

**SUMMARY MINUTES (DRAFT)
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Administrative Office of the Courts
450 South State Street
Second Floor Board Room
Salt Lake City, Utah
February 3, 2006**

Present

Carol Verdoia
Judge Lindsley
Judge Steele
Paul Wake
Brent Bartholomew
Claudia Page
Alan Sevison
Narda Beas Nordell
Jeff Noland
Nelson Abbott
Ed Peterson
Pam Vickery

Excused

Adam Trupp
Kristin Brewer
Matty Branch

Staff

Katie Gregory

Guests

Rob Parrish

I. Minutes and Welcome

Carol Verdoia welcomed all members and called for approval of the minutes. Narda moved to approve the minutes of the January 6, 2006 meeting and Claudia 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 voted to have Katie circulate three options related to URJP 34(e) to committee members and request that members discuss them with other members of their respective disciplines. The three options were: 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."

Carol reported that the AGs, on the whole, did not want to a change that would change "shall" to "may." Allowing the judge discretion would cause uncertainty regarding whether a trial will take

place so any benefit would be lost. Otherwise, AGs generally found it acceptable to leave the language as is, or make the change to deemed true. Judge Lindsley emailed the juvenile judges and received responses from about one third. While most preferred option 2, responses varied with some judges expressing a preference not to change the rule. One judge felt that we should leave the rule as is, or eliminate the rule altogether. Those who responded were satisfied with keeping "shall" over "may."

Brent gave feed back on the position of the GALs, as did Kristin (who was absent), but sent additional feedback she had received. The majority selected "deemed true." Since the issue arose in 2nd District, Rob canvassed attorneys from various disciplines in the 2nd District. He reported that the majority like the second option, including two public defenders. Some considered adding a burden of proof, but felt it should not be done at this time. A group discussion followed.

MOTION: Brent made a motion to adopt option number 2, changing the rule to read as follows: "Allegations not specifically denied by a respondent shall be deemed true." Ed seconded the motion and it passes unanimously. Katie agreed to contact Tim Shea to submit the change in the current rule cycle.

III. *Search Warrants in Juvenile Court*

This agenda item was continued from the last meeting. Carol agreed 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. Carol explained Bruce Thomas' concerns from last meeting and his concern that there either be rule or policy to deal with how warrants are handled and maintained in juvenile court. The following discussion was raised:

--Carol investigated in her office and found an old checklist used with law enforcement. She distributed these in a handout. She also reviewed power point presentations the AGs office used previously to train DCFS workers. The workers were instructed to take an original warrant to the home with copies and the copies were to be left with parents.

--Ed explained that in criminal matters the original warrant is taken to the scene, a copy given to the individual(s), and the return of service and the original must be returned to the court. Discussion followed regarding the benefits of having the original in the court file so that tampering cannot occur and it can be used as a comparison.

--Judge Lindsley explained how she handles warrants that are faxed or brought to her home. She has a copy of the original faxed back to her immediately after she signs it. She then takes that to her court.

--Claudia polled the Clerks of Court and it appears that no district office has a written rule or

procedures. Warrants are handled differently by district.

--Judge Lindsley reported that in Third District she has an on call procedure during her shelter week and she receives all the warrants during that week. The original warrants come back to her at the shelter hearing. The original is placed in the file and the file is transferred to the judge who ultimately is assigned the case. The procedure is not as clear in juvenile delinquency cases.

A lengthy discussion followed, including whether the matter should be resolved by the URJP or by the Clerks of Court. Several members emphasized that what ever type of rule or policy is created, the original should be filed at the court. It was suggested that the originals could be maintained in a central location in the district, although this may be problematic in districts with more than one site. Claudia reported that the Clerks of Court agreed that a policy is needed. Others suggested that the policy needs to be uniform between districts and in writing.

Questions were raised regarding the extent that provisions of the Criminal Code apply, if at all, especially since the Criminal Code is referenced in 78-3a-106. It was noted that one rule will not fit all types of warrants (child welfare removal, delinquency, property, etc). Judge Lindsley suggested the matter first be addressed by the Clerks of Court. If the Clerks establish a policy, it will train local attorneys that they must return the original to the court.

The committee agreed that a subcommittee of the URJP could review the issues and make a recommendation. It was suggested that the subcommittee consist of Alan, Ed and Jeff.

MOTION: Judge Lindsley made a motion that Katie report to Bruce that a committee was being formed to consider if action by rule is appropriate, but may not have recommendations for some time. In the meantime the Clerks of Court should consider a uniform policy.

SUBSTITUTE MOTION: Alan made a substitute motion to form a subcommittee to review warrants under both criminal procedure and child welfare statutes and determine whether a rule or statute will be necessary to resolve current concerns. Ed seconded the motion and it passed unanimously. The subcommittee was formed with Alan, Ed and Jeff as its members.

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

Brent requested that this item be tabled until the next meeting while he complete his proposal. Katie agreed to email out the proposal for review when it is completed. The committee also discussed concerns regarding the posting of dockets with childrens' names on bulletin boards outside the courtrooms. Claudia mentioned that it may be a CARE issue and that CARE may now be prograded to produce dockets with children's name.

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

Brent also requested that this item be tabled until the next meeting while he completes his proposal.

Carol explained that she needed to leave the meeting early, so the following items were covered before she left. The next meeting was set for June 2, 2006 from 11:30 a.m. to 1:00 p.m.

Ed reported that the URJP Committee members had donated funds to the Uintah County Library Board and the funds will be used to construct a children's reading area in memory of Linda Steele.

Carol left the meeting and turned the chair over to Judge Steele.

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

At the last meeting, Katie reported that Judge Chamberlain asked the Committee to look at URJP 37 to make sure it conforms to statute. Judge Steele agreed to review the issue and propose language to resolve the discrepancy between Rule 37(a) and UCA Section 78-3h-102 (1). Judge Steele had Katie circulate a proposal prior to the meeting which reflected the following change:

Rule 37. Child protective orders.

Rules Text

(a) Child protective order proceedings are governed by Section 78-3h-101 et seq. Protective order proceedings may be commenced as an independent action by filing a petition. Any interested person may file a petition for a protective order on behalf of a child as provided by statute who has been abused, sexually abused, neglected, or abandoned or is in imminent danger of being abused, sexually abused, neglected, or abandoned. The petitioner shall first make a referral to the division. If an immediate ex parte protective order is requested pending a hearing, the petition or an accompanying affidavit shall set forth the facts constituting good cause for issuance of the ex parte order.

The Committee discussed the proposal, including whether the statutory reference should be provided rather than to state "as provided by statute." It was noted that the statute concerned was covered by referenced to 78-3h-101, et seq. in the first sentence. The Committee further determined that the language was specific enough that it could not be argued that another statute applied.

MOTION: Judge Lindsley made a motion to adopt the revised language proposed by Judge Steele. Narda seconded the motion and it passed unanimously.

There being no further business, the meeting was adjourned.