

URJP 50



Chief Justice Christine Durham
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

MEMORANDUM

To: All Supreme Court Justices
From: Supreme Court's Advisory Committee to the Rules of Juvenile Procedure
Date: August 19, 2003
Re: Approval of Rules of Juvenile Procedure

Having received no comments, the Supreme Court's Advisory Committee to the Rules of Juvenile Procedure recommends these rules for final approval:

* **URJP 7, Warrants** was amended to comply with legislation. This bill was proposed to bring Utah statute into compliance with the Tenth Circuit's *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 exigent circumstances exist. The Committee deleted reference to 78-3a-112 in paragraph (h) because it did not provide a definition of "exigent circumstances" as defined by the new legislation. The Committee also incorporated Judge Oddone's amendment that return of service be executed "within 72 hours unless otherwise ordered by the court." The criminal code requires prompt return of service.

* **URJP 14. Reception of referral; preliminary determination.** Incorporates Code of Judicial Administration Rule 4-901, "Coordination of cases pending in district court and juvenile court" as part of the Reorganization of the Code of Judicial Administration.

* **URJP 15. Preliminary inquiry; informal adjustment without petition** was amended to remove guilt or innocence language. Rule 15(c) is inconsistent with URJP 25 and Utah Code § 78-3a-117 because it mixes a criminal justice term in with juvenile justice terms. Rule 15(c) speaks of "guilt" but the rules and the statute speak of admissions or denials, of the court making an adjudication that the allegations in a petition are established, and of most juvenile delinquency proceedings being civil proceedings rather than criminal proceedings.

change language (f) [**URJP 19. Responsive pleadings and motions.** Incorporates Code of Judicial Administration Rule 4-501, as part of the Reorganization of the Code of Judicial Administration. The committee amended the rule to clarify that answers are required to petitions to terminate parental rights.

URJP 37. Child Protective Orders. This rule was amended to conform to statute, SB 128, Protective Orders (2003).

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

talk to committee
URJP 45. Pre-disposition reports and social studies. Incorporates 4-203, as part of the Reorganization of the Code of Judicial Administration. All parties receive pre-dispositional reports and studies at least two days prior to the dispositional hearing. Such notice allows all parties to be prepared to address relevant disposition information. The intent is not to have clerks provide those copies.

✓ **URJP 46. Disposition hearing.** Incorporates 7-305 as part of the Reorganization of the Code of Judicial Administration.

(5) ,
(6) ✓ **URJP 47. Review and modifications of orders.** Incorporates 7-305, as part of the Reorganization of the Code of Judicial Administration. The section dealing with progress reports was amended to reflect that copies of progress reports "be submitted to the court and all parties by the agency which prepared the intervention plan at least two working days prior to the review hearing date." Ed Peterson moved that the rule be approved as amended. Judge Steele seconded the motion, and it passed unanimously.

URJP 52. Appeals. Recommended by Expedited Child Welfare Appeals Subcommittee, as detailed in Annina Mitchell's memo, attached.

RULE 53. Appearance and Withdrawal of Counsel. Recommended by Expedited Child Welfare Appeals Subcommittee, as detailed in Annina Mitchell's memo, attached.

() **URJP 54. Continuances.** Incorporates 4-105, as part of the Reorganization of the Code of Judicial Administration. The Juvenile Rules Committee also recommended that the Criminal Procedure Committee also incorporate provisions (d) and (e) into its rules.

look at purpose.

1 Rule 7. Warrants for immediate custody of minors; grounds; execution of warrants; search
2 warrants.

3 (a) The issuance and execution of a warrant in delinquency cases is governed by Title 77,
4 Chapter 7, Arrest, and by Section 78-3a-112 and Section 78-3a-113.

5 (b) After a petition is filed, a warrant for immediate custody of a minor may be issued if the
6 court finds from the facts set forth in an affidavit filed with the court or in the petition that there is
7 probable cause to believe that:

8 (1) the minor has committed an act which would be a felony if committed by an adult;

9 (2) the minor has failed to appear after the minor or the parent, guardian or custodian has been
10 legally served with a summons;

11 (3) there is a substantial likelihood the minor will not respond to a summons;

12 (4) the summons cannot be served and the minor's present whereabouts are unknown;

13 (5) the minor seriously endangers others and immediate removal appears to be necessary for
14 the protection of others or the public; or

15 (6) there are reasonable grounds to believe that the minor has run away or escaped from the
16 minor's parent, guardian or custodian.

17 (c) A warrant for immediate custody of a minor may be issued if the court finds from the
18 affidavit that the minor is under the continuing jurisdiction of the court and probable cause to
19 believe that the minor:

20 (1) has left the custody of the person or agency vested by the court with legal custody and
21 guardianship without permission; or

22 (2) has violated a court order.

23 (d) A warrant for immediate custody shall be signed by a court and shall contain or be
24 supported by the following:

25 (1) an order that the minor be taken to the detention or shelter facility designated by the court
26 at the address specified pending a hearing or further order of the court;

27 (2) the name, date of birth and last known address of the minor;

28 (3) the reasons why the minor is being taken into custody;

29 (4) a time limitation on the execution of the warrant;

1 (5) the name and title of the person requesting the warrant unless ordered by the court on its
2 own initiative pursuant to these rules; and

3 (6) the date, county and court location where the warrant is being issued.

