

**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
February 2, 2007**

Present

Carol Verdoia
Pam Vickery
Kristin Brewer
Jeff Noland
Claudia Page
Alan Sevison
Judge Steele
Paul Wake

Excused

Ed Peterson
Narda Beas-Nordell
Matty Branch
Brent Bartholomew
Judge Lindsley
Nelson Abbott

Staff

Katie Gregory

Guests

Mark May

I. Minutes and Welcome

Carol Verdoia welcomed all members and introduced Mark May, Division Chief of the Child Protection Division of the Attorney General's Office. Carol called for approval of the minutes of January 5, 2007.

MOTION: Paul Wake moved to approve the minutes of January 5, 2007. Kristin Brewer seconded the motion and it passed unanimously.

Carol then called for approval of the minutes of September 8, 2006 and December 1, 2006.

MOTION: Paul moved for approval of the minutes of September 8, 2006 and December 1, 2006. Kristin seconded the motion and it passed unanimously.

II. Search Warrants After Anderson v. Taylor

Carol recapped the status of the search warrant discussion from the last meeting. She further explained that the Supreme Court had delayed review of the committee's actions until February 14, 2007, allowing the committee to discuss additional revisions at this meeting. At the January 5th meeting the committee voted to remove the word "exigent" because it suggested that exigent circumstances were needed to obtain a warrant and this did not accurately reflect the standard to be applied. It appears the issue of exigent circumstances was inadvertently tabled with the remainder of the motion and was not reflected in the final January 5th version.

MOTION: Kristin Brewer made a motion to amend the language of Rule 7(e)(7) included in the January 5, 2007 version to delete the word "exigent" before the word "circumstances." Paul seconded the motion and it passed unanimously.

Carol noted the language the committee imported from Rule 40 into subparagraph (j) of Rule 7 uses the term "magistrate," which may not be appropriate in juvenile court. Judge Steele noted that the juvenile judge often acts in this capacity. The committee discussed the definition of magistrate in criminal code section 77-1-3(d). Members decided that the term "judge" is too narrow and the term "juvenile court" allows clerks and others to take appropriate actions such as retaining copies, filing, sealing, etc.

MOTION: Judge Steele made a motion to change "magistrate" to "juvenile court" where ever it appears throughout subparagraph (j) of Rule 7. Kristin seconded the motion and it passed unanimously.

Judge Steele addressed Rule 7(e)(7) on a verbal request for a warrant followed by the filing of an affidavit the next day. Discussion followed regarding how this provision might apply differently in a child welfare versus a delinquency case. Pam explained that a verbal warrant is different than a situation where time exists to prepare an affidavit, and that the term "exigent" may still be necessary. Obtaining a warrant verbally in this circumstance may require some degree of urgency. The committee discussed whether a different word than exigent should be used in this situation. Verbal warrants are done in delinquency matters, but rarely in child welfare matters. The committee considered whether case law regarding exceptions to a warrantless search (such as "hot pursuit") would be sufficient if the word "exigent" was removed from the rule. Carol noted that Judge Lindsley motion which was tabled during the last meeting would have included all of Rule 40 as a new juvenile Rule 7A. The committee tabled the motion to give the ramifications of incorporating Rule 40 more complete consideration.

In Anderson v. Taylor the Court was concerned with the retention of the warrant document rather than the use and regulation of telephonic warrants. It was noted that the availability and use of telephonic warrants was previously considered by the warrants committee. A policy decision was made against using telephonic warrants due to the difficulty of recording them. Jeff noted that the criminal statute discusses the use of recordings in delinquency matters. This may be authorized by 78-3a-106, which refers back to all the procedures for search warrants, but it is unclear whether telephonic warrants are appropriate in child welfare matters.

Mark reviewed the history of the resistance to the use of verbal warrants. The committee discussed whether to merely reference that telephonic warrants are covered in Rule 40. Can we use a word other than exigent? Mark reviewed the difficulty the warrants committee had experienced in using a different word. A lengthy discussion followed about other options besides exigent.

