



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

Meeting Minutes

Matthew Johnson, Chair

Location: Webex Meeting

Date: March 1, 2024

Time: 12:00 p.m. – 2:00 p.m.

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

1. Welcome and approval of the February 2, 2024, Meeting Minutes: (Matthew Johnson)

Mr. Johnson welcomed everyone to the meeting. Mr. Johnson asked the committee for approval of the February 2, 2024, meeting minutes. Ms. Moore moved to approve the minutes. Arek Butler seconded the motion, and it passed unanimously.

2. Welcome and approval of the February 23, 2024, Meeting Minutes: (Matthew Johnson)

Mr. Johnson asked the committee for approval of the February 23, 2024, meeting minutes. Ms. Moore moved to approve the minutes. Arek Butler seconded the motion, and it passed unanimously. Mr. Johnson expressed appreciation to those of the committee who were able to attend that meeting on short notice.

3. Discussion & Action: Rule 19C. Delinquency, Traffic and Adult Criminal Matters: (All)

Mr. Johnson stated the comment period closed on February 3, 2024, on the proposed amendments to Rule 19C and there were no comments received. Mr. Johnson asked the committee for a motion to send to the Supreme Court for final publication. Judge Dame motioned to send to the Supreme Court for final publication. Judge Jensen seconded the motion, and it passed unanimously.

4. Discussion & Action: New Rule 13A. Limited-Purpose Intervention: (All)

Mr. Johnson stated this committee was going to continue their discussion regarding the language regarding limited-purpose intervention. Mr. Johnson reminded the committee that at the last meeting, the committee wanted to move this agenda item over for further discussion so those who were on the subcommittee could be present to give their input. Mr. Johnson stated he believes the only question was regarding whether to use the term limited-purpose intervention or limited-purpose-party intervention. Judge Dame indicated that was his recollection as well. Judge Dame stated this committee set forth their opinions, but Judge Jensen had to leave early, and this committee did not want to make any changes without her input due to her being on the subcommittee.

Judge Jensen stated she looked at the case, *In re J.T.*, again and also looked at definitions, and she is okay with either version. Judge Jensen indicated that as she has been looking at it, *In re J.T.* does state they are really granting limited-purpose intervenor status, which is what this committee proposed. However, the language in the case then changes to limited-purpose-party when referencing the person who is intervening. Judge Jensen noted that when she looked at definitions of intervenor versus party, if they are a full fledge intervenor then they almost have party status, so she doesn't have heartburn with either one at this point.

Mr. Johnson stated if he recalls from the previous discussion, Mr. Fureigh and Ms. Ferrin were leaning more towards a limited-purpose-party. Judge Dame indicates he also recalls that that was sort of the consensus, and he doesn't feel strongly about it. Judge Dame stated he likes limited-purpose-party because it mirrors the language that the case relied on. Mr. Butler stated he also does not have a strong opinion about it, but he thinks this committee should adopt limited-purpose-party intervention and vote on it.

Mr. Gallardo stated he wants to ensure the committee looks through the draft again before a vote. Judge Dame believes it looks good as written and it is a good compromise to refer to them as limited-purpose-party intervenor throughout because it ends up being precise about what exactly they are. Mr. Johnson agreed, especially from the child welfare side.

Mr. Johnson asked the committee for a motion to send it to the Supreme Court for approval and public comment. Mr. Butler made the motion, and Ms. White seconded. It passed unanimously.

5. Discussion & Action: In-person, Remote and Hybrid Hearings: (All)

Mr. Johnson stated he and Mr. Gallardo had their meeting with the Supreme Court this week. The Supreme Court was very grateful for all the effort this committee put into the changes that were made to the supplied rule on calendaring and appearance. Mr. Johnson indicated he explained to the Supreme Court the areas this committee had concerns. Mr. Johnson stated the justices were pushing him regarding the section dealing with non-stipulated motions. Mr. Johnson explained to the Supreme Court how the process works and the reason why this committee recommended the 96 hours and the other timeframes with regard to that. Mr. Johnson stated the justices were very gracious and they had also met with the other committee chairs and a lot of them had the same concerns as this committee. Mr. Johnson also discussed Rule 29B with the justices and that the main thing this committee wanted the justices to know is the difference between evidentiary versus non-evidentiary hearings and why it's important to have that distinction.

