



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

Meeting Agenda

Matthew Johnson, Chair

Location: Webex Meeting
Date: March 1, 2024
Time: 12:00 pm – 2:00 pm

Action: Welcome and approval of February 2, 2024, meeting minutes.	Tab 1	Matthew Johnson
Action: Approval of February 23, 2024, meeting minutes.	Tab 2	Matthew Johnson
Discussion & Action: Rule 19C . Delinquency, traffic and adult criminal matters. <ul style="list-style-type: none">• Comment period closed on February 3, 2024, and no comments were received.	Tab 3	All
Discussion & Action: New Rule 13A. Limited-purpose intervention. <ul style="list-style-type: none">• The Committee will continue its discussion and drafting of new Rule 13A in response to In re J.T. (2023 UT App 157).	Tab 4	All
Discussion & Action: In-person, Remote, and Hybrid Hearings. <ul style="list-style-type: none">• Chair Matthew Johnson will provide the latest update regarding in-person, remote, and hybrid hearings.• The Committee will discuss how to proceed with Rule 29B, Rule 37B, and new rule, "Manner of calendaring and appearance for remote hearings."	Tab 5	All

<p>Discussion: Rule 15. Preliminary inquiry; informal adjustment without petition.</p> <ul style="list-style-type: none"> <i>The Committee will continue their discussion regarding amending paragraph (f) to be consistent with Utah Code section 80-6-304.</i> 	Tab 6	All
<p>Discussion: Rule 50. Presence at hearings.</p> <ul style="list-style-type: none"> <i>The Committee will continue their discussion on excluding people from the courtroom as allowed in paragraph (d) and its applicability to remote hearings.</i> 	Tab 7	All
<p>Discussion: Old business or new business.</p>		All

[URJP Committee Site](#)

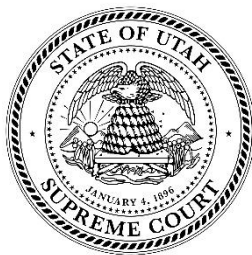
Meeting Schedule:

April 5, 2024
August 2, 2024

May 3, 2024 (In-person)
September 6, 2024

June 7, 2024
October 4, 2024

TAB 1



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

5 **Draft Meeting Minutes**

6
7 *Matthew Johnson, Chair*

8
9 Location: Webex Meeting

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11 Date: February 2, 2024

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13 Time: 12:00 p.m. – 2:00 p.m.

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<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> <hr/> <p><u>Guests:</u></p>
<p><u>Staff:</u> Raymundo Gallardo Kiley Tilby, Recording Secretary</p>	

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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.

62 Ms. Hautamaki stated that from her perspective as a clerk, they would receive a
63 records request from the intervenor. Ms. Hautamaki indicated the language as written
64 in the proposed rule is clear to her that they are not to release anything without the
65 Court's permission. Mr. Russell indicated this is not his area of practice, but from an
66 outside perspective, he would want to know that he doesn't have access to the CARE
67 system. Mr. Russell proposed adding something at the end of the first sentence that
68 clarifies they are child welfare records maintained in the court's database.
69

70 Judge Dame proposed language that says the intervenor will not have access to court
71 records as defined in Rule 4-202.01 of the Code of Judicial Administration. Ms. Ferrin
72 likes that proposal because it gives private practitioners a good idea of what that
73 includes. Mr. Putnam stated not everything in CARE is part of the record, and there
74 have been issues where cases are certified on appeal and the juvenile court transfers
75 the record, but only certain documents are going up there. Mr. Putnam indicated there
76 are issues related to what constitutes "the record." Judge Dame responded that the
77 term "record" is a separate defined term and in this proposed rule, we are dealing
78 with a court record.
79

80 Judge Dame proposes the following language to subparagraph (2) to state, "A
81 limited-purpose intervenor will not have access to court records, as defined in Rule 4-
82 202.01 of the Code of Judicial Administration, except as provided below. If the court
83 determines, after notice and opportunity to be heard, any court records are relevant
84 to the issue of placement, the court may order those court records to be provided to
85 the limited-purpose intervenor." The committee discussed changes to the proposed
86 rule. Judge Jensen prefers "certain court orders" over "any court orders." Judge
87 Jensen also proposed to reword the second sentence to state, "After notice and
88 opportunity to be heard, if the court determines certain court records are relevant to
89 the issue of placement, the court may order those court records to be provided to the
90 limited-purpose intervenor." The proposed changes were made.
91

92 Mr. Fureigh stated there is a definition in Rule 5 for court records, and inquired if
93 there was a reason why the citation to the judicial administration would be used
94 instead. Judge Dame believes it is the same language in both, and agreed it's already
95 defined in Rule 5. The committee removed the language referencing the judicial
96 administration rule.
97

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

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

112
113 Judge Jensen stated a lot of the case law that was cited to was criminal, and the Court
114 of Appeals kind of used that to address it in the context of juvenile court. Judge Jensen
115 believes the term intervenor captures more of what they are. Judge Jensen indicates
116 they are not a party and are an intervenor for consideration for placement only, and
117 then they are out. Mr. Luchs stated he is struggling to understand the distinction and
118 believes they mean the same thing. Mr. Fureigh indicated he would argue that an
119 intervenor doesn't have as much as a party would, which is the concern that was
120 discussed. Mr. Fureigh stated a party to the case can file motions, request discovery,
121 etc., and the subcommittee wanted to limit that. Mr. Butler thinks it's a distinction
122 without any meaning. Mr. Butler indicated a limited-purpose party is how the Court
123 of Appeals has distinguished it, but it means the same thing. Judge Jensen proposed
124 the committee table the issue so each member can do more research on the issue.

125
126 The committee then discussed the proposal for a timeframe. Judge Dame wondered
127 why the subcommittee distinguished a timeframe that was different from the statute.
128 Mr. Fureigh stated the subcommittee felt like there needed to be a triggering event,
129 but then there were discussions about what is procedural and what is substantive. Mr.
130 Fureigh believes the legislature would say this committee can't set timeframes. Mr.
131 Fureigh indicated the other issue deals with subparagraph (3) where it states,
132 "...challenge the Division's placement decision." Mr. Fureigh stated an individual has
133 a right to ask for placement with them, but not a right to challenge the Division's
134 placement decision. Mr. Fureigh is concerned with that proposed language, you could
135 get multiple relatives, who don't necessarily want placement, but just want to
136 challenge the decision the Division made. Judge Dame agrees the language needs to
137 be consistent with what they are asserting.

138
139 Judge Jensen proposed a change to the language in subparagraph (3). Judge Dame
140 inquired if there even needed to be a timeframe or if that is something the parties
141 could determine on a case-by-case basis in the child welfare case. Judge Dame
142 suggested removing subparagraph (3) altogether because it is not necessary, and he
143 wouldn't want to have a timeframe that conflicts with the statute. Judge Jensen
144 doesn't have much heartburn with that proposal. Subparagraph (3) was removed.

145
146 The committee then discussed the burden of proof. Mr. Johnson stated he originally
147 had a question about that because the Rules of Juvenile Procedure says unless it is
148 specifically stated in the statute, the burden is clear and convincing. However, Mr.
149 Johnson indicated he recently had a case regarding this issue and Judge
150 Westmoreland wrote specific findings about why he thought it was by a
151 preponderance of the evidence. Mr. Fureigh stated he thinks it is more of a disposition
152 order which would be consistent with a preponderance of the evidence standard.

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

168
169 The committee also discussed the formatting issue. Mr. Gallardo will change the
170 format to match the changes the committee made during the meeting.

171
172 **3. Discussion & Action: Rule 29B. Hearings with remote conferencing from a**
173 **different location:** (Judge Paul Dame; William Russell; All)

174
175 Judge Dame stated the subcommittee got together to discuss Rule 29B and they are
176 proposing a substantial change to the rule. Judge Dame believes their proposal
177 simplifies things and makes the distinction between evidentiary and non-evidentiary
178 hearings. Judge Dame indicated he has also spoken to the Juvenile Court Working
179 Group, and he provided them with a copy of the draft so they can discuss it as well.

