SUMMARY MINUTES (DRAFT)
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Administrative Office of the Courts
450 South State Street
Executive Dining Room
Salt Lake City, Utah
January 6, 2006

Present	Excused	Staff
Carol Verdoia	Ed Peterson	Katie Gregory
Judge Lindsley	Nelson Abbott	
Judge Steele	Matty Branch	Guests
Adam Trupp	Pam Vickery	Rob Parrish
Brent Bartholomew		Bruce Thomas
Claudia Page		Sarah Bartholomew
Alan Sevison		
Kristin Brewer		
Narda Beas Nordell		
Jeff Noland		
Paul Wake		

I. Minutes and Welcome

Carol Verdoia introduced Claudia Page as a new member. Claudia is the 7th District Clerk of Court and replaces Jeanette Gibbons whose term as Clerk of Court representative to the URJP expired this summer. Brent Bartholomew also introduced his daughter, Sarah Bartholomew, who was visiting with him as part of a school project.

Carol also welcomed Judge Steele and expressed the Committee's sympathy, concern and friendship following the loss of his wife.

Alan moved to approve the minutes of the June 3, 2005 meeting and Paul seconded the motion. The motion passed unanimously.

II. *URJP 34(e); Pre-trials Hearings in Non-delinquency Cases (Continued discussion regarding the affect of allegations that are deemed admitted).*

At the last meeting, the Committee discussed at length concerns expressed by Judge Van Dyke regarding the use of URJP 34(e). Carol distributed copies of a follow up letter she sent to Judge

Van Dyke dated October 5, 2005, regarding the Committee's discussion of the issue. Rob Parrish, GAL from 2nd District, joined today's meeting to discuss additional concerns that he has observed regarding the affect of allegations that are deemed admitted.

Rob explained that in 2nd District the 34(e) plea of a parent was admitted by a district court judge as an admission by the parent in a subsequent criminal case. This has caused the practical problem of parents not wanting to enter such a plea in child protection cases.

Rob expressed concern that the issue may also be a constitutional one, violating the privilege against self-incrimination. He suggested one option to fix the constitutional problem would be to change "deemed admitted" to "may be found true by the court." This would also deal with the portion of Judge Van Dyke's concerns that suggest the rule should read "may" rather than "shall." This proposed solution would allow the court to deem the matter "true" but not necessarily deemed it "admitted." Carol raised the concern of those who prosecute and using "may" causes uncertainty in whether they must prepare for a trial anyway. In a sense, the parties may make a deal and then not be sure what the judge will do with it. In that cause they would rather not have the rule, as it is no longer a useful tool.

The Committee also discussed two other concerns: 1) whether the judge would take further testimony once there had been a Rule 34(e) admission; and 2) whether a limiting statement could be added to Rule 34(e) that a 34(e) plea could not be used "outside of this proceeding." Carol expressed concern that adding this phrase may preclude the use of 34(e) pleas in other appropriate proceedings such as divorces or administrative hearings.

Discussion followed that deeming the allegation admitted does not authorize the court to find the allegation true. It was noted that the technical application is different from the rule. Some judges are taking the additional step to considered the allegations true, even though the party is not admitting or denying the allegation. This is not the same as a criminal proceeding where a no contest plea is the same as a guilty plea, the party is just not admitting the allegations.

Carol asked committee members to consider how this is compares to Requests for Admissions where failure of a party to answer means the statements are deemed admitted. Kristin commented that parties are aware that Requests for Admission are an adversarial tool, not a tool to settle the case such as Rule 34(e) admissions.

Additional concerns were discussed regarding the impact on the party entering therapy. Failure to acknowledge the problem before hand may cause the therapy and service plan to be less beneficial.

The Committee returned to discussing the use of Rule 34(e) to set up the tacit admission, but not allow the admission to be used in criminal matter by using "deemed true" rather than "deemed admitted." Currently, practice appears to vary by district. Jeff suggested the Committee change "deemed admitted" to "deemed true" in the last line of URJP 34(e).

Judge Lindsley made a motion that discussion be continued to the next meeting, that Katie circulate three options to committee members and that members discuss the options with other members of their respective groups. The three options are: 1) to leave URJP 34(e) in its current form; (2) to change "deemed admitted" to "deemed true" in the last line of URJP 34(e); or (3) to substitute "allegations not specifically denied by a respondent may be found true by the court." Paul seconded the motion. Judge Steele noted that discussion reflects that members are more comfortable with "shall" than "may" in the third option due to arguments such as the need for AGs and others to have certainty regarding whether they must go to trial. Rob clarified that he had proposed either option.
The motion passed unanimously.