4 (7) On verbal request from a probation officer or other authorized individual a warrant for
5 custody may be issued telephonically during non-business hours or under exigent circumstances
6 when it appears necessary for the protection of the community or the juvenile and shall be
7 supported by an affidavit from the requesting authority the next court business day.

8 (e) Search warrants, with an order of immediate custody, may be issued in the manner
9 provided by law.

10 (f) A peace officer who brings a minor to a detention facility pursuant to a court order for
11 immediate custody shall so inform the person in charge of the facility and the existence of such
12 order shall require the minor's immediate admission. A minor so admitted may not be released
13 without court order.

14 (g) This rule shall not limit the statutory authority of a probation officer to take a minor who
15 has violated a condition of probation into custody.

16 (h) The issuance and execution of a warrant in dependency, neglect and abuse cases is
17 governed by Utah Code Ann. 78-3a-106, and Section 78-3a-113.

18 (i) A warrant for immediate custody shall be signed by a court and shall contain or be
19 supported by the following:

20 (1) an order that the minor be taken to the detention or shelter facility or other location
21 designated by the court at the address specified pending a hearing or further order of the court;

22 (2) the name, date of birth and last known address of the minor;

23 (3) the reasons why the minor is being taken into custody;

24 (4) a time limitation on the execution of the warrant;

25 (5) the name and title of the person requesting the warrant unless ordered by the court on its
26 own initiative pursuant to these rules; and

27 (6) the date, county and court location where the warrant is being issued.

28 (7) On verbal request from a state officer, peace officer, or child welfare worker or other
29 authorized individual a warrant for custody may be issued telephonically when it appears

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Comment: (6) A warrant may be issued for the parent, the guardian, the custodian, or the minor if (d) the welfare of the minor requires that he be brought immediately into the custody of the court.

Comment: 78-3a-112 is not a definition of "exigent circumstances"

Deleted: Section 78-3a-112,

Comment: 62A-4a-202.1(1) A state officer, peace officer, or child welfare worker may not, without a warrant or court order issued under Section 78-3a-106, remove a minor from the minor's home or school, or take a minor into protective custody unless:

(a) a parent or guardian consents; or

(b) the officer or worker has, at the time, probable cause to believe that one or more of the following circumstances exist:

(i) there is imminent danger to the physical health or safety of the minor, and the minor's physical health or safety may not be protected without removing the minor from the custody of the minor's parent or guardian;

(ii) there is a substantial risk to the minor of being physically or sexually abused by a parent or guardian, a member of the parent's or guardian's household, or another person known to the parent or guardian;

(iii) the parent or guardian is unwilling to have physical custody of the minor;

(iv) the minor has been abandoned without any provision for the minor's support;

(v) a parent who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the minor;

(vi) a relative or other adult custodian with whom the p[ar]t ... [1]

Deleted: and Section 62A-4a-202.1¶

Deleted: (i) A warrant for immediate custody of a minor may be issued if the court finds from the facts set forth in an affidavit filed with the court that there is probable cause to believe that:¶

(1) A child is being ill-treated by his parent, guardian, or custodian, or ... [2]

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1 necessary for the protection of the juvenile. Telephonic warrants shall be supported by an
2 affidavit from the requesting authority the next court business day.

3 | ~~(j)~~ Search warrants, with an order of immediate custody, may be issued in the manner
4 provided by law.

5 | ~~(k)~~ A peace officer who brings a minor to a detention or shelter facility pursuant to a court
6 order for immediate custody shall so inform the person in charge of the facility and the existence
7 of such order shall require the minor's immediate admission. A minor so admitted may not be
8 released without court order.

9
10 | (l) Return of service on a warrant shall be executed within 72 hours unless otherwise ordered
11 by the Court.

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Comment: Judge Oddone commented that civil removal in child welfare does not require 24 hour return of service, as the Criminal Code does. The shelter hearing allows adverse parties the opportunity to test the legal validity of a removal.

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Rule 14. Reception of referral; preliminary determination.

(a) Delinquency cases.

(1) A law enforcement officer or any other person having knowledge of or reason to believe facts that would bring a minor within the court's jurisdiction for delinquency may refer the minor to the court by submitting a written report and a request for a petition to the clerk, on forms prescribed by the court. An intake officer of the probation department shall make a preliminary determination, with the assistance of the prosecuting attorney if necessary, as to whether the facts reported are legally sufficient to give the court jurisdiction. If the facts appear legally sufficient such officer shall make a preliminary inquiry in accordance with standards prescribed by the court and Rule 15 to determine whether the interests of the public or the minor require further judicial action to be taken. If it is so determined, such officer may file a petition on behalf of the referring officer or person or may refer the matter to the prosecuting attorney for preparation of the petition.

