Utah Rules of Juvenile Procedure Committee- Meeting Minutes

January 30, 2015				Executive Dining Room		
MEETING DATE				OCATION Present Absent Excused		
MEMBERS:	Present Abse	ent Excused	MEMBERS:	Present	Absent	excused
Carol Verdoia			Maybell Romero			\boxtimes
Judge Elizabeth Lindsley			Alan Sevison			
Judge Mary Manley			Pam Vickrey			\boxtimes
Kristin Fadel			Paul Wake			
David Fureigh			Mikelle Ostler			\boxtimes
Brent Hall						
Debra Jensen						
Narda Beas-Nordell						
AOC STAFF:	Present Excu	ısed	GUESTS:	Presen	t Absent	
Katie Gregory			Chase Ames (Intern-Lokken and Associates.)			
Emily Iwasaki						
AGENDA TOPIC I. Welcome & Profession	onal Practice	Disclosures	CAROL VERDOIA AND KATIE	GREGORY		
	1 . 1		l ssional practice disclosur			1 44
AGENDA TOPIC						
II. Approval of Minutes	5		CAROL VERDOIA			
Corrections to the Minu	ites: None					
Motion: To approve the minutes of October 3, 2014 as written.	By: A	Alan Sevison	Second:	Judge Ma	anley	
Approval	⊠ Un	animous	☐ Vote:			
, ,pp. 0 va.		ariirio do	In Favor	Oppo	sed	
comment. Rule 37B re	Rule 37B rec	garding remo	CAROL VERDOIA te access to court hearir committee consideration	. The fir	st comm	ent
requested that adoption proceedings be added to Rule 37B(b) to allow long distance family to testify without incurring travel expense. The committee discussed whether adoption should be listed separately and whether other types of hearings beyond abuse, neglect and dependency should be listed. Alan Sevison made a motion to add to the following language to the beginning of Rule 39B(a): "Except as provided in Rule 29B or unless prohibited by law," and to strike "abuse, neglect, dependency, substantiation, or termination of parental rights." Judge Manley						

seconded the motion and discussion followed. David Fureigh made a friendly amendment to split the added language to read as follows: "<u>Except as provided in Rule 29B</u>, upon motion of a party and for good cause shown, the court may permit a party or a minor's parent, guardian, or custodian to attend any abuse, neglect, dependency, substantiation, or termination of parental rights-proceeding by contemporaneous transmission from a different location <u>unless otherwise</u> <u>prohibited by law or rule."</u> The motion passed unanimously.

The committee discussed the second comment to the proposed rule, which was submitted by Brent Newton. Mr. Newton's concern was that an opposing party could prevent a witness who could not be physically present from testifying merely by objecting to remote access. This could effectively block testimony by telephone. Brent Hall noted that parents' defense counsel may feel they have a duty to object unless their client agrees otherwise. The committee discussed whether a due process right to confrontation exists regardless of what is stated in Rule 39B. The 6th Amendment right to confrontation only applies in criminal cases, but the 5th Amendment right to due process may be construed to provide a right to examine a witness, even in a civil case.

The committee asked Katie Gregory to contact Emily Iwasaki, the juvenile court law clerk, and request she research the following question: Is there a due process confrontation right in civil proceedings such as child welfare proceedings under either the U. S. or Utah Constitutions?

Kristin Fadel made a motion to table discussion of revisions to Rule 39B(b) until the committee receives the results of Ms. Iwasaki's research. Brent Hall seconded the motion and it passed unanimously.

Motion #1: To amend	By: Alan Sevison	Secoi	nd: Judge Mary Manley
proposed Rule 39B(a) to	,		
read:			
" <i>Except as provided in</i>			
Rule 29B, upon motion of			
a party and for good			
cause shown, the court			
may permit a party or a			
minor's parent, guardian,			
or custodian to attend any			
abuse, neglect,			
dependency,			
substantiation, or			
termination of parental rights proceeding by			
contemporaneous			
transmission from a			
different location <u>unless</u>			
otherwise prohibited by			
law or rule."			
Approval	× Unanimous	□ Vote:	
		# In Favor	# Opposed

Motion #2: To table	By:	Kristin Fadel	Second: Brent Hall
discussion of revisions to			
Rule 39B(b) until the			
committee receives the			
results of Ms. Iwasaki's			
research on whether a due			
process right of			
confrontation exists in civil			
proceedings under either			

the U. S. or Utah Constitutions.			
Approval	× Unanimous	□ Vote:	" 0
		# In Favor	# Opposed

AGENDA TOPIC

IV. Impact of 78A-6-1111 on Appointment of	BRENT HALL
Counsel and Rule 37(d)	

Prior to the 2014 legislative session, Section 78A-6-1111 provided that in all proceeding a parent, guardian or custodian had the right to appointed counsel if indigent. This language was stricken last year and the right to counsel was removed for respondents in private cases. Rule 37(d) which addresses counsel for child protective orders now conflicts with Section 1111(2) to the extent the petitioner is a private party. Rule 37(d) states in part "Counsel may be appointed by the court for an indigent respondent who is a parent, guardian or custodian of the child alleged to be abused or threatened with abuse." The provisions of Section 1111(1)(c) that discuss the appointment of counsel for an indigent parent or quardian also appear to omit child protective order proceedings.

Brent Hall suggested the committee poll the juvenile bench statewide to see if the conflict and the prohibition on appointing counsel in child protective order proceedings is an issue that needs to be addressed. Brent agreed to draft an inquiry to be sent to the bench by Judge Manley.

AGENDA TOPIC

V. Scope of Discovery Issues: URJP 20A(d) and URCP 26(c)	CAROL VERDOIA

Carol Verdoia reviewed the three tiers of discovery contained in the Rules of Civil Procedure and noted that child welfare discovery is generally in the non-monetary, Tier II category. The Interrogatory portion of URJP 20A(d) refers to the URCP 26 tiers and discovery limits. However, other sections of Rule 20A do not refer to the Rule 26 tier structure. After discussing the issue, the committee determined that no further change to Rule 20A is needed.

AGENDA TOPIC

VI. Old or New Business	ALL

Carol Verdoia addressed issues arising out of the application of Rule 7 of the URCP to juvenile court practice and juvenile court eFiling.

Carol Verdoia mentioned a recent issue pertaining to URCP 7(f) regarding whether the attorney preparing an order must hold it for the objection period before submitting it to the court per 7(f), or file the order and have the court staff hold the order for the objection period as is done in some juvenile courts. Katie Gregory also discussed issues which have arisen in the application of URCP 7(d) regarding whether a notice to submit must be filed with motions. In some cases, such as truancy, pro se youth file letters or motions, attendance information, and requests for extension of time to complete hours. Juvenile courts currently vary on whether the Notice to Submit for Decision requirements should be followed in these situations. The committee discussed the need to consider alternatives to applying URCP 7 in juvenile court by creating a separate juvenile rule to address these concerns. Brent Hall suggested that the committee compare how Rules 100-108 of the URCP modify civil practice in cases involving court commissioners as a starting place for a new rule.

The committee agreed to place URCP 7 and the creation of a separate juvenile rule on the next agenda and to consider if additional parties should be present for the discussion.

The next meeting was set for March 27, 2015 from Noon to 2:00 p.m.