

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

Meeting Agenda

Matthew Johnson, Chair

Location: Webex Meeting
Date: September 6, 2024
Time: 12:00 pm – 2:00 pm

Action: Welcome and approval of August 2, 2024, meeting minutes.	Tab 1	Bill Russell
Discussion & Action: Rule 16 . Transfer of delinquency case. <ul style="list-style-type: none"><i>The proposed amendments to Rule 16 aim to provide clear and consistent direction regarding the transfer of and venue in a delinquency case.</i>	Tab 2	Judge Michael Leavitt
Discussion & Action: Rule 29 . Multiple county offenses. <ul style="list-style-type: none"><i>The proposed amendments to Rule 29 also aim to provide clear and consistent direction regarding the transfer of and venue in a delinquency case.</i>	Tab 3	Judge Michael Leavitt
Discussion: Manner of Appearance Rules. <ul style="list-style-type: none"><i>During the public comment period for the new manner of appearance rules, a suggestion was made to include an additional factor courts should consider when setting the hearing format. The factor relates to recruiting volunteer attorneys and how the availability of remote hearings increases recruitment. The comment was made in referenced to Rule 87 of the Utah Rules of Civil Procedure, but the</i>	Tab 4	All

<p><i>Supreme Court has asked that this Committee also discuss this comment and whether the proposed factor should be included in Rule 61.</i></p>		
<p>Discussion: Old business or new business.</p>		<p>All</p>

[URJP Committee Site](#)

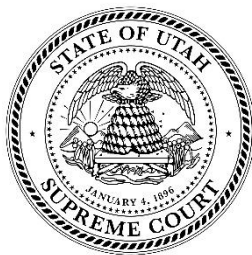
Meeting Schedule:

October 4, 2024 (in-person)

November 1, 2024

December 6, 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: August 2, 2024

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13 Time: 12:00 p.m. – 2:00 p.m.

14
Attendees:

Matthew Johnson, Chair
William Russell, Vice Chair
Thomas Luchs
Judge David Johnson
Janette White
Michelle Jeffs
Judge Debra Jensen
Adrianna Davis
Sophia Moore
Arek Butler
Jordan Putnam
David Fureigh, Emeritus Member

Excused Members:

Dawn Hautamaki
James Smith
Elizabeth Ferrin

Guests:

Daniel Meza-Rincon
Amy Giles
Blake Murdoch

Staff:

Randi Von Bose, Juvenile Law Clerk
Lisa McQuarrie, Juvenile Law Clerk
Raymundo Gallardo
Kiley Tilby, Recording Secretary

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1. Welcome and approval of the June 7, 2024 Meeting Minutes: (Matthew Johnson)

Mr. Johnson welcomed everyone to the meeting. Mr. Johnson asked the committee for approval of the June 7, 2024 meeting minutes. Mr. Russell suggested two changes, and the changes were made. Mr. Russell moved to approve the minutes with the changes. Judge Johnson seconded the motion, and it passed unanimously.

Mr. Johnson stated Judge Johnson is the newest committee member and replaced the vacant spot left by Judge Dame. Mr. Johnson turned the time over to Judge Johnson to introduce himself. Judge Johnson provided an introduction of himself, and stated he is excited to get to know the committee members and work on the rules. The committee members then provided an introduction of themselves. Mr. Johnson expressed appreciation to the committee for the work they are doing.

2. Discussion: Expungement order copies and fees: (Daniel Meza Rincon)

Mr. Meza-Rincon stated he is the deputy juvenile court administrator, and this issue was brought to his attention when Rule 56 was amended and a portion of the language was removed that prevented the court from imposing a fee when providing certified copies of the expungement order to individuals. Mr. Meza-Rincon indicated that as they have sought to implement the rule change, they were asked whether this committee intended that the court would now charge for those copies.

Mr. Johnson stated it was his recollection that this committee wanted to leave it up to the court and did not want a specific provision outlined in the juvenile rules with regard to the cost. Mr. Gallardo stated that last time this topic was discussed, this committee had a major discussion on the structure of the rule that led to this particular change. At that time, there was mention that certified copies are addressed in the Code of Judicial Administration, and since they are addressed there, it shouldn't be addressed in the juvenile rules. So, this committee looked toward removing that language. Mr. Gallardo stated the second thing this committee discussed was that if there is a cost for providing these certified copies, it should be left up to the Administrative Office of the Courts or the Judicial Council through those same rules.

Judge Johnson stated if he recalls, the statute changed as well and the statute allowed for no cost. Judge Johnson indicated this is directly addressed by the Code of Judicial Administration that specifically talks about certified copies. From his own perspective, Judge Johnson noted that he regularly waives fees for various things and that option is there if someone is indigent or has other financial issues preventing the expungement. Judge Johnson stated the biggest concern, as a system, is that expungement should not be contingent on someone's ability to pay. However, there is a way to avoid having to pay those fees, and one of those is a request for a waiver from the court. Judge Jensen agreed and stated she waives fees regularly and the other judges within her district do the same.

