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

Meeting Minutes

Matthew Johnson, Chair

Location: Webex Meeting

Date: May 3, 2024

Time: 12:00 p.m. – 2:00 p.m.

Attendees: Matthew Johnson, Chair William Russell, Co-Chair Thomas Luchs Dawn Hautamaki Judge Paul Dame Janette White Michelle Jeffs James Smith Elizabeth Ferrin Judge Debra Jensen David Fureigh, Emeritus Member	**Excused Members**: Adrianna Davis Sophia Moore Arek Butler Jordan Putnam **Guests:** Jacqueline Carlton, Office of Legislative Research and General Counsel Blake Murdoch Sonia Sweeney Daniel Meza-Rincon
Staff: Randi Von Bose, Juvenile Law Clerk Lisa McQuarrie, Juvenile Law Clerk Raymundo Gallardo Kiley Tilby, Recording Secretary	

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

   Mr. Johnson expressed his appreciation for everyone coming to the meeting. Mr. Johnson asked the Committee for approval of the April 5, 2024, meeting minutes. Janette White moved to approve the minutes. Mr. Russell seconded the motion, and it passed unanimously.

2. **Discussion & Action: New Rule on In-person, Remote, and Hybrid Hearings: (All)**

   Mr. Johnson stated there have been multiple versions of this rule sent out to the participants who have been working on it. Mr. Gallardo stated there is a draft dated May 2, 2024, which is the current version of the rule. Mr. Gallardo indicated the Supreme Court and Mr. Russell have been working on some language related to written motions. Mr. Johnson stated another thing the Supreme Court asked this committee to consider is whether there needs to be a special carve-out for problem-solving courts. Mr. Johnson indicated that he discussed it with Mr. Russell, and they did not believe it was necessary to have a special carve-out, but they wanted this committee to weigh in. The other request by the Supreme Court is for this committee to consider whether a Notice/Request to Submit should be included in the rule.

   Ms. Hautamaki stated that normally a request to submit would state if there was opposition and to let them know it is ready. Ms. Hautamaki thinks it would be helpful to have a request to submit so it would trigger the court clerks to get it to the bench. Judge Dame does not believe we need specific language as it is covered in Rule 19A. Judge Dame's preference is to rely on other rules that deal with the issues. If the language is included, it could make it messier. Judge Jensen agreed and stated that being able to refer back to Utah Rules of Civil Procedure would be better. Judge Dame states Rule 7(l) of the Utah Rules of Civil Procedure sets out rules that allows the court to act on a motion without waiting for a response time, but he isn't sure if there has been discussion with that committee to amend the rules for this new rule.

   Mr. Russell states under subsection (d) related to the resolution of the request, it allows the court to rule on a request without waiting for a response. Mr. Russell believes that statement supplements and overrules Rule 7 and Juvenile Rule 19A as there is not a briefing period. Mr. Russell stated these requests under the proposed rule will be on a very condensed timeline and all will be less than the 14 days required by Rule 19A of the juvenile rules. Mr. Russell also pointed out that many of the requests will not have briefing period in it, or anticipated, because of the language the Supreme Court put in. Mr. Russell stated when he files a request to submit for decision, he must indicate that the time for briefing is complete, that no opposition has been filed, and that there hasn't been a request for hearing. Under this rule, none of that will be applicable because of the language of the Supreme Court that they can be submitted without waiting for a response. Mr. Russell stated it is not an ex parte request because it still has to be served on all parties, but it is a motion that the Court does not have to wait for the other parties to respond.

Mr. Russell stated his initial position is that no request to submit was necessary because it is self-executing under (d)(1), and he doesn't think there needs to be language requesting a proposed order. Mr. Russell is concerned that if a proposed order is submitted, they won't know what factors the court will consider in either granting or denying the request. Mr. Russell indicated that his initial thought is if the court is going to be firm in its statement that it can be ruled on as soon as the request is received, then the request to submit is not applicable. His second thought is that if the Supreme Court wants a request to submit, that the request to submit would just state the time and manner of service since the other factors are not applicable. Mr. Fureigh stated that in subsection (d)(1), it states "the court may rule," so his concern is how will the court know that the moving party wants them to rule without a request to submit. Mr. Fureigh inquired if the judges will automatically review it and decide, or if it is triggered by a party requesting that the court immediately review and rule on it through a request to submit.

