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

Meeting Minutes

Matthew Johnson, Chair

Location: Webex Meeting

Date: June 6, 2025

Time: 12:00 p.m. – 2:00 p.m.

<table>
<tr>
<td rowspan="2"><u>Attendees:</u>
Matthew Johnson, Chair
William Russell, Vice Chair
Adrianna Davis
David Fureigh, Emeritus Member
Dawn Hautamaki
Elizabeth Ferrin
Janette White
Jordan Putnam
Sophia Moore
Thomas Luchs
Arek Butler
Judge David Johnson
Judge Debra Jensen
Michelle Jeffs</td>
<td><u>Excused Members</u>:
James Smith</td>
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<td><u>Guests:</u>
Paige Nelson, Office of Legislative Research and General Counsel</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 Ulrich, Recording Secretary
Raymundo Gallardo

1. **Welcome and approval of the May 2, 2025, Meeting Minutes**. (Matthew Johnson)

   Committee Chair Matthew Johnson welcomed everyone to the meeting. Chair Johnson then asked the Committee for approval of the May 2, 2025, meeting minutes. Vice Chair William Russell made a motion to adopt the proposed minutes as presented. Judge Debra Jensen seconded the motion, and it passed unanimously.

2. **Discussion & Action: Rule 34. Pre-trial hearing in non-delinquency cases**. (All)

   Chair Johnson reported that he, Vice-chair Russell, and Mr. Gallardo met with the Supreme Court and Justice Pohlman had several comments and suggestions, as well as questions, to bring back to the Committee.

   Chair Johnson stated that the first question presented was whether adding the term "respondent" before "parent, guardian, or custodian" was appropriate, then simply referring to "respondent" in the rest of the proposed rule. Mr. Fureigh felt that adding "respondent" was appropriate and accurate. Vice-chair Russell clarified that Justice Pohlman felt that only referring to " respondent parent, guardian, or custodian" one time in the rule, then simply using the term respondent, may be a more succinct way of referring to the respondent throughout the rule. The members of the Committee felt that it was appropriate to make that change.

   Justice Pohlman also had questions as to what the Committee meant by the term "reasonable dispositional orders." Chair Johnson and Vice-Chair Russell explained to the Supreme Court what dispositional orders are made in non-delinquency cases. Judge David Johnson said that the word "reasonable" is used throughout the child welfare statute and that the subcommittee was trying to mirror the language contained in the statute. Judge Johnson and Judge Jensen both opined that removing the word "reasonable" would make sense, and Mr. Putnam agreed that the word is not needed. The members of the Committee approved the removal of the word "reasonable" before the term "dispositional orders", and the proposed rule will now read "potential for dispositional orders".

   Mr. Gallardo shared that Justice Pohlman suggested an alternative to the "answer" language and presented it to the Committee. Mr. Fureigh was in favor of the proposed language by Justice Pohlman and talked about keeping that language in subparagraph (e) as it may be confusing to practitioners to move such a commonly used rule to another subsection. At the same time, Mr. Fureigh thinks that it may be a

good change to move that language as it could help practitioners begin to use the language of "uncontested answer" as proposed by the revised rule.

Vice-Chair Russell was concerned about some of the omissions made by Justice Pohlman's revisions, specifically leaving out the language "proceeding with an uncontested answer." Vice-Chair Russell was not necessarily opposed to the change but wanted the Committee to make sure it is being omitted knowingly.

Judge Johnson wanted clarifications on exactly what language proposed by the subcommittee was being changed, and Chair Johnson shared those revisions. Judge Johnson was concerned about the potential that the revisions change the substance of what the subcommittee proposed and that the word "uncontested" was removed. Judge Johnson expressed his preference for the original language proposed by the subcommittee.

Mr. Gallardo provided more clarification regarding the exact proposals from Justice Pohlman, and Mr. Putman expressed a desire to keep the language about an uncontested answer in subparagraph (e) for historical practice purposes. Mr. Butler noted that the phrase "uncontested answer" came directly form the Board of Juvenile Court Judges. Chair Johnson expressed his preference for the original language proposed by the subcommittee and believed it to be more in line with recent appellate court decisions.

