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

Meeting Minutes

Matthew Johnson, Chair

Location: Webex Meeting

Date: April 5, 2024

Time: 12:00 p.m. – 2:00 p.m.

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

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

Mr. Gallardo stated Mr. Johnson is not available for the committee meeting as he is out of town, but the Supreme Court has appointed William Russell as the vice chair. Mr. Gallardo stated he also just sent out an updated version of the in-person, remote, and hybrid hearings rule.

Mr. Russell asked the committee for approval of the March 1, 2024, meeting minutes. Judge Dame and Mr. Russell proposed changes, and those changes were made. Janette White moved to approve the minutes. Ms. Jeffs seconded the motion, and it passed unanimously.

2. **Discussion & Action: Rule 5. Definitions: (All)**

Mr. Russell stated when he looked at the preamble portion- of Rule 5, it outlines that the rules have the same definitions as provided in Utah Code sections 80-1-102 and 80-3-102 unless a different definition is provided. When he looked at subpart (b), the definition of adjudication is identical to the language in the statute. Mr. Russell proposed it might be better to remove subpart (b) from Rule 5. Mr. Fureigh agreed, and indicated he had the same thought.

Judge Dame stated the issue is whether any of the Rules of Juvenile Procedure use a different definition for adjudication. Judge Dame indicated he looked through the rules and there are several places where the term adjudication is used, including Rule 16(c), Rule 26(a)(8) and Rule 40(c). Judge Dame indicated that may not be an exhaustive list, but those are the specific rules he looked at. Judge Dame believes the definition as outlined in Utah Code 80-1-102 is appropriate in those rules, so he is agreeable to get rid of the definition of adjudication in subpart (b) in Rule 5.

Mr. Russell inquired if the committee has a motion to remove subpart (b) in Rule 5. Ms. Davis moved to remove subpart (b) and adjust the subsequent lettering. Ms. Ferrin seconded, and it passed unanimously. Mr. Russell stated it will be sent to the Supreme Court for approval and public comment.

3. **Discussion & Action: New Rule 13A. Limited-purpose-party intervention:** (All)

Mr. Gallardo stated he and Mr. Johnson were before the Supreme Court on March 27, 2024, and the day before that meeting, the Supreme Court e-mailed their proposed changes to this proposed rule. Mr. Gallardo stated one of biggest differences that he noticed, and that Mr. Johnson raised, was the removal of party. Mr. Gallardo stated the feedback they received from Justice Pohlman was that she didn't want to give the intervenor party status. Mr. Johnson addressed this in the meeting with the Supreme Court and indicated the term "party" was specifically used in the Court of Appeals opinion. Mr. Gallardo indicated Judge Jensen could not be at the meeting, but she provided some small feedback on this rule. Judge Jensen informed Mr. Gallardo that

she liked paragraph (a) regarding the scope, but she still prefers the rule this committee drafted over the proposed rule of the Supreme Court.

Mr. Russell stated he has an opportunity to look at Rule 13A as an outsider as he does not practice in child welfare. However, when he looked at subpart (c) and (d), it appeared to him that the Supreme Court reworded the language, but they have the same substantive content. Judge Dame stated it seems like, where the Supreme Court has made suggested changes, that their preference would be to work off their version. Judge Dame would propose using the first option of subpart (b). Judge Dame would also propose that in subpart (d), the word "why" be changed to "that." Judge Dame indicates the word "why" presupposes that it is in the best interest, but he believes the Court should make that determination. Judge Dame also proposed adding "limited-purpose intervenor" in subpart (d).

Mr. Fureigh inquired about the issue the Supreme Court had in using the term "party." Mr. Gallardo stated Justice Pohlman stated she didn't do an exhaustive review of the Court of Appeals case, but her proposal is more about the wordiness of using "limited-purpose-party intervention." Mr. Gallardo indicated his recollection was Justice Pohlman suggested removing "party" for two reasons. The first is that she didn't think an intervenor had full-party status, and the second reason is she was trying to limit the wordiness of the phrase. Mr. Gallardo stated Justice Pohlman recognized she did not do an exhaustive review of the Court of Appeals opinion, so she indicated if that is the term they used, this committee could also use it.

Mr. Fureigh stated he agrees that the first subsection (b) as outlined in the Supreme Court draft is the best. Mr. Fureigh likes how it has the statute cited in there, and it is more clear. He also likes the changes Judge Dame has proposed for subsection (d) in adding limited-purpose-intervenor, so it is the same throughout the rule.

