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

Meeting Minutes

Matthew Johnson, Chair

Location: Webex Meeting

Date: February 7, 2025

Time: 12:00 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
Janette White
Judge David Johnson
Judge Debra Jensen
Michelle Jeffs
Sophia Moore
Thomas Luchs
William Russell, Vice Chair</td>
<td><u>Excused Members</u>:
Jordan Putnam</td>
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<td><u>Guests:</u>
Blake Murdoch</td>
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<tr>
<td colspan="2"><u>Staff</u>:
Joe Mitchell, Juvenile Court Law Clerk
Lisa McQuarrie, Juvenile Court Law Clerk</td>
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Tyler Herrera, Juvenile Court Law Clerk Raymundo Gallardo

1. **Welcome and approval of the January 3, 2025 Meeting Minutes**. (Matthew Johnson)

   Committee Chair Matthew Johnson welcomed everyone to the meeting. Chair Johnson then asked the Committee for approval of the January 3, 2025 meeting minutes. Dawn Hautamaki moved to approve the minutes as presented. Vice-chair Bill Russell seconded the motion, and it passed unanimously.

2. **Discussion: *In re J.M.*, 2024 UT App 147, Rule 34, and Rule 48**. (All)

   Judge Johnson and Judge Jensen met with the Board of Juvenile Court Judges on January 10, 2025. Judge Johnson shared that the Board's biggest concern with the proposed changes to Rule 34 was the use of the phrase "no-contest." The Board urges this Committee to avoid the use of "no-contest" to eliminate any confusion and crossover use of the phrase between criminal and delinquency proceedings and civil and child welfare proceedings.

   Judge Jensen presented a draft of the changes as proposed by the Board. Judge Jensen shared that "uncontested" and "undisputed," among other words, were suggested as replacements to "no-contest," but she is persuaded that "uncontested" seems to be a better fit. The proposed phrase "no-contest answer" in paragraphs (e) and (f) of Rule 34 was replaced with the newly proposed language of "uncontested answer" in both paragraphs. Judge Jensen presented an additional change that was suggested by the Board. In proposed paragraph (f), the Board added, "Any relief under this rule will not toll any statutory timeframes." The intent behind this added language is to inform parties that while relief can be sought, the child welfare case will progress while relief is sought. This change avoids amending the timeframes allowed in Rule 60 of the Civil Rules of Procedure.

   Thomas Luchs suggested clarifying the last change that was suggested by the Board. Mr. Luchs noted that a motion pursuant to Civil Rule 59 or Rule 60 does toll the time for appeal, but that the Board is likely referring to the child welfare statutory timeframes. Mr. Luchs suggested making this clear in Rule 34.

   David Fureigh pointed out that Rule 48 of the Utah Rules of Juvenile Procedure restricts the timeframe—"14 days after entry of the judgment"—for a motion filed pursuant to Civil Rule 59. Rule 48, however, does not include Civil Rule 60. Mr. Fureigh proposes adding Civil Rule 60 to Rule 48 for consistency and because both Civil Rules 59 and 60 are referenced in proposed paragraph (f) of Rule 34. Mr. Fureigh believes the timeframe was shortened by Rule 48 precisely because of the appeal timeframe specific to juvenile court proceedings.

Vice-chair Bill Russell expressed his appreciation for the proposed term of "uncontested." The use of "no-contest" mixes in case law that does not apply to child welfare proceedings. Mr. Russell supports this change and the added sentence in proposed paragraph (f) regarding the non-tolling of the statutory timeframes.

Mr. Luchs shared his experienced working with parental defense attorneys who are not familiar with juvenile court cases and his own experience as a past parental defense attorney. He often advised clients that the findings can only be used against the client in the current juvenile court proceeding or in a termination of parental rights case, if filed, but the findings cannot be used in other proceedings. Therefore, Mr. Luchs proposes further amending Rule 34 to make this clear. He proposes the following change to the last sentence in paragraph (e), "Allegations not specifically denied by a respondent will be deemed true *only for purposes of the non-delinquency proceeding*" (emphasis added to show the proposed language). However, Mr. Luchs is still working on finding the right, clear language due to the possibility that the findings may be used in a termination of parental rights proceeding or a substantiation proceeding. Nonetheless, Mr. Luchs believes it's important to highlight that the findings are not "deemed true" for everything.

Elizabeth Ferrin voiced her support for the amendments discussed today. Clarity is helpful, especially for parents who may have an accompanying criminal case. Ms. Ferrin added that consistency from courtroom to courtroom will also help. Training for judges that emphasizes understandable explanations to parents about the proceeding and steers away from the use of "no-contest" may be needed.

Judge Johnson, in response to Mr. Luchs's proposal, noted that the findings in the child welfare proceeding, including a Rule 34(e) response, may also be used in a child protective order proceeding in juvenile court or district court. This is something to consider.

