

**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
April 6, 2007**

Present

Carol Verdoia
Ed Peterson
Kristin Brewer
Brent Bartholomew
Nelson Abbott
Alan Sevison
Judge Steele
Paul Wake

Excused

Jeff Noland
Narda Beas-Nordell
Matty Branch
Pam Vickery
Judge Lindsley
Brad Willis

Staff

Katie Gregory

Guests

Susan Eisenman

I. Minutes and Welcome

Carol Verdoia welcomed all members. After establishing a quorum, Carol called for approval of the minutes of February 2, 2007.

MOTION: Judge Steele moved to approve the minutes. Ed Peterson seconded the motion and it passed unanimously.

II. Continued Discussion Regarding Definitions of Minor and Child

[Committee notes show that the following Rules still need review: Rules 8, 10-12, 15-16, 37A, 46,48-49 and 57.]

Rule 37A. Visual recording of statement or testimony of child in abuse, neglect and dependency proceedings—Conditions of admissibility.

The committee began with a discussion of Rule 37A, which had been raised but tabled at an earlier meeting. The word “child” is used throughout Rule 37A. Kristin noted the age of perpetrator would control which court has jurisdiction. It was noted that most of the statements in question would relate to CJC interviews. The committee could not determine an instance when the interviewee would be over the age of 18.

MOTION: Kristin made a motion to leave Rule 37A as written, using the word “child” throughout. Alan seconded the motion and it passed unanimously.

Kristin mentioned that a complete discussion of Rule 37A should include the *Crawford* decision. Criminal Rule 15.2 may need to be revised by the URCrP Committee to resolve this issue. The committee agreed to return to the *Crawford* issue at a later date. Carol discussed a case in her office where an attorney was denied the right to admit a CJC tape of a child victim under the rule in a substantiation proceeding because it is not defined as an abuse, neglect or dependency proceeding under the rules. The definitions in Rule 5 state that "abuse, neglect and dependency" refers to proceedings under UCA 78-3a-301, but section 78-3a-320 covers substantiation proceedings. This distinction causes confusion in the definitions and their application. Kristin suggested that since "substantiation proceeding" is a defined term, the committee should refer to it specifically in Rule 37A(a).

MOTION: Kristin Brewer made a motion to change the first sentence of Rule 37A(a) from "In any abuse, neglect and dependency proceedings" to "In any abuse, neglect, dependency, and substantiation proceedings." Brent Bartholomew seconded the motion and it passed unanimously.

Rule 8. Rights of minor while in detention.

Rule 8c) makes reference to "minor under age 14" and Rule 8(d) to "minor 14 years of age or older."

A question was raised regarding whether this language grants the youth additional substantive rights to which they would not otherwise be entitled if 18 or older? A minor under 18 has certain rights and restrictions under Utah law. Various questions were raised by the committee such as: Does the minor have a substantive right to have law enforcement first involve their parent(s) before interviewing the minor?

The committee then considered whether Rule 8(e) should be changed from minor to "child." It was suggested that some under age 21 (20 and younger) could be a danger to themselves or the community and a judge could place them in detention. The committee agreed to confer with Dan Maldonado and/or Susan Eisenman regarding the affect of changing Rule 8.

Rule 10. Bail for non-resident minors.

Rule 11. Time limits on detention orders.

The committee decided to table these Rules until later in the meeting when Susan Eisenman could be present.

Rule 12. Admission to shelter care.

The committee determined that Rule 12 does not contain any references to minor or child and does not need revision.

Rule 46. Disposition hearing.

The committee determined that the reference to "minor" in Rule 46 (b) is merely permissive and does not need to be changed.

MOTION: Kristin made a motion to amend Rule 46(e) by changing the reference from "minor"

to “child.” Ed seconded the motion and it passed unanimously.

Discussion turned to the reference to minor in the first sentence of Rule 46(d). The rule states that a written copy of the disposition be mailed or furnished to “the minor and parent, guardian or custodian...” Discussion followed regarding whether the parents are entitled to a copy of the disposition order if the minor is over 18. The situation may be different when the state has custody of the minor over age 18. Carol asked the committee to consider if there is any “harm” if the judge does not furnish the order to a parent of a minor over 18, other than a rule violation. Kristin mentioned the privacy rights of the minor over 18 not to have their parent notified.

MOTION: Kristin made a motion to revise Rule 46(d) to read “furnished to the minor, and to the parent, guardian or custodian of a child...” Ed seconded the motion. Discussion followed regarding whether the new wording should include “and” or “or.” Carol noted that if a case involved siblings both older and younger than 18, then the wording must be “and” not “or.” A question was raised whether a similar change needed to be made in the next clause of Rule 46(d) regarding counsel for the minor. The committee decided not to make a change to the second clause at this time. A vote was called and the motion passed unanimously.

Rule 48. New hearings.

Rule 49. Adoptions.

Neither Rule 48 nor Rule 49 contain a reference to “minor” or “child” so no action was taken.

Rule 57. Change of judge as a matter of right.