180
181 Mr. Russell recognizes that the subcommittee did not list specific hearings despite
182 the Supreme Court’s request for input in that regard. However, Mr. Russell stated
183 that based on the discussions from the last committee meeting, he doesn’t believe
184 there will be a consensus about which types of hearings should be presumed in-
185 person or remote. Judge Dame stated the key distinction is evidentiary and non-
186 evidentiary, and not the type of hearing. Mr. Russell agreed, and stated he believes
187 there is not a substitute for an in-person trial. Mr. Russell indicated he wants there to
188 be discretion given to the judge, so he likes that the proposed Rule 29B leaves it left
189 open. Judge Dame agreed. Judge Dame wanted to make sure the rule provided the
190 court discretion to hold remote hearings, which he hopes this proposed change to the
191 rule accomplishes that. Mr. Johnson indicated he likes the changes. Mr. Russell stated
192 there was a mini debate amongst the subcommittee about hybrid hearings and
193 whether hybrid needed to be specifically defined. Judge Dame didn’t think it needed
194 to be defined more, and Mr. Russell agreed.

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

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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

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

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250 **8. Old business/new business: (All)**

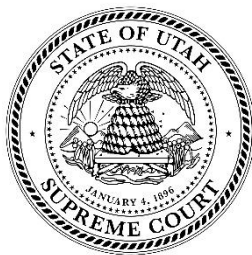
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252 Mr. Fureigh inquired if there has been an in-person committee meeting scheduled.
253 Mr. Johnson stated May 3rd will be the in-person hearing. Mr. Gallardo stated it will
254 be in the same room, and lunch has been approved.

255
256 Mr. Johnson announced he needs a vice-chair to assist him and asked Mr. Gallardo if
257 he would send an e-mail to all committee members. The vice-chair would cover
258 meetings when he is not present and would attend the meetings with the Supreme
259 Court Justices. That person’s name would be sent to the Supreme Court for approval.
260 Once they are approved, he would present that name to the committee.

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262 No additional old or new business was discussed.

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

TAB 2



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

5 **Draft Meeting Minutes**

6
7 *Matthew Johnson, Chair*

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9 Location: Webex Meeting

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11 Date: February 23, 2024

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13 Time: 2:00 p.m. – 4:00 p.m.

14

<p><u>Attendees:</u> Matthew Johnson, Chair Thomas Luchs Dawn Hautamaki Adrianna Davis Sophia Moore Judge Paul Dame Janette White Jordan Putnam Arek Butler Judge Debra Jensen</p>	<p><u>Excused Members:</u> James Smith William Russell Elizabeth Ferrin Michelle Jeffs David Fureigh, Emeritus Member</p>
	<p><u>Guests:</u> Sonia Sweeney Blake Murdoch Nick Stiles</p>
<p><u>Staff:</u> Randi Von Bose, Juvenile Law Clerk Lisa McQuarrie, Juvenile Law Clerk Raymundo Gallardo Kiley Tilby, Recording Secretary</p>	

18 **1. Rule Related to In-Person versus Remote Hearings: (All)**

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Mr. Johnson thanked everyone for getting together so quickly.

Nick Stiles stated the legislature had potential legislation that was not public but was provided to the Judicial Council which prompted the Judicial Council to have to look at remote versus in-person hearings and get some form of governance into a rule. Mr. Stiles indicated that about a week ago, the Judicial Council and the Supreme Court were looking at incorporating an administrative rule, but as of a few days ago, they both decided most of the language should be found in the procedural rules. Mr. Gallardo provided this committee with a proposed draft of what the administrative rule would look like, and stated there needs to be a mechanism found within the rules where a party can reach out to the Judicial Council if a judge is not following what the rules says. Mr. Stiles expressed appreciation to the committee for getting together so quickly, and indicated he was here to answer any questions.

Mr. Johnson inquired if the document provided was just a draft at this point. Mr. Stiles stated it was, and it was put together by the Judicial Council, but then it was later decided the substance should be in the specific procedural chapters. Mr. Johnson inquired if the highlighted sections were those that they wanted this committee to add to their rule, and Mr. Stiles stated that was the bulk of it, but there also needed to be a reference in the procedural rules to Rule 2-211 of the Code of Judicial Administration for enforcement.

Judge Dame stated it appears the Supreme Court wants this committee to incorporate the draft rule, currently numbered as Rule 4-101, into their rule. Judge Dame indicated he has concerns with it, but he wants to be the faucet not the drain, so this committee needs to figure out the parameters. Judge Dame stated it seems that one interpretation of what this committee is being asked to do is to do away with Rule 29B and Rule 37B and copy the first five sections of draft 4-101 to create a new rule in the Rules of Juvenile Procedure that mirrors that. Judge Dame inquired if that is what this committee is being asked to do. Mr. Stiles responded that that is along the lines of what the Supreme Court is asking this committee to do. Mr. Stiles stated he appreciates that Judge Dame can see some issues or concerns with the draft but feels like this is a better situation than it would be if the potential legislation goes through.

Mr. Stiles stated this committee is being tasked with applying sections three and four in a manner that makes the most sense, and if that means doing away with Rule 29B and 37B, that is fine. Mr. Stiles indicated that if it is possible to tweak it some to get it into Rule 29B and 37B, so it is more seamless, that is also acceptable. Judge Dame believes subsection three and four cannot be standalone, and this committee would need to also incorporate the other sections as well which will require a complete re-write to the rules that are already standing. Judge Dame stated the rule would not make a lot of sense if only sections three and four were incorporated without the context of sections one and two. Judge Dame indicated that when those sections are added, it completely eviscerates the current revised version of Rule 29B and if that is

64 the case, someone can just copy Rule 4-101 and label it. Mr. Butler agreed and stated
65 the current rule and Rule 4-101 are totally incompatible.

66
67 Mr. Stiles stated the request from the Supreme Court is to incorporate section three
68 and four, but if this committee feels like section one and two also need to be
69 incorporated, this committee can do that. Judge Dame believes this committee would
70 have to incorporate subsection one because it includes a witness, who may be hostile
71 to both sides, to request to appear via telephone. Judge Dame stated subsection one
72 completely does away with response times to motions and allows the court to make
73 their own determination and tell the parties this critical witness is allowed, because
74 there is a presumption to allow it. Judge Dame stated he doesn't want to be negative
75 or waste time if the Supreme Court is essentially telling this committee to deal with
76 it because this is what they want us to do. If the Supreme Court does not want this
77 committee to have discretion or judgment in analyzing whether the changes they are
78 suggesting are good or problematic, then Judge Dame does not want to waste time
79 doing that. Judge Dame indicated if this committee is not tasked with doing that, and
80 the Supreme Court doesn't want to hear the feedback from this committee, then it is
81 a matter of cutting and pasting it because subsections three and four don't make sense
82 without definitions of one.

83
84 Judge Dame stated subsection one allows witnesses to make a request because they
85 are defined as a participant. Ms. White said that's the first thing she saw is that this
86 rule includes parties and witnesses. Ms. White stated witnesses have very different
87 reasons why they need to be in court, and judges should have discretion with a party.
88 Ms. White stated if a parent has COVID and they are willing to participate in trial
89 virtually, that is very different than allowing a party to confront a witness in person.
90 Judge Dame stated one of the things to also consider is constitutional requirements
91 of the right of confrontation whether that applies to termination of parental rights or
92 delinquency. Mr. Putnam stated there may be an in-between ground, and maybe the
93 Supreme Court is essentially asking this committee to cut and paste, but his proposal
94 is that this committee use draft 4-101 and then make changes to the things that are
95 problematic.

