

**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
Friday, August 01, 2003**

Present

Alicia Davis
Carol Verdoia
Judge Lindsley
Judge Steele
Narda Beas Nardell
Ed Peterson
Paul Wake
Kristin Brewer
Jeanette Gibbons
Adam Trupp
Jeff Noland
Nelson Abbot

1. Welcome, Approval of Minutes

Carol Verdoia

Judge Lindsley moved to approve the April 2003 minutes. The motion was seconded and passed unanimously.

2. Rules out for Comment (11/2003)

Carol Verdoia

Carol Verdoia reviewed the rules published for comment as detailed in a memo submitted by Alicia Davis. The Supreme Court will meet on August 20 to make final approval. No comments were received to the rules.

3. Limiting Discovery in Substantiation Proceedings

Carol Verdoia

Carol asked what committee intended with the amendments made for the substantiation rules. They were separated from normal proceedings in terms of those being shortened processes. Small claims forms were used as the template, and the procedures were intentionally separated from the normal rules. In Substantiation cases, parties should provide info they plan to rely on. Recent cases have involved a great deal of discovery. Carol asked if those procedures weren't supposed to be streamlined. Beth indicated that we didn't want 4-5 day trials. However, because 63-46b-15 applies, URCP applies. We might be able to amend, but Supreme Court may need to approve limited discovery. Ed asked if this was happening regularly. Kristin indicated that it happened more than once.

Committee discussed that it wasn't beneficial to anyone to draw it out. Is it a judge-specific issue? Legislative intent was to allow parties to have a day in court. May not be popular, seems like it may be a substantive right. Kristin asked if there was a way for the agency to opt out of de novo so as not to have a hearing twice, like a stipulation. If we leave the rules the way they are, it may encourage faster resolution, but does not require it. May be a case management issue to raise with the Board of Juvenile Judges. Exhaustion of remedies may not be required. AGs, Courts, need to consider this issue, and there may not be an immediate solution. If we streamline other findings for abuse or neglect, seems like we could streamline these proceedings as well. We could revisit in October. Judges will put feelers out, so will Carol with AGs.

4. Public Access to Child Welfare Proceedings:
motions to close, access to record of the
proceedings, appeals procedures

Alicia Davis

Alicia Davis presented an outline of the process contemplated with opening child welfare proceedings, and a URJP 50 amendment. With regards to the amendment, Carol indicated that, despite the rule, the COA may decide to stay a proceeding, but the rule will tell the trial judge that they don't have to.

Upon discussion, the following language was proposed for URJP 50: "if a motion is made to deny any person access to any part of a hearing, the parties to the hearing, including the person challenged, may address the issue by proffer, but are not entitled to an evidentiary hearing on the issue."

There was some question about a motion to seal, and where that authority comes from. While the Committee approved it in concept, it may or may not be correct procedurally.

Alicia suggested that the Supreme Court be asked to approve this rule under the emergency rule-making provisions, making it effective during the comment period. Judge Lindsley said that immediate effect was necessary to implement the legislation. Paul Wake agreed.

Judge can make their own findings on their own motion.

Adoptions are not an abuse, neglect or dependency case so no special rule needs to be written to close those proceedings. Adoption proceedings continue to remain to be closed. There was a question of whether to close TPR proceedings. Kristin indicated that the subcommittee intent was to include terminations.

5. "Criminal Matters" vs. "Delinquency Matters"

Paul Wake

Paul said that Heading VII in the rules stated "proceedings related to criminal matters" and it should say "proceedings related to delinquency matters." This change will be

submitted to the publishers per motion made by Ed Peterson, seconded by Narda, and passed unanimously by the Committee.

Paul indicated that CJA changes to Rule 46 may have confused issues. Parents have always addressed the court, but the recent amendment made it appear that they could only do so in traffic cases. Upon discussion, the committee proposed the following amendment to URJP 46: "a parent or guardian may address the court regarding the disposition of the case, and may address other issues with the permission of the court."

Committee discussed URJP 19 and courtesy copies. Paul requested clarification as to whether amendment applied to delinquency or not. Members are asked to inquire as to what practice is statewide before any changes are pursued.

Paul also asked what was meant in 53(b), with the filing of certificates of probable cause. Committee will consider at next meeting.

Nelson asked what reliable hearsay is. Unlike in district court, the juvenile court has no rule-guidance as to reliable hearsay. Nelson suggested that it might be appropriate as URE 1102, to define 1102 within URJP. Kristin indicated that URJP 78-3a-411 broadens the scope of what is acceptable hearsay.

Paul suggested that Rule 46 could be more like Rules 9 and 13 ("hearsay and opinion") rather than remaining "reliable hearsay" and sounding like URE 1102, which is too narrow a definition of hearsay for Rule 46's purposes, and that perhaps Rule 22 and URCP 7(g)(2) should both track Utah Constitution Article I Section 9 and URE 1102 and refer to "reliable hearsay" instead of just "hearsay." In any event, Paul thought it would be a bad idea to incorporate URE 1102's definition into Rule 5 as a general definition of hearsay for juvenile court purposes, because it is too narrow a definition for purposes of discussion of dispositions (or for DT hearing/shelter hearing purposes). Judge Steele suggested that, before we look at the use of terms, we ought to bring all the statutes, and the case that dealt with that rule within juvenile court. Judge Steele stated that it would be interesting to do a chart, and good to settle the issue. Carol will bring the case and Nelson will gather additional information to provide a framework to work from.

6. Request for Form: 78-3a-305 Petition

Kristin Brewer
Judge Steele

Kristin stated that in the protective order subcommittee, a potential requirement was discussed that if you filed for a protective order in juvenile court, you had to file an underlying abuse or neglect petition in juvenile court. No one has drafted an underlying petition. In some ways, it is an open courts issue; the statute says any interested person may file, but not every interested person is capable. Judge Steele indicated that some judges would not support such a form, but he would like to try it. The new protective order statute states a finding of abuse on a protective order petition cannot form the basis for a finding of abuse for child welfare. Even if the parties stipulate for some supervision, a new petition is required. It seems like an advocate or screener could assist

a petitioner in filing the appropriate petition. The new shelter hearing is the protective order hearing. Kristin and Judge Steele will work together to construct a form. Legal Aid would like to see a flowchart. The issue will be put on the next agenda. Paul asked if we should create an appendix of forms at the end. The committee can talk about those being appended. A discussion on protective order issues will be held at the next meeting. If you want legislative amendments, have to come in through August.

7. Child Protective Orders:
Issues coming up since May 2003

Committee

Protective Order discussion to be held at the next meeting. Judge Steele indicated that mostly custody cases. They are not eliminated because you don't have to file abuse or neglect petition. If you want legislative amendments, have to come in through August.

8. Other Business and Adjourn

Carol Verdoia

There being no further business, meeting was adjourned. Next meeting will be held on Friday, October 3, 2003 at 12:00 p.m.