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Mr. Meza-Rincon clarified that this committee’s intention would be that the certified copies would not be free, and only if the individual requests the fee to be waived, then it would be up to the decision of the courts. Mr. Meza-Rincon stated for a long time the courts have interpreted Rule 4-202.08 of the Code of Judicial Administration, where it talks about waiver of fees, to mean that certified copy fees could be waived. However, they have spent a long time looking at that rule recently, and the rule provides for that waiver of fees for those fees established by the rule, not those established by statute and certified copies are established by statute. As it is written, that would not allow for a waiver on certified copies. Judge Johnson inquired which statute he is referencing, and Mr. Meza-Rincon provided Utah Code 78A-2-301(z). Mr. Meza-Rincon indicated his intention is not to question the decision of the committee, but only to gather additional clarification so he can provide instruction to their clerical teams.

Judge Johnson stated if the statute has a fee outlined, a rule cannot waive it as the statute takes authority over a rule. Judge Johnson believes the statute would need to be changed. Mr. Meza-Rincon stated the “no cost” language was originally added to the rule following H.B. 397 (2020) after the committee determined no fees could be assessed for expungement other than a petition filing fee.

Mr. Johnson stated, with regard to the fees, this committee did not put anything in the rule because it was already in the Code of Judicial Administration. Mr. Johnson indicated they have been directed by the Supreme Court Justices to try to make these rules as simple for people to follow that don’t have a legal background. Additionally, this committee did not want to direct the court with regard to fees as there was already a rule and statute. Mr. Johnson stated that this committee’s intent was not a waiver of all fees, but since it was already mentioned elsewhere, this committee did not want to mention it and make it more difficult for people to understand.

Mr. Meza-Rincon inquired if there is another rule that provides for free copies. Mr. Russell stated he is not aware of one, and although he disagrees with it from a policy standpoint, he thinks with the statute and the repeal of the “no cost” language, we are stuck with it. Mr. Russell does not believe it would not be appropriate for this committee to assert one as it is not justified under the current framework. Mr. Meza-Rincon stated that helps provide some clarification, and he will provide feedback to his teams that there will not be an automatic waiver on certified copies. Mr. Meza-Rincon stated there was confusion since the language was there for three years and now that the language is not there, he wanted to make sure that is the direction this committee is going.

Mr. Gallardo let the committee know, as a potential new business item, that their general counsel is looking at the need for a possible amendment to Rule 16 and Rule 16A regarding venue. Mr. Gallardo indicated the concern is that a petitioner who is seeking to expunge their record may have incidents committed in different counties and districts. One of the questions that was brought to them, and will likely be seen

109 on the September agenda, is a way to help petitioners consolidate and avoid having
110 to file multiple petitions throughout different districts. In addition to that, they are
111 also possibly looking into the petitioner having only one petition filing fee instead of
112 multiple if that petitioner has a history in different counties.

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115 **3. Discussion & Action: Rule 14. Reception of referral; preliminary determination:**
116 (All)

117
118 Mr. Gallardo stated this rule came to them from their general counsel and the Board
119 of Juvenile Judges as a proposed amendment. The Board of Juvenile Court Judges and
120 legal counsel for the Administrative Office of the Courts suggested this committee
121 amend the rule to properly define when a probation officer refers a delinquency
122 referral to the prosecuting office. In addition, they proposed removing the language
123 of “intake officer” as Probation no longer has intake officers. Mr. Gallardo outlined
124 that the proposed change is to strike that language throughout the rule. Additionally,
125 the major change is in Line 7 where it reads “A juvenile probation officer must make
126 a preliminary determination as to whether the minor qualifies for a nonjudicial
127 adjustment. If the referral does not establish that the minor qualifies for a nonjudicial
128 adjustment, the probation officer must forward the referral to the prosecutor.” This
129 language is provided in statute. Mr. Gallardo then turned the time over to the
130 committee for discussion.

131
132 Mr. Russell stated after reviewing the statutes, the suggested language fairly captures
133 the statute, and he does not have any proposed changes. Mr. Russell believes it is an
134 accurate paraphrasing of the statute. Mr. Fureigh inquired about the current practice,
135 and if, in order for probation to do a nonjudicial adjustment, they have to staff it with
136 prosecuting attorney first. Mr. Johnson stated in his experience, if it was handled
137 nonjudicial, the prosecutor never saw it. If it wasn’t handled nonjudicially, then they
138 would get it and screen it for charges.

139
140 Mr. Fureigh inquired if the probation officer would determine if it was necessary to
141 seek the assistance of a prosecuting attorney. Ms. Davis stated practices surrounding
142 this issue vary across the state. For their office, everything goes through the probation
143 office, and they will reach out to them if there is a felony or something that was
144 missed. However, it is Ms. Davis’s understanding that Utah County screens
145 everything that comes in, so there is variation between the state. Mr. Gallardo stated
146 his understanding was that there were different practices across the state and they
147 wanted a uniform practice so that is why it was brought to this committee.

148
149 Ms. Von Bose stated she has been involved in a lot of these discussions recently and
150 the issue that was discussed was that some probation officers were getting charges in
151 and questioning whether it met the legal standard, so they were sending it to the
152 prosecutor’s office. However, that was leading to biases. Ms. Von Bose indicated that
153 in 2014 when all the reforms were happening, this was a big part of what was trying
154 to be addressed is the variation that was happening throughout the state and

155 outlining the things that can go to the prosecuting office. Since the reform started
156 happening in 2014, this has been happening in different districts, so they are trying to
157 get all the probation offices on the same page to follow the way the statute actually
158 reads.

