

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

March 27, 2015

Noon to 2:00 p.m.

Executive Dining Room

MEETING DATE

TIME

LOCATION

MEMBERS:	Present	Absent	Excused	MEMBERS:	Present	Absent	Excused
Carol Verdoia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Maybell Romero (by phone)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judge Elizabeth Lindsley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Alan Sevison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judge Mary Manley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pam Vickrey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kristin Fadel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Paul Wake	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Fureigh	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mikelle Ostler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brent Hall	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Debra Jensen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Narda Beas-Nordell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AOC STAFF:	Present	Excused		GUESTS:	Present	Absent	
Katie Gregory	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Tim Shea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Emily Iwasaki	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Brody Arishita	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	

AGENDA TOPIC

I. Welcome & Approval of minutes		CHAIR: CAROL VERDOIA	
Corrections to the Minutes: None			
Motion: To approve the minutes of January 30, 2015 as written.	By: Paul Wake	Second: David Fureigh	
Approval	<input checked="" type="checkbox"/> Unanimous	<input type="checkbox"/> Vote:	In Favor _____ Opposed _____

AGENDA TOPIC

II. Application of URCP 7 in Juvenile Court and Discussion of Whether More Specific Juvenile Rules Are Needed for Consistency and to Support eFiling	CAROL VERDOIA AND KATIE GREGORY
<p>The committee briefly discussed the time frames contained in URCP 7 and considered their applicability to the Rules of Juvenile Procedure. The committee also considered how juvenile court eFiling will impact the application of URCP 7(f)(2). Currently some districts follow the procedure outlined in (f)(2) and attorneys do not file proposed orders until after the objection period has run. In other districts, attorneys file proposed orders at the time they are served on other parties and expect the court to hold the order until the objection period has run. At least one district requires the filing of a notice to submit for decision pursuant to URCP 7, but other districts do not require the notice. Consistency of practice is needed to implement eFiling successfully.</p> <p>eFiling will not include email notifications to attorneys when a document is filed. Attorneys will have to review their queue in CARE to see if new documents have been filed (new documents are designated with a red file folder symbol). Tim Shea cautioned the committee that the Rules of Civil Procedure Committee is completing a rewrite of URCP 7, although he did not believe it would directly impact the discussion of the juvenile rules committee. He recommended that more specific juvenile rules be considered for consistency and eFiling. The URJP does not have a</p>	

separate rule regarding the service of documents after the original petition is filed and relies on URCP 5. Currently, URCP 5(b)(1)(A)(i) says that eFiling constitutes service and this will not occur with juvenile eFiling. The URJP will need its own rule of service that excludes the provisions of URCP 5(b)(1)(A)(i). The committee discussed whether the filer should be responsible to enter a "hold" date in CARE when filing an order.

If the URJP Committee elects to write a juvenile equivalent of Rule 7(f), then the committee may need to give additional consideration to the timeframes in URCP 7 and whether they work for juvenile court practice.

The committee requested that Brody Arishita return and report to the committee after additional programming decisions are finalized by the eFiling Steering Committee and the Board of Juvenile Court Judges if needed. Carol Verdoia asked the committee to continue to consider a juvenile rule that carves out practice from the rules of civil procedure and address any concerns at the next meeting.

AGENDA TOPIC

III. Proposed Rule 37B: Remote Access to Court Hearings

CAROL VERDOIA

Katie Gregory distributed a copy of Rule 37B as amended at the last meeting. A question arose during the January meeting regarding the language in paragraph 37B(b) pertaining to waiving confrontation of the witness. The question was whether including this language cause attorneys to refuse to ever waive the right due to malpractice concerns and whether a right to confrontation exists in civil cases. Emily Iwasaki researched the right to confrontation issue for the committee and prepared a memorandum. She found that under both the U.S. Constitution and the Constitution of the State of Utah, a due process right to confront witnesses exists in child welfare proceedings. She could not find any cases that make a distinction between the 6th Amendment right to confrontation as discussed in *Crawford* and the right to confrontation in civil cases.

Discussion turned to the definition of "contemporaneous transmission." Tim Shea reported that the term will be defined in the Code of Judicial Administration to include high quality digital cameras, monitors and sound systems that would enable everyone to see and hear everyone else. If counsel and client are in different locations a private means of communication would be provided between them. The public would also be able to view all parties. In its prior discussions, the committee considered telephonic transmission, which Mr. Shea clarified was not the "contemporaneous transmission" contemplated by the new rules. Telephonic transmission could continue, even without the new rule at the judge's discretion and upon stipulation of the parties. The committee determined that it will need to create a separate rule if it wishes to create a rule for telephonic testimony that is more specific than current practice.

Brent Hall made a motion to revise Rule 37B(b) by adding a period after the word "location" in the third line and deleting the remainder of the sentence. Alan Sevison seconded the motion. After discussion, Mr. Hall considered adding "due process confrontation" between the words appropriate and safeguards in the first line of paragraph (b). Others indicated that the constitutional limitations will always control over a rule of procedure, so the additional language may not be necessary. Mr. Sevison made a friendly amendment to eliminate the "due process confrontation" addition and end the sentence with a period after the word "location." Brent Hall accepted the friendly amendment. Mr. Wake provided a second to the amendment and the motion passed unanimously.

The committee will review Rule 29B and Rule 37B to consider the impact of the rules on telephonic transmission and continue the discussion at its next meeting. Tim Shea will update Katie Gregory on the progress of the other rules committee on their respective versions of the rule.

Action Item:	Reserve time on the next meeting agenda for additional discussion pertaining to telephonic transmission.
Motion: To further revise Rule 37B(b) by adding a period after the word "location" and deleting the remainder of paragraph (b).	By: Brent Hall Second: Alan Sevison/Paul Wake
Approval	× Unanimous Vote: # In Favor _____ # Opposed _____

AGENDA TOPIC

IV. Impact of 78A-6-1111 on Appointment of Counsel and Rule 37(d)	BRENT HALL AND JUDGE MARY MANLEY
<p>Judge Manley reported on her informal survey of juvenile judges regarding the frequency with which they were appointing counsel in child protective order proceedings. She received 20 responses, 17 of which said they do not appoint counsel in child protective order proceedings. Three judges currently appoint counsel, although one of those said he or she will discontinue this practice after reviewing the statute. Based on this report and committee discussion, Brent Hall will draft proposed revisions to Rule 37 and present them at the next meeting. Judge Lindsley also noted that the current version of Rule 37 says counsel "may" be appointed, so the rule does not mandate appointment and the statutory language of section 1111 override the rule.</p>	
Action Item:	Brent Hall to draft proposed revisions to Rule 37 for presentation at the next meeting.

AGENDA TOPIC

V. SB 167—Juvenile Offender Amendments: Impact of Legislation on URJP 22	PAM VICKREY
<p>The issue of SB 167 was held for the next meeting due to time constraints. The appointment of counsel for juvenile offenders portion of SB 167 will go into effect on May 12, 2015.</p>	

AGENDA TOPIC

VI. Old or New Business	[PRESENTER]
<p>There being no old or new business addressed, the next meeting was set for May 1, 2015 from Noon to 2:00 p.m.</p>	