(2) If the intake officer refuses after a demand by the complainant to file a petition, the complainant shall be informed of the reasons for the refusal and advised that he may submit the facts of the alleged delinquency in writing to the prosecuting attorney who shall determine whether a petition shall be filed.

(b) Cases involving neglect, dependency or abuse. Pursuant to Utah Code, Title 62A, Chapter 4a, complaints and reports involving the neglect, abuse or dependency of minors shall be directed to the nearest office of the Division of Child and Family Services for investigation, which agency may, with the assistance of the attorney general, file a petition with the court to initiate judicial proceedings.

(c) Coordination of cases pending in district court and juvenile court.

1 (1) Criminal and delinquency cases; Notice to the court.

2 (A) In a criminal case all parties have a continuing duty to notify the court of a delinquency case
3 pending in juvenile court in which the defendant is a party.

4 (B) In a delinquency case all parties have a continuing duty to notify the court:

5 (i) of a criminal or delinquency case in which the respondent or the respondent's parent is a
6 party; and

7 (ii) of an abuse, neglect or dependency case in which the respondent is the subject of the petition
8 or the respondent's parent is a party.

9 (C) The notice shall be filed with a party's initial pleading or as soon as practicable after
10 becoming aware of the other pending case. The notice shall include the case caption, file number
11 and name of the judge or commissioner in the other case.

Rule 15. Preliminary inquiry; informal adjustment without petition.

(a) If the minor controverts the allegations in the referral or upon request by the minor, the effort at non-judicial adjustment shall terminate.

(b) In attempting to determine whether the interests of the minor or the public require that a petition be filed, the probation intake officer may conduct one or more interviews with the minor and at least one parent, guardian or custodian and may invite the referring party and the victim, if any, to attend or otherwise seek further information from them. Attendance at any such interview shall be voluntary and the probation intake officer may not compel the disclosure of any information or the visiting of any place. A non-judicial adjustment of the case shall not be attempted if the offense or condition alleged in the referral report as a basis for court jurisdiction is denied by the minor.

(c) In any such interview, the minor and the minor's parent, guardian or custodian must be advised that the interview is voluntary, that they have a right to have counsel present to represent the minor, that the minor has the right not to disclose any information, and that any information disclosed that could tend to incriminate the minor cannot be used against the minor in court ~~to prove whether the minor committed the offense alleged in the referral~~ but may be used as part of a dispositional recommendation to the court.

(d) If the probation intake officer concludes on the basis of the preliminary inquiry that non-judicial adjustment is appropriate and is authorized in such cases by the court, such officer may seek agreement with the minor and the parent, guardian or custodian to a proposed non-judicial adjustment. If such agreement is reached and the terms and conditions agreed upon are satisfactorily complied with by the minor and the minor's parent, guardian or custodian, the case shall be closed without petition. Such resolution of the case shall not be deemed an adjudication of jurisdiction of the court and shall not constitute an official record of juvenile court action or disposition. A non-judicial adjustment may be considered by the probation intake officer in a subsequent preliminary inquiry and by the court for purposes of disposition only following adjudication of a subsequent delinquency involving the same minor.

(e) Attempts to affect non-judicial adjustment of a case shall not extend beyond 60 days without authorization by the court, and then for no more than an additional 60 days.

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Comment: Rule 15(c) is inconsistent with URJP 25 and Utah Code § 78-3a-117 because it mixes a criminal justice term in with juvenile justice terms. Rule 15(c) speaks of "guilt" but the rules and the statute speak of admissions or denials, of the court making an adjudication that the allegations in a petition are established, and of most juvenile delinquency proceedings being civil proceedings rather than criminal proceedings

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1 **Rule 19. Responsive pleadings and motions.**

2
3 (a) If the petition is not resolved at pretrial, an answer to abuse, neglect, and dependency
4 petitions, petitions to terminate parental rights, or petitions for a change of custody must be filed
5 ten days after pretrial or twenty-five days after service of the petition whichever comes first.
6 The answer may be made orally at a pretrial hearing but otherwise must comply with Utah R.
7 Juv. P. 34. Default against a party who fails to appear in person or by counsel at pretrial, or who
8 fails to file an answer may be entered pursuant to Utah R. Juv. P. 34.
9

10 (b) Before answering, the respondent may move to dismiss the petition as insufficient to state a
11 claim upon which relief can be granted. The court shall hear all parties and rule on said motion
12 before requiring a party to answer.
13

14 (c) A party may file a written pleading or motion concerning the allegations of the petition
15 before or at the hearing. Such pleading or a true and complete copy thereof shall be made
16 available to the other parties of record. At the request of a party or on the court's own motion, the
17 court shall set the matter for hearing to allow either party to respond to the issues raised in the
18 pleading or motion.
19

20 (d) The court shall entertain and hear motions on any matter properly petitioned before it, and
21 such motion practice shall be conducted according to the pertinent provisions of Utah Rules of
22 Civil Procedure 7 and 12.
23