159
160 Mr. Russell stated his observations of other counties are similar to Ms. Davis's view
161 that each county is different. In the past, when the statute was first being
162 implemented, there was a lot of confusion and it went from a range of probation
163 making the determination, to having the prosecutor look it on an informal basis. Ms.
164 Davis stated that through the legislative process, it wasn't an obligation. Ms. Davis
165 addressed the concern of the prosecutor and probation finding themselves at odds,
166 but asking probation officers to make legal determinations is also problematic. Ms.
167 Davis explained this is why the decision was made in her district to have them
168 screened at the probation level.

169
170 Ms. White inquired if the rule written this way would prohibit probation officers from
171 seeking legal advice. Mr. Fureigh also inquired if this proposal is going to accomplish
172 what they are trying to prevent or resolve some of the concerns that Ms. Davis brought
173 up. Mr. Johnson stated if they look at the statute, it outlines what they can and cannot
174 do as far as giving nonjudicial adjustments, crimes that they cannot be offered on, etc.,
175 and this language reinforces the statute. Mr. Johnson indicated that his experience
176 was that he rarely had probation officers coming over to inquire about charges. His
177 biggest issue was that when citations would come in, the probation office would
178 automatically file them with the court and then after the prosecutor reviewed them,
179 they didn't understand why it was charged a particular way.

180
181 Mr. Russell stated the front page of the referral sheet lists the charges they are being
182 referred on and the statute has a fairly comprehensive list of the types of charges and
183 the criteria that has to be checked before the mandatory nonjudicial has to be offered.
184 However, it doesn't stop probation officers from referring it to the prosecutor's office
185 for them to determine if a nonjudicial needs to be offered. Mr. Russell stated there are
186 some cases that will not get that sort of clarity until charges are filed and lawyers are
187 involved. However, there is always a safety valve to return it for nonjudicial. Mr.
188 Russell stated there are ways to get it back there, but the proposed language now is
189 that the juvenile probation officer must make a determination and offer it if they
190 qualify. Mr. Russell believes that is cleaner, and he understands it will continue to be
191 different district by district, but he does not believe that is necessarily a bad thing.

192
193 Ms. Moore inquired if there is a need for the rule at all if there is an extensive statute.
194 Ms. Moore expressed some concern that it could make it more confusing. Mr. Russell
195 stated he prefers to leave the rule there because it is a fairly concise and
196 straightforward process envisioned by the statute, and the statute itself is
197 complicated.

198
199 Ms. McQuarrie proposed a stylistic change as under subsection (a) and (c) as there is
200 a (1) without a (2). Mr. Johnson stated he believes Justice Pohlman would agree to

201 make that stylistic change. Ms. Moore inquired if that is consistent with the other
202 rules. Mr. Russell stated that is stylistically consistent. The committee then discussed
203 the stylistic changes, how to format it, and the changes were made.

204

205 Mr. Johnson inquired if there is a motion by the committee to publish Rule 14 with
206 the revisions for a public comment period. Mr. Russell made the motion, and Ms.
207 Moore seconded the motion. The motion passed unanimously.

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

211

212 Mr. Johnson stated the comment period closed regarding Rule 5 and there were no
213 comments received. Mr. Johnson asked the committee for a motion to send it to the
214 Supreme Court for approval and publishing. Ms. Jeffs made the motion, and Judge
215 Jensen seconded the motion. The motion passed unanimously.

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218 **5. Discussion & Action: Rule 13A. Limited-purpose intervention: (All)**

219

220 Mr. Johnson stated the committee had a lengthy discussion on this rule and it was
221 sent out for public comment, and no comments were received. Mr. Johnson inquired
222 if there is a motion to send it to the Supreme Court for approval and publishing. Judge
223 Jensen made the motion, and Ms. Jeffs seconded the motion. The motion passed
224 unanimously.

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227 **6. Discussion & Action: Rule 15. Preliminary inquiry; informal adjustment without
228 petition: (All)**

229

230 Mr. Johnson stated Rule 15 was sent out for public comment and no comments were
231 received. Mr. Johnson inquired if there is a motion to send it to the Supreme Court for
232 approval and publishing, or if there were any other changes or concerns.

233

234 Mr. Gallardo stated he had a few minor changes. As he had mentioned before, the
235 probation office no longer has intake officers, so his proposed changes were to remove
236 any language related to intake officers. Mr. Johnson stated he does not believe those
237 changes are substantive and it would not need to be sent back out for public comment.
238 Mr. Russell agreed.

239

240 The committee approved the proposed changes to remove the language related to
241 intake officers. With those changes, Ms. Davis made the motion to send it to the
242 Supreme Court for approval and publishing, and Ms. White seconded the motion. The
243 motion passed unanimously.

