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
November 2, 2007

Present	**Excused**	**Staff**
Carol Verdoia	Ed Peterson	Katie Gregory
Narda Beas-Nordell	Pam Vickery	
Paul Wake		
Judge Lindsley		
Judge Steele		
Angela Fonnesbeck		
Brent Hall		
Renee Jimenez		
Joan Carroll		
David Johnson		
Brent Bartholomew		
Alan Sevison		

I. Minutes and Welcome

Carol Verdoia welcomed all members. The committee reviewed the minutes of September 14, 2007.

MOTION: Judge Steele made a motion to approve the minutes of September 14, 2007. Judge Lindsley seconded the motion and it passed unanimously.

II. Updates: Rule 7A and Changes Pertaining to Minor and Child Definitions

Katie updated the committee on the status of Rule 7A and the rules impacted by the statutory changes to the definitions of "minor" and "child." Rule 7A creates a procedure for issuing pick up orders for youth who run from placement after hours or on a weekend. No comments were received during the comment period for Rule 7A and it is now final.

The various rule changes related to the definitions of minor and child were sent out for comment and the comment period closes November 21, 2007.

III. URJP 52–15 Day Language Regarding Appeals

Katie Gregory reviewed the discussion of this issue from the September meeting. 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)

At the September meeting, the Committee discussed revised language and asked Katie to prepare a revised version of Rule 52 for review. Katie circulated a document by email with the following proposed revisions:

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.

~~(c)~~(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.

Carol reviewed the revised version with the committee and compared it to Appellate Rule 53(b) (Notice of Appeal) regarding who must sign a notice of appeal. The appellate rule states, "The notice of appeal must be signed by appellant's counsel and appellant, unless the appellant is a minor child or state agency." This language is not mirrored completely in the committee's proposed revisions to URJP 52. State parties may be exempted from signature since they are usually represented by counsel. Judge Lindsley mentioned a concern that some minors who technically would not have to sign, are themselves parents who may have rights to an appeal. This may raise a concern for parents' counsel because minor parents are told (as is the case with other parents) that if they fail to

come in to the attorney's office and sign, the appeal will not be filed. The Notice of Rights and Responsibilities form also tells all parents they have to sign the appeal, which may be incorrect. Carol notes that 78-3a-909 reads similarly to the appellate rule. Carol noted the original intent in creating the expedited appeals process was to encourage parents to be active in the appeal process and to favor those parent who actively participate in seeking return of their child. A statutory amendment may be needed first and Carol will mention the issues to the appropriate individuals within her office.

MOTION: Judge Lindsley moved to amend Rule 52 to the form presented and contained in Katie's handout. Alan seconded the motion. Brief discussion followed regarding whether the committee should be concerned about the issue of signature by a state agency. The corresponding appellate rule contains language which implies that a state agency is not required to sign an appeal. Similar language is not contained in URJP 52.

Alan Sevison made a friendly amendment to Judge Lindsley motion. His amendment would revise the second sentence of Rule 52, subparagraph (b) to read as follows, "In non-delinquency cases, a Notice of Appeal of a party who is not a minor <u>or a state agency</u> must be signed by each party himself or herself." Judge Lindsley accepted Alan's friendly amendment to her motion.

Judge Steele made a second friendly amendment to Rule 52, subparagraph (a) to move "Except as otherwise provided by law," to the beginning of the first sentence and strike out the same language later in the exisitng sentence. After discussion, Judge Lindsley accepted this second friendly amendment. Alan renewed his second of the motion as amended.

A vote was called and all voted in favor of Judge Lindsley's motion as amended.

IV. Rule 29A and Rule 37A–Affect of the Crawford decision

Paul Wake mentioned that the juvenile rule tends to mirror the criminal rule. He believes the Rules of Criminal Procedure committee is still working on amendments to the criminal rules. The committee decided to table this discussion until the January meeting to see if the Criminal Procedure committee had completed its review of the issue.

V. Rule 9 Timing of periodic reviews following placement in detention

Paul Wake summarized the committee's earlier discussion of this issue in approximately 2004. The issue arose due to concerns of the Board of Juvenile Court Judges and JJS. Alicia Davis had prepared a memo outlining four scenarios that were occurring: 1) no review held; 2) no review held because of a stipulation to waive the review; 3) a paper review; or 4)face to face detention review (after the first 7 days). The issue may have arisen because Alicia Davis was asked to bring the issue to the committee in 2004 to consider a rule change to create a consistent practice. Judge Lindsley reviewed detention practices and stated that most judges will hold a face to face review in the first seven days if a child is held in detention. Practice questions tend to arise when the child is held beyond the seven day period In Salt Lake County, for example, the child may be held in detention post- adjudication because they are awaiting placement. It is the responsibility of either DCFS or

JJS to bring the issue to the court's attention if the child is still being held beyond appropriate time periods. A dispositional order is needed to continue to hold the child. A child can remain in detention indefinitely pre-adjudication if reviews are held.

Judge Lindsley offered to contact Dan Maldanado to see if this is still an issue for JJS. Committee members feel it is a regular problem that children are held in detention for longer than 30 days after adjudication because of placement waiting lists. This could ultimately create a civil rights issue. Discussion followed regarding whether the problem lies in rule or practice. Judge Lindsley also agreed to email the juvenile judges around the state to see if this is a recurring problem and bring their comments back to the committee in January.

VI. Old and New Business

Judge Lindsley reported that she had reviewed the emancipation issue. The emancipation statute appears to set forth the procedures and it does not appear an additional rule on the issue is necessary. Discussion followed regarding issues which has arisen in emancipation cases. The committee agreed to take the issue off the tabled list.

Carol addressed the issue regarding the use of the child's initials rather than full name in notice of publication in termination of parental rights actions. She will bring updated research on the question to the January meeting.

The *In re KM* decision is still pending on appeal before the Supreme Court, so the issue will remain tabled until a decision is issued.

Rule 57–Change of Judges as a Matter of Right. Judge Lindsley noted that both the civil and criminal rules of procedure contain similar language. Originally the committee thought the rule was unique to juvenile court. The right may only be exercised one time, and then with agreement of the parties. In light of this information the committee decided to take the issue off the tabled list for now.

Carol mentioned that in the future the committee may need to address the rules impacting the computation of time. Tim Shea alerted Carol and Katie that using the new federal method of computation is being discussed for the State of Utah. The new procedure involves a " days are days approach" rather than the traditional method of excluding weekends and holidays when the time period is less than ten days. This would also involve lengthening shorter time requirements to compensate for the difference. The goal would be to simplify time computation. The committee briefly discussed how such a rule would impact issues unique to juvenile court practice including the statutory requirement that court reports be filed within five days and the 72 hour shelter hearing time frames.

Judge Lindsley informed the committee that the Office of Legislative Research and General Counsel is considering a recodification of Title 78. This may require a number of corresponding rule changes after the 2008 legislative session.

The following items will be included on the agenda for the URJP's January 4, 2008 meeting: 1)

comments received (if any) on the Minor and Child amendments; 2) Update on Rule 9 detention issues; and 3)Use of the child's initials in publication of notices.

VI. Future Meeting Dates

The next meeting is set for Friday, January 4, 2008 from noon-2:00 p.m.
The meeting adjourned.