Rule 7(e)(7) does not comply with revised URCrP 40 because it does not require recording. Judge Steele noted that in order for a court to fulfill its constitutional role to determine whether or not there is probable cause for the warrant, you must determine the facts. This requires a

record of the facts and a successful appeal must be able to show the facts on which the issuing court relied.

Judge Steele will request a legal opinion from Brent Johnson regarding whether incorporating URCrP 40 in its new form into Rule 7 will solve the problem that Rule 7(e)(7) does not meet the current procedure for obtaining a telephonic warrant.

MOTION: Pam Vickery made a motion to retract the committee's earlier decision to delete the word "exigent" in subparagraph (e)(7) of Rule 7. Kristin seconded the motion. Discussion followed regarding other potential options and constitutional problems. Judge Steele reiterated the need for obtaining an opinion from Brent Johnson regarding the use of telephonic warrants and then consider how that may impact the committee's decision. A vote was called on the motion and all were in favor.

Mark asked for clarification regarding whether the committee is considering a purely verbal warrant versus just obtaining the facts over the phone. Judge Steele felt the committee should split out these two situations. Discussion followed regarding whether verbal warrants are even appropriate after Anderson v. Taylor. The verbal warrant was distinguished from the use of a telephone to call the judge and then fax information to him or her.

Paul requested that the committee, at a later date, return to the discussion of whether to incorporate Rule 40 by reference, in its entirety or with revisions. Discussion then turned to a recap of overall revisions to Rule 7 and whether the committee's actions are sufficient to meet the request of the Supreme Court.

MOTION: Paul Wake made a three part motion as follows: 1) delete subparagraph (d)(7) of Rule 7 in its entirety; 2) adopt everything Judge Lindsley moved in the January 5, 2007 meeting with the exception of incorporating URCrP Rule 40 as a new Rule 7A; 3) instead, incorporate URCrP Rule 40 into Rule 7(a) by reference after the reference to 78-3a-113. No vote was taken on the motion.

Carol noted that we must follow all the criminal procedures for search warrants, even in child welfare cases because Section 78-3a-106 currently does not provide a choice. The committee may need to recommend a statutory change to 78-3a-106. 78-3a-106 says we must apply all the criminal procedure provisions to search warrant whether for criminal search warrants or warrants for custody of a child in child welfare cases.

MOTION: Kristin made the following motion: On the draft previously designated as Judge Lindsley's proposed amendments: 1) at the end of subparagraph (a) add "and Utah Rules of Criminal Procedure 40."; 2) remove the words "in delinquency cases" from subparagraph (a); 3) remove (d)(7) in its entirety; 4) retain subparagraph (h) containing the language of Rule 40, but change all references to "magistrate" in the subparagraph to "juvenile court." Paul seconded the motion and it passed unanimously.

After the motion passed, Kristin Brewer left the meeting. Immediately following, the committee

noticed that an earlier approved draft of Rule 7 from January 5th contained a subparagraph (b) stating “(b) The issuance and execution of a warrant in dependency, neglect and abuse cases is governed by Section 78-3a- 106 and Section 78-3a-113.” This subparagraph had been inadvertently been removed from the draft containing Judge Lindsley’s proposal, which draft had been the subject of Kristin’s motion today. Committee members agreed that the situation was remedied by removing the words “”in delinquency cases” and the inclusion of references to 78-3a-106 and 78-3a-113 in subparagraph (a). Thus, subparagraph (a) now relates to the issuance of warrants in both delinquency and dependency, abuse and neglect cases.

Katie agreed to ratify these additional amendments with Kristin regarding the deletion of subparagraph (b).

An additional question was raised why Rule 7 was entitle “Warrants for immediate custody of minors; grounds; execution of warrants; search warrants.” and not entitled merely “Warrants.” After discussion, the committee members agreed to title Rule 7 merely “Warrants” and Katie agreed to ratify the change with Kristin prior to submitting the revisions to the Supreme Court.

The next meeting was scheduled on April 6, 2007 from noon until 2:00 p.m. It was noted that this is the Friday before Easter and some members not present may be impacted. Katie agreed to send out a reminder now and three weeks ahead of time to see if sufficient members could attend to have a quorum present.