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247 **7. Discussion & Action: Rule 19C. Delinquency, traffic and adult criminal matters:**
248 (All)

249
250 Mr. Johnson stated this rule was sent out for the public comment period and no
251 comments were received. Mr. Johnson inquired if there were any further changes with
252 regard to that rule, or if there was a motion to send it to the Supreme Court for
253 approval and publishing. Mr. Russell made the motion and Ms. Davis seconded the
254 motion. The motion passed unanimously.

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

259
260 Mr. Johnson stated this rule was sent out for public comment and there were no
261 comments received. Mr. Johnson inquired if there were any additional issues or
262 changes that needed to be made, or if there was a motion to send it to the Supreme
263 Court for approval and publishing. Mr. Butler made the motion, and Mr. Russell
264 seconded the motion. The motion passed unanimously.

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

268
269 Mr. Johnson stated this committee repealed Rule 31 and it was sent out for public
270 comment and no comments were received. Mr. Johnson inquired if there was further
271 discussion, or if there was a motion to send it to the Supreme Court for approval and
272 publishing. Mr. Gallardo stated they need a recommendation from this committee on
273 the title in Section VIII. Mr. Gallardo proposed it to be changed to "Citable Offenses
274 and Status Offenses," and the committee agreed.

275
276 Ms. Moore made the motion to send it to the Supreme Court for final approval and
277 repeal, and Mr. Butler seconded the motion. The motion passed unanimously.

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280 **10. Old business/new business: (All)**

281
282 Mr. Johnson stated they got an e-mail from Nick Stiles regarding the rule that was
283 put together with regard to the manner of appearance. Mr. Johnson indicated he
284 believes they are looking to publish that and make it a formal rule as of September 1,
285 2024.

286
287 Mr. Gallardo stated last time they were before Supreme Court they addressed the
288 change to Rule 50 that allows the court to exclude someone from the hearing, not just
289 the courtroom, now that there are remote hearings. Mr. Gallardo stated that the
290 change was approved by the Supreme Court and that will be effective November 1st
291 of next year. Mr. Gallardo also reminded the committee that the October meeting will
292 be a hybrid meeting. Additionally, Mr. Gallardo stated there have been some issues

293 with graphic posting or appearances at meetings by other individuals. In order to
294 protect our meeting, Mr. Gallardo stated he will have to admit everyone into the
295 meeting. Mr. Gallardo asked that if a committee member is calling in from a mobile
296 phone, to change their name instead of having a number.

297
298 The chair and members of the Committee expressed their thanks to and appreciation
299 of Ms. Kiley Tilby who has acted as recorder and drafter of the Committee meeting
300 minutes over the last year. Her professionalism, diligence, and promptness in
301 discharge of this pro bono duty have provided a great service to both the Committee
302 and the legal profession of Utah, and she will be greatly missed in that capacity.

303
304 No additional old or new business was discussed.

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308 The meeting adjourned at 1:16 PM. The next meeting will be held on September 6,
309 2024 via Webex.

TAB 2

1 **Rule 16. Transfer of delinquency case and venue.**

2 (a) **Transfer of delinquency case for preliminary inquiry.**

3 (1) When a minor resides in a county within the state other than the county in
4 which the alleged delinquency occurred, and it appears that the minor qualifies
5 for a nonjudicial adjustment pursuant to statute, the ~~intake~~ probation officer of the
6 county of occurrence ~~must~~shall, unless otherwise directed by court order, transfer
7 the referral to the county of residence for a preliminary inquiry to be conducted in
8 accordance with Rule 15. If any of the following circumstances are found to exist
9 at the time of preliminary inquiry, the referral ~~must~~shall be transferred back to the
10 county of occurrence for filing of a petition and further proceedings:

11 (A) a minor, the child or the child's parent, guardian, or custodian cannot
12 be located or failed to appear after notice for the preliminary inquiry;

13 (B) a minor, the child or the child's parent, guardian, or custodian declines
14 an offer for a nonjudicial adjustment;

15 (C) a minor or the minor's custodian cannot be located or fails to appear
16 after notice for the preliminary inquiry or the minor declines an offer for a
17 nonjudicial adjustment;

18 (D) there are circumstances in the case that require adjudication in the
19 county of occurrence in the interest of justice; or

20 (E) there are multiple minors involved who live in different counties.

21 (b) ~~If the referral is not returned to the county of occurrence, a petition may be filed in the~~
22 ~~county of residence, and the arraignment and all further proceedings may be conducted~~
23 ~~in that county if the petition is admitted.~~Upon filing of a petition, the arraignment and
24 initial pretrial conference will be held in the district and county where the minor resides.
25 If the petition is resolved without a trial, venue will remain in the minor's county of
26 residence. Once the parties have determined that the matter cannot be resolved without

27 a trial and are ready to schedule a trial, venue will be transferred to the county of
28 occurrence for trial. If the petition is adjudicated, the case will then be transferred back to
29 the court in the county where the minor resides for disposition and continuing
30 jurisdiction.

31 ~~(c) After the filing of a petition alleging a delinquency or criminal action, the court may~~
32 ~~transfer the case to the district where the minor resides or the district where the violation~~
33 ~~of law or ordinance is alleged to have occurred. The court may, in its discretion, after~~
34 ~~adjudication certify the case for disposition to the court of the district in which the minor~~
35 ~~resides. Prosecutors and appointed defense counsel in both the county of occurrence and~~
36 the county of residence must cooperate with each other to assist in the resolution or
37 litigation of each case.

