

MINUTES
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Administrative Office of the Courts
450 South State Street, N31
Salt Lake City, Utah 84114-0241
Monday, March 10 from 12-2

Present

- / Carol Verdoia, Chair
- / Judge Lindsley
- / Ed Peterson
- / Judge Steele
- Paul Wake
- Pamela Vickrey
- Jeanette Gibbons
- Kristin Brewer
- Shirl Don LeBaron
- Jeff Noland
- Narda Beas-Nardell
- Matty Branch

Staff

Alicia Davis

I. Welcome, Approval of Minutes

Carol Verdoia extended a welcome to all present. The Supreme Court has appointed 5 new members to the committee: Jeff Noland, Brent Bartholomew, Narda Beas Nardell, Nelson Abbot, and Alan Sevison. Judge Lindsley moved to approve the minutes with her name corrected as "Lindsley" not "Lindsey" throughout. The motion was seconded and passed unanimously.

II. Legislation

A. SB 208, and URJP 7

The committee reviewed proposed changes to URJP 7, Warrants, stemming from 2003's SB 208s2. This bill was proposed to bring Utah statute into compliance with the Tenth Circuit's September, 2002 ruling in the *Roska* case. (*Roska v. Peterson*, 304 F.3d 982 (10th Cir. 2002)). The bill provides that a minor may not be removed from the minor's home or school, or be taken into protective custody, without parental consent or a warrant, unless there exists exigent circumstances. The court may issue a warrant for the removal of the minor child upon a showing of probable cause to believe there is an immediate threat to the safety of the child. The party requesting the warrant must present the efforts made to give notice to the child's parent or

guardian, or demonstrate why the parent or guardian should not receive notice and an opportunity for a hearing prior to the removal.

After discussion, the Committee decided to delete reference to 78-3a-112 in para. (h) because it did not provide a definition of "exigent circumstances" as defined by the new legislation. Rather than add in the statutory language about what needs to happen before a warrant may be issued, the Committee added a reference to statute.

The Committee also decided to incorporate Judge Oddone's amendment that return of service be executed no later than the shelter hearing unless otherwise ordered by the Court. Kristin suggested that this not be tied to the shelter hearing, because now not all cases were having shelter hearings, and suggested: "return of service within 72 hours unless otherwise ordered by the court." The committee agreed. Pam asked if "unless otherwise ordered by the court" would allow for an unreasonable timeframe for return of service. The criminal code requires prompt return of service, but Judge Lindsley and Pam recalled this as being a case law requirement. Judge Steele moved that the amended rule be issued for comment. The motion was seconded, and passed unanimously.

B. SB 158, Substantiations

After discussion, the committee decided that the changes to the notice requirements did not impact the juvenile rules, or the forms created for substantiation proceedings.

C. SB 128, Protective Orders and URJP 37

Amendments were made to Rule 37 to conform to statutory language. The amendment removed the provision allowing for stipulation for a longer amount of time because the new law does not allow for it. Narda asked if a citizen off the street could obtain a child protective order; the committee responded that they could. Judge Steele questioned whether a child protective order could be obtained against 21 year old boyfriend. Judge Steele may consider the issue further, and bring it back to the committee for discussion. Paul asked whether stalking petitions could come before the juvenile court; the committee responded that stalking injunctions are issued by district court.

The committee discussed the appointment of counsel in these proceedings. Kristin suggested that the requirement that the AOC create forms be included with the rule. This amendment was adopted by incorporating the language: "Child protective order proceedings are governed by 78-3h-101 et seq." The title of the rule was amended to "Child Protective Orders." Apart from these changes, the committee decided that the statute was sufficiently specific procedurally that additional rule changes were not required. Judge Lindsley moved that the amendments be approved, Kristin seconded the motion, and it was approved.

D. HB 222, Public Access

The committee decided that the statute was sufficiently specific procedurally that additional rule changes were not required.

E. HB 133, Expedited CW Proceedings

Kristin had commented that the only changes to the rules occasioned by HB 133 would be to rules that differentiated between a child in custody or not in custody. Alicia stated that the rules do not make such a distinction, so no rule changes were made.

The committee discussed motions for expedited hearings being substituted for a warrant request.

III. URJP 19

Judge Steele asked for the committee's direction in amending URJP 19. Previously, the committee had discussed that this rule does not address whether or not answers are required to TPR petitions. Carol opined that the rule is vague and recommended that language be inserted to address private petitions. Judge Steele will present amended language at the next meeting.

IV. Withdrawal of Counsel Form

Pam has been working on a withdrawal of counsel form. She determined that a withdrawal form needs to be for dependency, not delinquency cases. Carol questioned whether the rule should be broadly applicable to both. The committee suggested that a form say only that the client was informed of the right to appeal by counsel, and that counsel could withdraw. Jeff asked if they should have a form because clients would be unlikely to sign post trial. Carol clarified that the rule requires filing of assertion that client was informed of right to appeal. The committee suggested that Iowa's withdrawal of counsel form be adapted for Utah. The committee will revisit URJP 53 for next time as well as other expedited appeals procedures.

V. Adjourn

There being no further business, meeting was adjourned. Next meeting will be held on April 4, 12:00 p.m. in Conf. Room B&C.