The Committee engaged in discussion about where to include this language and how to keep it in subparagraph (e) as preferred by many of the members. Mr. Putnam made a proposal on adjusting the subsection numbering in a manner that allowed the proposed language to stay in subparagraph (e) and still added much of the language proposed by the Supreme Court. The Committee also addressed the proposed subparagraph (g) regarding relief and suggested removing the language "non-denials" added by the Supreme Court, reverting to the original language proposed by the subcommittee. Judge Johnson also noted that there is a separate rule that addresses relief from default judgment found in subparagraph (h).

Mr. Fureigh noted that the proposed subparagraph (b) language of "minor is in temporary shelter care custody" did not make sense to him. Mr. Fureigh noted that pretrial hearings are governed by statue and cover removal and non-removal situations, so the extra language was not needed. Ms. White suggested changing the language to "pursuant to statute" and thought that would cover removals and non-removals, including expedited petitions. Judge Johnson asked if that language would also cover privately filed petitions that have different statutory timelines than those filed by the State.

Chair Johnson and Vice-Chair Russell suggested listing the statutes referred to in the rules and thought that it would be helpful in being consistent with the direction given by the Supreme Court. Judge Jensen suggested using the title of the statute in lieu of specific citations to cover all potential hearings under that statute. The proposed rule was amended to add "Utah Code Title 80, Chapter 3."

The Committee then addressed subparagraph (c), and Mr. Putman noted that the language used does not mirror actual practice when it says "at the outset" when a judge is informing a respondent of their rights. Ms. Moore proposed adding "Prior to adjudication of the petition" and removing "at a pre-trial hearing." Vice-Chair Russell thought that the new proposed language was clearer and more succinct.

Chair Johnson reported that the Supreme Court wanted to know what findings are made, and how they are made (orally or in writing), when a court finds that a waiver of rights is knowing and voluntary. Chair Johnson explained to the Supreme Court that those findings are usually done orally on the record, and also in writing when a written order is prepared by the assistant attorney general. Mr. Luchs shared that it should always be included in the written adjudication orders prepared by the assistant attorney general when a respondent parent waives those rights. Judge Jensen added that, in practice, judges do make the findings orally on the record, and then it is later memorialized in a written order. Judge Johnson noted that a judge can amend a proposed order if needed to clarify that a respondent waived their rights knowingly and voluntarily. Mr. Putnam noted that the rule should reflect that those rights are only waived when admissions or uncontested answers are entered, not when denials or trials occur.

The Supreme Court was concerned that subparagraph (g) made a general referral to the "applicable rules of appellate procedure" and suggested adding a specific referenced to Rule 52 of the Utah Rules of Appellate Procedure. The Committee agreed with the addition of a specific reference to Rule 52.

Ms. Moore recalled back to the discussion of using the word "respondent" and wondered whether future amendment of other rules should reflect that change as well. Chair Johnson suggested that adding that language during future amendments and changes would be beneficial for continuity among the rules. Vice-Chair Russell asked that court staff review where it would be beneficial to add "respondent parent" to the language of other rules.

Mr. Gallardo presented all the changes that the Committee had agreed upon and Chair Johnson thanked everyone for their input, expressing that he believed that the current draft was appropriate. Mr. Luchs made a motion to present today's version of Rule 34 to the Supreme Court for approval. The motion was seconded by Ms. White

and Judge Johnson and passed unanimously. The proposed rule will be presented to the Supreme Court for approval.

Chair Johnson asked what Committee members would like to be shared with the Supreme Court regarding subparagraph (e). Judge Jensen noted that the use of the phrase "uncontested petition" did not make sense in practice as each parent must answer a petition separately and independently of the other parent(s). Mr. Putnam added that a parent could answer various paragraphs of the same petition in different ways, suggesting that the language "uncontested answer" was more accurate than "uncontested petition".

