



Utah Supreme Court's Advisory Committee on the Rules of Juvenile Procedure

Meeting Minutes

Matthew Johnson, Chair

Location: Webex Meeting

Date: February 2, 2024

Time: 12:00 p.m. – 2:00 p.m.

<p><u>Attendees:</u> Matthew Johnson, Chair William Russell Elizabeth Ferrin Thomas Luchs Dawn Hautamaki Adrianna Davis Sophia Moore Judge Paul Dame Janette White Jordan Putnam Arek Butler Judge Debra Jensen Michelle Jeffs David Fureigh, Emeritus Member</p>	<p><u>Excused Members:</u> James Smith</p>
<p><u>Staff:</u> Raymundo Gallardo Kiley Tilby, Recording Secretary</p>	

1. Welcome and approval of the January 5, 2024 Meeting Minutes: (Matthew Johnson)

Mr. Johnson welcomed everyone to the meeting, and congratulated Mr. Fureigh on his new position as Deputy Director. Mr. Johnson asked the committee for approval of the January 5, 2024, meeting minutes. Ms. Hautamaki moved to approve the minutes. Judge Jensen seconded the motion, and it passed unanimously.

2. Discussion & Action: Rule 13B. Limited Purpose Rule: (Judge Debra Jensen; Elizabeth Ferrin; David Fureigh)

Judge Jensen stated the subcommittee has been working on a proposed rule to address the case that recently came down from the Court of Appeals, *In re J.T.* Judge Jensen indicated in that case, the Court of Appeals mentioned that this committee may want to determine if a separate rule addressing this issue would be appropriate. Judge Jensen stated the subcommittee met and had some good discussion, but there were some additional things that needed to be discussed with the committee.

Judge Jensen stated the subcommittee decided on the title of “limited purpose intervenor.” Judge Jensen indicated the subcommittee felt like it was important to limit their access and specifically outline that they would not have access to child welfare records. As far as timeframes, Judge Jensen stated the subcommittee went back and forth on this but felt like there needed to be a triggering event. The subcommittee also felt like the burden of proof should be by a preponderance of the evidence as to why it’s in the best interest to grant the intervenor’s request for placement of the child. Judge Jensen stated that is consistent with the language in the statute.

Mr. Luchs inquired if it needed to be specifically outlined what “child welfare records” included. Ms. Ferrin stated the subcommittee had some discussion about wanting to make sure it wasn’t too broad or too narrow, while still giving the court discretion to determine the appropriate things they would have access to. Ms. Ferrin stated this committee could outline a list of things, but the subcommittee preferred to have a model of giving more discretion to the court to determine what documents would be appropriate that the intervenor should have access to. Mr. Luchs stated he likes that idea but wonders if there will be debate about what child welfare records means. Ms. White proposed language that the intervenor wouldn’t have access to the court file without authorization from the court, and if they wanted access to DCFS records, they would need to go through the GRAMA process to see if they were eligible for DCFS records. Mr. Luchs stated he would prefer the language to state they are not entitled to any legal or social files in the child welfare case, unless in the court’s discretion the court determines it is necessary. The committee then discussed the proposed language.

Ms. Hautamaki stated that from her perspective as a clerk, they would receive a records request from the intervenor. Ms. Hautamaki indicated the language as written in the proposed rule is clear to her that they are not to release anything without the Court's permission. Mr. Russell indicated this is not his area of practice, but from an outside perspective, he would want to know that he doesn't have access to the CARE system. Mr. Russell proposed adding something at the end of the first sentence that clarifies they are child welfare records maintained in the court's database.

Judge Dame proposed language that says the intervenor will not have access to court records as defined in Rule 4-202.01 of the Code of Judicial Administration. Ms. Ferrin likes that proposal because it gives private practitioners a good idea of what that includes. Mr. Putnam stated not everything in CARE is part of the record, and there have been issues where cases are certified on appeal and the juvenile court transfers the record, but only certain documents are going up there. Mr. Putnam indicated there are issues related to what constitutes "the record." Judge Dame responded that the term "record" is a separate defined term and in this proposed rule, we are dealing with a court record.

Judge Dame proposes the following language to subparagraph (2) to state, "A limited-purpose intervenor will not have access to court records, as defined in Rule 4-202.01 of the Code of Judicial Administration, except as provided below. If the court determines, after notice and opportunity to be heard, any court records are relevant to the issue of placement, the court may order those court records to be provided to the limited-purpose intervenor." The committee discussed changes to the proposed rule. Judge Jensen prefers "certain court orders" over "any court orders." Judge Jensen also proposed to reword the second sentence to state, "After notice and opportunity to be heard, if the court determines certain court records are relevant to the issue of placement, the court may order those court records to be provided to the limited-purpose intervenor." The proposed changes were made.