24 (e) Decisions on motions filed without a request for a hearing or by stipulation of the parties
25 shall be rendered by the court without a hearing unless the court otherwise orders, in which event
26 the clerk shall set a date and time for the hearing and notify the parties of record. Any party
27 requesting a hearing must do so within 5 days of receipt of the motion or a hearing will be
28 deemed waived.
29

30 (f) Motion for expedited hearing.
31

32 (1) A party may request an expedited hearing on any motion or petition filed with the court by
33 filing a verified motion. The verified motion shall state with particularity the issues to be
34 considered at the expedited hearing, the reasons an expedited hearing is necessary, and what
35 efforts, if any, have been made to notify the other party of the request for expedited hearing.
36

37 (2) The court may grant a motion for expedited hearing on an ex parte basis.
38

39 (3) A motion for expedited hearing shall be granted if the facts alleged in the motion
40 demonstrate good cause for an expedited hearing and otherwise appears appropriate.
41

42 (4) If the court grants the motion for expedited hearing, the hearing shall be set within ten days
43 of the order.
44

45 (5) If the motion for an expedited hearing is granted, the moving party shall serve notice of

1 hearing upon all interested parties.
2

3 (g) Requests for review hearings or modification of court custody orders by agents of the
4 Department of Human Services or one of its divisions, following the adjudication of a petition in
5 which the department or division is a party, or by any other person or agency who is a party of
6 record, shall be by written motion. Such motions shall state with particularity the legal basis for
7 the motion and relief sought.
8

9 (h) In matters certified in the juvenile court from the district court, pleadings and motions shall
10 be governed by the Utah Rules of Civil Procedure.
11

12 (i) In delinquency, traffic and adult criminal matters, motion practice shall be governed by the
13 Utah Rules of Criminal Procedure.

1 | **Rule 37. Child Protective orders.**

2
3 (a) Child Protective order proceedings are governed by 78-3h-101 et seq. Protective order
4 proceedings may be commenced as an independent action by filing a petition. Any interested
5 person may file a petition for a protective order on behalf of a child who has been abused,
6 sexually abused, neglected, or abandoned or is in imminent danger of being abused, sexually
7 abused, neglected, or abandoned. The petitioner shall first make a referral to the division. If an
8 immediate ex parte protective order is requested pending a hearing, the petition or an
9 accompanying affidavit shall set forth the facts constituting good cause for issuance of the ex
10 parte order.

11
12 (b) If the petitioner is the agent of a public or private agency, including a law enforcement
13 agency, the petition shall set forth the agent's title and the name of the agency that the petitioner
14 represents.

15
16 (c) Petitions for protective orders by a public agency shall not be accepted by the clerk unless
17 reviewed and approved by the attorney for the public agency, whose office shall represent the
18 petitioner in such cases.

19
20 (d) The petitioner, if a private person or agency, and the respondent may be represented by
21 retained counsel. Counsel may be appointed by the court for an indigent respondent who is a
22 parent, guardian or custodian of the child alleged to be abused or threatened with abuse. If the
23 court finds in the hearing that the allegations of the petition have been established, the court may
24 assess petitioner's costs and attorney fees against the respondent. If the court finds that the
25 petition is without merit, the respondent's costs and attorneys fees may be assessed against
26 petitioner.

27
28 (e) If an ex parte order has been issued, the hearing must be held within 20 days excluding
29 Saturdays, Sundays and legal holidays,
30
31

Deleted: A protective order may also be sought in a petition filed in the interest of an alleged child victim of abuse, threatened abuse, or domestic violence.

Comment: Amended to conform to 78-3h-102(1).

Comment: 1. 801" the court shall schedule a hearing within 20 days after the ex parte determination."

Deleted: unless the respondent stipulates to a longer period of time

1 **Rule 45. Pre-disposition reports and social studies.**

2
3 (a) Unless waived by the court, a pre-disposition report shall be prepared in all proceedings
4 which result in the filing of a petition. The pre-disposition report shall be deemed waived, unless
5 otherwise ordered, in all traffic, fish and game and boating cases, and other bailable offenses.

6 The report shall conform to the requirements in the Code of Judicial Administration.

7
8 (b) In delinquency cases, investigation of the minor and family for the purpose of preparing the
9 pre-disposition report shall not be commenced before the allegations have been proven without
10 the consent of the parties.

11
12 (c) The pre-disposition report shall not be submitted to or considered by the judge before the
13 adjudication of the charges or allegations to which it pertains. If no pre-disposition report has
14 been prepared or completed before the dispositional hearing, or if the judge wishes additional
15 information not contained in the report, the dispositional hearing may be continued for a
16 reasonable time to a date certain.

17
18 (d) For the purpose of determining proper disposition of the child and for the purpose of
19 establishing the fact of neglect or dependency, written reports and other material relating to the
20 child's mental, physical, and social history and condition may be received in evidence and may
21 be considered by the court along with other evidence. The court may require that the person who
22 wrote the report or prepared the material appear as a witness if the person is reasonably
23 available.

