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

Meeting Minutes

Matthew Johnson, Chair

Location: Webex Meeting

Date: December 6, 2024

Time: 12:30 p.m. – 2:00 p.m.

<table>
<tr>
<td rowspan="2"><u>Attendees:</u>
Matthew Johnson, Chair
Adrianna Davis
Arek Butler
David Fureigh, Emeritus Member
Dawn Hautamaki
Elizabeth Ferrin
James Smith
Jordan Putnam
Judge David Johnson
Judge Debra Jensen
Michelle Jeffs
Sophia Moore
Thomas Luchs
William Russell, Vice Chair</td>
<td><u>Excused Members</u>:
Janette White</td>
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<td><u>Guests:</u>
Blake Murdoch, Deputy Juvenile Court Administrator</td>
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<tr>
<td colspan="2"><u>Staff</u>:
Joe Mitchell, Juvenile Law Clerk
Lisa McQuarrie, Juvenile Law Clerk</td>
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Tyler Herrera, Juvenile Law Clerk Raymundo Gallardo

1. **Welcome and approval of the November 1, 2024 Meeting Minutes**. (William Russell)

   Vice-chair William Russell welcomed everyone to the meeting. Mr. Russell then asked the Committee for approval of the November 1, 2024 meeting minutes. Ms. Jeffs moved to approve the minutes as presented. Ms. Davis seconded the motion, and it passed unanimously.

2. **Discussion & Action: Rule 16. Transfer of delinquency case**. (All)

   Mr. Russell reminded the Committee that Rule 16 was previously approved by this Committee to be presented to the Supreme Court and request that it be sent for a public comment period. However, Mr. Russell discovered inconsistencies between paragraph (a) and its subsections and the proposed procedure by new paragraphs (b) and (c), so Rule 16 was pulled from the Court's November Agenda to allow this Committee to have further discussion.

   Mr. Russell then proposed eliminating subparagraphs (D) and (E) of paragraph (a)(1) and merging subparagraph (C) with the main body of paragraph (a)(1). This proposal limits the transfer of a referral to the county of occurrence to when a minor or the minor's parent, guardian, or custodian cannot be located, fail to appear for a preliminary inquiry, or the minor declines a nonjudicial adjustment. The proposal also seems to align with the intent behind the revision of the rule. That is, a referral and petition should be handled in the county of residence and only transferred to the county of occurrence for trial proceedings.

   Due to the length of the sentences in subparagraph (1) and for clarity, paragraph (a) was further divided into proposed subparagraphs (1) and (2). The Committee also removed the language "it appears that" in paragraph (a)(1) relating to the minor's eligibility for a nonjudicial adjustment, and replaced it with "the minor *initially* qualifies for a nonjudicial adjustment." Moreover, the Committee also removed the language "unless otherwise directed by court order" in paragraph (a)(1) because the court does not make orders regarding the transfer of a referral that qualifies for a nonjudicial adjustment. Furthermore, the Committee removed "within the state" in the first sentence of paragraph (a)(1) as it is implied that referrals occurring in the State of Utah are handled in Utah counties.

   Chair Johnson asked for a motion to present Rule 16, as amended, to the Supreme Court and request an initial public comment period. Judge Johnson made that motion, and Mr. Russell seconded the motion. The motion passed unanimously.

Because Rule 29 is tied to the revisions made to Rule 16, the Committee reviewed the proposed changes to Rule 29 but made no further amendments.

3. **Discussion: *In re J.M.*, 2024 UT App 147 and Rule 34(e) responses**. (All)

The Committee continued their discussion on Court of Appeals Opinion *In re J.M.*, in which the Court asks this Committee to consider adopting a rule that allows for a process by which no-contest responses pursuant to Rule 34(e) may be withdrawn by parties in a child welfare case.

Judge Johnson proposed adding a subparagraph to Rule 34 that establishes that a Rule 34(e) response is civil in nature and any relief sought by a party is governed by Rule 59 and Rule 60 of the Utah Rules of Civil of Procedure.