Rule 57 does not contain references to “minor” or “child” and no action was taken. Discussion followed on the purpose of the Rule 57 and the underlying policy that would include such a “no cause” rule in juvenile court, but not in other courts.

MOTION: Brent made a motion to eliminate Rule 57 in its entirety. Kristin’s seconded the motion and discussion followed without a vote, due to a temporary loss of quorum. Kristin noted that without URJP 57, URCP 63 and URCrP 29 would control. Both rules allow for recusal of a judge, but require the specificity lacking in URJP 57.

[Susan Eisenman joined the meeting during the discussion.]

Rule 8. Rights of minor while in detention.

The committee then revisited its discussion of Rule 8 after consulting with Susan Eisenman.

MOTION: Kristin made a motion to change the word “minor” or the phrase “minor under 14” as they appear throughout Rule 8 to the word “child.” The rule would then refer to either “child” or “child under age 14” as appropriate throughout.

Paul seconded the motion and it passed unanimously.

The discussion returned to Brent’s earlier motion to strike Rule 57 in its entirety. It was noted that the issue was not placed on today’s agenda and should not be addressed without first placing it on an agenda. A substitute motion was made as follows:

SUBSTITUTE MOTION: Brent withdrew his motion to strike Rule 57 and made a substitute motion to place the issue on the agenda for the committee's next meeting. Kristin seconded the motion and it passed unanimously.

Rule 10. Bail for non-resident minors.

Rule 10 makes reference to a nonresident minor in detention. The committee agreed that while generally, Utah does not take non-residents over 18 to detention, it could happen in rare occasions.

MOTION: Alan made a motion to take no action on Rule 10. Paul seconded the motion and it passed with Brent voting against the motion based on his feeling that the word minor should be changed to child.

Rule 9. Detention hearings; scheduling; hearing procedures.

The committee had previously reviewed Rule 9 and determined that no action was necessary.

Rule 11. Time limits on detention orders.

MOTION: Kristin made a motion to leave Rule 11 as written.. Ed seconded the motion and all voted in favor.

Rule 15. Preliminary inquiry; informal adjustment without petition.

MOTION: Kristin made a motion to leave Rule 15(a) and (b) as "minor." No second followed and Kristin withdrew the motion. The committee proceeded to discussion.

MOTION: Ed made a motion as follows:

- leave Rule 15(a) as "minor";
- in Rule 15(b), leave the first reference to "minor" as written;
- regarding the second reference to "minor" in 15(b), change the language to read "with the minor, or the child and at least one parent, guardian or custodian,";
- in Rule 15(b), leave the third reference to minor as written.

Kristin seconded and all were in favor.

MOTION: Ed made a motion as follows:

- in Rule 15c), in the first reference to minor, change the language to read "In any such interview, the minor, or the child and the child's parent, guardian or custodian,";
- all remaining references to "minor in Rule 15c) remain the same;
- in Rule 15(d) at the first reference to minor, change "minor and the parent, guardian or custodian" to "minor, or if a child, then with the child and the child's parent, guardian, or custodian."
- the second reference to minor in 15(d), changed to "minor or the child's parent, guardian or custodian."
- the final reference to minor in (d) remains the same.

AMENDMENT: Alan made a friendly amendment to the first sentence in Rule 15(d) to read "with the minor, or if a child, then with the child and the child's parents, guardian or

custodian...”

Ed accepted Alan’s friendly amendment.

Kristin seconded the motion and it passed unanimously.

Rule 16. Transfer of delinquency case for preliminary inquiry.

The committee noted that the numbering and lettering in Rule 16 is inconsistent.

MOTION: Alan made a motion that the numbering be changed to be consistent with other portions of the URJP and Kristin seconded the motion. Alan withdraw his motion and the committee agreed to refer the paragraph numbering issue to Tim Shea.

MOTION: Paul made a motion as follows:

–the first reference to minor in Rule 16(a) should remain as written;

–the subsections currently numbered Rule 16(a)(A) and 16(a)(B), should read “the minor, or if a child, the child and the child’s parent, guardian or custodian.”

–the final reference to minor in Rule 16(a)(D) will remain as written.

Kristin seconded the motion and it passed unanimously.

[Kristin Brewer left the meeting following this discussion and the quorum was lost.]

Judge Steele recommended that committee go back to its earlier work today and change the Rules so that all include the phrase “or if a child, the child and the child’s parent, guardian or custodian” as appropriate.

The committee asked Katie to discuss this with Kristin and get her approval to this action. Alan went into the hall and conferred with Ed and Kristin who were in agreement with the recommendation.

The committee agreed that Katie will prepare a redline copy of all minor/child related changes to the rules and the committee would have a final discussion regarding minor and child. The draft will also be distributed to Susan Eisenman.

Judge Steele discussed the wisdom of having three separate categories in the URJP (child, minor under 18, minor over 18) to define the subject population, even if the categories are not included in the new statute. A discussion followed regarding the pros and cons of this approach and its impact on legislative intent and policy.

The next meeting was scheduled for May 4, 2007 from noon until 2:00 p.m.