Following this discussion, the Committee decided to take the remaining agenda items out of order to accommodate guest presenters.

III. *Notice by Publication in Termination of Parental* Rights Actions (proposal to use initials to identify child)

Brent noted that sometimes notices are sent out with children's names on them. He would like to change this policy to have only the children's initials used. The proposal would be a new rule, rather than an amendment to an existing rule. It was noted that in appeals, only the children's initials are used. Questions centered around whether initials in notices would provide adequate notice to parents. Carol asked if children's birth dates were or could be used. One problem may be that the child has the mother's last name and if mother's last name is not on the summons, the father may not realize why he is being served.

Alan made a motion to continue discussion to another meeting after additional research can be completed. Judge Lindsley modify the motion to ask Brent to create proposed language for discussion and to ask Carol to have her law clerk perform additional research on the proposal as the law clerk's time allows. Paul seconded the motion and it passed unanimously

A corollary concern was raised that some new CARE dockets posted outside the courtrooms list children's name instead of just their initials or a reference to the family such as "Smith children." Alan asked if we could produce a general rule to encourage protection of all children's privacy.

IV. *URJP 52-- Appeals (15 day language not included)*

Brent noted that URJP 52 does not specifically state the 15 day expedited appeal requirement. Rule 52 only says "except as otherwise provided by law." Committee members noted that not all juvenile matters are 15 days, with delinquency and substantiation matters being still subject to the original 30 days requirement. **Judge Steele made a motion to ask Brent to propose language for discussion at the next meeting. Paul seconded the motion and it passed unanimously.**

V. *Search Warrants in Juvenile Court*

Carol welcomed Bruce Thomas to the Committee. Bruce explained a situation that arose in 3rd District Juvenile Court regarding the issuance of a search warrant from the juvenile court and the subsequent questions that were raised regarding the court's practices regarding search warrants. His investigation revealed no per se rule for the juvenile court to follow. Bruce brought the issue before the Committee to consider whether it could be handled by policy, or whether the Committee felt a rule is necessary.

Bruce briefly presented a fact scenario in which the court did not keep the original or a copy of an original signed delinquency search warrant. The proof of service was returned to the court, but without the original warrant. Later a request was made to view the original warrant.

Discussion followed regarding the various experiences of Committee members in this area. Alan asked if the same guidelines apply in both child welfare and delinquency cases. Section 78-3a-106 states that the court has the authority to issue search warrants in both types of cases under the same procedures set forth in the Code of Criminal Procedure. There is a difference of opinion on whether the parent is served with the original or a copy. In either event, a copy should be kept by the court while waiting for an original or the service return to come back. Criminal Code section 77-23-201 states that "the" warrant be returned, implying an original. In criminal matters there is also an inventory of what was recovered that comes back with the return of service, but the actual warrant may or may not be returned.

Issues may arise regarding the original and parties wanting to know exactly what the judge allowed the parties to look for. Member agreed that a set procedure is needed for search warrants, both as to expectations of law enforcement and court clerks as well. Reference was also made to the Subpoena Powers Act at Section 77-22-1, *et seq.* which may have relevance, although some members noted that the Committee may not want to incorporate criminal restrictions in child welfare cases.

After this discussion, it was clear that there are currently no internal juvenile court procedures regarding search warrants and that the issue may have been handled only by memo agreement in various agencies. The district court, however, has both rules and procedures for search warrants. Additional issues that must be considered include the impact of telephonic warrants and warrants which must be obtained at a judge's home after business hours. It was noted that Rule 40 of the Rules of Criminal Procedure deals with telephonic warrants in criminal cases and may provide some guidance.

Carol agree to investigate whether there exists any documentation regarding the original discussions that may have taken place around search warrants in juvenile court. She will look for any internal rules that may be in place and will report back to the Committee at a later date.

VI. *URJP 37a-Child Protective Orders (Grounds for filing petition do not comport to statute)*

Katie reported that Judge Chamberlain asked the Committee to look at URJP 37 to make sure it conforms to statute. It appears that the grounds for filing a child protective order were never revised after the statute was revised. Currently Rule 37(a) reads "Any interested person may file a petition for a protective order on behalf of a child who has been **abused, sexually abused, neglected , or abandoned.**" UCA Section 78-3h-102 (1) was revised in 2004 and reads "Any interested person may file a petition for a protective order on behalf of a child who **is being abused or is in imminent danger of being abused.**"

The issue was continued to the next meeting with Judge Steele volunteering to review the issue and bring proposed language to the next meeting.

VII. New Business and Next Meeting Date

The next meeting was set for **Friday, February 3, 2006 from noon until 2:00 p.m.**
There being no further business, the meeting was adjourned.