24
25 (e) The pre-dispositional report and social studies shall be provided to the minor's counsel, the
26 prosecuting attorney, the guardian ad litem, and counsel for the parent, guardian or custodian of
27 the minor at least two days prior to the dispositional hearing. When the minor or the minor's
28 parent, guardian or custodian are not represented by counsel, the court may limit inspection of
29 reports by the minor or the minor's parent, guardian or custodian if the court determines it is in
30 the best interest of the minor to do so.

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* suggest clarifying.

1 **Rule 46. Disposition hearing.**

2 (a) Disposition hearings may be separate from the hearing at which the petition is proved or may
3 follow immediately after that portion of the hearing at which the allegations of the petition are
4 proved. Disposition hearings shall be conducted in an informal manner to facilitate the
5 opportunity for all participants to be heard.

6 (b) The court may receive any information that is relevant to the disposition of the case including
7 reliable hearsay and opinions. Counsel for the parties are entitled to examine under oath the
8 person who prepared the pre-disposition report if such person is reasonably available. The
9 parties are entitled to compulsory process for the appearance of any person, including character
10 witnesses, to testify at the hearing. A minor's parent or guardian may address the court
11 regarding the disposition of the case, and may address other issues with the permission of the
12 court.

13 (c) After the disposition hearing, the court shall enter an appropriate order. After announcing its
14 order, the court shall advise any party who is present and not represented by counsel of the right
15 to appeal the court's decision.

16 (d) The disposition order made and entered by the court shall be reduced to writing and a copy
17 mailed or furnished to the minor and parent, guardian or custodian, or counsel for the minor and
18 parent, guardian or custodian, if any, the prosecuting attorney, the guardian ad litem, and any
19 agency or person affected by the court's order.

20 (e) Disposition of a petition alleging abuse, neglect, or dependency of a minor shall be conducted
21 also in accordance with Section 78-3a-118, Section 78-3a-310, and Section 78-3a-311.

22
23

1 Rule 47. Reviews and modification of orders.

2 (a) Reviews.

3 (1) At the time of disposition in any case wherein a minor is placed on probation, under
4 protective supervision or in the legal custody of an individual or agency, the court shall also
5 order that the individual supervising the youth or the placement, submit a written report to the
6 court at a future date and appear personally, if directed by the court, for the purpose of a court
7 review of the case. If a date certain is not scheduled at the time of disposition, notice by mail of
8 such review shall be given by the petitioner, if the review is a mandatory review, or by the party
9 requesting the review to the supervising agency not less than 5 days prior to the review. Such
10 notice shall also be given to the guardian ad litem, if one was appointed.

11 (2) No modification of a prior dispositional order shall be made at a report review that would
12 have the effect of further restricting the rights of the parent, guardian, custodian or minor, unless
13 the affected parent, guardian custodian or minor waives the right to a hearing and stipulates in
14 open court or in writing to the modification. If a guardian ad litem is representing the minor, the
15 court shall give a copy of the report to the guardian prior to the report review.

16 (b) Review hearings.

17 (1) Any party in a case subject to review may request a review hearing. The request must be
18 in writing and the request shall set forth the facts believed by the requesting party to warrant a
19 review by the court. If the court determines that the alleged facts, if true, would justify a
20 modification of the dispositional order, a review hearing shall be scheduled with notice,
21 including a copy of the request, to all other parties. The court may schedule a review hearing on
22 its own motion.

23 (2) The court may modify a prior dispositional order in a review hearing upon the stipulation
24 of all parties and upon a finding by the court that such modification would not be contrary to the
25 best interest of the minor and the public.

26 (3) The court shall not modify a prior order in a review hearing that would further restrict the
27 rights of the parent, guardian, custodian or minor if the modification is objected to by any party
28 prior to or in the review hearing. The court shall schedule the case for an evidentiary hearing and
29 require that a motion for modification be filed with notice to all parties in accordance with

30 Section 78-3a-903.

(4) Any individual, agency or institution vested with temporary legal custody or guardianship must make a motion for a review hearing at the expiration of 18 months from the date of the placement order as provided in Utah Code Ann. §78-3a-516.

(5) All cases which require periodic review hearings under Title 78, Chapter 3a shall be scheduled for court review not less than once every six months from the date of disposition.

~~(6) A regular review calendar may be set by the court to facilitate appearances by child placement agencies.~~

C'el.

(c) Disposition reviews. Upon the petition of any agency, individual or institution vested with legal custody or guardianship by prior court order, the court shall conduct a review hearing to determine if the prior order should remain in effect. Notice of the hearing, along with a copy of the petition, must be provided to all parties not less than 5 days prior to the hearing.

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(d) Review of a case involving abuse, neglect, or dependency of a minor shall be conducted also in accordance with Section 78-3a-118, Section 78-3a-312, and Section 78-3a-313.

(e) Intervention plans.

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(1) In all cases where the disposition order places temporary legal custody or guardianship of the youth with an individual, agency, or institution, a proposed intervention plan shall be submitted by the probation department when probation has been ordered; by the agency having custody or guardianship; or by the agency providing protective supervision, within 30 days following the date of disposition. This intervention plan shall be updated whenever a substantial change in conditions or circumstances arise.