Mr. Johnson stated Mr. Stiles sent out an e-mail requesting two to three individuals from this committee that may be willing to work with the other committee members of the Rules of Civil Procedure and the Rules of Criminal Procedure. Mr. Johnson stated they did not provide dates or times for when this meeting would occur, but they said they would send out a Doodle poll once they had the contact information of those who were willing to participate to see which date works best for everyone. Mr. Johnson inquired if there were any members willing to sacrifice some of their time to help the other committees and represent this committee. Judge Dame, Judge Jensen, Janette White, and Mr. Johnson will participate in that subcommittee.

Mr. Gallardo stated the plan is to get this done quickly and the timeframe would be to meet next week and the week after. Mr. Gallardo stated the volunteers will meet with Justice Pohlman who is leading the effort to create a uniform rule within the three bodies of the rules of procedure, but also identify the distinctions where there should be distinctions. Judge Dame indicated he spoke to another juvenile judge yesterday about the project. That judge was asked by Sonia Sweeney to be on a committee that would work with the civil, criminal, and juvenile rules committees. The judge had mentioned they would also have the legislator there who is sponsoring, or threatening to sponsor, either a 2/3 vote to redo the rules or legislation dealing with this issue. Judge Dame stated he believes the desire is to have all rules of procedure be consistent in the approach taken regarding remote hearings.

Mr. Johnson stated in speaking with the justices, he understands that they have been able to hold back the legislative push to deal with this issue since the committees and AOC have been able to tackle the issue quickly, but they want to ensure it continues to be worked on. Judge Dame stated he was also told that they want the committee to work from the template of the proposed rule that this committee worked on last week, and not an entirely different rule. Mr. Johnson stated when he presented the committee's changes from the proposed rule/template, he also informed the justices that this committee felt very strongly about Rule 29B and the language that was used. Mr. Johnson stated the justices may want this committee to work on that, but he agrees with Judge Dame and the committee that there does need to be some distinguishing language in there. Mr. Johnson indicated that for the most part, this committee changed the template completely in a positive direction and the justices were receptive as they did not know some of the issues this committee saw.

Mr. Johnson will let Mr. Stiles know the names and information of those on this committee who are willing to participate so he can send out the Doodle poll.

Judge Dame stated the dream would be for this committee to be able to say the problems do not lie in juvenile court. Judge Dame indicated he is not aware of any concerns anyone has raised with how the juvenile court is approaching this issue, even though there are different approaches. Judge Dame stated ideally, the juvenile court would be able to carve out their own rule to include similar language as Rule 29B because it is succinct, precise, and gives discretion to the judges. However, Judge Dame does not think that will be acceptable, and the justices will say they want a rule in the civil, criminal, and juvenile rules that are consistent with each other. Judge Dame wants to ensure the concerns that were raised by this committee are addressed, which include *ex parte* communication, lack of response opportunity, and stuff that violates simple basic rules of procedure, basic rules of due process, and fundamental fairness. Judge Dame stated if we are working off the template/proposed rule already provided, this committee will need to address it with the other individuals who are working on it as well.

Mr. Gallardo stated Rule 37B may not be relevant soon, but Ms. Von Bose was tasked with researching the applicability of the right to confrontation in termination of

parental rights proceedings. Ms. Von Bose stated she researched *In re L.M.*, and that is still the controlling authority on this matter. Ms. Von Bose stated the law clerk's previous memo remains good analysis and this committee can rely on that if and when this committee gets to the point of including the confrontation clause in Rule 37B.