96
97 Ms. Sweeney stated she wants to underscore what Mr. Stiles had shared at the outset
98 as to the history behind the task and the possible bill that they were confronted with
99 that would have been far more prescriptive. Ms. Sweeney stated it is fair to say that
100 the proposed legislation significantly reduced the judicial discretion than what is
101 being proposed in draft 4-101. Ms. Sweeney outlined that this is the best attempt to
102 be responsive to what the legislature was communicating to them, but within realms
103 of what people thought might be workable. Ms. Sweeney believes Mr. Putnam's
104 suggestion is a good one. Although Mr. Stiles is not able to guarantee the Supreme
105 Court's reception to the proposed changes this committee may make, she believes
106 they would be open to hearing the concerns and may be accommodating to the
107 unique issues to juvenile court. Judge Dame stated his concerns are worse for district
108 court than they are for juvenile court so he can't say they are unique to the juvenile
109 court. Ms. Sweeney indicated she assumes each committee will be addressing those

110 concerns and the various ways the language in 4-101 could be problematic. Judge
111 Dame doesn't want to send Mr. Gallardo and Mr. Johnson to the Supreme Court with
112 something they didn't ask for.

113
114 Mr. Stiles stated Mr. Putnam and Ms. Sweeney hit the nail on the head that this
115 committee could incorporate the substance of 4-101, and then amend it as necessary
116 to make sense to the juvenile court. Mr. Stiles indicated if those amendments require
117 some changing of the language, if those changes still accomplish what the original
118 rule was intending to accomplish, they should be received well. Mr. Stiles indicated
119 the court, for the last 18 months, has been working with all the advisory committees
120 on this exact issue, but the court hasn't pressed it and has instead been receiving
121 feedback.

122
123 Ms. Von Bose had a question on what the Supreme Court has highlighted. Ms. Von
124 Bose stated the timber is that this committee wanted to preserve discretion to the
125 court as much as possible which is why this committee drafted Rule 29B as they did.
126 Ms. Von Bose stated that the part that overrides that is where it says the court "must
127 accommodate." Ms. Von Bose inquired if there was wiggle room in the "must"
128 language. Mr. Stiles stated the proposed rule says unless the court finds good cause.
129 Judge Dame stated the language that gives him the most heartburn is giving a non-
130 party witness the authority to e-mail the court 25 hours before a trial and ask to
131 appear by telephone without notice to the other side or allowing the other parties to
132 address it. Judge Dame stated that eviscerates due process and allows the court to
133 make a reasonable decision alone without the parties having an opportunity to say
134 why they shouldn't be allowed to testify remotely. Judge Dame stated this language
135 doesn't allow for due process or other basic concepts of fundamental fairness which
136 is his real concern.

137
138 Mr. Butler agreed with the concerns raised by Judge Dame. Mr. Butler inquired if this
139 committee could change the timeframe to 72 hours, or even a week, that would allow
140 time for all parties to give input. Mr. Butler doesn't think the proposed language is
141 appropriate or a wise way to do business. Judge Jensen stated she also has an issue
142 with the 24-hour timeframe from the clerk's perspective. Judge Jensen stated the
143 clerks need time to wait for the judge to rule, set up a Webex meeting, send notice,
144 etc. Mr. Butler agreed. Mr. Stiles stated all those points have merit, and if this
145 committee feels it is undoable, he believes the Supreme Court would at least listen to
146 that and if they don't agree, they can change it. Mr. Stiles stated if that is the position
147 of the committee to change the timeframe, maybe the court would be receptive to
148 that. Mr. Stiles also indicated one of the reasons for these committees to draft it and
149 not the Judicial Council is because this committee has expertise in this field.

150
151 Mr. Johnson stated the Supreme Court is looking at this committee to incorporate a
152 lot of this language, so if this committee drafts something to include some of the
153 language but make changes that are more feasible for juvenile court, then he can go
154 before the Supreme Court and explain. Mr. Johnson indicated it sounds like the
155 Supreme Court is behind the "8-ball" with legislators pushing some kind of rule that

156 would hamstring the courts and the judges. Mr. Johnson stated the Supreme
157 Court/AOC drafted this as quickly as they could and sent it off the committees to be
158 incorporated. Mr. Johnson indicated he doesn't feel comfortable cutting and pasting
159 it and then have to amend it later. Mr. Johnson proposed that if this committee can
160 amend some of the language now, that would be more productive than just cutting
161 and pasting.

162
163 Judge Dame stated the problem with Rule 29B, is it is simple and clean-cut in
164 distinguishing between evidentiary and non-evidentiary hearings, and that
165 distinction is not even considered in 4-101. Judge Dame stated this committee can try
166 to re-do it and minimize the concerns we have if that's what the Supreme Court wants
167 us to do, but it's not consistent with what this committee came up with in Rule 29B.
168 Mr. Stiles stated it would be ideal if the criminal, civil, and juvenile rules are all
169 similar in how they handle this issue versus having differing rules. Having said that,
170 Mr. Stiles doesn't think it would be wrong if this committee wanted to incorporate 4-
171 101, but also send up Rule 29B and say that is the preference.

172
173 Ms. Sweeney stated she believes presenting something "in the alternative" would
174 also be appropriate. Ms. Sweeney stated one of the proposals would be on the nose
175 responsive to what it appears they are requesting by using the language in 4-101, but
176 this committee can also maintain that it believes there is a better approach as already
177 drafted in Rule 29B. Ms. Sweeney stated this committee can do that, and then let the
178 Supreme Court decide what they think is best for the judiciary.

179
180 Mr. Butler would propose to re-write the rule basically as they have it but would
181 propose changing the timeframe in section 3(b) to something more than 24 hours and
182 adding a statement, "so long as the court can hear input from all parties prior to
183 making a decision." Mr. Butler stated if the Supreme Court doesn't like that, they can
184 let us know.

185
186 Ms. White stated she may have missed it at the beginning, but inquired what group
187 or individual is behind pushing the legislation regarding this issue. Mr. Stiles stated
188 the proposed legislation was a result of some legislators and constituents noticing an
189 inconsistency in courts allowing remote hearings. One example being two attorneys
190 who have a similar hearing type outside the Wasatch front, one attorney will be
191 allowed to appear remotely while the other must drive to another city to hold the
192 hearing their colleague was able to do from their office. Mr. Stiles stated there are
193 other folks who are raising this issue from an access to justice standpoint. Judge
194 Dame inquired if anyone has discussed with the legislature that these issues are
195 procedural and not substantive, so it is outside of their authority. Mr. Stiles
196 responded that the legislature could amend rules of procedure by a 2/3 vote, but he
197 thinks the decision from the Judicial Council was to work with the legislature instead
198 of using a hardline approach in passing an administrative rule. Ms. White wants the
199 court to be able to be flexible, and indicated she has always seen the court be
200 accommodating to the parties and their counsel. Ms. White stated witnesses are a
201 different concern. Ms. White believes this committee can incorporate a lot of the

202 language in draft 4-101 into our rule, but still make changes. Ms. White indicated
203 Judge Dame's emotion about this is very valid and that she would be furious if one
204 of her witnesses sent an e-mail to the court to appear telephonically and nobody got
205 to weigh in on it. Ms. White proposed this committee could use the language in 4-101
206 for the parties, but subpoenaed witnesses maybe need to have a separate rule. Mr.
207 Stiles stated those are good points.

208
209 Ms. Hautamaki stated she is glad someone brought up the clerk issues for the 24-
210 hour timeframe. Ms. Hautamaki stated e-mails are quite heavy, and checking e-mails
211 are not the first thing they do when they come to work because they are in court,
212 helping people at the counter, etc. Ms. Hautamaki indicated 24 hours to answer a
213 request by e-mail is going to be difficult. Ms. Hautamaki stated 72 hours would be
214 possible, but less than that would be setting-up the court clerks for failure.

215
216 Mr. Johnson stated if it is a witness, and we are giving them that much power,
217 especially on a termination petition or trial delinquency matter, he would argue 72
218 hours is not enough time. Mr. Johnson agrees with Judge Dame that having a witness
219 be able to e-mail the courts without notifying anyone and requesting to appear
220 remotely is problematic. Mr. Johnson agrees with Mr. Butler that this committee
221 could make some of the changes and submit that, but he would also like to keep our
222 proposal of Rule 29B as an alternative. Judge Dame stated he doesn't think that is
223 possible because it is a completely different structure and there is no differentiation
224 between evidentiary versus non-evidentiary hearings.