38 (d) With each transfer, Tthe transferring or certifying court ~~shall~~will notify the receiving
39 court and transmit all documents and legal and social records, or certified copies thereof,
40 to the receiving court. The receiving court ~~shall~~will proceed with the case from the point
41 where the preceding court transferred the case as if the petition had been originally filed
42 or the adjudication had been originally made in that court.

43 (e) The dismissal of a petition in one district where the dismissal is without prejudice and
44 where there has been no adjudication upon the merits ~~shall~~does not preclude refiling
45 within the same district or another district where venue is proper.

1 **Rule 16. Transfer of delinquency case and venue.**

2 (a) **Transfer of delinquency case for preliminary inquiry.**

3 (1) When a minor resides in a county within the state other than the county in
4 which the alleged delinquency occurred, and it appears that the minor qualifies
5 for a nonjudicial adjustment pursuant to statute, the probation officer of the county
6 of occurrence must, unless otherwise directed by court order, transfer the referral
7 to the county of residence for a preliminary inquiry to be conducted in accordance
8 with Rule 15. If any of the following circumstances are found to exist at the time
9 of preliminary inquiry, the referral must be transferred back to the county of
10 occurrence for filing of a petition and further proceedings:

11 (A) a minor, the child or the child's parent, guardian, or custodian cannot
12 be located or failed to appear after notice for the preliminary inquiry;

13 (B) a minor, the child or the child's parent, guardian, or custodian declines
14 an offer for a nonjudicial adjustment;

15 (C) a minor or the minor's custodian cannot be located or fails to appear
16 after notice for the preliminary inquiry or the minor declines an offer for a
17 nonjudicial adjustment;

18 (D) there are circumstances in the case that require adjudication in the
19 county of occurrence in the interest of justice; or

20 (E) there are multiple minors involved who live in different counties.

21 (b) Upon filing of a petition, the arraignment and initial pretrial conference will be held
22 in the district and county where the minor resides. If the petition is resolved without a
23 trial, venue will remain in the minor's county of residence. Once the parties have
24 determined that the matter cannot be resolved without a trial and are ready to schedule
25 a trial, venue will be transferred to the county of occurrence for trial. If the petition is

26 adjudicated, the case will then be transferred back to the court in the county where the
27 minor resides for disposition and continuing jurisdiction.

28 (c) Prosecutors and appointed defense counsel in both the county of occurrence and the
29 county of residence must cooperate with each other to assist in the resolution or litigation
30 of each case.

31 (d) With each transfer, the transferring or certifying court will notify the receiving court
32 and transmit all documents and legal and social records, or certified copies thereof, to the
33 receiving court. The receiving court will proceed with the case from the point where the
34 preceding court transferred the case as if the petition had been originally filed or the
35 adjudication had been originally made in that court.

36 (e) The dismissal of a petition in one district where the dismissal is without prejudice and
37 where there has been no adjudication upon the merits does not preclude refiling within
38 the same district or another district where venue is proper.

TAB 3

1 Rule 29. Multiple county offenses.

2 (a) When a minor is charged in a petition with the commission of offenses in more than
3 one county, all proceedings except the trial ~~may take place on all charges in the county in~~
4 ~~which the petition is filed~~must take place in the county where the minor resides.

5 (b) ~~If a minor denies some or all of the charges for those offenses committed outside the~~
6 ~~county in which the arraignment takes place, the court may enter such denial and set the~~
7 ~~matter for a pre-trial conference, or refer such charges to the prosecuting attorney for the~~
8 ~~county in which the offenses are alleged to have occurred. If the offenses are alleged to~~
9 ~~have occurred in a county which is within the same judicial district, the arraigning court~~
10 ~~may order that the matter be scheduled for trial in that county.~~If the petition is resolved
11 without trial, venue will remain in the minor's county of residence. Once the parties have
12 determined that the matter cannot be resolved without a trial, venue must be transferred
13 to the county where the alleged offenses occurred. If the petition is adjudicated after trial,
14 the case will be transferred back to the minor's county of residence for all further
15 proceedings.

16 (c) ~~Out of county charges may be included in a proposed pleas agreement as provided in~~
17 ~~Rule 25. Such charges shall not be dismissed by the court except on motion of the~~
18 ~~prosecuting attorney for the county where the offenses are alleged to have occurred, or~~
19 ~~on the court's own motion as part of a plea agreement approved by the court.~~The
20 prosecutor in the minor's county of residence has the authority to resolve out-of-county
21 charges after consultation with the prosecutor in the county where the alleged offenses
22 occurred.

23 (d) Where charges are referred to another county for further proceedings, the clerk of the
24 court where the petition was filed ~~shall~~will transmit all pertinent documents, including
25 the petition, summons, minutes and orders to the receiving court clerk. The receiving
26 court ~~shall~~will proceed with the case from the point where the preceding court
27 transferred the case as if the petition had been originally filed ~~and arraignment held in~~
28 that court.