3. **Discussion: Defense Counsel Qualifications When Youth Face Risk of Adult Prosecution**. (All)

The Committee discussed the proposal of new rule 23B. Vice-Chair Russell gave a historical overview of these cases and reported that the Indigent Defense Counsel asked that the Committee address this issue by rule. Vice-Chair Russell explained the procedure that goes into these types of cases, including preliminary hearings to determine probable cause, and subsequent retention hearings. Vice-Chair Russell mirrored the language used in adult capital offense cases, as well as appellate rule 38B, and modified the language to reflect juvenile court practice. Vice-Chair Russell recognized that some of the potential qualifications may be too stringent and exclusive and noted that there has been previous discussion of expanding to a broader range of previous experience and qualifications. The current draft contemplates a mentor/lead attorney, along with a less experienced co-counsel, as covered in subparagraph (a)(1) of the current draft. Vice-Chair Russell believes this change will help more attorneys achieve these qualifications. The current draft also captures the unique nature of retention/transfer cases by requiring that at least one of the appointed attorneys have prior experience with these cases.

Vice-Chair Russell noted that the language in subparagraph (b) is taken directly from appellate rule, as is most of subparagraph (c).

Ms. White asked if the IDC and other potential defense counsel have given input to the current draft. Vice-Chair Russell responded that the IDC is who suggested creating this rule and asked that the Committee take the lead in creating a proposed draft.

Judge Jensen agreed that these are some of the most difficult cases seen in juvenile court and require attorneys with significant experience. However, Judge Jensen wants to be cognizant of more rural areas and suggested gathering feedback from practitioners in those more rural districts. Judge Jensen also asked if the requirement of having a certain number of cases as defense counsel could be amended to

contemplate attorneys that have filled different roles in those cases. Vice-Chair Russell clarified that former prosecutors could count some of their prior experience but would still need some experience in the role of defense counsel.

Ms. Davis shared her concern of how exclusive the suggested standards are and suggested gathering data of how many practitioners across the state could meet those standards, preventing the result that only a handful of attorneys would be able to handle these cases statewide. Ms. Davis suggested that including previous experience as a prosecutor in these cases would be beneficial and still give potential counsel the experience necessary to handle these matters. Vice-Chair Russell spoke about the potential of UJDA staffing and consulting with other jurisdictions on these matters.

Ms. White expressed concern about who would bear the cost of providing counsel in these cases in counties that may not have practitioners who meet the proposed standards. Ms. White suggested that the cost issue may need to be addressed by statute. Judge Johnson spoke about having the IDC address the issue of cost and about the difficulties that may arise in rural areas.

Mr. Fureigh asked if there are similar requirements in other rules, such as in the Rules of Criminal Procedure, to qualify for such cases. Vice-Chair Russell reported that much of the language in the current draft comes directly form the rules of criminal and appellate procedure and would ensure that a minor charged with these offenses has the same protection under the 6th Amendment to the right to effective counsel. Vice-Chair Russell noted that this is potential for a completely new rule for juvenile cases.

Ms. White asked if this could create a ripple effect on other types of cases, such as a petition for termination of parental rights. Vice-Chair Russell answered that this is being addressed in direct response to a request from the IDC, so that while it is a starting point, it could create a domino effect.

Vice-Chair Russell expressed his desire to have more involvement from rural areas in addressing this issue to address their specific challenges. Chair Johnson asked whether current contracted providers would meet the suggested requirement of "active practice of juvenile defense." Vice-Chair Russell thinks that it could include many part-time juvenile court practitioners while excluding attorneys with insufficient juvenile court experience.

Vice-Chair Russell and Ms. White suggested forming a subcommittee to address this issue and gathering input from rural counties. Ms. White also suggested gathering more input from the IDC and the Utah Prosecution Council, especially to address the additional costs that may come with a new rule. Ms. Hautamaki was willing to begin gathering input in her jurisdictions and will begin to gather contact information from

those who could give more input. Ms. Hautamaki reported that more of the attorneys that are appointed in rural jurisdictions are coming from urban areas now due to virtual hearings.

