

**SUMMARY MINUTES (DRAFT)
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Administrative Office of the Courts
450 South State Street
Education Room
Salt Lake City, Utah
November 7, 2008**

Present

Carol Verdoia
Narda Beas-Nordell
Paul Wake
Judge Lindsley
Judge Steele
Angela Fonnesbeck
Brent Hall
Joan Carroll
David Johnson
Alan Sevison
Ed Peterson

Excused

Renee Jimenez
Matty Branch
Pam Vickery
Brent Bartholomew

AOC Staff

Katie Gregory
Whitney Kania

I. Minutes and Welcome

Carol Verdoia welcomed all members and called for approval of the minutes of September 5, 2008.

MOTION: Judge Lindsley made a motion to approve the minutes of September 5, 2008. Judge Steele seconded the motion and it passed unanimously.

Katie introduced Whitney Kania, the Juvenile Court Law Clerk.

II. Update Regarding Rule 9 and Rule 25

Katie Gregory explained that Rules 9 and 25 were sent out for comment and the comment period will close on November 19, 2008. Rule 25 was sent out for comment after the Supreme Court met with members of the Board of Juvenile Court Judges. Judge Higbee, Judge Noonan and Judge Nolan met with the Supreme Court on September 17th regarding the Board's concerns with the revisions to Rule 25 proposed by the URJP. The September 17th discussion focused on Rule 25 (c)(6), which was added regarding the ability to present *Alford* pleas in juvenile court. The Board had not reached a consensus regarding whether the language should remain in the rule. After the meeting, the Supreme Court struck the language in (c)(6) and requested that the revised rule go out for comment. The Supreme Court felt that it was better to leave discretion in the juvenile judges and to allow the case law to develop on the issue. The URJP Committee engaged

in a lengthy discussion of the result of this action, noting that some judges allow *Alford* pleas and others do not. This raised concerns that juveniles may receive different treatment in different courtrooms. To date, Rule 25 has received one comment, submitted by Paul Wake.

III. Rule 25—Additional Issues Regarding Orders for Continuing Disposition and Withdrawal of Pleas

The Committee considered its next steps regarding additional issues raised by Rule 25. The Committee focused on when it is appropriate to allow a juvenile to withdraw a plea and the ramifications of orders for continuing disposition. It was noted that the timing of when juveniles can withdraw pleas is different than in the adult criminal system. This creates problems with trying to incorporate adult criminal statute or rule provisions into the juvenile rules. Juvenile court may in some cases enter orders for continuing disposition, which raise the question of when it is acceptable to withdraw a plea.

The Committee discussed whether it should create a standard for withdrawal of juvenile pleas. Judge Lindsley and Judge Steele asked Whitney Kania to research what other states are doing regarding allowing youth to withdraw pleas. Others noted that it may be a statutory issue rather than a rule issue. Another issue will be how much judicial discretion should be retained and whether it should be stated in the rule itself.

IV. Title 78 Recodification Issues

At its last meeting, the Committee reviewed Katie's draft of revisions to the URJP necessitated by the Recodification of Title 78. Various members were assigned groups of rules to review. The members reported back on their respective rules and the following additional revisions to Katie's original draft were proposed:

Rule 13. Shelter hearings.

(b) The Division of Child and Family Services shall file with the court at or before the shelter hearing a copy of the notice form required by Section ~~78-3a-304~~ 62A-4a-202.2 and the notice required by Section ~~78-3a-306~~ 78A-6-306.

Rule 17. The petition.

(c)(2) Expungements. The petition shall state: the name, age and residence of the minor. The petition shall state the date and nature of each adjudication which the petitioner wishes to expunge. Petitions for expungement must be accompanied by an original criminal history report obtained from the Bureau of Criminal Identification and proof of service upon the County Attorney, or within a prosecution district, the District Attorney for each jurisdiction in which an adjudication occurred prior to being filed with the Clerk of Court. Petitions for expungement must meet all of the criteria of Utah Code Ann. § ~~78-3a-905~~ 78A-6-1105.

Rule 18. Summons; service of process; notice.

(a)(2)(B) Other cases. The summons shall contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It shall

also contain an abbreviated reference to the substance of the petition. In proceedings against an adult pursuant to Section ~~78-3a-801~~ 78A-6-1001, the summons shall conform to the Utah Rules of Criminal Procedure and be issued by the prosecuting attorney.

(b)(4) In any proceeding wherein the parent, guardian or custodian cannot after the exercise of reasonable diligence be located for personal service, the court may proceed to adjudicate the matter subject to the right of the parent, guardian or custodian to a rehearing, except that in certification proceedings brought pursuant to Section ~~78-3a-603~~ 78A-6-703 and in proceedings seeking permanent termination of parental rights, the court shall order service upon the parent, guardian or custodian by publication. Any rehearing shall be requested by written motion.

