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

Meeting Minutes

Matthew Johnson, Chair

Location: Webex Meeting

Date: January 3, 2025

Time: 12:00 p.m. – 2:00 p.m.

Attendees: Matthew Johnson, Chair Arek Butler David Fureigh, Emeritus Member Dawn Hautamaki Janette White Jordan Putnam Judge David Johnson Judge Debra Jensen Michelle Jeffs Sophia Moore William Russell, Vice Chair	**Excused Members**: Adrianna Davis Elizabeth Ferrin James Smith Thomas Luchs **Guests:**
Staff: Joe Mitchell, Juvenile Court Law Clerk Lisa McQuarrie, Juvenile Court Law Clerk Tyler Herrera, Juvenile Court Law Clerk Raymundo Gallardo	

1. **Welcome and approval of the December 6, 2024 Meeting Minutes**. (Matthew Johnson)

   Committee Chair Matthew Johnson welcomed everyone to the meeting. Chair Johnson then asked the Committee for approval of the December 6, 2024 meeting minutes. Judge Johnson moved to approve the minutes as presented. Ms. Moore seconded the motion, and it passed unanimously.

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

   At a recent conference with the Supreme Court, Chair Johnson asked the Court for their guidance on whether withdrawal of Rule 34(e) responses is a substantive issue or a procedural issue. The Supreme Court advised that this is a procedural issue and asked the Committee to be proactive in drafting a rule to address withdrawals.

   Judge Johnson indicated that this issue will be presented to the Board of Juvenile Court Judges at their January 10, 2025 meeting to gather the Bench's input. Judge Johnson then outlined the two routes that can be taken to address withdrawal of Rule 34(e) responses. On the one hand, juvenile court proceedings, particularly child welfare proceedings, are civil in nature. Therefore, Rule 59 and Rule 60 of the Utah Rules of Civil Procedure justly apply. A Rule 34 draft dated November 1, 2024 that supports this route was circulated to the Committee prior to the meeting. On the other hand, the Committee can build in a process of withdrawing an answer, similar to a withdrawal of plea in a delinquency proceeding. A draft dated December 6, 2024 containing this proposal was also circulated prior to the meeting. The concern with the latter, Judge Johnson explained, is that a withdrawal of plea in a delinquency proceeding is authorized in statute. Withdrawals of answers in a child welfare proceeding is not authorized by statute.

   Chair Johnson suggested finding a way to combine both approaches. Jordan Putnam voiced his support of the language proposed and included in the draft dated December 6, 2024, that was put forth by David Fureigh. Mr. Putnam liked the use of "no contest response" because it creates uniform language. That said, Mr. Putnam agrees that a hybrid approach seems best because the proceedings are civil in nature and Civil Rule 60 applies. Mr. Putnam advocated for adding language in Rule 34 that refers practitioners to Rule 60 of the Utah Civil Rules of Procedure. Parties may ask to withdraw their response for various reasons. Mr. Putnam showed that a parent may ask to withdraw their answer because they did not submit it "knowingly and voluntarily," or a party can request to withdraw due to newly discovered evidence that no longer supports a finding.

Mr. Putnam then suggested adding a procedure that requires that any agreements made during mediations or negotiations are to be included as part of the court record, preferably in writing.

David Fureigh acknowledged that his proposal dated December 6, 2024 is akin to a substantive rule that creates a legal right for parties, and that can be problematic. In contrast, a proposal that refers practitioners to the relief found in Civil Rule 60 is emphatically procedural. Mr. Fureigh shared that his only concern with the procedure in Civil Rule 60 is the timing; 90 days after a judgment is entered to file a motion seeking relief is a long time in child welfare cases. Mr. Fureigh would like to see this shortened to 30 days after the entry of the order.

Mr. Putnam responded and proposed that one option is to keep the 90-day timeframe allowed by Civil Rule 60, and if a motion to set aside an answer is filed, the motion does not halt the child welfare case and its timelines.

