Utah Rules of Juvenile Procedure Committee- Meeting Minutes

October 1, 2010 Noon to 1:40 p.m. Conference Rooms B & C **MEETING DATE** TIME LOCATION Present Absent Excused Present Absent Excused MEMBERS: MEMBERS: Judge Elizabeth Lindsley Narda Beas-Nordell Judge Larry Steele Alan Sevison Carol Verdoia Pam Vickrey Paul Wake Diane Abegglen **Brent Bartholomew** Joan Carroll **Brent Hall** Renee Jimenez Present Absent Present Absent AOC STAFF: GUESTS: Katie Gregory Lauren Brown-Washburn M M U of U Law School Intern Matthew Janzen Rick Smith

AGENDA TOPIC

I. Welcome & Approva	al of minutes	CHAIR: CAROL VE	RDOIA
Corrections to the Min Carol Verdoia introduc Washburn, a law stude	ed guests, Matthew Ja		fice and Lauren Brown-
Motion: To approve the minutes of August 6, 2010	By: Judge Lindsley	Second: Jo	oan Carroll
Approval	Unanimous	☐ Vote: In Favor	Opposed

AGENDA TOPIC

[PRESENTER] CAROL VERDOIA

Discussion: Carol Verdoia reviewed the committee's prior discussions and highlighted questions that have come to light since the last meeting. One issue relates to the availability of the GAL to appear and consent to a juvenile's waiver after hours. For example, would a GAL be available to consent if a fight occurred in a detention center on a weekend and law enforcement wanted to interview a foster youth who was a witness? A second question was whether consent from a GAL must be obtained for youth of any age, or is it limited to youth for whom consent is otherwise required because the youth is under 14 years of age? A third concern is whether the failure to get consent to interview a victim of sexual abuse would prohibit the evidence from being used in court.

Carol will ask the AG's law clerk to review the legislative history of 62A-4a-415. Youth who are 14 and older have the ability to waive their own right, while youth under age 14 are not considered competent to exercise the waiver and are referred to a parent or GAL. The statute may be interpreted in two ways: 1) consent of GAL is required for all children in DCFS custody

regardless of age, or 2) consent is only required for children in DCFS custody under age 14. Rick Smith, Director of the Office of Guardian ad litem, joined the meeting. He interprets 62A-4a-415 to apply only to children under the age of 14 who are in DCFS custody and have a GAL appointed. Others noted that all youth in detention need parental involvement, so the GAL should consent for even those youth in DCFS custody who are over 14, if they are in detention. A discussion followed regarding exclusion of statements obtained in violation of the statute. Additional discussion was held on the effect of commenting on statute within a rule. Two motions were made as documented below. Action Item: Carol Verdoia will have a law clerk in the AG's office prepare a legislative history on the passage of 62A-4a-415. Motion: Motion that the By: Judge Steele Second: Alan Sevison committee not address the issue of 62A-4a-415 in the URJP at this time. Approval: Yes Unanimous ⊠ Vote: In Favor__5_ __ Opposed _ Voting in favor: Alan Sevison, Brent Bartholomew, Judge Steele, Narda Beas-Nordell and Paul Wake. Voting against: Pam Vickrey, Judge Lindsley, Joan Carroll and Brent Motion: To add an By: Brent Bartholomew Second: Brent Hall advisory committee note to URJP 8 that indicates that for an interview of a child in DCFS custody the reader should see 62A-4a-415. Approval: No, Motion Unanimous ✓ Vote:

AGENDA TOPIC

Failed.

III. Issues pertaining to URJP 29A and URCrP	[PRESENTER] CAROL VERDOIA AND MATTHEW JANZEN
15.5	

Judge Steele

In Favor___3__ Opposed _4_

Voting in favor: Brent Bartholomew, Joan Carroll and Brent Hall Voting against: Pam Vickrey, Alan Sevison, Judge Lindsley and

Discussion:

The Criminal Rules committee revised URCrP 15.5 in 2008 to comply with *Crawford*. In May, 2009, the legislature amended statute based on the rule change, but no corresponding revisions were made to the juvenile rules. Matthew Janzen distributed a handout with proposed revisions to URJP 29A, which would mirror the language of URCrP 15.5.

Mr. Janzen discussed each of the proposed changes. He proposed adding the following language to Rule 29A as a condition of admissibility, "(a)(1) the child is available to testify and to be cross-examined at trial, either in person or as provided by law, or the child is unavailable to testify at trial, but the minor had a previous opportunity to cross-examine the child concerning the recorded statement, such that the minor's rights of confrontation are not violated."

Proposed revisions to Rule 29A(a)(4) would eliminate the need to provide a foundational statement from the operator of recording equipment to testify that they know how to operate the tape.

Section 76-5-411 requires pretrial notices to the opposing party so that evidence may be reviewed for reliability and trustworthiness. Mr. Janzen discussed how the rules may differ in juvenile court where the judge is the fact finder, rather than a jury. Having a jury may necessitate additional protections not needed in juvenile court. However, juvenile judges are required to make similar determinations in many situations (motions to suppress, motion in limine to allow expert testimony, etc.).

A separate discussion was held regarding whether Rule 29A should apply to both delinquency and child welfare proceedings. At a minimum Mr. Janzen recommended adding language similar to URCrP 15.5(a)(1) to the juvenile rule and deleting language contained in Rule 29A(a)(8). Mr. Janzen agreed to send proposed language related to whether a pretrial motion should be mandatory or discretionary for discussion at the December 3rd meeting.

Action Item:	Place issue on the agenda for December 3 rd and invite Matthew Janzen to return to discuss the issue further.