

**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**

Carol Verdoia  
Judge Lindsley  
Alan Sevison  
Paul Wake  
Ed Peterson  
Nelson Abbott  
Brent Bartholomew  
Matty Branch  
Pam Vickery

**Excused**

Jeff Noland  
Claudia Page  
Narda Beas-Nordell  
Judge Steele  
Kristin Brewer

**Staff**

Katie Gregory  
Rick Schwermer  
Brent Johnson

**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 required privacy/anonymity of the proceedings, but did not clearly defined the terms in this contest. 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.

Attorney 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.. A 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.

Our judges are accustom to having a GAL present to making a best interest recommendation, but court can make a best interest decision without a GAL.

The committee discussed whether or not abortion bypass proceedings are contested proceedings and look 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 leave the language as broad 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 revisions to those revisions designated previously. Carol reviewed the minutes of the August meeting and discussed each previously proposed revision.

**Strike and/or the office of the GAL in End of ©)**

Brent B: Motion to paragraph (d)

Nelson suggested we revisit appointment of GAL in paragraph ©). So that judge knows that GAL appointment is an option. Shall consider appointment of attorney. Nelson sees no constitutional prohibition to appointing an GAL. Pam suggested that it should read to say that

Motion: Nelson to add "and may consider appointing a GAL.a GAL.Alan friendly amendment: (second sentence) "If the court appoints an attorney, the may also appoint a GAL." and then leave in the third sentence as is. Ed seconded.

Discussion: Judge Lindsley feels it leaves confusion as to who must be notified. Ed suggest The clerk notify any attorney appointed. And Nelson accepted as a friendly amendment. Brent voted against.

Brent withdrew his earlier motion related to (d)

Paragraph (e) Findings and Order.

No changes made previously

Paragraph (f) originally we voted to delete the entire paragraph. Brent Johnson said that eventually may be a judge who fails to act. No motion to make additional changes to paragraph (f). Pam would like the record to reflect that she does not agree.

Paragraph (g) now becomes (f) with no substantive changes

Paragraph (h) now becomes (g). Changes to ...

And make recommendation that appellate rule to be a 30 day appeal period for this be at least Brent's motion and Alan's second All 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.

Next meeting 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 minutes at the December meeting.