Judge Johnson raised concern with the creation of what could be a legal right to withdraw an answer pursuant to Rule 34(e) and whether this type of motion, which would have a shorter timeframe, precludes or limits the future filing of a Civil Rule 60 motion in the same case. Judge Johnson noted that the Committee would have to find a way to reconcile this new type of motion to withdraw, or set aside, and a motion filed under Civil Rule 60, because having both motions available to parties may be confusing.

Mr. Putnam advocated against the creation of a new right or motion contained in Rule 34. Instead, he proposes language that refers to a Civil Rule 60(b) motion in Rule 34. Mr. Fureigh proposed a hybrid of Judge Johnson's proposal dated November 1, 2024 and Mr. Fureigh's proposal dated December 6, 2024. Mr. Fureigh proposed keeping the language he proposed for paragraph (d) and (e), but replacing the language he proposed in paragraph (f) with Judge Johnson's proposed language that refers readers to Civil Rule 60. Mr. Fureigh would like to see, however, the timeframe in which a Civil Rule 60 motion can be filed shortened to 30 days.

Jannette White recommended distinguishing between parties seeking relief under Civil Rule 60 for a child welfare adjudication, e.g., "mistake," "surprise," "newly discovered evidence," etc., and parties moving for the withdrawal of a Rule 34(e) response, i.e., "declining to admit or deny," because the parent did not like their attorney. Ms. White reminded the group that children's lives are affected greatly, and it may not be in the children's best interest if parents are given 90 days to possibly change their mind about their Rule 34(e) response. Ms. White supports a shortened timeframe.

Sophia Moore expressed concern with creating new or separate timeframes. Ms. Moore reminded the Committee that there are various reasons for filing a motion pursuant to Civil Rule 60. Obtaining discovery can also take time, so Ms. Moore suggested not changing the timeframes. Ms. Moore also expressed concern with the creation of a right contained in a procedural rule.

Mr. Gallardo presented a draft of Rule 34 combining Mr. Fureigh's proposed language in (d) regarding the court's colloquy with parties and Judge Johnson's language regarding the remedies provided in Civil Rules 59 and 60. The Committee then discussed the use of the language "no contest response." Several members expressed concern with this language as it carries overtones of criminal proceedings. Judge Johnson proposed the use of "answer" instead of "response," and referred the group to Rule 19, which establishes the use of "answer." Members agreed with the use of "answer" and with the idea of allowing for any "answer" to be set aside, not just "no contest responses."

Mr. Putnam suggested incorporating into the rule the use of a "change of plea"-type form to establish a party's answer to a child welfare petition. This would strengthen a judge's colloquy in which a parent acknowledges that their answer is "knowingly and voluntarily" made. Judge Johnson argued against the use of such a form. While agreements may be made during mediations or negotiations between parents, attorneys, and DCFS, the court is not obligated to adopt those agreements.

Bill Russell commented on the use of "no contest response" by the Court of Appeals. In his opinion, Mr. Russell does not view an answer pursuant to Rule 34(e) as a "no contest response." Instead, it is, as the rule describes, a declination to respond upon which a court can make a finding of true. For purposes of drafting a rule, Mr. Russell believes the rule should address how to reverse the finding of true based on the declination to respond. Mr. Putnam shared that in his experience parents seem to liken a declination to respond to a no contest response. Parents themselves, even after explanations of Rule 34(e), conclude that their declination to respond is like a no contest response. Therefore, Mr. Putnam advocates for keeping the "no contest" language. This is familiar to parties.

Moreover, on a similar issue, Mr. Fureigh prefers steering away from calling a parent's "no contest response" a "plea" or simply a "Rule 34(e)." Mr. Fureigh included the "no contest response" language in his proposal because that is the term that the Court of Appeals uses in their opinion.

The Committee then returned to the combined draft and reviewed all changes. The Committee, for now, would like to keep the proposed language in paragraph (d) that includes a judge's colloquy. Judge Johnson, however, would like to review this language with the Board of Juvenile Court Judges. Judge Jensen agreed with tabling

this particular language to allow for input from the Board. Mr. Russell also agreed with seeking the Board's input.

