Utah Rules of Juvenile Procedure Committee- Meeting Minutes

August 3, 2012									Executive Dining Room					
METING DATE MEMBERS: Present Absent									OCATION Present Absent Excused					
MEMBERS:	Prese	nt A	bse	nt Ex	cus	ed	MEMBERS:	量為	Pre	sent	Abs	sent	Excus	ed.
Judge Elizabeth Lindsley					\boxtimes		Brent Hall			X				
Judge Larry Steele					\boxtimes		Narda Beas-Nordell				[\boxtimes	
Carol Verdoia]					Alan Sevison			\boxtimes				
Diane Abegglen					\boxtimes		Pam Vickrey						\boxtimes	
Brent Bartholomew		1					Paul Wake			$\overline{\mathbb{Z}}$				
Joan Carroll		1												
Sterling Corbett		1												
David Fureigh		1												
AOC STAFF:	Prese	nt A	bse	nt:	花		GUESTS:		Pr	eser	it A	bsent	3.00	
Katie Gregory											[
Alison Adams-Perlac														
AGENDA TOPIC I. Welcome & Approval of minutes Corrections to the Minutes: None														
Motion: To approve the minutes of May	Ву:	Paul	Wa	ake			Second	d: Joa	in C	arro)li			
4, 2012 as written.														
Approval	×υ	nanii	mo	us			Vote:						-	
							In Favor	Ор	pose	<u>.d</u>				
AGENDA TOPIC														
II. Review of Revisions to Rule 20 [PRESENTER] KATIE GREGORY														
Discussion: Katie Gregory distributed a redlined copy of Rule 20 containing the following revisions proposed at the May 4, 2012 meeting:														
Rule 20. Discovery generally.														
(a) Discovery involving adjudications of delinquency, offenses by adults against minors, and proceedings brought pursuant to Section 78A-6-702 and Section 78A-6-703 shall be conducted in accordance with Utah R. Cr. P. 16, except where limited by these rules, the Code of Judicial Administration, or and the Juvenile Court Act. (b) In substantiation cases, no later than thirty days prior to trial, parties shall provide to each														
other information necessary to support its claims or defenses unless otherwise ordered by the court.														
(c) Rule 26.1 of the Rules of Civil Procedure does not apply in any juvenile proceedings unless there is a showing of good cause and it is ordered by the court.														

(d) (c) In all other cases, dis a showing of good cause an			hese rules unless modified by
After discussion, the commit was present. After a quorus			
Action Item:	Katie Gregory to for	rward Rule 20 to Ti	m Shea for public comment.
Motion: To approve the revisions to Rule 20 as stated above.	By: Brent Hall		Second: David Fureigh
Approval	□ Unanimous	☐ Vote:	Opposed

AGENDA TOPIC

III. Admissibility of Hearsay Evidence in Child	[PRESENTER] CAROL VERDOIA
Protective Order Proceedings	

The committee had a lengthy discussion concerning the applicability of the Utah Rules of Evidence in Child Protective Order proceedings pursuant to UCA 78B-7-201. Some of the key points were as follows:

- Input is needed from the juvenile judges.
- Clarification is needed as to whether the proceeding is adjudicative or dispositional.
 Although ultimately establishing custody may be dispositional, the bulk of the hearing is factual. The ruling may have long term consequences such as determining an individual's right to property, depriving an individual of custody or subjecting them to criminal penalties. Due process concerns may be raised by suspending the application of the Rules of Evidence.
- Given the long term consequences of entering a CPO, should hearsay be allowed? An informal poll of attorneys shows that some courtrooms allow hearsay (or suspend the Rules of Evidence) because of the emergency nature of the situation. The CPO is treated similarly to a shelter hearing.
- Is the same statute being treated differently in District and Juvenile Court regarding whether parties may present evidence? In District Courts where Commissioners are available, the party may get an opportunity to present evidence by objecting to the Commissioners recommendations and requesting a rehearing before the District Judge. This option is not available in Juvenile Court.
- Do we need to clarify the rule or the statute? If the statute is unclear, then a remedy is beyond the scope of the committee.
- Concerns that many litigants are pro se and may not know to object to the proffer or the admission of hearsay.

The Committee acknowledged the need for input from the juvenile judges and discussed possible questions that could be emailed to the judges by Judge Lindsley. Discussion focused on the child protective order hearing that follows the ex parte petition, not on the ex parte decision itself. After a lengthy discussion, Paul Wake made the following motion:

MOTION: To have the committee ask Judge Lindsley to send the following three questions to the juvenile bench by email:

- 1) Do you believe the child protective order statute, 78B-7-201, allows you to rely on hearsay that is not otherwise admissible under the Utah Rules of Evidence?
- 2) Do you require the petitioner to present their case through witnesses in the absence of a stipulation to proffer?
- 3) Is it child protective order hearing adjudicative or dispositional?

Brent Hall seconded the motion and it passed unanimously.

The committee also noted that many parties are pro se and discussed the impact of pro se proceedings on the use of hearsay and proffered testimony. The Committee further agreed that it does not want to mandate the use of the rules of evidence, since the parties may agree to proceed by proffer. Alison Adams-Perlac agreed to research how other states handle evidentiary issues in child protective order cases.

Action Item:	Alison Adam-Perlac will research how other states deal with the issue of evidence in child protective order proceedings. Katie Gregory will email the judges' questions to Judge Lindsley.				
Motion: See three part MOTION above.	By: Paul Wake	Second: Brent Hall			
Approval	× Unanimous	☐ Vote: # In Favor # Opposed			

AGENDA TOPIC

IV. Impact of Juvenile Competency Statute on URJP	[PRESENTER] CAROL VERDOIA
Discussion: The committee began its review of the which was enacted during the 2012 legislative see After a brief discussion, the committee determine agenda.	ssion.

AGENDA TOPIC

V. Old or New Business	[PRESENTER] ALL
No old or new business was raised. The next me	eting was scheduled for November 2, 2012 from
12:00 to 2:00 p.m.	