(2) In cases where both parents have been permanently deprived of parental rights, the intervention plan shall identify efforts made by the child placing agency to secure the adoption of the youth and subsequent review hearings held until the youth has been adopted or permanently placed.

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(f) Progress reports.

- (1) A written progress report relating to the intervention plan shall be submitted to the court and all parties by the agency, which prepared the intervention plan at least two working days prior to the review hearing date.

(2) The progress report shall contain the following:

- (i) A review of the original conditions, which invoked the court's jurisdiction.
- (ii) Any significant changes in these conditions.
- (iii) The number and types of contacts made with each family member or other person related to the case.
- (iv) A statement of progress toward resolving the problems identified in the intervention plan.
- (v) A report on the family's cooperation in resolving the problems.
- (vi) A recommendation for further order by the court.

(g). In substantiation proceedings, a party may file a motion to set aside a default judgment or dismissal of a substantiation petition for failure to appear within thirty days after the entry of the default judgment or dismissal. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party from a default judgment or dismissal if the court finds good cause for the party's failure to appear. The filing of a motion under this Subdivision does not affect the finality of a judgment or suspend its operation.

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COMMA.

1 RULE 52. APPEALS

2 (a) An appeal may be taken from the juvenile court to the Court of Appeals from a final
3 judgment, order, or decree, except as otherwise provided by law, by filing a Notice of Appeal
4 with the clerk of the juvenile court within 30 days after the entry of the judgment, order, or
5 decree appealed from. In non-delinquency cases, a Notice of Appeal of a party who is not a
6 minor must be signed by each party himself or herself.

7 (b) An appeal from an interlocutory order may be sought by any party by filing a petition for
8 permission to appeal from the interlocutory order with the Court of Appeals within 20 days after
9 the entry of the order of the juvenile court.

10 (c) The Utah Rules of Appellate Procedure shall govern the appeal process, including preparation
11 of the record and transcript.

12 (d) No separate order of the juvenile court directing a county to pay transcript costs is required to
13 file a Request for Transcript in an appeal by an impecunious party who was represented during
14 the juvenile court proceedings by court-appointed counsel.

15 (e) A party claiming entitlement to court-appointed counsel has a continuing duty to inform the
16 court of any material changes that affect indigent status. If at any stage in the trial or appellate
17 proceedings the court makes a finding that a party does not qualify, or no longer qualifies for
18 indigent status, the court may order the party to reimburse the county or municipality for the
19 reasonable value of the services rendered, including all costs.
20

1 RULE 53. APPEARANCE AND WITHDRAWAL OF COUNSEL

2 (a) Appearance. An attorney shall appear in proceedings by filing a written notice of
3 appearance with the court or by appearing personally at a court hearing and advising the
4 court that he is representing a party. Once an attorney has entered an appearance in a
5 proceeding, the attorney shall receive copies of all notices served on the parties.

6 (b) Withdrawal.

7 (1) Retained Counsel. Consistent with the Rules of Professional Conduct, an retained
8 attorney may withdraw as counsel of record ~~in all cases except where~~ unless withdrawal
9 may result in a delay of trial or unless a final appealable order has been entered. In such
10 circumstances, that case, an retained attorney may not withdraw except upon written
11 motion and without the approval of the court.

12 (2) Court-appointed counsel. Court-appointed counsel may not withdraw as counsel of
13 record except upon motion and signed order of the court. If the court grants appointed
14 counsel's motion to withdraw, the court shall promptly appoint new counsel.

15 (3) If a motion to withdraw is filed after entry by the court of a final appealable
16 judgment, order, or decree, the motion may not be granted unless counsel, whether
17 retained or court-appointed, certifies in a written statement: (a) that the represented party
18 in a delinquency proceeding has been advised of the availability of a motion for new trial
19 or a certificate of probable cause and that, if appropriate, the same has been filed; and (b)
20 that the represented party has been advised of the right to appeal and that, if appropriate,
21 a Notice of Appeal and a Request for Transcript have been filed.

22 (2) (4) When an attorney withdraws as counsel of record, written notice of the withdrawal
23 must be served upon the client of the withdrawing attorney by first class mail, to his or
24 her last known address" and upon all other parties not in default and a certificate of
25 service must be filed with the court. If a trial date has been set, the notice of withdrawal
26 served upon the client shall include a notification of the trial date.

27 (3) (5) A guardian ad litem may not withdraw except upon written motion and approval
28 of the court.

29 (4) ~~Representation by court appointed counsel shall terminate upon the entry of a final~~
30 ~~dispositional order without the filing of a formal withdrawal of counsel.~~

31
*if no automatic termination, counsel still on
board S.Ct.
look at w/ questions :. County.
expire 60/90 days.*

1 **Rule 54. Continuances.**

2
3 (a) Pre-trial and motion matters may be continued once upon stipulation of the parties and the
4 guardian ad litem and notice to the clerk of the judge to whom the case is assigned. After the first
5 continuance or once a matter has been set for trial, the matter may be continued only with the
6 approval of the court.