Mr. Fureigh agreed that the findings may also be used in protective order proceedings. He adds that the findings may also be used in divorce proceedings. Mr. Fureigh believes that the underlying reason a parent is allowed to proceed with an "uncontested answer" is so that parents are not forced to admitting allegations, which may be used against the parent in a criminal case. Mr. Fureigh also supports the proposed language in paragraph (f) regarding statutory timeframes not being tolled. The underlying reason for shorter timeframes is the best interest of the children. Children should not be left wondering what's going on and whether or not they'll be reunited with their parents. This focus should guide the timeframes. Therefore, Mr. Fureigh again suggests adding Civil Rule 60 to paragraph (c) of Rule 48.

Mr. Luchs asked a clarifying question as to the use of juvenile court findings in district court divorce proceedings. Judge Johnson shared that conversations between juvenile

court judges and district court commissioners and judges regarding divorce and custody proceedings occur frequently. Mr. Luchs feels strongly that the protection of Rule 34(e) needs to be clear as this is the issue that the Court of Appeals was grappling with in *In re J.M., 2024 UT App 147*.

Arek Butler voiced concern with making the protection of Rule 34(e) more clear; that is, the language "deemed true *only for purposes of the non-delinquency proceeding*." Mr. Butler has not seen and does not believe that a prosecutor would be able to use the findings from a civil court that resulted from an uncontested answer in a criminal matter. A criminal proceeding's standard of proof is totally different. The Committee should not attempt to articulate what "deemed true" means. Mr. Butler does support adding Civil Rule 60 to paragraph (c) of Rule 48 that already shortens the timeframe for the filing of a motion pursuant to Civil Rule 59.

Judge Jensen explained that when the juvenile court finds something true pursuant to Rule 34 it is under the clear and convincing standard. The juvenile court finding cannot be used in a criminal proceeding, because in that proceeding, the standard used is beyond a reasonable doubt. Juvenile court findings may be used by a district court in other civil proceedings where the same standard of clear and convincing is being used, e.g., divorce and custody proceedings. The district court would have to certify the juvenile court findings. Judge Jensen is also hesitant with clarifying the phrase "deemed true" because, for example, if there is a finding of abuse or neglect in the juvenile court, that finding may be helpful in a district court custody proceeding. Sophia Moore and Chair Johnson also agreed with this position.

Ms. Moore adds that she spoke to committee member Jordan Putnam, who was not able to attend this meeting, and Mr. Putnam is also in support of this latest version of Rule 34, dated February 5, 2025.

Dawn Hautamaki raised a separate concern found in the proposed language of paragraph (d). Ms. Hautamaki shared that the judge she works with expressed concern with the proposed language that states, "The court will inform the respondent of the potential dispositional orders that may be entered…" A judge may not know all of the potential dispositions at the time of the pretrial. A respondent may challenge a dispositional order that the court did not inform the respondent of at the time of the pretrial. Mr. Fureigh reasoned that the term "potential" allows for judicial discretion as to which orders a judge feels a parent needs to understand. Mr. Butler agreed that the use of "potential" expands the range of possible dispositional orders.

Janette White suggested incorporating the language found in the judge's benchbook regarding the colloquy in paragraph (d). On a rule drafting note, Chair Johnson suggested changing "orders" to "order." The Supreme Court's Style Guide recommends drafting in the singular. Judge Johnson expressed concern with

incorporating the language of the benchbook into the rule. The benchbook is unique to judges and each case is also unique. The benchbook is also amended every year. Judge Johnson supports keeping the term "potential." Chair Johnson also supports the vague nature of the term "potential." It also captures the discretion judges have to make orders that are in the best interest of the children. Judge Johnson reminded the group that the "best interest" language is in statute, and it promotes a creative approach to each case. If, however, a change is needed, Judge Johnson suggested changing "potential dispositional orders" to "reasonable orders that the court finds are in the best interest of the children." This would mirror the language in statute.

If the rule states "potential dispositional order" and at the time of disposition the court orders a dispositional order that was not discussed, Mr. Fureigh acknowledged the possibility of respondents filing motions pursuant to Civil Rule 60. Mr. Fureigh now thinks it may be best to remove the "potential dispositional order" language from the rule. Further into paragraph (d), the rule states that the court will find that the respondent understands the "consequences of their answer." Judges do a good job outlining the basic consequences around custody, visitation, parental rights, and services.

Mr. Russell noted the practical impossibility of the court informing respondents of every single potential dispositional order. He suggests the language, "The court will inform the respondent that a dispositional order will be entered…" This is simple and general. This follows a natural sequence from adjudication to disposition. Chair Johnson expressed support for this succinct language. Mr. Fureigh also supports this language as it leaves room for a judge to explain the possible orders regarding custody, visitation, parental rights, and services. Judge Johnson commented that training judges to avoid the use of "no-contest" and to ensure their colloquies are robust may be needed. Judge Jensen made similar remarks in support of the change.

Mr. Russell suggested further amending the proposed language in paragraph (d) regarding the use of "answer or response." Now that the Committee has agreed on the term "uncontested answer," Mr. Russell suggests removing "response." Members agreed with this changed.

The Committee then made several stylistic, clarifying, and structural changes in paragraph (d).