225
226 Judge Dame stated the meat and potatoes of litigation is being able to question a
227 witness in the same room, not on camera. Judge Dame would not include a witness
228 as a participant. Judge Dame is also concerned about the information that will come
229 to a judge that would be inappropriate *ex parte* communications as they are
230 explaining why they don't want to appear in person. Judge Dame stated that would
231 not be subject to cross-examination and is rife with potential problems. Judge Dame
232 stated this is the only situation he is aware of in any of the rules of procedure that
233 would allow a witness or third party to have *ex parte* communications with the court.

234
235 Ms. White inquired if the folks that have proposed the legislation have seen this
236 committee's proposed Rule 29B. Mr. Stiles stated the court did not approve it for
237 public comment and tabled it, so they have not seen it. Ms. White asked if there is a
238 liaison who can go to them and present the proposed rule. Mr. Stiles stated there is a
239 liaison and they have been communicating with the legislators, but not specifically
240 about the proposed Rule 29B.

241
242 Judge Dame stated there is also Rule 37B that this committee has not made changes
243 to because they wanted to see if the Supreme Court would approve Rule 29B before
244 making the changes to Rule 37B. Judge Dame stated Rule 29B has already been shown
245 to the Supreme Court, they tabled it, and it didn't satisfy their requirements so it
246 doesn't make sense to show it to them again. Ms. Sweeney stated it could be
247 presented to the Supreme Court as option A, this committee tried to do the best we

248 could, here are the concerns, and options B is that this committee would suggest in
249 the alternative to adopt what was previously presented to you. Ms. Sweeney stated
250 that allows this committee to articulate to the Supreme Court that Rule 29B is really
251 the best approach for the juvenile court. Mr. Johnson stated the Supreme Court did
252 not say anything negative about the proposed Rule 29B and really liked the fact that
253 it was short, succinct, and to the point and conveyed what needed to be done.
254 However, they tabled it possibly because they knew this was coming down.

255
256 Judge Dame proposed a subcommittee to work on Rule 37B if the Supreme Court
257 was positive about the proposed Rule 29B. Judge Dame stated this committee would
258 need a second subgroup to form a new rule that would apply to both delinquency
259 and non-delinquency to replace Rule 29B and 37B. Judge Dame indicated that the
260 committee could incorporate the substance of Rule 4-101 but make changes this
261 committee would hope the Supreme Court would accept unless this committee
262 would like to work on it now. Judge Jensen and Mr. Johnson agreed this committee
263 should start on a draft of a new rule now. Mr. Butler had to leave the meeting early,
264 but indicated he would support removing the ability of a third-party witness to make
265 demands to the court. He would also support making a longer time for making
266 requests to the court.

267
268 The committee then began working on a proposed rule to incorporate the language
269 in draft Rule 4-101.

270
271 In the language to the applicability of the rule, the committee agreed it should state,
272 "This rule applies to civil, criminal and delinquency matters in juvenile courts."

273
274 In the definitions, the committee does not believe a third party who is required to
275 attend court should have that authority. The committee agreed that the witness can
276 talk to the person who sent them the subpoena if they have an issue, and that party
277 can decide whether they want to make the request on their behalf. The committee
278 believes that change would eliminate a lot of concerns. Ms. Von Bose inquired if there
279 would be a value in adding definitions to differentiate between evidentiary and non-
280 evidentiary hearings, or if there would be a conflict in the language that comes after.
281 Judge Dame likes that but thinks it would have to be a complete re-write of Rule 4-
282 101. Mr. Johnson stated it might be good to add a definition of evidentiary hearing
283 and non-evidentiary hearing to show the justices the difficulty the juvenile court
284 faces. Judge Dame doesn't believe they need to be defined.

285
286 Ms. Hautamaki inquired if they are tied to the language regarding e-mail or letter
287 and if so, whether that correspondence would need to be placed in the record. Judge
288 Dame responded that if this committee takes out non-party as participant, this
289 committee can address that once subpart three is addressed. Judge Dame proposed
290 this committee work on subpart three first, then this committee can discuss
291 evidentiary versus non-evidentiary.

292

293 Judge Dame stated that in subpart three, if a party is not represented, they need to
294 make the request by motion like everyone else. Judge Dame stated that one approach,
295 which this committee would all like but may not be acceptable to the legislature or
296 the Supreme Court, is to state, "A participant may request that they appear or a
297 witness to appear in person or remotely by filing a motion with the court or making
298 a verbal request during a hearing." Judge Dame also proposed a timeframe of 72
299 hours, but also leave it open to allow for requests to be made the day of the hearing
300 if something comes up like sickness or other emergencies. Judge Dame proposed
301 adding language to include "absent exigent circumstances" to allow the freedom to
302 address that. Ms. Moore likes that proposal.

303
304 The following language was proposed: "The motion must be filed at least 72 hours
305 prior to the hearing unless there are exigent circumstances. The court will schedule a
306 remote hearing related to the motion at least 24 hours prior to the hearing." Judge
307 Dame stated the timeframe would not apply to the verbal request, because all parties
308 would be present, and they could discuss it at the time of the hearing. Judge Dame
309 proposed a hearing will be held at least 24 hours in advance. Judge Jensen is
310 concerned about having to hold a hearing every time that request is received. Judge
311 Dame proposed the timeframe be extended to allow for time to respond. Ms.
312 Hautamaki proposed adding language for stipulated versus not stipulated. Judge
313 Dame proposed that a stipulated motion may be filed at any time prior to the hearing,
314 and a non-stipulated motion must be filed within 72 hours.

315
316 Judge Jensen stated even on a stipulated motion, we may still want 24 hours' notice
317 for the clerk's sake. Judge Dame indicated the problem is, in situations where the
318 request is being made the day of, that would not allow for 24 hours anyway. Ms.
319 White stated the worst that could happen is the court could say they couldn't
320 accommodate the request, and the hearing will need to be continued due to the last-
321 minute notice.

322
323 The committee proposed the following language related to a non-stipulated motion,
324 "A non-stipulated motion must be filed at least 96 hours prior to the hearing, unless
325 there are exigent circumstances. If a party objects to the motion within 48 hours of
326 the filing, the court will schedule a remote hearing at least 24 hours prior to the
327 hearing to address the motion."

328
329 Judge Dame stated with the way this committee has restructured this, there would
330 no longer be a presumption. Judge Jensen stated it may be a good idea to keep some
331 of that language, not as a presumption, but factors the court may consider when
332 making the decision.

333
334 In regard to subpart 4, the committee had no proposed changes as the intent of the
335 language is that the court must find good cause if the request is going to be denied.

336
337 Judge Dame stated he doesn't understand subpart five as it is a bit superfluous in an
338 implicit way and seems to be stating the obvious. Judge Dame indicated he doesn't

339 necessarily care if it is left in but doesn't think it is necessary. Mr. Putnam stated it
340 may be referring to when one party requests to appear in person, they will convert
341 the entire hearing to virtual rather than hybrid. Judge Dame stated we don't need to
342 spend time on it and agreed it can be left in.

343
344 As far as subpart six, the committee left the language as-is.

345
346 Ms. Hautamaki inquired if this committee wants to use the term "participant" or if
347 they would rather use the term "party or counsel" to be more clear. Ms. White stated
348 can just use participant instead of party or attorney. Mr. Johnson stated in Rule 29B,
349 if he recalls correctly, the term participant is used.

350
351 Ms. Moore believes this committee still needs to account for those who are not a party
352 or a witness. Ms. Moore stated if this committee leaves out someone who is not a
353 party or a witness, the Supreme Court will have a problem with the proposed rule,
354 and this committee should deal with them somehow. Ms. Moore inquired if this
355 committee should state a participant who is not a party or a witness may appear
356 virtually at any time. Ms. White wonders if it should be left to the court's discretion.
357 Judge Dame inquired if it has been an issue up to this point, as he doesn't believe it
358 has been. Ms. Moore stated this may be the issue the Supreme Court is trying to
359 address, so she wonders if that is addressed, this committee may have a good chance
360 of getting the rule passed.

