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. • *The proposed amendments to Rule 16 aim to provide clear and consistent direction regarding the transfer of and venue in a delinquency case.*	Tab 2	Judge Michael Leavitt
Discussion: Manner of Appearance Rules. • *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 Supreme Court has asked that this Committee also discuss this comment and whether the proposed factor should be included in Rule 61.*	Tab 3	All
Discussion: Old business or new business.		All

URJP Committee Site

Meeting Schedule:

October 4, 2024 (in-person) November 1, 2024 December 6, 2024

TAB 1

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

Draft Meeting Minutes

Matthew Johnson, Chair

Location: Webex Meeting

Date: August 2, 2024

Time: 12:00 p.m. – 2:00 p.m.

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	

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No additional old or new business was discussed.

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

TAB 2

Rule 16. Transfer of delinquency case and venue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TAB 3

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
- LPP15.01105
- LPP15.01106
- LPP15.01107
- LPP15.01108
- LPP15.01109
- LPP15.01110
- LPP15.01111
- LPP15.01112
- LPP15.01113
- LPP15.01114
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- LPP15.01116
- LPP15.01117
- LPP15.01118
- LPP15.01119
- LPP15.01120
- LPP15.0301
- LPP15.0501
- LPP15.0502
- LPP15.0503
- LPP15.0505
- LPP15.0506
- LPP15.0508
- LPP15.0509
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- LPP15.0526
- LPP15.0527
- LPP15.0528
- LPP15.0529
- LPP15.0530
- LPP15.0531
- LPP15.0532
- 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
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- 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

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

(a) **Definitions**.

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

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

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

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

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

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

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

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

(2) the anticipated hearing length;

(3) the number of participants;

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

(5) the complexity of issues to be addressed;

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

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

(8) the availability of language interpretation or accommodations for communication with individuals with disabilities;

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

(10) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights; and

(11) any other factor, based on the specific facts and circumstances of the case or the court's calendar, that the court deems relevant.

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

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

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

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

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

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

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

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

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

(d) Resolution of the request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) **Definitions**.

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

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

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

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

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

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

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

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

(2) the anticipated hearing length;

(3) the number of participants;

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

(5) the complexity of issues to be addressed;

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

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

(8) the availability of language interpretation or accommodations for communication with individuals with disabilities;

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

(10) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights; and

(11) any other factor, based on the specific facts and circumstances of the case or the court's calendar, that the court deems relevant.

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

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

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

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

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

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

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

motion need not be accompanied by a supporting memorandum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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