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August 7, 2006

Chief Justice Christine M. Durham
Utah Supreme Court
450 S. State Street
PO Box 140210
Salt Lake City, UT 84111-0210

Re: Proposed Amendments to URJP 16; URJP 34(e); URJP 37(a)
Comments regarding proposed URJP 60

Dear Chief Justice Durham:

On behalf of the Utah Rules of Juvenile Procedure Committee, I am enclosing the revised version of URJP 16, URJP 34(e) and URJP 37(a), which are now before the Court for your review and final action. The Committee did not receive any comments on the revised rules. Also enclosed are the Committee's comments on proposed Rule 60.

Revisions to URJP 16 were technical renumbering changes to bring the rule into stylistic conformity with other portions of the URJP. URJP 34(e) was revised to resolve an issue regarding the use of juvenile court admissions in subsequent criminal cases in district court. In some cases, parents are reluctant to enter a Rule 34(e) plea regarding abuse of a child in juvenile court because the pleas have been used as an admission in a later criminal case. To alleviate this concern, the last sentence of subparagraph (e) was revised to read "Allegations not specifically denied by a respondent shall be deemed *true*," rather than "deemed admitted."

URJP 37(a) was revised to conform to a statutory change in Section 78-3h-101, *et seq.* regarding grounds for requesting a protective order in juvenile court. The statute was previously revised to eliminate neglect as a ground for obtaining a protective order and to limit the types of abuse that qualify for a protective order. URJP 37(a) was revised accordingly. The Committee eliminated all references in the rule to various types of abuse or neglect and instead, refer the reader to the statute. URJP 37(a) now reads "Any interested person may file a petition for a protective order on behalf of a child as provided by statute." The first sentence of subparagraph 37(a) refers the reader to 78-3h-101, *et seq.*

Chief Justice Durham
August 6, 2006

The Committee discussed proposed URJP 60 at length. The Committee voted to make several changes to the rule. The committee had concerns about paragraph (b), allowing the petitioner to file in any county and providing for no filing fee. Ultimately, the committee was forced to close debate on the issue because it lacked the necessary information. For paragraph (c), the committee voted to modify the provision to simply reflect that, if the petitioner is not represented by private counsel, the court shall consider appointing an attorney. The debate that led to this change centered on questions regarding the appropriateness, or lack thereof, of appointing a GAL.

Regarding paragraph (d), the committee voted to change the terms "judicial days" to "days" and "24 hours" to "1 day." No one was familiar with the term "judicial days," and the committee believed that URJP 4 – computation of time – served the same purpose in its calculation of time by simply using the term "days." The committee felt it was important for the terminology to be consistent, and voted to change the language throughout this rule to reflect the same changes.

Regarding paragraph (f), the committee voted to strike this paragraph in its entirety. The committee believed that this paragraph is clearly in conflict with paragraph (d) which requires a hearing and issuance of an order. The committee questioned whether a certificate issued by a clerk would be sufficient authority for a physician to perform an abortion. Regarding paragraph (h), the committee voted to delete the provision limiting the amount of time a petitioner has to file an appeal.

Please feel free to contact me if you have any questions or concerns regarding the revised rules or the work of the Utah Rules of Juvenile Procedure Committee.

Sincerely,



Carol Verdoia
URJP Committee Chair

cc: Matty Branch
Katie Gregory

1 Rule 16. Transfer of delinquency case for preliminary inquiry.

2 (a) When a minor resides in a county within the state other than the county in which
3 the alleged delinquency occurred, the intake probation officer of the county of
4 occurrence shall make a preliminary determination in accordance with Rule 14 and
5 shall, unless otherwise directed by court order, transfer the referral to the county of
6 residence for a preliminary inquiry to be conducted in accordance with Rule 15. If any of
7 the following circumstances are found to exist at the time of preliminary inquiry, the
8 referral shall be transferred back to the county of occurrence for filing of a petition and
9 further proceedings:

10 ~~(a)(A)-(a)(1)~~ the minor or the minor's parent, guardian or custodian cannot be located
11 or failed to appear after notice for the preliminary inquiry;

12 ~~(a)(B)-(a)(2)~~ the minor or the minor's parent, guardian or custodian indicate that they
13 plan to deny the offense alleged in the referral or request an evidentiary hearing;

14 ~~(a)(C)-(a)(3)~~ there are circumstances in the case which require adjudication in the
15 county of occurrence in the interest of justice; or

16 ~~(a)(D)-(a)(4)~~ there are multiple minors involved who live in different counties.

17 (b) If the referral is not returned to the county of occurrence, a petition may be filed
18 in the county of residence, and the arraignment and all further proceedings may be
19 conducted in that county if the petition is admitted.

1 Rule 34. Pre-trial hearing in non-delinquency cases.

2 (a) Petitions in non-delinquency cases shall be scheduled for an initial pre-trial
3 hearing.

4 (b) The pre-trial hearing shall be scheduled on the nearest court calendar date
5 available in all cases where the subject minor is in temporary shelter care custody in
6 accordance with Section 78-3a-308.

7 (c) In the pre-trial hearing, the court shall advise the parent, guardian or custodian of
8 the minor's rights and of the authority of the court in such cases. In the hearing or in any
9 continuance of the hearing, the parent, guardian or custodian shall answer the petition
10 in open court.

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

14 (e) A respondent may answer by admitting or denying the specific allegations of the
15 petition, or by declining to admit or deny the allegations. Allegations not specifically
16 denied by a respondent shall be deemed ~~admitted~~ true.

17 (f) Except in cases where the petitioner is seeking a permanent deprivation of
18 parental rights, the court may enter the default of any respondent who fails to appear in
19 person or by counsel after having been served with a summons or notice pursuant to
20 Rule 18. Allegations relating to any party in default shall be deemed admitted unless the
21 court, on its own motion, or the motion of any party not in default, shall require evidence
22 in support of the petition. Within the time limits set forth in Utah R. Civ. P. 60(b), upon
23 the written motion of any party in default and a showing of good cause, the court may
24 set aside an entry of default.

25

1 Rule 37. Child Pprotective orders.

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

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

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

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

24 (e) If an ex parte order has been issued, the hearing must be held within 20 days
25 excluding Saturdays, Sundays and legal holidays.