7
8 (b) A second continuance may be requested by stipulation of the parties and the guardian ad
9 litem, by motion in open court or by written motion clearly stating the grounds for the
10 continuance. Notice of the hearing on the motion shall be served upon all counsel according to
11 Rule 18. The motion and notice of hearing must be served at least 5 days prior to the date of the
12 hearing, unless the court has ordered otherwise and a copy of the court's order is served upon
13 counsel with the motion.

14
15 (c) Notwithstanding paragraphs (a) and (b), absent unavoidable circumstances, no continuance
16 shall be granted in any child protection case except upon a showing by the moving party that the
17 continuance will not adversely affect the interest of the child or cause a hearing to be held later
18 than child welfare timelines established by statute.

19
20 (d) In sexual abuse cases involving minor victims, continuances may be granted upon a written
21 finding by the court, or written minute entry which shall include the reason(s) for the
22 continuance.

23
24 (e) If the hearing is an "important criminal justice hearing" or an "important juvenile justice
25 hearing" as defined by § 77-38-2 of which the victim has requested notification, the court should
26 consider the impact of the continuance upon the victim.
27
28

(to get written hx on sex abuse cases?
=Awkwardly phrased.
"for purposes of review."

MEMORANDUM

To: Board of Juvenile Judges
From: Annina Mitchell, Utah Solicitor General
Date: November 5, 2002
Re: Proposed amendments to juvenile court rules

The Expedited Juvenile Court Appeals Committee agreed on October 30, 2002, that the Court Improvement Project should seek adoption of the following changes to the Juvenile Court Rules in order to reduce unnecessary delays in appeals from juvenile court. These changes were preliminarily presented to the Juvenile Court Rules Advisory Committee October 4, 2002, and the members were very receptive to the suggestions. They are awaiting a formal request from the Court Improvement Project.

I.

The Expedited Juvenile Court Appeals Committee has discussed the problems and delays caused in child protection cases when court-appointed trial counsel either withdraw unilaterally after the case is finished in the juvenile court or recklessly rely on new appellate counsel to file timely notices of appeal. At Judge Thorne's suggestion, we have drafted an amendment that requires trial counsel to file the notice of appeal (and any necessary transcript request), as is currently required of all counsel in adult criminal cases and in delinquency cases in juvenile court. Under Utah R. Jud. Admin. 4-604, once judgment has been entered in such cases, no withdrawal of counsel can be permitted by the trial court unless trial counsel (court-appointed or not) certifies that

the defendant has been advised of the right to appeal and if in counsel's opinion such action is appropriate, that a Notice of Appeal, a Request for a Transcript, and in appropriate cases, an Affidavit of Impecuniosity and an Order requiring the appropriate county to bear the costs of preparing the transcript have been filed.

As a result of a recent Utah Supreme Court decision, *Grand County v. Rogers*, 2002 UT 57, this rule and others currently in the Code of Judicial Administration (including Rule 4-506, discussed next) have been sent to the advisory committees for the juvenile court and criminal procedure rules for incorporation there, as appropriate.

There are currently two court rules that address the withdrawal of counsel in civil cases which would apply in child protection cases. The more general rule, Utah R. Jud. Admin. 4-506, requires court approval of withdrawal of counsel only if a motion is pending or the case is ready for trial. By its terms, however, the rule does not apply to court-appointed counsel.

The second is Juvenile Court Rule 53(b), which now provides: “(4) Representation by court appointed counsel shall terminate upon the entry of a final dispositional order without the filing of a formal withdrawal of counsel.” The origins of this rule are unclear, but it appears to have been in effect since long before the number of appeals from juvenile court each year began to burgeon in the 1990s. As it stands, the provision can lead to untimely filings of notices of appeal where the retained or appointed trial counsel—who may not do the appeals—simply drops out of the case unilaterally, without filing a timely notice of appeal, and new counsel is not appointed to handle the appeal until the jurisdictional filing period has expired.

To fix this defect, and to incorporate rule 4-604 into the juvenile court rules, this Committee should recommend to the juvenile rules advisory committee the following amendments:

RULE 53. APPEARANCE AND WITHDRAWAL OF COUNSEL

(a) Appearance. An attorney shall appear in proceedings by filing a written notice of appearance with the court or by appearing personally at a court hearing and advising the court that he is representing a party. Once an attorney has entered an appearance in a proceeding, the attorney shall receive copies of all notices served on the parties.

(b) Withdrawal.

(1) Retained Counsel. Consistent with the Rules of Professional Conduct, an retained attorney may withdraw as counsel of record ~~in all cases except~~ where unless withdrawal may result in a delay of trial or unless a final appealable order has been entered. In such circumstances, ~~that case,~~ an retained attorney may not withdraw except upon written motion and without the approval of the court.

(2) Court-appointed counsel. Court-appointed counsel may not withdraw as counsel of record except upon motion and signed order of the court. If the court grants appointed counsel’s motion to withdraw, the court shall promptly appoint new counsel.

