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
March 4, 2005

Present	Excused	Staff
Carol Verdoia	Kristin Brewer	Katie Gregory
Judge Lindsley	Nelson Abbott	
Judge Steele	Marty Olsen	
Paul Wake	Matty Branch	
Brent Bartholomew	Adam Trupp	
Jeanette Gibbons		
Alan Sevison		
Ed Peterson		
Narda Beas Nordell		
Jeff Noland		
Pam Vickery		

I. Minutes and Welcome

Carol called the meeting to order. Ed moved to approve the minutes of the January 7, 2005 meeting and Alan seconded the motion. The motion passed unanimously.

II. URJP 53 Update

Katie reported that the Supreme Court had adopted and promulgated the proposed amendments to URJP 53, effective April 1, 2005, by order of Chief Justice Durham dated January 21, 2005.

III. Update on Access to Court Records

Katie gave an update on the status of allowing Attorneys General and others to access the court's recording or draft transcript for the purpose of drafting orders. A discussion followed regarding the accessability of the CAT technology used by court reporters. Judge Steele said that he had used this in his courtroom and the text was immediately accessible, although you needed special software to operate it. Alan had also used it and had received it by emailed from the court reporter. Katie explained the issue of whether certain parties could obtain a fee waiver when

requesting the draft transcript. It was unclear whether the rough draft was immediately accessible or whether the court reporter would have to take time to clean it up before releasing the draft.

Carol summarized the status of this issue. A discussion followed regarding the concerns of the Board of Juvenile Court Judges regarding allowing parties to request the court's electronic recording when a court reporter is present. Ed summarized the concerns as opening up a collateral attack on the record and expressed that it appeared within the discretion of the judge to grant a fee waiver. Ed then made a motion to: 1) add a juvenile rule stating that fee waivers were at the judge's discretion based on a motion and good cause; and 2) the unofficial record generated by a court reporter can be made available and the judge has discretion to waive any fees applicable, especially in the case of the party instructed to draft the order. Judge Steele suggested that it should be clear that the information to be accessed is the "unofficial record."

The committee embarked on a through discussion of the applicable provisions of the Code Of Judicial Administration. The following summarizes the committee's analysis:

CJA 4-201 (2)C) provides:
"If a proceeding is recorded by a court reporter, an electronic recording of the proceeding shall not be made, except that a judge may direct a single original of an electronic recording be made as part of the judge's notes......."

CJA 4-202.02 (8)(A) provides that the judge's notes are protected judicial records. 4-202.03(8) states that "protected judicial records are exempt from disclosure." This would include the single original electronic recording made by a judge when a court reporter is also present. The committee presumed that the judge has the discretion to waive this restriction. CJA 4-202.02(9)(E) states that juvenile court legal records include "electronic recordings or reporter recordings of testimony in court proceedings." CJA 4-202.03 sets forth who may have access to juvenile court legal records.

When draft transcripts are available, they would be classified as juvenile court legal records. CJA 202.03(9) provides that juvenile court legal records are accessible to among others, parties to the proceeding and any person to whom the record must be provided pursuant to juvenile court order. After establishing that these parties and persons have the ability to request a court reporter's draft, the committee considered the issue of fees and fee waivers set forth in CJA 4-202.08.

Specifically, 4-202.08(3)(F) sets a $25 fee for an electronic copy of a court reporter stenographic text per each one-half day or part thereof. Subsection (8) allows fee waivers, including governmental entities (if the fee is minimal) and an impecunious person who is a subject of the record. From this analysis, the committee determined that parties may obtain the court reporter's draft and the judge has the discretion to waive the $25 fee for qualifying parties.

Based on this discussion, Ed withdrew his previous motion. Judge Steele volunteered to send an email to all juvenile judges on the committee's position. Carol asked that he bring any concerns expressed by the judges back to this committee.

IV. Fax Filing Rule

Katie updated the committee on the positions of the other rules committees who have considered the proposed fax filing rule. Generally the criminal and civil rules committees are not supportive of the new rule, nor are the Clerks of Court. The committee expressed serious disagreements on a uniform policy on several levels and felt the concerns could be better handled at a local level. The committee agreed that Katie would prepare a memo to Tim Shea expressing the committee's concerns listed in the January 7, 2005 minutes along with the following additions:

1. Judge Lindsley expressed concerns that the rule would unduly burden clerks.

2. Jeanette added that the clerks do not have any credit card machines.

3. Judge Steele clarified his concern from the last meeting that the language "shall send the document" does not clarify whether the reference is to the point the document went into the sender's fax machine, or when it was actually received at the court. Alan noted that the current proposal is directly opposite of traditional "mailbox rule."

If asked to proceed further, the committee requested that Tim Shea provide additional information on other states who have successfully implemented a fax filing rule or procedure.

Brent made a motion to handle fax filing on a local district level and allow each district to adopt their own rules as necessary. Ed seconded the motion and it passed unanimously. Based on this discussion and motion, the committee withdrew its conditional action on the fax filing rule made during the meeting of January 7, 2005. The conditional action was adopted in January as temporary rule, pending further review and the receipt of additional information.

V. URJP 29A; Affect of Crawford Decision on Delinquency Proceedings

Katie reviewed the committee's prior decision to eliminate the Advisory Committee Note to URJP 29A, pending a further discussion of the affect of the *Crawford* decision on criminal proceedings in juvenile court. Katie distributed an email memo dated December 16, 2004, from Tim Shea regarding the committee's request to remove the Advisory Committee Note. The committee discussed Tim's related questions regarding the renumbering of the rule for conformity and questions regarding the difference between the first and third sections of the rule. The committee agreed that the renumbering for conformity should be completed.

