

**SUMMARY 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
September 14, 2007**

Present

Carol Verdoia
Narda Beas-Nordell
Pam Vickery
Paul Wake
Judge Lindsley
Judge Steele
Angela Fannesbeck
Brent Hall
Renee Jimenez

Excused

Joan Carroll
Ed Peterson
David Johnson
Brent Bartholomew
Alan Sevison

Staff

Katie Gregory
Matty Branch
Maile Verbica

I. Minutes and Welcome

Carol Verdoia welcomed all members. The Supreme Court approved the appointment of the following new members to the committee: Angela Fannesbeck, Brent Hall, Renee Jimenez, David Johnson, Joan Carroll (Clerk of Court representative). Carol introduced and welcomed the new members in attendance and reviewed committee procedures.

The committee reviewed the minutes of April 6, 2007, May 4, 2007 and July 13, 2007.

MOTION: Judge Steele made a motion to approve the minutes of April 6, 2007, May 4, 2007 and July 13, 2007. Judge Lindsley seconded the motion and it passed unanimously.

II. Updates: Rule 7-Search Warrants; Minor and Child Definitions and Rule 15-Nonjudicial Adjustments

Katie updated the committee on the status of Rule 7, Rule 7A, Rule 15 and the rules impacted by the change in definitions of "minor" and "child" in statute. Katie reported that the Supreme Court had issued an order in mid August creating Rule 7A under expedited rule making procedures. Rule 7A creates a procedure for issuing pick up orders for youth who run from placement after hours or on a weekend. It went into effect immediately, subject to a comment period.

The Supreme Court approved technical changes to Rule 15 to increase from 60 days to 90 days

the time for a minor to complete a non-judicial adjustment. This conforms the rule with statutory changes made in 2006. The various rule changes related to the definitions of minor and child will be sent out for comment later this month.

III. URJP 52–15 Day Language Regarding Appeals

URJP 52(a) currently reads as follows:

“(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 non-delinquency cases, a Notice of Appeal of a party who is not a minor must be signed by each party himself or herself.” (emphasis added)

The Committee discussed whether Juvenile Rule 52(a) is misleading to practitioners by stating the 30 day time frame, when Rule 52(a) of the Appellate Rules states that the appeal must be filed within 15 days in child welfare proceedings. Additional discussion followed regarding whether the catch all “except as otherwise provided by law” was sufficient to put attorneys on notice that the appeal period might be shorter than 30 days. Some expressed concern that the phrase was too vague or misleading. Others felt that it was not appropriate to change the reference from 30 days to 15 days, because some juvenile proceedings such as delinquency matters are still subject to the 30-day appeal period. In addition, substantiation proceedings are exempted from the expedited child welfare appeals deadlines.

The Committee considered that most attorneys will look at the juvenile rules when filing an appeal, and break downs in communication are probably more likely with private attorneys. One suggestion was to cross reference Appellate Rule 52 because it specifically refers to “child welfare appeals.”

MOTION: Judge Lindsley made a motion to create a new section in URJP 52(b) as follows: “Appeals taken from juvenile court orders related to abuse, neglect, dependency, termination and adoption proceedings must be filed within 15 days of the entry of the order appealed from.” She further motioned to strike the following sentence from the end of Rule 52(a) and move it to the end of the new subparagraph (b): “In non-delinquency cases, a Notice of Appeal of a party who is not a minor must be signed by each party himself or herself.” She further motioned that subsections b, c, d, and e to Rule 52 be re-lettered to c, d, e, and f, respectively.

After discussion the committee agreed that Katie will type up the proposed language and bring it back to the committee for discussion at its next meeting.

SUBSTITUTE MOTION: Judge Lindsley made a substitute motion asking Katie to prepare language for the committee to review and discuss at its next meeting. Narda seconded the motion and it passed unanimously.

IV. URJP 53–Review of Rules for Withdrawal of Counsel in Expedited Child Welfare Appeals

The committee discussed the original reasons that this issue was placed on the list of rules for

review. Carol shared a memo from one of the juvenile court judges related to the release of court appointed counsel. The memo notes that the statute only keeps court appointed counsel engaged for purposes of appeal. The committee discussed whether the rule only applies to court appointed counsel and whether there should be a distinction between private attorneys and court appointed attorneys. Carol discussed the protections given indigent parents because they do not have the resources to hire counsel. So, they are statutorily guaranteed a right to counsel.

The rule does not allow a retained attorney to withdraw without leave of court. While the court cannot require private counsel to go forward on appeal, the rules provide certain critical times in which counsel cannot withdraw (such as the night before trial, etc). Current practice is to file a motion or notice to withdraw on a timely basis. The committee discussed various cases in which problems arose with the withdrawal of either appointed or private counsel.

After discussion, the committee determined that no issues need to be addressed at this time and took no further action.

V. New business

Carol asked the committee to review the remaining list of tabled discussion items on the agenda and add any that member felt had been omitted. Paul suggested adding two issues:

1) Should Rules 29A and 37A be revised after the *Crawford* decision? Paul mentioned that the criminal rules committee was, at one time, discussing revisions to the rules regarding videotaped interviews of victims of sexual abuse and whether *Crawford* affects the rule(s).

2) Should Rule 9 be revised regarding the timing of detention hearings and periodic reviews thereafter? This issue relates to whether 7 day reviews are being conducted as paper only reviews or as face to face reviews. While most believed that the first 7 day review was conducted face to face, the concern was that some districts may perform paper only reviews if the youth remains in detention after 7 days.

The committee agreed that both issues should be added to the list for consideration at a future meeting. Carol reviewed the remainder of the items on the committee's list of tabled matters as follows:

Notice by Publication (Proposal to use child's initials rather than name in a published notice)—Carol suggested that she could first update her office's earlier research on the topic before bringing it back to the committee for discussion.

Emancipation Statute Issues—Judge Lindsley agreed to look at the statute to see if a rule is needed.

Withdrawal of Admissions under the *KM* decision—The Utah Court of Appeals upheld the decision and the case was argued to the Supreme Court last spring. We are currently waiting for a decision.

Rule 57—Change of Judge As a Matter of Right. Judge Steele asked the committee to consider whether this rule should be repealed. The committee suggested that Katie ask Brent Johnson if he knows the history of Rule 57. The rule appears to have been created prior to April of 1992.

VI. Future Meeting Dates

The committee set the next meeting for Friday, November 2, 2007 from noon-2:00 p.m. An additional meeting was set for January 4, 2008 from noon-2:00 p.m. Katie will send out the dates to all members.

The meeting adjourned.

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 non-delinquency cases, a Notice of Appeal of a party who is not a minor must be signed by each party himself or herself.~~

(b) Appeals taken from juvenile court orders related to abuse, neglect, dependency, termination and adoption proceedings must be filed within 15 days of the entry of the order appealed from. In non-delinquency cases, a Notice of Appeal of a party who is not a minor must be signed by each party himself or herself.

~~(b)(c)~~ 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.

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

~~(d)(e)~~ 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.

~~(e)(f)~~ A party claiming 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.