Mr. Fureigh stated there is a definition in Rule 5 for court records, and inquired if there was a reason why the citation to the judicial administration would be used instead. Judge Dame believes it is the same language in both, and agreed it's already defined in Rule 5. The committee removed the language referencing the judicial administration rule.

Judge Dame asked the subcommittee why the term "limited-purpose party" was not used. Limited-purpose party is consistent with *In re J.T.* Judge Jensen stated they didn't like the idea of giving them party status. Judge Dame believes the committee needs to use the language from the case and is worried this committee would not be complying with the direction from the Court of Appeals if party is not used. Judge Dame stated if the term party is not used, it could give someone an opportunity to say they want party status, not intervenor status, because the case specifically says party. Mr. Johnson understands Judge Dame's position, but he thinks there will be confusion about people thinking they are a party to the case. Judge Dame responded that according to the four cases outlined by the Court of Appeals, they are a limited-

purpose party. Mr. Johnson would push back and say it should be a limited-purpose intervenor, and not party. Judge Dame stated that is the language the Court of Appeals used, and the whole rule is based on this case that specifically indicates they would be a limited-purpose party, not limited-purpose intervenor.

Judge Jensen stated a lot of the case law that was cited to was criminal, and the Court of Appeals kind of used that to address it in the context of juvenile court. Judge Jensen believes the term intervenor captures more of what they are. Judge Jensen indicates they are not a party and are an intervenor for consideration for placement only, and then they are out. Mr. Luchs stated he is struggling to understand the distinction and believes they mean the same thing. Mr. Fureigh indicated he would argue that an intervenor doesn't have as much as a party would, which is the concern that was discussed. Mr. Fureigh stated a party to the case can file motions, request discovery, etc., and the subcommittee wanted to limit that. Mr. Butler thinks it's a distinction without any meaning. Mr. Butler indicated a limited-purpose party is how the Court of Appeals has distinguished it, but it means the same thing. Judge Jensen proposed the committee table the issue so each member can do more research on the issue.

The committee then discussed the proposal for a timeframe. Judge Dame wondered why the subcommittee distinguished a timeframe that was different from the statute. Mr. Fureigh stated the subcommittee felt like there needed to be a triggering event, but then there were discussions about what is procedural and what is substantive. Mr. Fureigh believes the legislature would say this committee can't set timeframes. Mr. Fureigh indicated the other issue deals with subparagraph (3) where it states, "...challenge the Division's placement decision." Mr. Fureigh stated an individual has a right to ask for placement with them, but not a right to challenge the Division's placement decision. Mr. Fureigh is concerned with that proposed language, you could get multiple relatives, who don't necessarily want placement, but just want to challenge the decision the Division made. Judge Dame agrees the language needs to be consistent with what they are asserting.

Judge Jensen proposed a change to the language in subparagraph (3). Judge Dame inquired if there even needed to be a timeframe or if that is something the parties could determine on a case-by-case basis in the child welfare case. Judge Dame suggested removing subparagraph (3) altogether because it is not necessary, and he wouldn't want to have a timeframe that conflicts with the statute. Judge Jensen doesn't have much heartburn with that proposal. Subparagraph (3) was removed.

The committee then discussed the burden of proof. Mr. Johnson stated he originally had a question about that because the Rules of Juvenile Procedure says unless it is specifically stated in the statute, the burden is clear and convincing. However, Mr. Johnson indicated he recently had a case regarding this issue and Judge Westmoreland wrote specific findings about why he thought it was by a preponderance of the evidence. Mr. Fureigh stated he thinks it is more of a disposition order which would be consistent with a preponderance of the evidence standard.

The committee then came back to the discussion surrounding the language of intervenor versus party. Mr. Fureigh stated he is leaning more towards Judge Dame's position at this point. Mr. Luchs doesn't think there is much of a distinction so the committee should use the language outlined in *In re J.T.* Judge Dame stated the committee needs to decide whether they need more time to consider the language, or if the committee is ready to vote on the language. Mr. Fureigh stated he would propose making the change to add party, and Ms. Ferrin agreed. Mr. Johnson inquired if the committee wanted to state "limited-purpose-party intervenor" or leave it as "limited-purpose party." Mr. Fureigh would prefer "limited-purpose party," but is not opposing keeping intervenor in there. Mr. Russell agreed to leave it at "limited-purpose party." Judge Dame indicated he would not feel comfortable making the changes without Judge Jensen's input since she had to leave the meeting early. The committee will table this discussion until Judge Jensen is available to provide her input.

The committee also discussed the formatting issue. Mr. Gallardo will change the format to match the changes the committee made during the meeting.