Judge Dame stated his response to Justice Pohlman is that he agrees they are not given a full-party status, which is why it is limited-purpose-party. If there is a reason for verbosity, it overrides the desire to have things not verbose. However, this committee was split on whether it should be limited-purpose-party intervention or limited-purpose intervention. Mr. Russell stated the reason this committee decided to use limited-purpose-party is to be consistent with the Court of Appeals opinion. Judge Dame stated every time intervenor is used in the rule, it needs to be preceded by "limited-purpose-party" so there is no question that under this rule, they are not a full party, and it is for limited purposes only.

Mr. Fureigh agrees with Judge Dame that indicating it is a limited-purpose-party resolves that concern. Mr. Fureigh stated the reason he supports using the term party is first, because that is what the Court of Appeals used in their decision, and second, it allows the individual to be recognized as a party regarding their request for placement. Mr. Fureigh stated he believes the intervenor should be able to file motions and do things that other parties can do in a case. Mr. Fureigh stated it would be

limited, but they should be able to file motions to continue, file requests for discovery, pleadings, etc.

Judge Dame suggested a potential approach this committee may want to consider, is using the Supreme Court's proposal, with the addition of adding back in "party" each time it is refers to intervenor and explain to the Supreme Court that this committee discussed it and feels they should use the language the Court of Appeals used which was the impetus to this rule.

Mr. Johnson joined the committee meeting. Mr. Johnson stated Justice Pohlman acknowledged she hadn't done a deep dive into the opinion, but her thought process was that by calling it a limited-purpose-party intervenor, it would be confusing to people thinking they are also a party, which she does not believe is the case. Justice Pohlman was pretty adamant that the word "party" gives that individual seeking intervenor status the thought they are a party, which is why she thought it should be removed. Mr. Johnson stated Justice Pohlman also mentioned in Rule 24 of the Rules of Civil Procedure, there is no mention of party, so this would be consistent with the civil rule. Judge Dame stated that explanation makes more sense to him and is a reason he can get behind. Judge Dame agrees with Justice Pohlman on that and indicates he has changed his position and is good with going back to the Supreme Court with their draft and the other changes this committee has discussed.

Mr. Russell indicated he believes this committee is close to a consensus in that this committee is opting for the first iteration of subpart (b), keep in scope (a), drop "party" from all references to limited-purpose, and make the suggested changes to subpart (d). Ms. McQuarrie stated in subpart (c) regarding record access, there is another place where it says intervenor and she suggested adding "limited-purpose" to that. The change was made.

Mr. Russell requested a motion from the committee to send the amended rule back to the Supreme Court. Ms. Hautamaki made the motion, and Ms. Jeffs seconded. The motion passed unanimously.

4. **Discussion: Rule 15. Preliminary inquiry; informal adjustment without petition:** (All)

Mr. Russell stated this committee previously made some substantive changes to Rule 15 to be consistent with the statute, but after review there were some stylistic changes that are being proposed. Mr. Gallardo stated once this committee made the change to subpart (f), he and the law clerks made some stylistic changes and added some plurality and commas that they wanted this committee to consider.

Mr. Fureigh indicated he agrees with the plurality in line 6 but is not sure about the plurality on line 19 and 23. Mr. Russell agreed with Mr. Fureigh, and stated he likes the singular language on line 19. Judge Dame agreed that he would leave it plural on line 6 but change it back to singular on lines 19 and 23.

Mr. Gallardo inquired about subpart (c) to change to "which" instead of "that" due to the repetitive use of "that" throughout subpart (c). Mr. Fureigh suggested removing "could" after "which," but Judge Dame believes it needs to be left in as it makes it broader. Judge Dame indicates he prefers the original version in subpart (c). Mr. Russell agrees as it is consistent with the *Miranda* standard.

Mr. Russell inquired if the committee had a motion to send to the Supreme Court for their review and publication. Ms. White made the motion. Ms. Ferrin seconded the motion, and it passed unanimously.