361
362 Ms. McQuarrie stated in 3(a), she would propose that it be changed to "A participant
363 may request that the participant or a witness appear in person or remotely by filing
364 a motion or making a verbal request during a hearing." The committee agrees.

365
366 Ms. Hautamaki proposed that the stipulated motion be filed within 24 hours prior to
367 the hearing. Ms. Hautamaki expressed concern that if the stipulated motion is filed
368 the day of the hearing, chances are the clerks are not going to know it has been filed.
369 The committee changed the language to state, "A stipulated motion must be filed at
370 least 24 hours prior to the hearing, unless there are exigent circumstances."

371
372 Mr. Johnson inquired if this committee needs to address the issue of non-participants.
373 Judge Dame stated if it is a problem, it should be addressed. If it is not a problem in
374 juvenile court, he believes they should let it lie. Judge Jensen stated if they are not
375 required to be there, they shouldn't have the ability to make those types of requests.
376 Judge Dame believes those individuals should rely on one of the parties to make the
377 request on their behalf.

378
379 Judge Dame stated he would like to go back to using the term "participant" rather
380 than "party." Ms. Moore stated the reason for defining it is that this committee is
381 excluding a witness as a participant. Judge Dame stated this committee has taken that
382 language out completely. Judge Jensen stated that by this committee using as much
383 of the same language as possible in 4-101 may help get the rule approved. Judge

384 Dame has no issue with the language of participant, and Ms. White agrees, so long
385 as a witness is not included in that definition.

386
387 The committee discussed the title of the rule. Judge Dame stated that was the
388 proposed language in 4-101. Ms. Von Bose stated she prefers the heading that was
389 outlined in Rule 29B as it seems more consistent with what is happening in the rule.
390 Ms. White proposed, "Manner of calendaring and appearance in delinquency and
391 non-delinquency hearings." Judge Dame stated that would be redundant because it
392 would apply to both regardless. The committee also discussed the rule number, and
393 Judge Dame doesn't believe this committee needs to worry about that now.

394
395 Judge Dame stated he is withdrawing his prior suggestion that there be a
396 subcommittee on Rule 37B because he believes this rule, or some variation of it, will
397 be adopted.

398
399 Mr. Johnson inquired if this is something he needs to take a vote on since this was
400 requested by the Supreme Court. Mr. Gallardo stated he doesn't believe a vote is
401 needed, and he got the sense that this is what was expected of this committee whether
402 they agreed or not. Mr. Johnson agreed and stated he will request a vote if there are
403 changes proposed by the Supreme Court. Mr. Johnson inquired if anyone had any
404 other issues or proposed changes regarding this rule. Mr. Johnson will provide this
405 version to the Supreme Court and let them know this is what this committee came
406 up with as a working draft under the limited time constraints.

407
408 Ms. McQuarrie wanted to revisit the title. Ms. McQuarrie stated as a law clerk, if
409 someone were to ask her if there was a rule that addresses remote versus in-person
410 hearings and she were to scan the rules, she wouldn't be able to determine this rule
411 addressed that issue based on the title. Ms. McQuarrie proposed changing the
412 heading to "Manner of calendaring and appearance for remote hearings." The
413 committee agreed and the change was made. Mr. Gallardo and Mr. Johnson will
414 present this proposed rule to the Supreme Court.

415
416 Judge Dame stated there is no authority or anything in the current rules that allow
417 the court to also appear remotely in certain situations because there are no COVID
418 orders at this point. Judge Dame inquired if this committee needed to put that into
419 the proposed rule, so it allows authority to hold any hearing as remote or hybrid,
420 including allowing the court to appear remotely. Ms. White likes having that in the
421 rule, and Ms. Moore agreed. The committee added language that states, "The court
422 may hold any hearing in-person, remotely, or hybrid as set forth below."

423
424 Mr. Johnson thanked everyone for their time and participation on short notice.

425
426 **2. Old business/new business: (All)**

427
428 No old or new business was discussed.

429

430

431

432 The meeting adjourned at 4:10 PM. The next meeting will be held on March 1, 2024
433 via Webex.

TAB 3

1 **Rule 19C. Motion practice for Delinquency, traffic, and adult criminal matters.**

2 (a) This rule applies to motion practice for delinquency, traffic, and adult criminal
3 matters.

4 (b) Any defense, objection, or request, including request for rulings on the admissibility
5 of evidence, which is capable of determination without the trial of the general issue may
6 be raised prior to trial by written motion. A motion ~~shall~~must state succinctly and with
7 particularity the grounds upon which it is made and the relief sought. A motion need not
8 be accompanied by a memorandum unless required by the court.

9 ~~(b)~~(c) The following ~~shall~~must be raised at least seven days prior to the trial unless
10 otherwise ordered by the ~~C~~court:

11 (1) defenses and objections based on defects in the petition, indictment, or
12 information;

13 (2) motions to suppress evidence;

14 (3) requests for discovery where allowed;

15 (4) requests for severance of allegations, charges, minors, or defendants;

16 (5) motions to dismiss on the ground of double jeopardy; or

17 (6) motions challenging jurisdiction, unless good cause is shown why the issue
18 could not have been raised at least seven days prior to trial.

19 ~~(c)~~(d) Motions for a reduction of criminal offense pursuant to Utah Code ~~S~~section 76-3-
20 402(2) may be raised at any time after disposition upon proper service of the motion on
21 the appropriate prosecuting entity.

22 ~~(d)~~(e) Motions to suppress. A motion to suppress evidence ~~shall~~must:

23 (1) describe the evidence sought to be suppressed;

24 (2) set forth the standing of the movant to make the application; and

25 (3) specify sufficient legal and factual grounds for the motion to give the opposing
26 party reasonable notice of the issues and to enable the court to determine what
27 proceedings are appropriate to address them.

28 If an evidentiary hearing is requested, no written response to the motion by the non-
29 moving party is required, unless the court orders otherwise. At the conclusion of the
30 evidentiary hearing, the court may provide a reasonable time for all parties to respond to
31 the issues of fact and law raised in the motion and at the hearing.

32 (f) Motions on the justification of the use of force pursuant to Utah Code section 76-2-309
33 must be filed at least 28 days before trial, unless there is good cause shown as to why the
34 issue could not have been raised at least 28 days before trial.

35 ~~(e)~~(g) When the facts in a petition, information, or indictment fail to inform a minor of the
36 nature and cause of the offense alleged so as to enable the minor to prepare ~~his or her~~
37 defense, the minor may file a written motion for a bill of particulars. The motion
38 ~~shall~~must be filed at arraignment or within 14 days thereafter, or at such later time as the
39 court may permit.

40 ~~(f)~~(h) A motion made before trial ~~shall~~must be determined before trial unless the court
41 for good cause orders that the ruling be deferred for later determination. Where factual
42 issues are involved in determining a motion, the court ~~shall~~will state its findings on the
43 record.

44 ~~(g)~~(i) Failure of the minor or defendant to timely raise defenses or objections or to make
45 requests which must be made prior to trial or at the time set by the court ~~shall~~will
46 constitute waiver thereof, but the court for cause shown may grant relief from such
47 waiver.

48 ~~(h)~~(j) A verbatim record ~~shall~~will be made of all proceedings at the hearing on motions,
49 including such findings of fact and conclusions of law as are made orally.

50 ~~(i)~~(k) If the court grants a motion based on a defect in the institution of the prosecution
51 or in the petition or information, it may order that the minor or defendant be held in

52 custody for a reasonable and specified time pending the filing of a new petition or
53 information. Nothing in this rule ~~shall~~will be deemed to affect provisions of law relating
54 to a statute of limitations.

1 **Rule 19C. Motion practice for delinquency, traffic, and adult criminal matters.**

2 (a) This rule applies to motion practice for delinquency, traffic, and adult criminal
3 matters.