Rule 30 Advisory Committee Notes

Section ~~78-3a-503~~ 78A-6-603 permits a minor who has been issued a citation to forfeit bail and to thereby waive the filing of a petition and plead guilty.

Rule 39. Contempt of court.

(a) Any parent, guardian, or custodian of a minor who willfully fails or refuses to produce the minor in court in response to a summons or order of the court may be proceeded against for contempt of court pursuant to ~~Title 78, Chapter 32, Title 78B, Chapter 6~~ Contempt. Any person made the subject of a court order who willfully fails or refuses to comply with the order may be proceeded against for contempt of court.

Rule 46. Disposition hearing.

(e) Disposition of a petition alleging abuse, neglect, or dependency of a child shall be conducted also in accordance with Utah Code Section ~~78-3a-118~~ 78A-6-117, ~~Section 78-3a-310~~ 78A-6-311, and Section ~~78-3a-311~~ 78A-6-312.

Rule 47. Reviews and modification of orders.

(b)(3) The court shall not modify a prior order in a review hearing that would further restrict the rights of the parent, guardian, custodian or minor if the modification is objected to by any party prior to or in the review hearing. The court shall schedule the case for an evidentiary hearing and require that a motion for modification be filed with notice to all parties in accordance with Section ~~78-3a-903~~ 78A-6-1103.

~~(b)(4) Any individual, agency or institution vested with temporary legal custody or guardianship must make a motion for a review hearing at the expiration of 18 months from the date of the placement order as provided in Section 78-3a-516.~~

Rule 49. Adoptions.

Adoption procedures in juvenile court shall be conducted in accordance with Utah Code Ann. § ~~78-30-1~~ 78B-6-101 et seq.

Rule 50. Presence at hearings.

(a) In abuse, neglect, and dependency cases the court shall exclude all persons who do not have a direct interest in the proceedings except as provided for by Utah Code Section ~~78-3a-115~~ 78A-6-114, and ~~Section 78-3a-115.1~~. If a motion is made to deny any person access to any part of a

hearing, the parties to the hearing, including the person challenged, may address the issue by proffer, but are not entitled to an evidentiary hearing. A person denied access to a proceeding may petition the Utah Court of Appeals under Utah Rule of Appellate Procedure 19. Proceedings shall not be stayed pending appeal. As provided for by Utah Code Section ~~78-3a-116~~ 78A-6-115, a person may file a petition requesting a copy of a record of the proceedings, setting forth the reasons for the request. Upon a finding of good cause by the Court and payment of a fee, the person shall receive an audio recording of a proceeding. The Court may place under seal information received in an open proceeding.

Rule 51. Violation of probation and contempt by a minor.

(c) Sanctions for contempt shall be as provided by Section ~~78-3a-901~~ 78A-6-1101 and ~~Title 78, Chapter 32, Title 78B Chapter 6, Part 30 Contempt.~~

The committee also discussed Rule 47(b)(4), noting that it references 78-3a-516, a section which has not existed in statute for some years. Overall, it was determined that section (b)(4) was no longer needed and should be deleted from the rules as obsolete. Carol Verdoia agreed to verify this and forward the information to Katie Gregory after the meeting.

MOTION: Judge Steele made a motion to strike Rule 47 (b)(4) in its entirety. Brent Hall seconded the motion and it passed unanimously. It was noted that the remaining subparagraphs of Rule 47(b) should then be renumbered accordingly. The Committee agreed to consider at a later date whether other language should be added in place of section (b)(4).

MOTION: David Johnson made a motion to approve all the recodification revisions contained in Katie Gregory's handout of September 5, 2008, together with the additional revisions discussed today and outlined above. Alan Sevison seconded the motion and it passed unanimously.

Katie Gregory will complete the revisions and forward them to Tim Shea so that they may be forwarded to the publisher.

V. Rule 29A: Affect of the Crawford Decision

Paul Wake prepared proposed revisions to Rule 29A which were circulated prior to the meeting and included in the meeting materials. The Committee reviewed Paul's proposal and a lengthy discussion followed. Paul incorporated language from the Rules of Criminal Procedure which the Utah Rules of Criminal Procedure Committee adopted after reviewing *Crawford*. The Committee discussed whether it should create a version that is more specific to juvenile court. Judge Steele and Paul Wake agreed to consider this and will have email discussions with Carol Verdoia between now and the next URJP meeting.

The next meeting was scheduled for **Friday, January 9, 2009 from noon until 2:00 p.m.** [Note, the meeting was later canceled and rescheduled to February 6, 2009].