5. **Discussion & Action: Rule 22. Initial appearance and preliminary hearing in case under Utah Code sections 80-6-503 and 80-6-504:** (All)

Mr. Russell stated there has been a proposed change to subpart (k) based on the change in statute that is already effective. Judge Dame stated he would suggest removing the reference to the other rules as those rules don't define or describe reliable hearsay. Judge Dame would propose it be changed to state, "The findings of probable cause may be based, in whole or in part, on reliable hearsay." Judge Dame would also propose to add, "Issues related to witnesses are governed by Rule 7B(d) of the Utah Rules of Criminal Procedure." Mr. Russell stated subpart (i) ropes in criminal Rule 7B already, though he understands Judge Dame is trying to make it more specific to witnesses by adding that sentence to subpart (k). Judge Dame agrees that it should just be left out of subpart (k) as it would be redundant.

Mr. Fureigh inquired about the last sentence in subpart (k) and wondered if it would be easier to read if instead of saying, "not properly raised," it just stated it is not allowed at the preliminary hearing. Judge Dame proposed, "Objections to evidence on the ground that it was acquired by unlawful means may not be raised at the preliminary hearing." Mr. Russell said the original language was taken verbatim from Rule 7(b) of the criminal rules, but he likes this committee's proposed language much better.

Subpart (k) will be changed to state, "The finding of probable cause may be based, in whole or in part, on reliable hearsay. Objections to evidence on the ground that it was acquired by unlawful means may not be raised at the preliminary hearing."

Mr. Russell inquired if a committee member would like to make a motion regarding Rule 22. Ms. White made the motion. Ms. Moore seconded the motion, and it passed unanimously. Mr. Russell stated the proposed language will be presented to the Supreme Court for approval and publication.

6. **Discussion & Action: Rule 31. Initiation of truancy proceedings:** (All)

Mr. Russell stated regarding Rule 31, he doesn't know of anyone that thinks there is a place for filing petitions for truancy in juvenile court anymore. Mr. Russell does not

know why there is a Rule 31, but it is open for discussion. Ms. Davis stated she doesn't want to have to prosecute it, and Mr. Russell indicated he doesn't want to defend it. Ms. Moore agrees, and stated she thinks it should be removed. Mr. Russell stated the Judicial Council may want to look at Rule 7-303 of the Code of Judicial Administration, which deals with this issue.

Ms. White doesn't know how long it has been since she has seen a truancy, and there is educational neglect that can be dealt with on the child welfare side and a whole statute that governs the schools. Mr. Russell stated he hasn't seen a petition for truancy in four or five years. Ms. Jeffs stated she has filed a few in her career, but she did not enjoy prosecuting them. Ms. White stated if the law changes and the legislature decides we need to prosecute these types of cases, this committee can create something, but she does not think we need a current rule dealing with this issue.

Judge Dame agreed the rule should be repealed but indicated there is a situation where it could be filed, though unlikely, because they would have to be habitual truant at least twice in the same school year, and then it would have to go to non-judicial. Judge Dame indicates in theory, it could happen, but the reality is the chance of it happening is so small that he is okay with repealing the rule. Mr. Gallardo pulled up H.B. 362, which indicates that if a non-judicial fails and the probation officer sends it to the prosecuting office, the prosecuting office would dismiss the referral, not the petition. Judge Dame stated that in that case, he is all for getting rid of the rule. Mr. Russell agrees.

Mr. Russell asks the committee if there is a motion to repeal Rule 31. Ms. Davis made the motion, and Ms. Ferrin seconded. The motion passed unanimously.

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

Mr. Russell requested an update on what has transpired in the last two weeks. Mr. Gallardo stated the work group subcommittee drafted a proposed rule, dated March 15, 2024. There was another draft dated March 22, 2024, which was amended to require that a participant eFile the e-mail requests. Mr. Gallardo stated the concern is that this will increase the workload of judicial assistants. Mr. Gallardo indicated both the March 15th and March 22nd draft were shared with the Supreme Court. The Supreme Court reviewed them and discussed it amongst themselves, and came up with the April 1, 2024 draft, which they came up with after reviewing all the proposed rules from the various committees. Mr. Gallardo stated the April 1, 2024 draft will be discussed next week with the workgroup.

Judge Dame inquired if the Supreme Court now wants the workgroup subcommittee to disregard the previous drafts, and work off the April 1, 2024 draft. Mr. Gallardo stated that is his understanding. Mr. Gallardo stated Justice Pohlman is leading the workgroup and made several comments and suggestions. The committee went

through several of the comments/suggestions made by Justice Pohlman and provided feedback.