4 (b) Any defense, objection, or request, including request for rulings on the admissibility
5 of evidence, which is capable of determination without the trial of the general issue may
6 be raised prior to trial by written motion. A motion must state succinctly and with
7 particularity the grounds upon which it is made and the relief sought. A motion need not
8 be accompanied by a memorandum unless required by the court.

9 (c) The following must be raised at least seven days prior to the trial unless otherwise
10 ordered by the court:

11 (1) defenses and objections based on defects in the petition, indictment, or
12 information;

13 (2) motions to suppress evidence;

14 (3) requests for discovery where allowed;

15 (4) requests for severance of allegations, charges, minors, or defendants;

16 (5) motions to dismiss on the ground of double jeopardy; or

17 (6) motions challenging jurisdiction, unless good cause is shown why the issue
18 could not have been raised at least seven days prior to trial.

19 (d) Motions for a reduction of criminal offense pursuant to Utah Code section 76-3-402(2)
20 may be raised at any time after disposition upon proper service of the motion on the
21 appropriate prosecuting entity.

22 (e) Motions to suppress. A motion to suppress evidence must:

23 (1) describe the evidence sought to be suppressed;

24 (2) set forth the standing of the movant to make the application; and

25 (3) specify sufficient legal and factual grounds for the motion to give the opposing
26 party reasonable notice of the issues and to enable the court to determine what
27 proceedings are appropriate to address them.

28 If an evidentiary hearing is requested, no written response to the motion by the non-
29 moving party is required, unless the court orders otherwise. At the conclusion of the
30 evidentiary hearing, the court may provide a reasonable time for all parties to respond to
31 the issues of fact and law raised in the motion and at the hearing.

32 (f) Motions on the justification of the use of force pursuant to Utah Code section 76-2-309
33 must be filed at least 28 days before trial, unless there is good cause shown as to why the
34 issue could not have been raised at least 28 days before trial.

35 (g) When the facts in a petition, information, or indictment fail to inform a minor of the
36 nature and cause of the offense alleged so as to enable the minor to prepare a defense, the
37 minor may file a written motion for a bill of particulars. The motion must be filed at
38 arraignment or within 14 days thereafter, or at such later time as the court may permit.

39 (h) A motion made before trial must be determined before trial unless the court for good
40 cause orders that the ruling be deferred for later determination. Where factual issues are
41 involved in determining a motion, the court will state its findings on the record.

42 (i) Failure of the minor or defendant to timely raise defenses or objections or to make
43 requests which must be made prior to trial or at the time set by the court will constitute
44 waiver thereof, but the court for cause shown may grant relief from such waiver.

45 (j) A verbatim record will be made of all proceedings at the hearing on motions, including
46 such findings of fact and conclusions of law as are made orally.

47 (k) If the court grants a motion based on a defect in the institution of the prosecution or
48 in the petition or information, it may order that the minor or defendant be held in custody
49 for a reasonable and specified time pending the filing of a new petition or information.
50 Nothing in this rule will be deemed to affect provisions of law relating to a statute of
51 limitations.

TAB 4

1 **Rule 13A. Limited-purpose intervention.**

2 Intervention will be governed by Rule 24 of the Utah Rules of Civil Procedure except as
3 follows:

4 (a) **Limited-purpose intervenor status.** When a relative or friend, other than a natural
5 parent, asserts an interest to the court of becoming a placement for a child pursuant to
6 Utah Code section 80-3-302, the court will allow the relative or friend to have a limited
7 interest in the child welfare matter with respect to a determination of placement.

8 (b) **Records access.** A limited-purpose intervenor will not have access to court records,
9 except as provided below. After notice and opportunity to be heard, if the court
10 determines certain court records are relevant to the issue of placement, the court may
11 order those court records to be provided to the limited-purpose intervenor.

12 (c) **Burden of proof.** The limited-purpose intervenor will have the burden to prove by a
13 preponderance why it is in the child(ren)'s best interest to grant the intervenor's request
14 for placement of the child(ren).

1 **Rule 13A. Limited-purpose-party intervention.**

2 Intervention will be governed by Rule 24 of the Utah Rules of Civil Procedure except as
3 follows:

4 (a) **Limited-purpose-party intervenor status.** When a relative or friend, other than a
5 natural parent, asserts an interest to the court of becoming a placement for a child
6 pursuant to Utah Code section 80-3-302, the court will allow the relative or friend to have
7 a limited interest in the child welfare matter with respect to a determination of placement.

8 (b) **Records access.** A limited-purpose-party intervenor will not have access to court
9 records, except as provided below. After notice and opportunity to be heard, if the court
10 determines certain court records are relevant to the issue of placement, the court may
11 order those court records to be provided to the limited-purpose-party intervenor.

12 (c) **Burden of proof.** The limited-purpose-party intervenor will have the burden to prove
13 by a preponderance why it is in the child(ren)'s best interest to grant the intervenor's
14 request for placement of the child(ren).

TAB 5

1 **Rule 29B. Hearings held bywith remote conferencing ~~from a different location.~~**

2 (a) Applicability of this rule. This rule applies to hearings in delinquency proceedings
3 and proceedings under Title 80, Chapter 6, Part 5, Transfer to District Court.~~In any~~
4 ~~delinquency proceeding or proceeding under Title 80, Chapter 6, Part 5, Transfer to~~
5 ~~District Court, the court, on its own initiative or on motion, may conduct the following~~
6 ~~hearings with the minor or the minor's parent, guardian, or custodian attending by~~
7 ~~remote conferencing from a different location:~~

8 ~~(1) contempt;~~

9 ~~(2) detention;~~

10 ~~(3) motion;~~

11 ~~(4) review; and~~

12 ~~(5) warrant.~~

13 (b) Non-evidentiary hearings. The court may hold any non-evidentiary hearing in-
14 person, remotely, or hybrid.~~In any delinquency hearing or hearing under Title 80,~~
15 ~~Chapter 6, Part 5, Transfer to District Court other than those in paragraph (a), the court,~~
16 ~~for good cause and on its own initiative or on motion, may permit a party or a minor's~~
17 ~~parent, guardian, or custodian to attend a hearing by remote conferencing from a~~
18 ~~different location.~~

19 (c) Evidentiary hearings. There is a presumption that evidentiary hearings will be held
20 in-person; however, the court, for good cause, may allow:

21 (1) any non-testifying participant to appear by remote conferencing; and

22 (2) any testifying participant to appear by remote conferencing if, where
23 applicable, the minor waives the minor's right to confront the witness in
24 person.~~For good cause, the court may permit testimony in open court by remote~~
25 ~~conferencing from a different location if the party not calling the witness waives~~
26 ~~confrontation of the witness in person.~~

- 27 (d) Requirements for remote conferencing. The remote conference must enable:
- 28 (1) a party and the party's counsel to communicate confidentially;
- 29 (2) documents, photos, and other things that are delivered in the courtroom to be
- 30 delivered previously or simultaneously to the remote participants;
- 31 (3) interpretation for a person of limited English proficiency; and
- 32 (4) a verbatim record of the hearing.
- 33 (e) Arrangements for remote conferencing. If a hearing is held remotely~~the court permits~~
- 34 ~~remote conferencing, the participants must~~ court may require a party to make the
- 35 arrangements for the remote ~~conferencing~~ connection.

1 **Rule 29B. Hearings held by remote conferencing.**

2 (a) **Applicability of this rule.** This rule applies to hearings in delinquency proceedings
3 and proceedings under Tile 80, Chapter 6, Part 5, Transfer to District Court.

4 (b) **Non-evidentiary hearings.** The court may hold any non-evidentiary hearing in-
5 person, remotely, or hybrid.

6 (c) **Evidentiary hearings.** There is a presumption that evidentiary hearings will be held
7 in-person; however, the court, for good cause, may allow:

8 (1) any non-testifying participant to appear by remote conferencing; and

9 (2) any testifying participant to appear by remote conferencing if, where
10 applicable, the minor waives the minor's right to confront the witness in person.

