

**SUMMARY MINUTES (DRAFT)
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Administrative Office of the Courts
450 South State Street
Board Room
Salt Lake City, Utah
January 7, 2005**

Present

Carol Verdoia
Judge Lindsley
Judge Steele
Alan Sevison
Kristin Brewer
Narda Beas Nardell
Paul Wake
Adam Trupp
Brent Bartholomew
Ed Peterson
Jeff Nolan

Excused

Pam Vickery
Nelson Abbott
Marty Olsen
Matty Branch
Pam Vickery
Jeanette Gibbons

Staff

Katie Gregory

I. Minutes and Welcome

Judge Lindsley moved that the minutes of 12/03/04 be approved as written. Narda seconded the motion, and it was approved unanimously.

II. Rule 4-201; Access to Recordings

Katie updated the committee on developments related to the request of the Attorney General's office and others to access digital and audio recordings from hearings where a court reporter is also present. In these instances, the Third District Juvenile Court Judges have treated the recording as part of the judges notes, rather than the official record. The recording has been made available to AGs for the purpose of preparing an order. Mark May, Division Chief for the Child Protection Division, brought the matter to the Board of Juvenile Court Judges meeting in October, 2004, and the Board asked the URJP Committee to consider a rule change to accommodate the AG's use of the recording.

Katie reported that following the Committee's directive at the last meeting, she had drafted a proposed amendment to CJA 4-201 to allow the court to make recordings available even if a court reporter was present. The court reporters transcription, would however, be considered the official record. Katie presented this proposal to the Board of Juvenile Court Judges on December 10, 2004, and the Board declined to support the concept due to concern over having more than one version of the record in existence. The Board suggested instead that those needing immediate access to the record utilize the

court's "CAT" technology to obtain a computer draft of the court reporter's transcription. Katie reported that the cost of obtaining the draft was \$25 for one-half day based on CJA 4-202.08(3). Discussion followed on the negative aspects of requiring state entities such as the AG and DCFS to regularly pay the \$25 fee. Concern was also expressed that the court rooms are not equipped with appropriate computer and printing equipment to allow the court reporters to make a copy available immediately after a ruling. Ed mentioned that CJA 4-202.08(8)(c) contemplates a fee waiver for governmental entities if the fee is "minimal." Katie agreed to obtain more information for the Committee regarding" 1) whether the \$25 fee was considered "minimal" and therefore, could be waived for governmental entities; and 2) how CAT printouts are obtained by parties in District Court.

III. Fax Filing Rule.

Carol explained a memo she received from Matty Branch requesting the committee review a proposed amendment to Rule 5: Service and Filing of Pleadings and Other Papers. Lengthy discussion followed regarding the appropriateness of fax filing and potential obstacles to establishing a uniform policy in this area.

Some of the areas discussed included:

1. The fact that the change contemplated by the memo is to the Rules of Civil Procedure. Judge Lindsley noted that a new rule should apply specifically to juvenile court, since juvenile court hears both civil and criminal matters.
2. Judge Steele noted that the use of "send" in line 67 could be problematic.
3. Who should bear the burden to insure that a fax was fully and correctly transmitted? Current wording provides that the clerk will notify the faxing party if the clerk observes a problem with the transmission or the transmission is incomplete. The committee discussed the policy behind line 71, which states that the faxing party assumes all risk of failure related to the fax transmission. Discussion followed regarding why this could be inappropriate in juvenile court. Specifically, the failure to provide evidence that a fax transmittal was completed could result in parties losing rights to their children, or other negative outcomes for children not considered in other civil matters.
4. The new rule contemplates only regulation of faxes to the court and not the service of notice to other parties by fax.
5. Concerns that existing fax capability at the juvenile court is not adequate and additional equipment may be needed to accommodate the rule. Judge Lindsley noted that parties in her courtroom are faxing reports five days before hearings as required by statute, but some reports are not received.
6. Concerns that the new rule should be thoroughly discussed with the Clerks of Court to consider how it will impact their workload.

7. Concerns that credit card information should not be sent to a shared fax machine and a dedicated machine should be designated.

Judge Lindsley made a motion to table and refer the issue to the Clerks of Court for comments. No second was forthcoming. Discussion followed and centered on the fact that insufficient time existed to obtain the input of the Clerks and still have a rule change completed by November 2005 as indicated in the memo. The memo also indicated that the fax filing concept had previously been presented to the Clerks of Court.

An amended motion was made to have Katie check with the rules of civil procedure committee to see how they are approaching the issue. The motion did not proceed and Judge Lindsley withdrew her original motion.

Alan made a motion to adopt URCP 5(e) as a draft rule today, draft modifications as needed, and circulate to all committee members to complete a final version by the next meeting. Ed seconded the motion. The motion passed unanimously. Alan noted that a new subsection, URJP 18(f) must be created. The committee asked Katie to check with the following rules committees to see how they are approaching the timing issue: 1) civil; 2) criminal and 3) appellate. The committee noted that it was leaning towards a midnight filing deadline and would like to know if the other committees had timing concerns as well.

Alan made a motion to adopt as the filing date the date the fax was received by the fax machine at the courthouse and that the document be dated stamped to match the time the fax was received. Considerable discussion followed regarding the merits of trying to match the fax machine timing. Alan withdrew the motion. The committee agreed that the faxed pleading would not be "accepted" until it was received by the clerk (which in some instances could be the next day).

Brent made a motion that the fax must be received by the court no later than 4:00 p.m. to be considered as a fax filing on that date. Ed seconded the motion. Discussion followed and Judge Lindsley expressed concern that some clerks work later and would be available to enter the document as filed. An amendment was made to amend the time to 3:00 p.m. and Ed seconded the amended motion. A vote was taken and the amended motion failed on a vote of 5 to 3. Alan made an alternate motion to leave the language as written and treat faxed documents the same as documents received by U.S. Mail. Ed seconded the motion. Alan amended the motion to leave the rule as is with line 60 reflecting that the filing is complete upon acceptance by the clerk of the court. Judge Steele seconded the motion and it passed unanimously.

V. Next Meeting and Adjourn

The next meeting was set for Friday, March 4, 2005 from noon to 2:00 p.m. There being further business, but inadequate time remaining to address all agenda items, the meeting was adjourned.