1 Rule 29. Multiple county offenses.

2 (a) When a minor is charged in a petition with the commission of offenses in more than
3 one county, all proceedings except the trial must take place in the county where the minor
4 resides.

5 (b) If the petition is resolved without trial, venue will remain in the minor's county of
6 residence. Once the parties have determined that the matter cannot be resolved without
7 a trial, venue must be transferred to the county where the alleged offenses occurred. If
8 the petition is adjudicated after trial, the case will be transferred back to the minor's
9 county of residence for all further proceedings.

10 (c) The prosecutor in the minor's county of residence has the authority to resolve out-of-
11 county charges after consultation with the prosecutor in the county where the alleged
12 offenses occurred.

13 (d) Where charges are referred to another county for further proceedings, the clerk of the
14 court where the petition was filed will transmit all pertinent documents, including the
15 petition, summons, minutes and orders to the receiving court clerk. The receiving court
16 will proceed with the case from the point where the preceding court transferred the case
17 as if the petition had been originally filed in that court.

TAB 4

diligent efforts to do so.

(6) Effect on other participants. The preference of one participant, and the court’s accommodation of that preference, does not:

- (i) change the format of the hearing for any other participant unless otherwise ordered by the court; or
- (ii) affect any other participant’s opportunity to make a timely request to appear in a different manner or the court’s consideration of that request.

Keri Sargent
June 28, 2024 at 11:45 am

Comment on Proposed Utah Rule of Civil Procedure 87

Dear Civil Procedure Advisory Committee:

This comment about proposed Civil Rule 87 is submitted by a majority of the members of the Working Interdisciplinary Network of Guardianship Stakeholders (“WINGS”), a Judicial Council Committee under CJA Rule 1-205(1)(A)(xv). We recommend two modifications, as discussed below:

1. Effect on Guardianship Signature Program.

We are concerned about the impact of proposed Civil Rule 87 on the Court’s Guardianship Signature Program (“GSP”). The GSP recruits volunteer attorneys to represent proposed protected persons in guardianship cases. Right now, it is challenging to recruit GSP volunteer attorneys, but those who volunteer report that being able to attend hearings remotely makes it possible for them to volunteer. If Courts are not lenient with allowing volunteer attorneys to appear virtually, then recruitment of volunteer attorneys will be even more difficult.

Because of this we recommend that Rule 87(b) be amended to add the following subparagraph: “(x) the benefit of facilitating participation in hearings by pro bono or low-cost legal counsel without the added cost of travel to the courthouse;”

2. Effect on Guardianship Proceedings.

Proposed Civil Rule 87 may have an unintended effect on hearings under Utah Code §75-5-303 for appointment of a guardian for an incapacitated person. If a judge and counsel are not aware of that section, they may unknowingly violate such a statutory provision by relying solely on Rule 87. Alternatively, a judge or counsel may mistakenly conclude that Rule 87 was intended to govern the interpretation of such a statutory provision.

Section 75-5-303(5)(a) has the following provision that applies to guardianship proceedings:

(5)(a) The person alleged to be incapacitated shall be present at the hearing in person and see or hear all evidence bearing upon the person’s condition. If the person seeking the guardianship requests a waiver of presence of the person alleged to be

- LPP15-0715
- LPP15-0716
- LPP15-0717
- LPP15-0718
- LPP15-0719
- LPP15-0720
- LPP15.01001
- LPP15.01101
- LPP15.01102
- LPP15.01103
- LPP15.01104
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- LPP15.01119
- LPP15.01120
- LPP15.0301
- LPP15.0501
- LPP15.0502
- LPP15.0503
- LPP15.0505
- LPP15.0506
- LPP15.0508
- LPP15.0509
- LPP15.0510
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- LPP15.0533

incapacitated, the court shall order an investigation by a court visitor, the costs of which shall be paid by the person seeking the guardianship.

Assuming that the Civil Procedure Advisory Committee does not intend that Civil Rule 87 will override such statutory provisions, thereby encouraging less liberality with virtual hearings, we recommend that Rule 87 includes a provision such as the following: “This Rule is not intended to supersede statutory provisions or caselaw that may require in-person attendance at Court proceedings nor to define the meaning of ‘in person’ in a way that restricts the Court’s ability to accommodate parties in a manner most consistent with justice and practicality.” Perhaps a Committee Note could be added that lists Utah Code §75-5-303(5)(a) and other similar statutory provisions that should be considered when applicable.

Thank you for your consideration of these comments.

Judge Keith A. Kelly, Utah 3rd District Court, Chair of WINGS

Nate Crippes

July 3, 2024 at 10:09 am

The Disability Law Center (DLC) is a 501(c)(3) designated as Utah’s Protection and Advocacy. The DLC’s mission is to enforce and advance the legal rights, opportunities, and choices of Utahns with disabilities. Our services are available free of charge statewide, regardless of income, legal status, language, or place of residence.

The DLC appreciates the opportunity to comment on proposed URCP 87. We advocate for the greatest degree of independence and self-determination possible for Utahns with disabilities. This includes representing individuals who wish to modify or challenge their guardianship.