Judge Dame stated he understands the argument that Mr. Russell made about how they won't know what findings to include in the proposed order, but the Court can amend the proposed order rather than the Court or judicial assistant preparing their own. Judge Dame thinks the language should be left as is. Ms. Hautamaki agrees with Judge Dame that the court will rely on the request to submit. Ms. Hautamaki stated that if there is not a request to submit, it could get missed. Ms. Hautamaki stated they often see requests to submit even on stipulated motions. Mr. Russell stated if the request to submit is the trigger to get the motion in front of the judge to review, then he is fine with that language as written.

Mr. Johnson stated the next issue is the suggested languages regarding the succinct timely motions outlined in Paragraph (B) under "Request for written motion." Ms. McQuarrie proposed a grammatical change to add a comma after "submit for decision" or change it to read "…a request to submit for decision that states the time and manner of service of the motion, and a proposed order." Mr. Russell prefers the latter suggestion. The committee agrees, and the change was made.

Mr. Johnson stated the other issue for the committee to consider is related to Rule 29B and Rule 37B as they both deal with remote hearings. The Supreme Court asked that this committee look at having those repealed or decide whether this committee wanted to add language into the new rule from the existing rules. Judge Dame thinks these rules need to be repealed, as it is confusing to have different rules that address the same thing. Mr. Russell supports Judge Dame that these rules should be repealed. Mr. Russell believes the proposed rule covers everything outlined in Rule 29B, and believes Rule 37B would be similar, but he has not reviewed it recently. Judge Dame states Rule 37B does not cover it in detail, and only states the court can have remote hearings for good cause, lists the four requirements for the remote hearing, and states that the party can make arrangements for remote conferencing. Mr. Fureigh stated Rule 37B was a pre-COVID rule prior to Webex development so the burden was on the party that appears virtually because the court didn't have that ability, but that is

not the case any longer. Mr. Fureigh believes both should be repealed as it wouldn't make sense to have them.

Mr. Russell inquired if there is a different rule in the Code of Judicial Administration that if they are doing Webex it needs to be recorded, interpretation services provided, etc. as outlined in Rule 37B. Judge Dame doesn't know that there is, but he believes it is implicit. Mr. Fureigh stated there is a rule that requires the court to record the proceedings as that issue recently came up because the court is asking the Attorney General's office to put in their orders that parties cannot record the proceeding and it is the duty of the court to do so. The committee had a discussion regarding Rule 4-201 of the Code of Judicial Administration.

Mr. Johnson indicated this committee will need to make a motion to repeal Rule 29B and Rule 37B once the new rule is published and adopted. Mr. Gallardo stated it was his understanding that the Supreme Court wanted to do this simultaneously. Mr. Johnson requests a motion from the committee to repeal Rule 29B and Rule 37B. Mr. Russell made the motion that, upon the adoption of the manner of appearance rule by the Supreme Court, there be a repeal of Rule 29B and Rule 37B. Elizabeth Ferrin seconded the motion, and it passed unanimously.

Mr. Johnson stated the Supreme Court also wanted this committee to discuss how this new rule would be numbered and where it would fit in. Mr. Johnson stated there were a few suggestions. One of them was to add Rule 50A, or to add an entirely new rule as Rule 61 under the Miscellaneous Rules. Judge Dame's vote is to add a new Rule 61. Judge Dame understands why there was a suggestion to add Rule 50A, but he does not believe there is enough of a nexus between the type of hearing and the details regarding who can be in a hearing or which hearings are closed. Mr. Fureigh agrees. Mr. Russell is also in support of it being a new Rule 61. Mr. Johnson requests a motion from the committee to number this rule as Rule 61. Ms. Hautamaki made the motion, Judge Dame seconded the motion, and it passed unanimously.

Judge Dame stated he had a few other issues he wanted to discuss. In subsection (c)(1), under request to appear by a different format, he inquired if it might be a good idea to change the language to specify a witness that a participant has subpoenaed. Judge Dame wanted to clarify that not just any participant could make a request for a witness, but that only the individual who subpoenaed the witness can request that witness appear in a different format. Judge Dame stated that if nobody else sees an issue with that, it can be left as is. Judge Dame's proposed language would state, "A participant may request that the court allow the participant or a witness the participant has subpoenaed to appear at a hearing by a different format than that set by the court…" Mr. Russell agrees with Judge Dame and supports the change. Mr. Russell believes he should be able to ask for his own witness(es) to appear in a different manner, but he shouldn't be allowed to mess with the DA's witnesses, or the DA to mess with his witnesses. Mr. Russell believes the one who subpoenas the witness should make the call as a matter of fairness.