(3) If a motion to withdraw is filed after entry by the court of a final appealable judgment, order, or decree, the motion may not be granted unless counsel, whether retained or court-appointed, certifies in a written statement: (a) that the represented party in a delinquency proceeding has been advised of the availability of a motion for new trial or a certificate of probable cause and that, if appropriate, the same has been filed; and (b) that the represented party has been advised of the right to appeal and that, if appropriate, a Notice of Appeal and a Request for Transcript have been filed.

(2) (4) When an attorney withdraws as counsel of record, written notice of the withdrawal must be served upon the client of the withdrawing attorney and upon all other parties not in default and a certificate of service must be filed with the court. If a trial date has been set, the notice of withdrawal served upon the client shall include a notification of the trial date.

(3) (5) A guardian ad litem may not withdraw except upon written motion and approval of the court. (4) Representation by court appointed counsel shall terminate upon the entry of a final dispositional order without the filing of a formal withdrawal of counsel.

II.

Another source of lengthy delays in child protection appeals, primarily from outside the Third District, is belated motions for court order directing the county to pay transcript costs. Sometimes the motions are promptly filed, but they are not promptly disposed of by the juvenile court. It is not apparent whether such requests for separate court orders are being required by the juvenile court judges or by the terms of contracts between appointed counsel and the county paying the bill. The original order appointing counsel for an impecunious party should constitute "satisfactory arrangement for payment" if attached to a transcript request under Utah R. App. P. 11(e). If lawyers need a separate order to satisfy their contracts with the county, they can file a motion and obtain one, but this should not delay transcript preparation. To clarify to the juvenile court bench and to counsel that no separate order is needed to start the transcription process, this Committee should recommend to the juvenile court rules advisory committee an amendment adding subsection (d) to Rule 52.

In addition, a recommended change to subsection (a) would require the signature of the adult client on a notice of appeal. This is intended to assure that pursuing an appeal is an active, informed choice made by attorneys in conjunction with their clients, not just an automatic post-trial gesture. This requirement was adopted by the Minnesota court system, with a reduction in frivolous appeals. See Ann Keith & Carol Flango, *Expediting Dependency Appeals: Strategies to Reduce Delays* 23 (National Center for State Courts 2002).

RULE 52. APPEALS

(a) An appeal may be taken from the juvenile court to the Court of Appeals from a final judgment, order, or decree, except as otherwise provided by law, by filing a Notice of Appeal with the clerk of the juvenile court within 30 days after the entry of the judgment, order, or decree appealed from. In nondelinquency cases, a Notice of Appeal of a party who is not a minor must be signed by each party himself or herself.

(b) An appeal from an interlocutory order may be sought by any party by filing a petition for permission to appeal from the interlocutory order with the Court of Appeals within 20 days after the entry of the order of the juvenile court.

(c) The Utah Rules of Appellate Procedure shall govern the appeal process, including preparation of the record and transcript.

(d) No separate order of the juvenile court directing a county to pay transcript costs is required to file a Request for Transcript in an appeal by an impecunious party who was represented during the juvenile court proceedings by court-appointed counsel. A party claiming indigency, and entitlement to court-appointed counsel, has a continuing duty to inform the court of any material changes that affect indigent status. If at any stage in the trial or appellate proceedings, the court makes a finding that a party does not qualify, or no longer qualifies for indigent status, the court may order the party to reimburse the county or municipality for the reasonable value of the services rendered, including all costs.



Chief Justice Christine Durham
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

MEMORANDUM

To: All Supreme Court Justices
From: Supreme Court's Advisory Committee to the Rules of Juvenile Procedure
Date: August 20, 2003
Re: Approval of Rules of Juvenile Procedure

These three rules were published for comment as shown in the attachment. Having received no comments, the Supreme Court's Advisory Committee to the Rules of Juvenile Procedure recommends these rules for final approval:

URJP 7, Warrants was amended to comply with legislation. This bill was proposed to bring Utah statute into compliance with the Tenth Circuit's *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 exigent circumstances exist. The Committee made three changes:

1. Deleted reference to 78-3a-112 in paragraph (h) because it did not provide a definition of "exigent circumstances" as defined by the new legislation.
2. Paragraph (i) was stricken because Utah Code Ann. 78-3a-106 (attached), referenced by URJP 7, sets forth the requirements for the warrant.
3. The Committee also incorporated Judge Oddone's amendment that return of service be executed "within 72 hours unless otherwise ordered by the court." The criminal code requires prompt return of service.

These changes required that following paragraphs be renumbered as shown.

URJP 14. Reception of referral; preliminary determination. Incorporates Code of Judicial Administration Rule 4-901, "Coordination of cases pending in district court and juvenile court" (attached) as part of the Reorganization of the Code of Judicial Administration.

URJP 15. Preliminary inquiry; informal adjustment without petition was amended to remove guilt or innocence language. Rule 15(c) is inconsistent with URJP 25 and Utah Code § 78-3a-117 because it mixes a criminal justice term in with juvenile justice terms. Rule 15(c) speaks of "guilt" but the rules and the statute speak of admissions or denials, of the court making an adjudication that the allegations in a petition are established, and of most juvenile delinquency proceedings being civil proceedings rather than criminal proceedings.

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.