3. Discussion & Action: Rule 29B. Hearings with remote conferencing from a different location: (Judge Paul Dame; William Russell; All)

Judge Dame stated the subcommittee got together to discuss Rule 29B and they are proposing a substantial change to the rule. Judge Dame believes their proposal simplifies things and makes the distinction between evidentiary and non-evidentiary hearings. Judge Dame indicated he has also spoken to the Juvenile Court Working Group, and he provided them with a copy of the draft so they can discuss it as well.

Mr. Russell recognizes that the subcommittee did not list specific hearings despite the Supreme Court's request for input in that regard. However, Mr. Russell stated that based on the discussions from the last committee meeting, he doesn't believe there will be a consensus about which types of hearings should be presumed in-person or remote. Judge Dame stated the key distinction is evidentiary and non-evidentiary, and not the type of hearing. Mr. Russell agreed, and stated he believes there is not a substitute for an in-person trial. Mr. Russell indicated he wants there to be discretion given to the judge, so he likes that the proposed Rule 29B leaves it left open. Judge Dame agreed. Judge Dame wanted to make sure the rule provided the court discretion to hold remote hearings, which he hopes this proposed change to the rule accomplishes that. Mr. Johnson indicated he likes the changes. Mr. Russell stated there was a mini debate amongst the subcommittee about hybrid hearings and whether hybrid needed to be specifically defined. Judge Dame didn't think it needed to be defined more, and Mr. Russell agreed.

Mr. Johnson requested a motion from the committee to take the proposed rule to the Supreme Court. Ms. Jeffs made the motion, Ms. Hautamaki seconded the motion, and it passed unanimously.

4. Discussion & Action: Rule 37B. Hearings with remote conferencing from a different location: (All)

Mr. Johnson stated Rule 37B is the child welfare rule, similar to Rule 29B for delinquency proceedings. Judge Dame stated they wanted to see the reaction and get input from the committee to the proposals to Rule 29B before working on Rule 37B. Mr. Johnson asked if the same committee members would be willing to work on Rule 37B. Mr. Russell thinks input from a child welfare attorney would be beneficial. Judge Dame indicates another option is to wait for the input from the Supreme Court on the proposed language to Rule 29B.

Mr. Fureigh proposed the law clerks research the issue of whether the confrontation clause applies to termination proceedings. Judge Dame indicates the case is *State in the interest of L.M.*, 2013 UT App. 191, 308 P.3 553. Mr. Gallardo stated he will get the memo that has already been completed by a law clerk so the committee can discuss that further. This matter should be put on the March agenda to create a work group.

5. Discussion: Rule 5. Definitions: (Judge Paul Dame; All)

Judge Dame stated as he looked at this further, he is going to withdraw his request to look at Rule 5 at this point, but he may want to address it again in the future.

6. Discussion: Rule 15. Preliminary inquiry; informal adjustment without petition: (Judge Paul Dame; All)

Judge Dame stated in regard to Rule 15(f), he wanted the language to be consistent with the statute and as the rule is currently written, it is not consistent. Judge Dame proposed Rule 15(f) be changed to state, "Attempts to effect nonjudicial adjustment of a case are governed by Utah Code section 80-6-304." Judge Dame suggested the committee table this discussion until the next hearing, so the committee has more time to look into it further.

Mr. Russell stated yesterday he also took an initial shot as to what he would propose. Mr. Russell proposed, "The initial time in which to complete a nonjudicial adjustment, and any extensions thereof, shall be governed by Utah Code section 80-6-304." Judge Dame thinks that proposal also looks good. This will be tabled to discuss at the next committee meeting.

7. Discussion: Rule 50. Presence at hearings: (Judge Paul Dame; All)

Judge Dame stated he wondered if this committee wanted to include the authority for a judge to exclude someone from the hearing, in addition to the courtroom. For example, if a remote hearing is being held and someone is being disruptive, Judge Dame proposed the court should have the same authority under Rule 50(d) to exclude them. Mr. Russell stated he has seen this happen on at least two occasions. Judge

Dame proposes to add language “or the hearing” in subpart (d). The committee will table this discussion for the next committee meeting.

8. Old business/new business: (All)

Mr. Fureigh inquired if there has been an in-person committee meeting scheduled. Mr. Johnson stated May 3rd will be the in-person hearing. Mr. Gallardo stated it will be in the same room, and lunch has been approved.

Mr. Johnson announced he needs a vice-chair to assist him and asked Mr. Gallardo if he would send an e-mail to all committee members. The vice-chair would cover meetings when he is not present and would attend the meetings with the Supreme Court Justices. That person’s name would be sent to the Supreme Court for approval. Once they are approved, he would present that name to the committee.

No additional old or new business was discussed.

The meeting adjourned at 1:46 PM. The next meeting will be held on March 1, 2024 via Webex.