In regard to participant, Justice Pohlman noted the definition of participant changes depending on the rules. Justice Pohlman inquired if the juvenile rules committee was okay having parents and victims make these requests, or whether it be best to have counsel for the juvenile make that request. Mr. Gallardo stated the version the Supreme Court is presenting now, it will allow the parent of the juvenile or victim to make that request. The committee discussed that issue. Many committee members expressed concern about the parent or victim being able to make the request, and believed it was more appropriate for counsel to make the request on their behalf.

In regard to (d)(1)(E), Justice Pohlman noted that some drafts of the rule required the court to put the email request in the court record, and others did not require the email request to be filed unless it was denied. Justice Pohlman stated the latter approach puts less burden on the court clerks. Judge Dame stated he doesn't understand why only a denial would be put in the record. Ms. Hautamaki stated it would require the clerks to do additional work by essentially filing it on behalf of the participant. The committee discussed that issue. Judge Dame stated the request could still be granted over an objection, and he doesn't understand why the Court should not be required to make a record, or why is it limited to the court making a denial. Judge Dame indicated if the court makes a ruling on a request under this rule, it should be made part of the record unless it's already part of the record. If it is a stipulated motion, it should also be part of the record. Ms. White can't imagine any e-mail being sent to the court and not being part of the official record. Ms. White indicates if a specific request is being made to a judge, it should be part of the court record. Mr. Russell agreed. Judge Dame feels everything should be made part of the record, just like in every other rule, and he does not know why we are making an exception to this rule.

Ms. White proposed paragraph (4) be changed to "Ruling" instead of "Denial," and the language be changed to reflect that. Mr. Gallardo stated this committee doesn't necessarily need to make the changes, and they can send him their proposals.

Ms. Moore stated she appears remotely routinely due to her health, and she always files a motion. She has been appearing in the district court, and all the links for the district court are on the webpage. Ms. Moore inquired if the juvenile court could do that. Judge Dame stated they would have to ensure the hearings that are private or closed would not have the associated link. Mr. Russell agreed that district court proceedings are open, but that is not always the case in juvenile court.

In paragraph (d), in regard to the request to appear by a different format, a comment was added by Justice Pohlman that the Utah Rules of Criminal Procedure suggested adding "by letter" as an additional method, and Justice Pohlman suggested it be added across all three rules. The committee discussed this suggestion was likely added due to incarcerated parents, specifically those who have refused the appointment of counsel. The committee doesn't have any opposition to adding that.

In paragraph (f)(2), in regard to the Court's accommodation of participant's preference; factors to consider, Justice Pohlman suggested adding or "makes a finding of good cause." The committee understands that proposed change, and the committee doesn't have any opposition to that.

In paragraph (f)(2)(B), when referencing the good cause finding, Justice Pohlman pointed out that "witness" was not defined in the definition of participant. Ms. Ferrin is worried this rule would give a witness who has been subpoenaed an opportunity to resist appearing in court. Ms. Ferrin is worried this would be opening a door to concern. Mr. Russell believes this would require the court to hash out any concerns or considerations about the right to confrontation. Judge Dame argued that doesn't need to be included at all in subpart (B) because if there is a situation that comes up and the right of confrontation needs to be weighed, or a witness is trying to avoid coming to court, it could be addressed under subpart (K) under "any other relevant factor."

In paragraph (f)(2)(F), Justice Pohlman changed "participant" to "party" as she did not believe a participant would be ordered into custody. Judge Dame stated there could be a participant who was held in contempt and placed into custody for being disruptive in court. Judge Dame stated that may not be what the factor is getting at, and it is getting at some other ordinary circumstance. Mr. Russell believes it is trying to get at specifically having a party there.

Mr. Gallardo invited the committee to send him any additional comments.

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

Mr. Gallardo stated the next meeting is an in-person meeting and lunch will be provided. It will be in the Café meeting room on the first floor of the Matheson courthouse. The meeting will take place at the same time, and there will be a hybrid option.

Mr. Gallardo indicated Rule 50 is old business, but it was presented to the Supreme Court last week, and after they looked at the proposed changes, the Supreme Court suggested this committee go a slightly different direction. Mr. Gallardo stated the Supreme court suggested changing it to "hearing" rather than "court." Justice Pohlman also pointed out an incorrect reference to a statute and made some other smaller stylistic changes. Mr. Gallardo indicated that rule is out for public comment and will be placed on the agenda next month.

No additional old or new business was discussed.

The meeting adjourned at 1:53 PM. The next meeting will be held on May 3, 2024 as a hybrid meeting.