

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 17, 2009

Present

Carol Verdoia
Renee Jimenez
Alan Sevison
Judge Lindsley
Judge Steele
Brent Bartholomew
Brent Hall
Joan Carroll
Pam Vickery
Ed Peterson

Excused

Paul Wake
Matty Branch
Narda Beas-Nordell
David Johnson
Angela Fannesbeck

AOC Staff

Katie Gregory
Whitney Kania

I. Minutes and Welcome.

Carol Verdoia welcomed all members and called for approval of the minutes of February 6, 2009. Judge Lindsley made a motion to approve the minutes. Ed Peterson seconded the motion and it passed unanimously.

II. Rule 36-Cases Certified from District Court.

Committee members tabled this issue to the next meeting to obtain more information from Commissioners and others.

III. Rule 25-Additional Issues Regarding Orders for Continuing Disposition and Withdrawal of Pleas.

Whitney Kania distributed and reviewed a legal memo she prepared for Judge Steele. The memo summarized how other states handle the withdrawal of pleas by juveniles. Most states use the state's criminal rules in juvenile plea withdrawal proceedings and give broad discretion to juveniles to withdraw pleas. After sentencing, most states only allow withdrawal of pleas to avoid manifest injustice.

The committee had a lengthy discussion of why and in what circumstances courts take continuing disposition under advisement in juvenile cases. Some issues discussed were:

- Whether a youth must be notified of the worst possible scenario on any particular charge.

- Youth need a date certain when court jurisdiction terminates because it impacts the time for obtaining an expungement.
- Concern that the youth is never given an opportunity to file an appeal.
- Sending a youth to secure care based on continuing disposition.

Judge Lindsley agreed to draft a proposed rule to use as a starting point for discussion at the next meeting. The committee agreed that it would like to create a rule that included both the time frame and criteria for withdrawal of pleas.

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

Brent Bartholomew introduced the issue and explained his concerns about notices which publish the names of children. The question is whether notice by publication for a parent whose parental rights are being terminated is sufficient when the notice contains only the initials of the child(ren) rather than the full name(s).

Some of the discussion points included:

- Is the issue limited to the listing of children’s names in published notices, or should we be concerned about including the names of children in the summons and complaint?
- The mother’s name may need to be listed when publishing notice related to the father.
- Prior research did not find relevant Utah case law on the issue, but some cases were found in other states.
- Is publication a “court document.”
- Could we list “child born on [date],” rather than using the child’s name?

Brent Bartholomew agreed to draft proposed language for the committee to review at its next meeting.

MOTION: Judge Lindsley made a motion that Brent draft proposed language to review.

FRIENDLY AMENDMENT: Alan Sevison proposed that the committee review case law regarding constructive notice via publication.

Ed Peterson seconded the motion. The committee determined that a formal motion was not needed and Judge Lindsley withdrew her motion.

The committee asked for a legal opinion from Tim Shea regarding whether publication by the child’s initials is sufficient in juvenile court. They asked him to consider if the question could be addressed by rule or whether it would require legislation. Carol and Katie agreed to discuss the issue with Tim Shea and report back to Brent Bartholomew, who will then draft proposed language for discussion.

V. Consent by Parent/Guardian/Custodian Prior to Juvenile’s Waiver of Constitutional Rights if Interrogated by Law Enforcement (re: email from JJS representative regarding perceived conflicts between Rules 8, 26, and 27A).

The committee reviewed an email from a JJS representative on the JJS Division's Policy and Procedure Committee, and Paul Wake's email summarizing his understanding of the related rules. JJS is revising its policy regarding requests by law enforcement to question a juvenile in its care. The JJS policy refers to the Utah Rules of Juvenile Procedure and the policy committee expressed confusion over who can consent/waive rights for the juvenile. Discussion followed regarding waivers by parents versus case workers acting as the child's guardian or custodian. It was noted that Rule 8 applies only to a child in detention, while Rule 26 sets out the child's rights in a delinquency proceeding. Carol Verdoia agreed to talk to DHS counsel, Susan Eisenman, regarding her thoughts on this matter. Members also noted that the comments to the three rules may be causing some of the confusion and need to be amended. Carol asked the committee to review the comments as they relate to the three rules for the next meeting.

VI. New Business

Pam Vickery raised the issue of amending the juvenile competency statute. Discussion followed regarding:

- Who is charged with paying for juvenile competency evaluations.
- Whether all juveniles, by nature, are deemed incompetent.
- Is this an issue that can be handled by rule or does it require legislation?
- Lack of resources to pay for evaluations limits the ability to handle the issue by rule instead of statute.

The next meeting was scheduled for Friday, August 14, 2009 from noon until 2:00 p.m.