11 (d) **Requirements for remote conferencing.** The remote conference must enable:

12 (1) a party and the party's counsel to communicate confidentially;

13 (2) documents, photos and other things that are delivered in the courtroom to be
14 delivered previously or simultaneously to the remote participants;

15 (3) interpretation for a person of limited English proficiency; and

16 (4) a verbatim record of the hearing.

17 (e) **Arrangements for remote conferencing.** If a hearing is held remotely, participants
18 must make arrangements for the remote-conferencing connection.

1 Rule XXX. Manner of calendaring and appearance [for remote hearings](#).

2 (a) **Intent.** The intent of this rule is to establish a clear process regarding the manner in
3 which hearings are calendared and a presumption that the court should accommodate
4 the preferences of the participants when determining the manner of participant
5 appearances for court hearings.

6 (b) **Applicability.** This rule applies to civil, ~~and~~ criminal, [and delinquency](#) matters in
7 ~~district, juvenile, and justice~~ courts.

8 (c) **Statement of the Rule.**

9 (1) Definitions.

10 (A) "Participant" means a named party, [or](#) counsel for a named party, ~~and~~
11 ~~any third party who is required to attend court, including a witness.~~

12 (B) "Hybrid hearing" means a hearing at which some participants appear
13 in person and others appear remotely.

14 (C) "In-person hearing" means a hearing at which it is intended that all
15 participants will be physically present in the courtroom.

16 (D) "Remote hearing" means a hearing at which it is intended that no
17 participants will be physically present in the courtroom but will instead
18 appear by video conference or other electronic means approved by the
19 Judicial Council.

20 (2) [General rule. The court may hold any hearing in-person, remotely, or hybrid](#)
21 [as set forth below.](#)

22 (3) Notice of hearing type. When calendaring a hearing the court must provide
23 the participants with notice as to whether the court intends the hearing to be an
24 in-person hearing, a remote hearing, or a hybrid hearing. In determining whether
25 a particular hearing is calendared as an in-person, remote, or hybrid hearing, the
26 court must consider:

- 27 (A) the potential length of the hearing;
- 28 (B) the burden of appearing in person compared to appearing remotely,
- 29 including time and economic impacts;
- 30 (C) the availability of adequate technology for the court and participants to
- 31 accomplish the purposes of the hearing;
- 32 (D) the complexity of issues to be addressed at the hearing, including the
- 33 number of participants or exhibits;
- 34 (E) whether testimonial evidence is likely to be presented; and
- 35 (F) any other relevant factor that a participant brings to the court's attention
- 36 regarding a specific hearing.

37 (4) Communication of participant preference.

38 (A) A participant may request that the participant or a witness to appear in
39 person or remotely by filing a motion or making a verbal request during a
40 hearing. ~~communicating the participant's preference to the court. A~~
41 ~~participant's preference may be flexibly communicated to the court,~~
42 ~~directly or through a party, using any of the following methods:~~

43 ~~(i) orally during a hearing;~~

44 ~~(ii) by email or letter; or~~

45 ~~(iii) in a court filing.~~

46 (B) A stipulated motion must be filed at least 24 hours prior to the hearing,
47 unless there are exigent circumstances.

48 (C) A non-stipulated motion must be filed at least 96 hours prior to the
49 hearing, unless there are exigent circumstances. If a party objects to the
50 motion within 48 hours of the filing, the court will schedule a remote
51 hearing at least 24 hours prior to the hearing to address the motion.

52 ~~(B) For the court to consider a participant's preference, a participant must~~
53 ~~communicate the participant's preference as soon as reasonably possible in~~
54 ~~advance of the hearing, but no later than 24 hours before the scheduled~~
55 ~~hearing time, unless supported by good cause.~~

56 ~~(C) A participant may presume that a timely request is approved unless the~~
57 ~~court, based on a good cause reason in Subsection (4):~~

58 ~~(i) has already specifically directed the participant to appear for the~~
59 ~~hearing in a particular manner; or~~

60 ~~(ii) notifies the participant that the request is denied and directs the~~
61 ~~participant to appear for the hearing in a particular manner.~~

62 (5) Court accommodation of participant preference. The court must accommodate
63 a participant's timely communicated preference, unless the court finds good cause
64 on a case-by-case basis to order the participant to appear in a particular manner
65 based on:

66 (A) a constitutional or statutory right that requires a particular manner of
67 appearance or where there is a significant possibility that such a right
68 would be impermissibly diminished or infringed by appearing remotely;

69 (B) any participant's safety, well-being, or specific situational needs;

70 (C) prior technological challenges that unreasonably contributed to delay
71 or a compromised record in the case;

72 (D) prior failure to demonstrate appropriate court decorum, including
73 attempting to participate from a location that is not conducive to
74 accomplishing the purpose of the hearing;

75 (E) prior failure to appear for a hearing of which the participant had notice;

76 (F) the possibility that the court may order a participant, who is not already
77 in custody, into custody;

- 78 (G) a participant’s involvement in a problem-solving court;
- 79 (H) the agreement of the parties; or
- 80 (I) in limited circumstances, the court’s determination that the
- 81 consequential nature of a specific hearing requires all participants to appear
- 82 in person.

83 (6) Effect of preference on other participants. The preference of one participant,

84 and the court’s accommodation of that preference, should not:

- 85 (A) dictate how any other participant appears for a hearing; or
- 86 (B) affect any other participant’s opportunity to request, and the court to
- 87 accommodate, a different preference for the other participant.

88 (7) Court compliance and accountability.

89 (A) Compliance with this rule is part of the effective operation of the court,

90 including docket management. As such, implementation and enforcement

91 of this rule is a responsibility of each presiding judge pursuant to Rule 3-

92 104 [of the Code of Judicial Administration](#).

93 (B) A judge that demonstrates persistent non-compliance with this rule may

94 be reported to the Judicial Council under Rule 2-211 [of the Code of Judicial](#)

95 [Administration](#).

96 (C) This rule does not prevent a court from:

- 97 (i) issuing a warrant based upon a party’s failure to appear as
- 98 directed; or
- 99 (ii) sanctioning a party for willful failure to comply with an order of
- 100 the court.

1 Rule XXX. Manner of calendaring and appearance for remote hearings.

2 (a) **Intent.** The intent of this rule is to establish a clear process regarding the manner in
3 which hearings are calendared and a presumption that the court should accommodate
4 the preferences of the participants when determining the manner of participant
5 appearances for court hearings.

6 (b) **Applicability.** This rule applies to civil, criminal, and delinquency matters in juvenile
7 courts.

8 (c) **Statement of the Rule.**

9 (1) Definitions.

10 (A) "Participant" means a named party or counsel for a named party.

11 (B) "Hybrid hearing" means a hearing at which some participants appear
12 in person and others appear remotely.

13 (C) "In-person hearing" means a hearing at which it is intended that all
14 participants will be physically present in the courtroom.

15 (D) "Remote hearing" means a hearing at which it is intended that no
16 participants will be physically present in the courtroom but will instead
17 appear by video conference or other electronic means approved by the
18 Judicial Council.

19 (2) General rule. The court may hold any hearing in-person, remotely, or hybrid
20 as set forth below.

21 (3) Notice of hearing type. When calendaring a hearing the court must provide
22 the participants with notice as to whether the court intends the hearing to be an
23 in-person hearing, a remote hearing, or a hybrid hearing. In determining whether
24 a particular hearing is calendared as an in-person, remote, or hybrid hearing, the
25 court must consider:

26 (A) the potential length of the hearing;

- 27 (B) the burden of appearing in person compared to appearing remotely,
28 including time and economic impacts;
- 29 (C) the availability of adequate technology for the court and participants to
30 accomplish the purposes of the hearing;
- 31 (D) the complexity of issues to be addressed at the hearing, including the
32 number of participants or exhibits;
- 33 (E) whether testimonial evidence is likely to be presented; and
- 34 (F) any other relevant factor that a participant brings to the court's attention
35 regarding a specific hearing.