Ms. White inquired if the Supreme Court talked about the end of the rule regarding the judge's compliance. Mr. Johnson stated he didn't really address that, but that it can be addressed in future meetings. Mr. Johnson wanted the Supreme Court to know the biggest concerns, and that the crux of the rule this committee gutted to make it conform with due process and quick remedies to the issues that were seen. Mr. Johnson agrees with Ms. White that he doesn't know why they want it in there unless it was a push from the legislature to hold the judges accountable. Mr. Gallardo indicated he got the sense that the enforcement mechanism is what they want in there and may be non-negotiable.

6. Discussion: Rule 15. Preliminary Inquiry; Informal Adjustment Without Petition: (All)

Mr. Johnson stated this committee was going to continue the discussion regarding subpart (f) in conjunction with 80-3-204. Mr. Gallardo stated Judge Dame and Mr. Russell had proposed language. Judge Dame stated he is okay with either proposal and is fine with Mr. Russell's approach as it is clear and concise. Judge Dame stated his approach was to make as few changes as possible to the current language, but Mr. Russell's approach may be more precise regarding what the issues are, which is the timeframe to complete a non-judicial agreement and any extension. Judge Dame indicated he is leaning towards Mr. Russell's approach being better. Judge Dame would move to adopt Mr. Russell's suggested approach, take it to the Supreme Court for approval, and send it out for public comment. Judge Jensen seconded and it passed unanimously.

The proposed change to subpart (f) will read as follows: "The initial time in which to complete a nonjudicial adjustment, and any extensions thereof, will be governed by Utah Code section 80-6-304."

7. Discussion: Rule 50. Presence at Hearings: (All)

Mr. Johnson stated this committee was going to continue discussion about excluding people from the hearing, including remote hearings. Mr. Johnson stated this committee had a good discussion on this the last time it was reviewed. Judge Dame indicated the proposed change would be to subpart (d) to add "or the hearing" to make sure the court is on solid ground to either mute people in a remote hearing or exclude them altogether, after a warning, if they continue to disrupt the hearing. Mr. Gallardo is also changing the "shalls" to "will" since they are making the change anyway to be consistent with the guidelines. Judge Dame stated he would make a motion to send it to the Supreme Court for approval and public comment. Janette

White seconded the motion, and it passed unanimously. Mr. Johnson stated he will put it on the agenda for the next meeting with the Supreme Court.

8. Old business/new business: (All)

Mr. Johnson inquired if there is any new or old business that this committee needs to discuss. Mr. Gallardo stated this committee had been working on Rule 18 for quite some time. Mr. Gallardo indicated this committee made changes to Rule 18 and added the bilingual notice to be included in the Summons. Mr. Gallardo stated they just received approval of the bilingual notice, and Rule 18 will be effective May 1, 2024. Mr. Gallardo stated the English version has been approved, and the bilingual notices are almost finished for the other languages. Mr. Gallardo anticipates the juvenile court bilingual notices will be posted when they are available.

Mr. Gallardo inquired about education on the process, and whether sending a notice to the Utah State Bar to inform them of the change is enough. Judge Dame stated to be consistent and to remain neutral, his opinion is to have the Utah State Bar send out notice and have the form available on the Utah Court's website and leave it at that. Judge Dame stated if the individual entities like the Office of Guardian ad Litem or Attorney General's office want to train their individuals in-house, that should be left to them.

Mr. Gallardo stated he also just received a house joint resolution which amends 7B of the Utah Rules of Criminal Procedure and 1102 of the Utah Rules of Evidence. Mr. Gallardo stated this bill doesn't specifically mention the juvenile rules, but he wanted to put it on the committee's radar so everyone can look at it and determine if any changes need to be made to the juvenile rules. Mr. Gallardo will send it out to all committee members. Ms. Von Bose stated it is effective immediately.

No additional old or new business was discussed.

The meeting adjourned at 12:42 PM. The next meeting will be held on April 5, 2024 via Webex.