Because guardianship necessarily involves the potentially permanent limitation or loss of a person’s fundamental freedoms or rights, it is critical they can see, hear, and question the evidence underlying a petition. Unfortunately, physically attending court can be difficult for an individual with a disability. Therefore, it needs to be as easy as possible to request the support needed to fully participate in the process, whether it be in-person or remote.

For this reason, the DLC supports the comments submitted by the Working Interdisciplinary Network of Guardianship Stakeholders. In addition, we recommend the following amendments:

1) in Subparagraph (a)(4), clarify that “other electronic means” includes by telephone;

- LPP15.0601
- LPP15.0602
- LPP15.0603
- LPP15.0604
- LPP15.0605
- LPP15.0606
- LPP15.0607
- LPP15.0901
- LPP15.0901
- LPP15.0902
- LPP15.0903
- LPP15.0904
- LPP15.0904
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- LPP15.0914
- LPP15.0915
- LPP15.0916
- LPP2.01
- LPP2.03
- LPP3.01
- LPP3.03
- LPP3.04
- LPP3.05
- LPP4.01
- LPP4.02
- LPP4.03
- LPP5.01
- LPP5.02
- LPP5.03
- LPP5.04
- LPP5.05
- LPP5.06
- LPP6.01
- LPP6.03
- LPP6.04
- LPP6.05
- LPP7.01
- LPP7.02
- LPP7.03
- LPP7.04
- LPP7.05
- LPP8.01
- LPP8.02
- LPP8.03
- LPP8.04
- LPP8.05
- LSI11.0701
- LSI11.0702
- LSI11.0703
- LSI11.0704

1 **Rule 87. In-person, remote, and hybrid hearings; request for different format.**

2 (a) **Definitions.**

3 (1) "Participant" means a party, an intervenor, a person who has objected to a
4 subpoena, or an attorney for any such persons.

5 (2) "In-person" means a participant will be physically present in the courtroom.

6 (3) "In-person hearing" means a hearing where all participants appear in person.

7 (4) "Remote" or "remotely" means a participant will appear by video conference
8 or other electronic means approved by the court.

9 (5) "Remote hearing" means no participants will be physically present in the
10 courtroom and all participants will appear remotely.

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

13 (b) **Setting hearing format; factors to consider.** The court has discretion to set a hearing
14 as an in-person hearing, a remote hearing, or a hybrid hearing. In determining which
15 format to use for a hearing, the court will consider:

16 (1) the preference of the participants, if known;

17 (2) the anticipated hearing length;

18 (3) the number of participants;

19 (4) the burden on a participant of appearing in person compared to appearing
20 remotely, including time and economic impacts;

21 (5) the complexity of issues to be addressed;

22 (6) whether and to what extent documentary or testimonial evidence is likely to be
23 presented;

24 (7) the availability of adequate technology to accomplish the hearing's purpose;

- 25 (8) the availability of language interpretation or accommodations
26 for communication with individuals with disabilities;
- 27 (9) the possibility that the court may order a party, who is not already in custody,
28 into custody;
- 29 (10) the preference of the incarcerating custodian where a party is incarcerated, if
30 the hearing does not implicate significant constitutional rights; and
- 31 (11) any other factor, based on the specific facts and circumstances of the case or
32 the court's calendar, that the court deems relevant.

33 **(c) Request to appear by a different format.**

34 (1) **Manner of request.** A participant may request that the court allow the
35 participant or a witness to appear at a hearing by a different format than that set
36 by the court. Any request must be made verbally during a hearing, by email, by
37 letter, or by written motion, and the participant must state the reason for the
38 request. If a participant is represented by an attorney, all requests must be made
39 by the attorney.

40 **(A) Email and letter requests.**

41 (i) An email or letter request must be copied on all parties on the
42 request;

43 (ii) An email or letter request must include in the subject line,
44 "REQUEST TO APPEAR IN PERSON, Case _____" or
45 "REQUEST TO APPEAR REMOTELY, Case _____;" and

46 (iii) An email request must be sent to the court's email address,
47 which may be obtained from the court clerk.

48 **(B) Request by written motion.** If making a request by written motion, the
49 motion must succinctly state the grounds for the request and be

50 accompanied by a request to submit for decision and a proposed order. The
51 motion need not be accompanied by a supporting memorandum.

52 (2) **Timing.** All requests, except those made verbally during a hearing, must be
53 sent to the court at least seven days before the hearing unless there are exigent
54 circumstances or the hearing was set less than seven days before the hearing date,
55 in which case the request must be made as soon as reasonably possible.

56 **(d) Resolution of the request.**

57 (1) **Timing and manner of resolution.** The court may rule on a request under
58 paragraph (c) without awaiting a response. The court may rule on the request in
59 open court, by email, by minute entry, or by written order. If the request is made
60 by email, the court will make a record if the request is denied.

61 (2) **Court's accommodation of participant's preference; factors to consider.** The
62 court will accommodate a timely request unless the court makes, on the record, a
63 finding of good cause to order the participant to appear in the format originally
64 noticed. The court may find good cause to deny a request based on:

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

68 (B) a concern for a participant's or witness's safety, well-being, or specific
69 situational needs;

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

72 (D) a 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) a prior failure to appear for a hearing of which the participant had
76 notice;

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

79 (G) the preference of the incarcerating custodian where a party is
80 incarcerated, if the hearing does not implicate significant constitutional
81 rights;

82 (H) an agreement or any objection of the parties;

83 (I) the court's determination that the consequential nature of a specific
84 hearing requires all participants to appear in person; or

85 (J) the capacity of the court, including but not limited to the required
86 technology equipment, staff, or security, to accommodate the request.