Chair Johnson pointed out that a Rule 34(e) response is not a plea but an answer, so Rule 34(e) responses are not the same as no-contest pleas in criminal proceedings. Judge Johnson reminded the Committee that because Rule 34(e) responses are not the same as no-contest pleas, the point is to avoid the use of "no-contest" in child welfare proceedings and clarify in rule that the responses are civil in nature. Judge Jensen supported the proposal that refers practitioners to civil rules 59 and 60. While a no-contest plea may be familiar to parties, Ms. Ferrin suggested uniform colloquy language for courts to use that is clear and easy for parties to understand that does not equate a Rule 34(e) response to a no-contest plea in a criminal matter. Mr. Butler added that any proposal guiding the withdrawal of a response should be applicable to all three types of responses: admit, deny, and or decline to admit or deny.

Mr. Putnam shared feedback from parental defense attorneys around the state, and noted that negotiations sometimes take on the nature of criminal-type plea deals, e.g., "my client will *34(e)* this allegation in return for a recommendation for reunification services." The sticking point comes when the court does not order reunification after that type of arrangement, so parties then seek to withdraw or set aside their previous response. Mr. Putnam suggested setting this issue out another month as he is expecting additional feedback from other parental defenders.

Ms. Ferrin pointed out that the agreements described by Mr. Putnam seem contrary to the court's colloquy in which the court expressly asks a party if they were promised anything in return for their response and contrary to the nature of the proceeding. Ms. Ferrin reiterated that responses in a child welfare proceeding are not plea agreements like those made in criminal proceedings. Mr. Putnam commented that during a mediation, discussions do take on the nature of plea negotiations. Language and even paragraphs are often reworded or removed and findings of neglect over abuse are offered. This practice also avoids taking every case to trial.

Judge Johnson maintained that the court is not bound by the agreements described above. Instead, the legislature has established factors that the court must consider before an order, for example, for reunification services.

Mr. Smith advocated for a rule that encompasses all responses, not just 34(e) responses. Ms. Hautamaki consulted with the judges in her district, and the judges supported the proposal by Judge Johnson that establishes the civil nature of child welfare proceedings and responses and provides relief through the procedure in civil rules 59 and 60. Mr. Putnam also advocated for a process that allows for any type of response to be withdrawn.

Mr. Fureigh expressed concern with the 90-day timeframe allowed by Rule 60 of the Utah Rules of Civil Procedure. In a child welfare case, this timeframe arrives at about the six-month mark of the life of the case. If the Committee chooses to refer to Rule 60 as a way to withdraw an answer, Mr. Fureigh proposes changing the timeframe for filing a motion for relief to 30 days, beginning at the time that the answer is submitted or filed with the court. Moreover, Mr. Fureigh pointed out that the Court of Appeals is who termed a Rule 34(e) answer as a "no-contest response" per their decision in a separate opinion, *In re B.D.*, 2024 UT App 104. This clarification in terms is found in footnote 2 of the *In re J.M.* opinion. Furthermore, Mr. Fureigh suggested drafting a rule that is similar to juvenile rule 25A, which provides for the withdrawal of a plea in delinquency cases. In particular, Mr. Fureigh suggested taking the language that a plea was "not knowingly and voluntarily made" found in Utah Code section 80-6-306, which Rule 25A refers to, as a condition that parties would need to show.

If the Committee decides to draft something similar to Rule 25A, Judge Johnson cautioned that this approach may require legislative change. Mr. Fureigh recognized this possibility by asking if this issue is a substantive issue that requires legislative change or a procedural issue that can be address in rule. It was suggested that Chair Johnson seek the Supreme Court's guidance on this particular question of substantive versus procedural when addressing the withdrawal of Rule 34(e) responses. Chair Johnson agreed to take this question to the Court.

Judge Johnson clued in on the high standard needed to be met that is spelled out in statute as it relates to the withdrawal of pleas in delinquency cases. Judge Johnson noted that it takes: (1) the permission of the court and (2) "a showing that the admission or plea was not knowingly and voluntarily made." Mr. Fureigh agreed with applying that same standard to non-delinquency cases. Mr. Fureigh noted this standard is also used when a party wishes to withdraw their voluntary relinquishment of their parental rights. Mr. Putnam also agreed with employing this standard and with the use of "no-contest response" in a procedural rule.

Mr. Fureigh, in his proposal, includes the requirement that the court "will determine that the respondent's answer is knowing and voluntary." Mr. Gallardo agreed to send Mr. Fureigh's proposal to the Committee for their review and for further discussion at the January 2025 committee meeting.

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

There was no old or new business discussed.

The meeting adjourned at 1:25 p.m. The next meeting will be held on January 3, 2025 via Webex.