Lisa McQuarrie suggested amending the last sentence in newly numbered paragraph (g). Currently, the sentence is unclear and places the responsibility of monitoring timeframes on the court. Ms. McQuarrie suggested replacing the last sentence, "Within the time limits set forth in Utah R. Civ. P. 60(b), upon the written motion of any party in default and a showing of good cause, the court may set aside an entry of default" with "The court may set aside an entry of default if the defaulting party files

a written motion upon just terms within the time limits set forth in Rule 60 of the Utah Rules of Civil Procedure." The Committee supported this change.

The Committee then returned to the issue of timeframes. Mr. Butler supports amending Rule 48, which includes a reduced timeframe, to include Civil Rule 60. Furthermore, Mr. Butler believes that Rule 48 should also be referenced in Rule 34 to alert practitioners that Civil Rules 59 and 60 are limited by Rule 48. Ms. White reminded the Committee that prior discussion seemed to have led to a view against altering the timeframes allowed by Civil Rule 60. Judge Johnson recalled the same, and added that the Board of Juvenile Court Judges also voiced concern over creating new timeframes as that can lead to litigation and conflict with the Rules of Civil Procedure. Mr. Butler argued that Rule 48 already shortens the timeframe for motions filed pursuant to Civil Rule 59, so it makes sense to add Civil Rule 60.

Judge Johnson noted the proportional relationship between Civil Rule 59, which has a 28-day timeframe, and Rule 48, which has a 14-day timeframe. The reduction in time that Rule 48 causes to Civil Rule 59 can be quantified at 50%. On the other hand, reducing the 90 days allowed by Civil Rule 60 to the 14 days found in Rule 48 is about an 85% reduction. This may be problematic for defense attorneys, especially if they have clients that are difficult to get a hold of. Ms. Moore understands the attempt to be consistent but shares the concern that 14 days is not a long time to file a motion pursuant to Civil Rule 60.

Mr. Butler suggested referencing Rule 48 in the new paragraph (f), because (f) now references Civil Rule 59. If a practitioner wishes to file a motion pursuant to Civil Rule 59, they should know that the timeframe found in Rule 48 applies. Reference to Rule 48 was added to paragraph (f).

The Committee agreed that the proposed changes to Rule 34 need further discussion. Ms. Moore agreed to take the proposal to the Indigent Defense Commission for feedback. Mr. Fureigh then suggested striking a balance in regards to the timeframes for filing a motion under Civil Rule 60. It seems the 14 days allowed by Rule 48 is too short of a timeframe, so perhaps, 28 days may be more appropriate. Mr. Butler agreed and suggested 45 days. It was suggested that a new subparagraph be added to Rule 48 regarding a timeframe for motions filed under Civil Rule 60. Raymundo Gallardo will send redline and clean versions of Rule 34 and 48 to Ms. Moore so that she can have a discussion with the Indigent Defense Commission. Judge Johnson reminded the group that Civil Rule 60 also provides for relief when newly discovered evidence is presented to the court. New evidence is another reason the Committee may want to consider keeping the current timeframes.

Joe Mitchell brought to the attention of the Committee that motions under Civil Rule 60(a) do not carry a timeframe but it seems they can be filed at any time. Several

members suggested clarifying the amendments made to Rule 48 to specify that the motions mentioned in Rule 48 are motions filed under Civil Rule 60(b). Judge Johnson added that only motions filed under Civil Rule 60(b)(1), (b)(2), and (b)(3) are restricted to a 90-day filing period.

Chair Johnson asked that Rule 34 and Rule 48 be placed back on the March agenda. Ms. Moore will share the rule amendments with the Indigent Defense Commission and may invite them to our next meeting to share their feedback. Chair Johnson welcomes the participation of defense counsel.

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

   Rule 16 will be discussed in March 2025.

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

   Rule 16A will be discussed in March 2025.

5. **Transfers of Child Protective Orders to District Court**. (All)

   Mr. Gallardo shared that the Committee received a request to join the Supreme Court's Advisory Committee on the Utah Rules of Civil Procedure and together address which juvenile rules could apply in district court proceedings after a child protective order is transferred from the juvenile court to the district court. Currently, the request centers around Rules 37, 37A, and Civil Rule 81. Chair Johnson indicated that a child's Children Justice Center (CJC) interview may only be released to parties by court order. Judge Johnson commented that Rule 37A does not apply to child protective order cases. Mr. Fureigh affirmed this and clarified that parties cannot simply introduce the CJC interview during a proceeding. A child must still be available for cross-examination. Mr. Fureigh asked for more information regarding this request. Mr. Gallardo will seek additional information to bring back to the Committee.

6. **Ineffective Assistance of Counsel Claims and Rule 23B of the Utah Rules of Appellate Procedure**. (All)

   Appellate Rule 23B will be discussed in March 2025.

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

   Chair Johnson noted the need for a recording secretary to take minutes. He asked for interested members or interested attorneys within members' offices or agencies

willing to help take minutes. Members are invited to send names to Mr. Johnson and Mr. Russell for consideration.

The meeting adjourned at 2:06 p.m. The next meeting will be held on March 7, 2025 via Webex.