87 **(3) Effect on other participants.** The preference of one participant, and the court's
88 accommodation of that preference, does not:

89 (A) change the format of the hearing for any other participant unless
90 otherwise ordered by the court; or

91 (B) affect any other participant's opportunity to make a timely request to
92 appear by a different format or the court's consideration of that request.

1 **Rule 61. In-person, remote, and hybrid hearings; request for different format.**

2 (a) **Definitions.**

3 (1) "Participant" means a party, an intervenor, an attorney for a party or an
4 intervenor, a parent of a minor in a delinquency matter, a juvenile probation officer
5 in a delinquency matter, a worker for Juvenile Justice and Youth Services in a
6 delinquency matter, or a victim in a delinquency matter.

7 (2) "In-person" means a participant will be physically present in the courtroom.

8 (3) "In-person hearing" means a hearing where all participants appear in person.

9 (4) "Remote" or "remotely" means a participant will appear by video conference
10 or other electronic means approved by the court.

11 (5) "Remote hearing" means no participants will be physically present in the
12 courtroom and all participants will appear remotely.

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

15 (b) **Setting hearing format; factors to consider.** The court has discretion to set a hearing
16 as an in-person hearing, a remote hearing, or a hybrid hearing. In determining which
17 format to use for a hearing, the court will consider:

18 (1) the preference of the participants, if known;

19 (2) the anticipated hearing length;

20 (3) the number of participants;

21 (4) the burden on a participant of appearing in person compared to appearing
22 remotely, including time and economic impacts;

23 (5) the complexity of issues to be addressed;

24 (6) whether and to what extent documentary or testimonial evidence is likely to be
25 presented;

- 26 (7) the availability of adequate technology to accomplish the hearing's purpose;
27 (8) the availability of language interpretation or accommodations for
28 communication with individuals with disabilities;
29 (9) the possibility that the court may order a party, who is not already in custody,
30 into custody;
31 (10) the preference of the incarcerating custodian where a party is incarcerated, if
32 the hearing does not implicate significant constitutional rights; and
33 (11) any other factor, based on the specific facts and circumstances of the case or
34 the court's calendar, that the court deems relevant.

35 **(c) Request to appear by a different format.**

36 (1) **Manner of request.** A participant may request that the court allow the
37 participant or a witness to appear at a hearing by a different format than that set
38 by the court. Any request must be made verbally during a hearing, by email, by
39 letter, or by written motion, and the participant must state the reason for the
40 request. If a participant is represented by an attorney, all requests must be made
41 by the attorney.

42 **(A) Email and letter requests.**

- 43 (i) An email or letter request must be copied on all parties;
44 (ii) An email or letter request must include in the subject line,
45 "REQUEST TO APPEAR IN PERSON, Case _____" or "REQUEST
46 TO APPEAR REMOTELY, Case _____;" and
47 (iii) An email request must be sent to the court's email address,
48 which may be obtained from the court clerk.

49 **(B) Request by written motion.** If making a request by written motion, the
50 motion must succinctly state the grounds for the request and be
51 accompanied by a request to submit for decision and a proposed order. The

52 motion need not be accompanied by a supporting memorandum.

53 (2) **Timing.** All requests, except those made verbally during a hearing, must be
54 sent to the court at least seven days before the hearing unless there are exigent
55 circumstances or the hearing was set less than seven days before the hearing date,
56 in which cases the request must be made as soon as reasonably possible.

57 (d) **Resolution of the request.**

58 (1) **Timing and manner of resolution.** The court may rule on a request under
59 paragraph (c) without waiting for a response. The court may rule on the request
60 in open court, by email, by minute entry, or by written order. If the request is made
61 by email, the court will make a record of the request if the request is denied.

62 (2) **Court's accommodation of participant's preference; factors to consider.** The
63 court will accommodate a timely request unless the court makes, on the record, a
64 finding of good cause to order the participant to appear in the format originally
65 noticed. The court may find good cause to deny a request based on:

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

69 (B) a concern for a participant's or witness's safety, well-being, or specific
70 situational needs;

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

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

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

78 (F) the possibility that the court may order a party, who is not already
79 in custody, into custody;

80 (G) the preference of the incarcerating custodian where a party is
81 incarcerated, if the hearing does not implicate significant constitutional
82 rights;

83 (H) an agreement or any objection of the parties;

84 (I) the court's determination that the consequential nature of a specific
85 hearing requires all participants to appear in person; or

86 (J) the capacity of the court, including but not limited to the required
87 technology equipment, staff, or security, to accommodate the request.

88 (3) **Effect on other participants.** The preference of one participant, and the court's
89 accommodation of that preference, does not:

90 (A) change the format of the hearing for any other participant unless
91 otherwise ordered by the court; or

92 (B) affect any other participant's opportunity to make a timely request to
93 appear by a different format or the court's consideration of that request.