36 (4) Communication of participant preference.

- 37 (A) A participant may request that the participant or a witness appear in
38 person or remotely by filing a motion or making a verbal request during a
39 hearing.
- 40 (B) A stipulated motion must be filed at least 24 hours prior to the hearing,
41 unless there are exigent circumstances.
- 42 (C) A non-stipulated motion must be filed at least 96 hours prior to the
43 hearing, unless there are exigent circumstances. If a party objects to the
44 motion within 48 hours of the filing, the court will schedule a remote
45 hearing at least 24 hours prior to the hearing to address the motion.

46 (5) Court accommodation of participant preference. The court must accommodate
47 a participant's timely communicated preference, unless the court finds good cause
48 on a case-by-case basis to order the participant to appear in a particular manner
49 based on:

- 50 (A) a constitutional or statutory right that requires a particular manner of
51 appearance or where there is a significant possibility that such a right
52 would be impermissibly diminished or infringed by appearing remotely;

- 53 (B) any participant’s safety, well-being, or specific situational needs;
- 54 (C) prior technological challenges that unreasonably contributed to delay
- 55 or a compromised record in the case;
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- 64 (I) in limited circumstances, the court’s determination that the
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72 (7) Court compliance and accountability.

- 73 (A) Compliance with this rule is part of the effective operation of the court,
- 74 including docket management. As such, implementation and enforcement
- 75 of this rule is a responsibility of each presiding judge pursuant to Rule 3-
- 76 104 of the Code of Judicial Administration.

77 (B) A judge that demonstrates persistent non-compliance with this rule may
78 be reported to the Judicial Council under Rule 2-211 of the Code of Judicial
79 Administration.

80 (C) This rule does not prevent a court from:

81 (i) issuing a warrant based upon a party's failure to appear as
82 directed; or

83 (ii) sanctioning a party for willful failure to comply with an order of
84 the court.

85 Effective May/November 1, 20__

TAB 6

1 **Rule 15. Preliminary inquiry; informal adjustment without petition.**

2 (a) If the minor qualifies for a nonjudicial adjustment pursuant to statute, the probation
3 intake officer shall offer a nonjudicial adjustment to the minor.

4 (b) If a minor does not qualify for a nonjudicial adjustment, the probation intake officer
5 may conduct one or more interviews with the minor, or if a child, then with the child and
6 at least one of the child's parent, guardian or custodian and may invite the referring party
7 and the victim, if any, to attend or otherwise seek further information from them.
8 Attendance at any such interview shall be voluntary and the probation intake officer may
9 not compel the disclosure of any information or the visiting of any place.

10 (c) In any such interview, the minor, or if a child, then the child and the child's parent,
11 guardian or custodian must be advised that the interview is voluntary, that they have a
12 right to have counsel present to represent the minor, that the minor has the right not to
13 disclose any information, and that any information disclosed that could tend to
14 incriminate the minor cannot be used against the minor in court to prove whether the
15 minor committed the offense alleged in the referral.

16 (d) If the probation intake officer concludes on the basis of the preliminary inquiry that
17 nonjudicial adjustment is appropriate and is authorized by law, officer may seek
18 agreement with the minor, or if a child, then with the child and the child's parent,
19 guardian or custodian to a proposed nonjudicial adjustment.

20 (e) If an agreement is reached and the terms and conditions agreed upon are satisfactorily
21 complied with by the minor, or if a child, then with the child and the child's parent,
22 guardian or custodian, the case shall be closed without petition. Such resolution of the
23 case shall not be deemed an adjudication of jurisdiction of the court and shall not
24 constitute an official record of juvenile court action or disposition. A nonjudicial
25 adjustment may be considered by the probation intake officer in a subsequent
26 preliminary inquiry and by the court for purposes of disposition only following
27 adjudication of a subsequent delinquency involving the same minor.

28 (f) Attempts to effect the nonjudicial adjustment ~~one~~^{of} a case are governed by Utah Code
29 section 80-6-304 ~~shall not extend beyond 90 days without authorization by the court, and~~
30 ~~then for no more than an additional 90 days.~~

31

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21 complied with by the minor, or if a child, then with the child and the child's parent,
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23 case shall not be deemed an adjudication of jurisdiction of the court and shall not
24 constitute an official record of juvenile court action or disposition. A nonjudicial
25 adjustment may be considered by the probation intake officer in a subsequent
26 preliminary inquiry and by the court for purposes of disposition only following
27 adjudication of a subsequent delinquency involving the same minor.

28 (f) The initial time in which to complete a nonjudicial adjustment, and any extensions
29 thereof, will be governed by Utah Code section 80-6-304.~~Attempts to effect nonjudicial~~
30 ~~adjustment of a case shall not extend beyond 90 days without authorization by the court,~~
31 ~~and then for no more than an additional 90 days.~~

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29 thereof, will be governed by Utah Code section 80-6-304.

30

TAB 7

1 **Rule 50. Presence at hearings.**

2 (a) In abuse, neglect, and dependency cases the court shall admit persons as provided by
3 Utah Code sections 80-3-104 and 80-4-106. If a motion is made to deny any person access
4 to any part of a hearing, the parties to the hearing, including the person challenged, may
5 address the issue by proffer, but are not entitled to an evidentiary hearing. A person
6 denied access to a proceeding may petition the Utah Court of Appeals under Rule 19 of
7 the Utah Rules of Appellate Procedure. Proceedings are not stayed pending appeal. As
8 provided under Utah Code sections 80-3-107 and 80-4-107, a person may file a petition
9 requesting a copy of a record of the proceedings, setting forth the reasons for the request.
10 Upon fee payment and the Court's finding of good cause, the person will receive an audio
11 recording of a proceeding. The Court may place under seal information received in an
12 open proceeding.

13 (b) In delinquency cases the court shall admit all persons who have a direct interest in the
14 case and may admit persons requested by the parent or legal guardian to be present.

15 (c) In delinquency cases in which the minor charged is 14 years of age or older, the court
16 shall admit any person unless the hearing is closed by the court upon findings on the
17 record for good cause if:

18 (1) the minor has been charged with an offense which would be a felony if
19 committed by an adult; or

20 (2) the minor is charged with an offense that would be a class A or B misdemeanor
21 if committed by an adult and the minor has been previously charged with an
22 offense which would be a misdemeanor or felony if committed by an adult.

23 (d) If any person, after having been warned, engages in conduct that disrupts the court,
24 the person may be excluded from the courtroom [or the hearing](#). Any exclusion of a person
25 who has the right to attend a hearing shall be noted on the record and the reasons for the
26 exclusion given. Counsel for the excluded person has the right to remain and participate
27 in the hearing.

28 (e) Videotaping, photographing or recording court proceedings shall be as authorized by
29 the Code of Judicial Administration.

30 (f) In proceedings subject to the Indian Child Welfare Act of 1978, 25 U.S.C. sections 1901-
31 63:

32 (1) The Indian child's tribe is not required to formally intervene in the proceeding
33 unless the tribe seeks affirmative relief from the court.

34 (2) If an Indian child's tribe does not formally intervene in the proceeding, official
35 tribal representatives from the Indian child's tribe have the right to participate in
36 any court proceeding. Participating in a court proceeding includes:

37 (A) being present at the hearing;

38 (B) addressing the court;

39 (C) requesting and receiving notice of hearings;

40 (D) presenting information to the court and other parties that is relevant to
41 the proceeding;

42 (E) submitting written reports and recommendations to the court and other
43 parties; and

44 (F) performing other duties and responsibilities as requested or approved
45 by the court.

46 (3) The designated representative must provide the representative's contact information
47 in writing to the court and other parties.

48 (4) As provided in Rule 14-802 of the Supreme Court Rules of Professional Practice, before
49 a nonlawyer may represent a tribe in the proceeding, the tribe must designate the
50 nonlawyer representative by filing a written authorization. If the tribe changes its
51 designated representative or if the representative withdraws, the tribe must file a written
52 substitution of representation or withdrawal.

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