Ms. Von Bose requested clarification and stated she believed under this rule that the witnesses themselves could make the request. Judge Dame stated that is not the case, as a witness is not included in the definition of "participant."

Judge Dame stated he had another thing he wanted to discuss. Judge Dame indicated he has explained his position on this before and doesn't want to be obstinate, but under subsection (d)(1), resolution of the request, it stated that if the request is made by e-mail, the court will make a record of the request if the request is denied. Judge Dame proposed that "if the request is denied" be removed. Judge Dame does not know why it is limiting to only if the request is denied. If there are communications with the court that the court relies on to make an order, Judge Dame wants those communications to be made part of the record regardless of whether it is denied or granted. Judge Dame stated that if the Supreme Court justices have rejected his position, he will accept it, but he doesn't know why it is only part of the record if the request is denied.

Mr. Gallardo stated it is his understanding the Supreme Court is moving towards only making those emails part of the record if it is denied. Judge Dame inquired if the Supreme Court gave any reasoning behind that decision. Mr. Fureigh suggested the Supreme Court is assuming that if it is granted, there would be some sort of order that is entered in. Judge Dame stated there is an order even if it is denied. Mr. Fureigh agrees both should be made part of the record. Judge Dame wants a record of what was relied on, regardless of whether it is denied or entered. Judge Jensen stated she remembers discussing this with the Supreme Court and it seemed like they were thinking it was a lot of work for the judicial assistants and they were concerned about the workload to upload all those emails. Judge Jensen also recalls that another reason why they thought it would be okay is because if it was denied, it might be appealed, but if it was granted, it wouldn't be appealed. Judge Jensen doesn't necessarily agree with that as she agrees with Judge Dame, but she recalls those were some of the discussions.

Ms. Hautamaki inquired if an attorney could e-mail the request as well, and stated that if the attorneys can e-mail, they may need to ask the courts to review the Code of Judicial Administration and look at those items that are included in mandatory e-filing. Ms. Hautamaki assumed a pro se party would submit their request by e-mail and it would be accepted, but she would expect it would be filed by motion if it was an attorney. Judge Dame doesn't think the rule differentiates between pro se and counsel so the intent would be that counsel could e-mail their request. Ms. Hautamaki asked if Rule 4-901 of the Code of Judicial Administration would be relied on. Judge Dame would think this rule would supersede that because it is more specific. Judge Dame stated that under the concepts of rule construction, if two rules conflict, it would be the more specific one that would supersede the less specific. If the Court had to do that analysis, if it is a specific type of request under Rule 61, it would supersede 4-901. Mr. Gallardo stated the intent was to allow these under exigent circumstances, but he believes it also allows attorneys to make the request via e-mail. The committee expressed concern about the request not being in the record, even if it

is granted. Ms. Hautamaki expressed concern about the additional workload it would place on the judicial assistants.

Mr. Russell appreciates Judge Jensen's comments, and he doesn't want to be insensitive to the judicial assistant workload, but he believes that the best way, to preserve the integrity of the trial court and the court record, is that they all be included in the record. Mr. Russell stated that if there is a request that is made to the court by e-mail, or an objection by e-mail, regardless of the ruling, it all needs to be in the record. Mr. Russell strongly joins in Judge Dame's request. Whether the request is granted or denied, the record needs to be preserved. Mr. Russell does not believe the Court of Appeals would be happy that part of the record is missing, and he would support the language being omitted.

Mr. Johnson stated he doesn't have a problem with omitting the language and sending it back up to the Supreme Court. Mr. Russell will respect the decision of the Supreme Court if they disagree, but he has a duty to express his opinion.

Mr. Gallardo addressed the issue related to whether there needs to be a specific carve-out for problem-solving courts. Mr. Johnson stated he and Mr. Russell did not feel it needed to be included. Mr. Fureigh stated subsection (L) includes "any other relevant factor," so he doesn't see a reason to include a specific carve-out. Judge Jensen and Judge Dame agree.