The committee clarified that section one refers to recordings made pre-petition as an

investigational tool, which may or may not be used to file charges. Sections two and three involve testimony taken for trial purposes. Section three allows testimony to be recorded at the time of the trial on motion and with good cause shown.

The discussion changed to the affect of the *Crawford* decision on the type of recordings/testimony contemplated in URJP 29A. Pam stated that under *Crawford* the tape could not be used if it is testimonial under the confrontation clause. The committee felt the issue was debatable.
The committee debated whether the Advisory Committee Note should be removed due to the difference of opinion on whether *Crawford* applies. Taking no further action, the committee's December 3, 2004 motion to remove the Committee Note will stand.

VI. URJP 34(e); Pretrial Hearings in Non-delinquency Cases

Katie distributed copies of a memo from Brent Johnson dated December 21, 2004, regarding Judge Van Dyke's request for a rule change concerning URJP 34(e). Judge Van Dyke suggested that the word "shall" be changed to "may" with regard to the language requiring the judge to accept all allegations not specifically denied. A failure to admit or deny is deemed admissible. Carol explained the nature of case in which the concerns arose. It involved a parent with a criminal case pending who did not want to admit to certain allegations in the civil case. The committee requested further legal analysis of how the issue arose. Carol agreed to check into the matter and present at the next meeting, including whether new legislation passed in the 2005 session could require the court to make a finding. Judge Steele also volunteered to contact Judge Van Dyke by email for clarification.

VII. Withdrawal of Admissions

This discussion item was tabled until a later meeting. Carol reported that the case in question will be argued before the Court of Appeals on March 22, 2005 at 9:30 a.m.

VIII. New Business and Next Meeting Date

The committee had a brief discussion regarding attendance by members and specifically about a concern that Nelson Abbott forwarded to Carol about his inability to attend meetings. Katie reported the dates on which the various member's terms expire.

Brent reported that he may have a new item of business for the June agenda. He agreed to prepare some information and send it to Katie prior to the meeting..

The next meeting was set for **Friday, June 3, 2005 from noon until 2:00 p.m.**
There being no further business, the meeting was adjourned.

From: Judge Larry Steele
To: Judge Stephen Van Dyke
Date: 3/29/05 1:29PM
Subject: Re: Rule 34(e)

Thank you Judge Van Dyke. I'll send a copy of your email to the committee for discussion at our next meeting.
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>>> Judge Stephen Van Dyke 03/23/2005 9:38:50 AM >>>
Thanks for the interest Larry. Yes, I've had problems with this rule:
1) It is not an admission and no evidence is taken to support the court deeming the petition true "by clear and convincing evidence." That seems an anomoly and injustice to me, in light of the very heavy implications of these cases (possible loss of one's children ultimately). I also fail to see how it saves much in the criminal court, since a knowing and voluntary entering of such a plea is with the very clear understanding that it will result in the civil petition being found true, the essence of what the person is trying to avoid in the criminal action. Attorneys tell me they know of nothing that prevents a prosecutor from using the plea in criminal matters and the rule doesn't seem to have anything in it to prevent that. So-o-o here's how we could use it: the person knew when he entered the plea that all allegations would be found true by clear and convincing evidence as a direct result of the knowing and voluntary plea. He knew it would result in his name being put on the substantiated list for licensing purposes. He knew it would mean he'd have to obey court orders and be limited in his contact or visitation with his children. He knew he could ultimately lose his children by entering such a plea and process. Jurors, draw your own conclusions here. It's a distinction without a difference. The reality is admissions in our civil cases are rarely used in criminal court because the standard of proof is different there, and defendants can make an easy argument that they were admitting something to get services for the family, and with the belief the state could never prove the case against them beyond a reasonable doubt.
2) I have defendants come back after successfully defending in criminal court and claim they were coerced into entering a 34e plea, or did not clearly understand it, or had poor counsel, requesting to withdraw the plea and have a trial on the issues. I can deny such motions, but I'm getting them with fair regularity and they are troubling every time. (Not to mention time consuming.)
3) Having neither admitted nor denied the charges, when services are put in place, the individual is in position to deny them in therapy, and the most egregious cases tend to do so. That stymies therapy and progress on the service plan, and results in prolonged litigation and trial on termination of rights ultimately.

The 34e plea is mandatory, and the court must grant it under the "shall" in the rule. Why take judgement out of the process? Can't we judges look at individual cases and the characters we're dealing with and decide whether the 34e plea will be accepted as appropriate in a given case? That reaps the benefit where appropriate and avoids many of the problems. My own feeling is that in the more egrgious cases we ought to be able to look very carefully at whether such a plea is in the best interests of children and victims involved as well. Why "shall" rather than "May?" Don't we trust us? Thanx...Steve

>>> Judge Larry Steele 03/21/05 03:33PM >>>
Judge Van Dyke - the committee on the Rules of Juvenile Procedure recently discussed a request of yours relating to Rule 34(e). Brent Johnson sent us a memo of a conversation he had with you requesting the word shall be changed to the word may. The committee had more questions and wanted to know more about your experience with this rule and why you were requesting the change. We assumed that you were seeing its use when a parent wanted to avoid making an admission that could be used in criminal court, but wanted to allow the court to deem the petition admitted based on their silence. The experience of the committee was that 34(e) adjudications were set up this way by the stipulation of all parties to accommodate a parent who wanted to avoid a criminal admission. The committee generally favored the use of the rule in this way. Have you had situations where you did not want to accept the agreement of the parties to proceed on 34(e)? Could you explain more of your experience and your reasons for wanting the change? I would like to take your comments back to the committee for further discussion. Thanx.

CC: Carol Verdoia; Katie Gregory