SUMMARY MINUTES (DRAFT)
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Administrative Office of the Courts
450 South State Street
Conference Rooms B & C
Salt Lake City, Utah
October 20, 2006

Present	Excused	Staff
Carol Verdoia	Jeff Noland	Katie Gregory
Judge Lindsley	Claudia Page	Rick Schwermer
Alan Sevison	Narda Beas-Nordell	Brent Johnson
Paul Wake	Judge Steele	
Ed Peterson	Kristin Brewer	
Nelson Abbott		
Brent Bartholomew		
Matty Branch		
Pam Vickery		

I.   Welcome and Approval of Minutes

Carol Verdoia called the meeting to order and introduced Rick Schwermer and Brent Johnson from the Administrative Office of the Courts who had been invited to participate in the discussion of URJP 60. No quorum being present at the start of the meeting, the minutes were held for a later date.

II.   URJP 60–Abortion Bypass Procedure Rule--Group Discussion to finalize comments to be submitted to the Supreme Court

Carol reviewed some of the issues still under discussion including: the appointment of counsel, "deemed granted" language and venue. The committee began with a discussion of whether it intended to stand by its earlier decision to remove the "deemed granted" language.

Brent Johnson explained that the deemed granted language has not been required by any court, but failure to include it will be an issue at some point in the future. He clarified that including deemed granted language may be the safest way to proceed, but is not required.

Ed Peterson asked regarding any legislative comment on the rule and Rick Schwermer clarified that he has invited legislative comment on three occasions and has not received a response.

Nelson Abbott raised the issue of confidentially and who must notify the parents. He inquired as to why the hearing must be confidential, only to require the doctor tell the parents after the

hearing.

Brent Johnson explained that the parents do not have standing. The safest route is to consider the wording of the statute which references a confidential proceedings. The United States Supreme Court requires privacy/anonymity of the proceedings, but did not clearly defined the terms in this context. Brent further explained that states either have a provision requiring consent or notice as to the parents. In either case the state must provide a judicial bypass if it requires notice to both parents. While the lower courts have unanimously required a bypass, the Supreme Court has not addressed the question.

Appointment of Counsel issue:

The committee then discussed the difference between the roles of a GAL Attorney and an attorney appointed to represent the minor (best interests versus the minor's wishes). Brent Johnson said Rule 60 was amended to allow each judge to decide on a case by case basis what type of attorney the situation requires.. At an earlier meeting, the URJP committee removed the reference to appointing a GAL and simply allowed the court to appoint an attorney (which could be a GAL). This decision was based on concerns that a GAL may not be appropriate, absent a showing that the minor's best interest are at issue.

It was noted that Utah's juvenile judges are accustom to having a GAL present to making a best interest recommendation, but the court can make a best interest decision without a GAL.

The committee discussed whether or not abortion bypass proceedings are contested proceedings and looked for comparisons with ex parte proceedings. For example, if the proceeding is only between the judge and the minor, then some felt it was inappropriate to impose other burdens on the moving party. The committee also discussed that while the provision for appointment of a GAL is in the rule, the statute does not mention or require the appointment of a GAL. The statute is silent on the appointment of counsel. Brent Johnson noted that while the United States Supreme Court has not required counsel, other case law uniformly finds a right to counsel. Rick Schwermer noted that as a practical matter, we have GALs around the state who are accustom to having hearings within 3 days, rather than trying to get the counties on board to provide counsel.

The committee reviewed its last decision on the issue, which was to word the language as broadly as possible. This would, in effect, give the judge the ability to appoint either type of counsel, and did not act as a presumption that a GAL could be appointed. Carol believes that Kristin is ok with the appointment of a GAL to the extent that it is made in reference to a child that is not determined to be mature.

Timing of notice of appeal issue.

Another issue the committee had considered was the timing of a notice of appeal and the rationale for limiting an appeal to three days. Judge Lindsley asked Brent Johnson why a normal 30 day time for filing could not be used, since the minor would understand the urgency of not delaying. Carol explained that the ACLU was ok with extending the time to appeal as long as the

appeal itself is expedited. Currently the corresponding appellate rule references the three days and would have to be changed as well.

MOTION: Alan Sevison made a motion to end the discussion and Ed Peterson seconded the motion. All were in favor. Carol excused Brent Johnson and Rick Schwermer and thanked them for their assistance in answering the committee's questions.

MOTION: Ed made a motion to send the rule to the Utah Supreme Court without further changes to the revisions designated previously. Carol reviewed the minutes of the August meeting and discussed each previously proposed revision. The following paragraphs received additional discussion:

The committee discussed whether or not to strike "and/or the office of the GAL" at the end of paragraph c). Nelson suggested the committee revisit the appointment of a GAL in paragraph c) so that the judge is aware that appointment of a GAL is an option.

MOTION: Nelson made a motion to add "and may consider appointing a GAL." Alan offered a friendly amendment to the second sentence of paragraph c as follows: "If the court appoints an attorney, it may also appoint a GAL" and then leave the third sentence as is. Ed seconded the motion as amended. Discussion followed. Judge Lindsley noted that this language may leave confusion as to who must be notified. Ed suggested the clerk notify any attorney appointed. Nelson accepted this suggestion as a friendly amendment. All voted in favor, with the exception of Brent Bartholomew, who voted against the motion as amended.

Paragraph (e) refers to "Findings and Orders" and the committee made no previous changes. Paragraph (f). Originally the committee voted to delete paragraph (f) in its entirety. Brent Johnson had cautioned that eventually there may be a judge who fails to act, making the deemed granted provision come into play. The committee did not make additional changes to paragraph (f), agreeing to let the deletion stand as previously voted. Pam ask for the record to reflect her disagreement.

Following the deletion of paragraph (f), the committee noted that the remaining paragraphs (g) and (h) should be renamed as (f) and (g) . No substantive changes were made to the renamed paragraph (f).

The renamed paragraph (g) contains information on appeals.
MOTION: Brent Bartholomew made a motion to incorporate a standard thirty day appeal period. Alan seconded the motion and all voted in favor.

MOTION: Nelson made a motion to amend paragraph (d) so that it reads, "closed to the public" to match the statutory language. Judge Lindsley seconded the motion. Discussion followed. A vote was called with Nelson, Judge Lindsley and Paul voting in favor. All others were opposed and the motion failed.

OTHER BUSINESS:

The committee will continue its discussion of the definitions of minor and child at the next meeting. Judge Lindsley explained to the group that upon further investigation, URJP 33 applies in delinquency matters and the reference therein to "minor" should remain.

The next meeting is scheduled for Friday, December 1, 2006 from 11:30 a.m. to 1:00 p.m. It was noted that the committee needs to vote on the approval of both the minutes at the December meeting.