Mr. Johnson requests a motion to submit Rule 61 as written with the changes made. Ms. Hautamaki stated she feels like she should represent the clerks and oppose the removal of the language in paragraph (d)(1) related to making a record of the request only if it is denied. Ms. Hautamaki states she believes attorneys should be required to e-file the request, and if they don't have to e-file the request, the workload will be shifted to the judicial assistant. Ms. Von Bose states the Supreme Court was concerned about how fast these requests are coming into the court if they come in via e-filing. Ms. Hautamaki states she believes the requests would be seen faster if they were through e-filing.

Mr. Johnson states with regard to omitting the language and sending Rule 61 up as written, he requests a motion to submit that rule to the Supreme Court for publication. Mr. Russell made the motion and Judge Dame seconded the motion. Ms. Hautamaki voiced her concerns and abstained from voting. Mr. Johnson will take it to the Supreme Court.

3. **Discussion & Action: Rule 19C. Motion practice for delinquency, traffic, and adult criminal matters:** (All)

Mr. Johnson states there is a proposal to amend Rule 19C based on some legislative changes. Mr. Johnson indicated Ms. Von Bose has additional information. Ms. Von Bose stated this originated from House Bill 369 addressing justification hearings and adding a justification defense. Ms. Von Bose stated that Utah Code 76-2-309(3)(a) is

where it comes from and provided some additional background information. Ms. Von Bose stated the question has been raised through discussion whether the juvenile rule should reference Rule 12 of the Utah Rules of Criminal Procedure based on those changes.

Mr. Gallardo stated the amendments made to Rule 19C went into effect two days ago, as of May 1, 2024. Mr. Gallardo indicated they wanted to have a discussion whether Rule 19C should remain the same, or whether this committee should entertain a possible second amendment. Judge Dame stated he doesn't feel strongly about this either way. Judge Dame indicated the impetus of looking at this is that an individual could be relying on the statute in juvenile court, and if there isn't some reference to Rule 12 of the Utah Rules of Criminal Procedure, it could be confusing. Mr. Russell states even though it is disappointing that the legislature has excluded the juvenile court, the reference to Rule 12(c)(3) would make it cleaner. If it is not included in the juvenile rules, there is ambiguity.

Mr. Gallardo stated the proposal would be to change the language to state, "(f) Motions on the justification of the use of force pursuant to Utah Code section 76-2-309 must be filed in accordance with Rule 12(c)(3) of the Rules of Criminal Procedure. Rule 12(c)(3) of the Rules of Criminal Procedure is hereby adopted by the Rules of Juvenile Procedure."

Mr. Gallardo states the Rules of Criminal Procedure could amend their rules or renumber their rules. Judge Dame states that is always a danger with adopting a rule, but he believes it could get worked out. Mr. Russell states the only work around he sees would be to import the process and burden language as outlined in the statute which would be cumbersome and long. Mr. Russell does not believe that is preferable to just adopting Rule 12(c)(3). Ms. Von Bose states in looking at the other rules that have incorporated the Rules of Criminal Procedure, the language "hereby adopted" isn't present in any of the other rules (Rules 7, 18, 20, 25, 27 and 38). Judge Dame stated he likes the language as written because he believes it is very clear that it has been specifically adopted and there is no question.

Mr. Johnson requests a motion from the committee to take it back up to the Supreme Court for public comment to make the change. Judge Dame made the motion, Elizabeth Ferrin seconded, and it passed unanimously. Mr. Johnson inquired if the committee is okay with it being immediately published. Mr. Russell made the motion for it to be published immediately, Judge Jensen seconded, and it passed unanimously.

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

Mr. Johnson inquired if there was any old or new business.

Mr. Gallardo stated they have been tracking the bilingual notice and they are ready, but they are not available on the website. Mr. Gallardo stated on a related note, in the

district court, there is a summons for pro se litigants. There was a question of whether there was a need for that in the juvenile court. Mr. Luchs stated he believes it would be helpful, and Ms. Ferrin agreed.

The committee then discussed whether the in-person meeting should remain scheduled for June, or whether it should be pushed out to the fall. After some discussion, Mr. Johnson stated the in-person meeting will be moved to October 4, 2024.

No additional old or new business was discussed.

The meeting adjourned at 1:44 PM. The next meeting will be held on June 7, 2024 via Webex.