Chair Johnson suggested tabling the discussion at this time to allow various parties to gather more information, and Ms. White suggested getting more input from the judiciary. The discussion was then tabled until the next Committee meeting.

4. **Discussion and Action: Rule 16. Transfer of Delinquency Case.** (All)

Chair Johnson reported that the comment period for Rule 16 closes today and that no comments have yet been submitted. Mr. Gallardo noted that the Supreme Court wanted to identify the party that transfers a referral in subparagraph (a)(1), and language was added that a probation officer would be the party to transfer a referral to the county of occurrence when a non-judicial adjustment is considered. Judge Johnson noted that it is law enforcement that send in referrals to juvenile probation, but a prosecutor is who makes a final determination when a petition is filed.

Mr. Gallardo noted that subparagraph (e) still refers to "district" and asked whether that should be changed to "county". Chair Johnson prefers "district" as judicial districts cover more than one county. Ms. Hautamaki noted that a case may at times be re-filed in a different county within the same district and therefore preferred the use of "district" in lieu of "county."

Mr. Gallardo noted that the final publication of this rule is scheduled on November 1, 2025. Ms. Hautamaki and Vice-Chair Russell asked if it could be published sooner, and Mr. Fureigh and Ms. Ferrin agreed, especially if this is already being done in practice. Mr. Gallardo noted that the Supreme Court generally publishes twice a year, in May and November, unless there is a need to publish outside of those times. Chair Johnson and Vice-Chair Russell suggested that if some counties are already doing this in practice, it creates good cause to publish the rule outside of the May and November dates.

Ms. Hautamaki made a motion to adopt the proposed rule for publishing on September 1, 2025. Ms. White seconded the motion, and it passed unanimously.

5. **Discussion and Action: Rule 16A. Transfer of a Non-Delinquency Proceeding**

Chair Johnson reported that the public comments on the proposed rule closed on June 2, 2025, and noted that no comments were submitted. There was no further input at this time from the Committee. Ms. Moore made a motion to adopt the proposed rule effective also on September 1, 2025. The motion was seconded by Ms. Jeffs, and it passed unanimously. The proposed rule will be presented to the Supreme Court.

6. **Discussion and Action: Rule 29. Multiple County Offenses.** (All)

   Chair Johnson reported that the public comment period for Rule 29 closed on February 1, 2025, and noted that no comments were submitted. Chair Johnson and Vice-Chair Russell suggested asking that this rule be published in September along with the proposed Rule 16.

   Ms. White made a motion to adopt the proposed rule for publishing on September 1, 2025. The motion was seconded by Ms. Ferrin and passed unanimously.

7. **Discussion and Action: Rule 37A. Visual Recording of Statement or Testimony of Child in Abuse, Neglect, Dependency, or Substantiation Proceedings – Conditions of Admissibility.** (All)

   Chair Johnson reported that the public comment period for Rule 37A closed on June 2, 2025, and noted that one comment was received in support of the proposed changes.

   Ms. Jeffs made a motion to adopt the proposed rule for publishing effective November 1, 2025. The motion was seconded by Judge Jensen and passed unanimously.

8. **Discussion and Action: Rule 44. Findings and Conclusions.** (All)

   Chair Johnson reported that the public comment period closed on June 2, 2025, and no comments were submitted.

   Ms. White made a motion to adopt the proposed rule for publishing effective November 1, 2025. The motion was seconded by Vice-Chair Russell and passed unanimously.

9. **Discussion: Rule 20A. Discovery in Non-Delinquency Proceedings.** (All)

   This matter was tabled until the next scheduled meeting in August.

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

    Chair Johnson expressed gratitude to the Committee's departing members for their service and dedication to this Committee: Sophia Moore, Jordan Putnam, and Arek Butler.

    The meeting adjourned at 1:56 PM. The next meeting will be held on August 1, 2025, via Webex.