Judge Johnson then proposed deleting the current, last two sentences from paragraph (d). The language there is repetitive. The same language is found in Rule 19 of the Utah Rules of Juvenile Procedure. The proposal now strikes these last two sentences.

The Committee made further amendments to clarify the language in paragraph (f). Proposed paragraph (f) now reads, "An answer to a child welfare petition is civil in nature. Relief from an admission or no-contest answer entered pursuant to Rule 34(e) is governed by civil remedies, including Rule 59 and Rule 60 of the Utah Rules of Civil Procedure and applicable appellate procedure."

Rule 34 was tabled and shared with members to allow for further discussion with various interest groups. Rule 34 will be back on the February 7, 2025 agenda.

3. **Rule 16A**. **Transfer of a non-delinquency proceeding**. (All)

The Committee proposed amending paragraph (e) to update the process by which receiving courts are notified of a case transfer. Physical documents are no longer transmitted between courts. Instead, all documents are uploaded to the C.A.R.E. system and notice is given to the receiving court. The proposed language mirrors recently proposed language in Rule 16 of the Utah Rules of Juvenile Procedure.

Mr. Gallardo inquired about the title of the rule and whether the rule does indeed capture all non-delinquency proceedings. Judge Johnson answered that Rule 16A does govern all non-delinquency proceedings, including adult criminal matters for which the juvenile court has jurisdiction over. Judge Jensen clarified that statute defines when a child protective order is transferred to the district court. Rule 16A applies only to transfers between juvenile courts.

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

4. **Rule 16**. **Transfer of delinquency case**. (All)

Rule 16 is currently out for public comment. Judge Jensen and Judge Johnson received a comment from another judge regarding detention and home detention review hearings. The judge asked, "If the case is transferred for trial to the trial judge, Does the home judge review the detention/home detention status?"

Judge Johnson explained that the current practice is for the home judge and the county of occurrence judge to communicate and agree on which judge will hear ongoing detention or home detention status. Judge Johnson added that the majority of ongoing detention review hearings are held before the home judge after the initial detention hearing is held by the judge in the county of occurrence. Mr. Russell shared that the process described by Judge Johnson is also his experience. He added that any party can request a detention or home detention review hearing, and if release is requested or revocation of a prior release order, this request can be made to the home judge. The home judge can then indicate whether that court or the judge in the county of occurrence should make that decision. Mr. Fureigh stated that procedural direction would also benefit attorneys due to the change in attorneys, who would represent a minor or represent the state.

Judge Jensen shared her experience with cases where a youth's home detention status is reviewed in one district but the actual supervision of home detention is done by another district. In this scenario, it is difficult to receive solid, helpful information on the youth's compliance. Judge Jensen suggested reviewing a youth's home detention status in the district where the youth is physically being monitored.

Mr. Fureigh presented two possible approaches through the adoption of a rule: (1) a standard can be established directing which court, the home judge or county of occurrence, reviews a youth's detention or home detention status, or (2) the rule can direct both judges to communicate regarding which court will hear the matter. Judge Johnson offered to seek input from the Board of Juvenile Court Judges when he meets with the Board on January 10th.

Mr. Russell proposed that an amendment addressing this issue may properly fit under Rule 9(n). Judge Johnson agreed and suggested language allowing the court who made the initial detention hearing orders to transfer the matter to a more appropriate venue.

The Committee tabled this issue. Judge Johnson will discuss it with the Board, and members will also seek feedback from other practitioners.

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

Judge Johnson offered thoughts on adding members from Probation and Juvenile Justice and Youth Services (JJYS) to this body. Many of the issues discussed here affect Probation and JJYS and their detention facilities. It would be helpful, as the issues are discussed, to gain their knowledge and feedback regarding their operations. Chair Johnson will look at the Supreme Court Rules of Professional Practice to see if the rules allow for the addition of Probation and JJYS members.

The meeting adjourned at 1:53 p.m. The next meeting will be held on February 7, 2025 via Webex.