

**SUMMARY MINUTES
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
January 4, 2008**

Present

Carol Verdoia
Narda Beas-Nordell
Paul Wake
Judge Lindsley
Judge Steele
Brent Hall
Renee Jimenez
Joan Carroll
David Johnson
Brent Bartholomew
Alan Sevison
Ed Peterson
Pam Vickery
Matty Branch

Excused

Angela Fonesbeck

Guests:

Ester Chelsea-McCarty

AOC Staff

Katie Gregory
Maile Verbica

I. Welcome and Minutes

Carol Verdoia welcomed all members and introduced Ester Chelsea-McCarty from the Office of Legislative Research and General Counsel. The committee reviewed the minutes of November 2, 2007 and the following motion was made:

MOTION: Paul Wake made a motion to approve the minutes of November 2, 2007. Judge Lindsley seconded the motion and it passed unanimously.

II. Rule 25–Utah Supreme Court’s Decision in *In re K.M.*

On December 4, 2007, the Utah Supreme Court issued its decision in *In re K.M.*, reversing the Utah Court of Appeals. The Committee reviewed the impact of the *In re K.M.* decision on Rule 25 of the Rules of Juvenile Procedure. The Committee agreed not to discuss the facts of the *K.M.* case in detail because some members may be involved in the remand of the proceedings.

In its decision, the Supreme Court concluded that Rule 25 is constitutionally deficient because it does not require that a juvenile court determine whether the juvenile understands the nature and

elements of the crime to which he or she is admitting in a plea. The Committee began with a discussion of whether URCrP 11 should be incorporated into the juvenile rules. Members debated whether incorporating Rule 11 would be problematic based on the status of Rule 11 jurisprudence and whether incorporating Rule 11 language would cause its jurisprudence to be adopted as well.

The Committee analyzed the Supreme Court's directive and debated whether the directive was limited to the nature and elements of the crime or whether the directive addressed broader issues in Rule 11. The Committee also addressed the urgency of revising Rule 25. Ms. Chelsea-McCarty indicated that a legislator is considering legislation related to the unconstitutionality of Rule 25.

MOTION: Judge Steele made a motion that the Committee limit its revisions to those item(s) that the Supreme Court mandated the Committee to address, and continue discussion of related issues at a later date. Alan seconded motion.

FRIENDLY AMENDMENT TO THE MOTION: Judge Lindsley proposed a friendly amendment to Judge Steele's motion. She proposed that the language in URCrP 11(e)(4)(A) be incorporated into URJP 25 as a new section (c)(5), but changing the word "defendant" as used in Rule 11 to "minor." The existing Rule 25 (c)(5) would be renumbered as (c)(6) and the existing (c)(6) would become (c)(7). The new section would then read "The minor understands the nature and elements of the offense to which the plea is entered, that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt, and that the plea is an admission of all those elements."

Judge Steele accepted the friendly amendment and Alan seconded the friendly amendment. A vote was called and the motion carried with all voting in favor, except Paul Wake, who voted against the motion.

Ed addressed an issue in the newly renumbered Rule (c)(6) which reads "that there is a factual basis for the plea." Ed noted that this language tracks the language of URCrP 11(e)(4)(B) which states "there is a factual basis for the plea." The Advisory Committee Note to URCrP 11(e)(4)(B) states that "the rule now explicitly recognizes pleas under *North Carolina v. Alford*, 400 U.S.25, 91 S.Ct. 160 (1970), and sets forth the factual basis for those pleas." Ed contended that all the language of Rule 11(e)(4)(B) should be incorporated into Rule 25 to make *Alford* pleas available in juvenile court.

A discussion followed regarding the impact and nature of *Alford* pleas. In an *Alford* plea, the defendant admits to the charge but they do not give the factual basis. The factual basis is usually given by the state and the defendant agrees to accept the factual basis. This practice has been used in juvenile court prior to the *K.M.* decision, but some juvenile judges will no longer allow *Alford* pleas following the *K.M.* decision.

Committee members noted that some of the language used in Rule 25 should be revised to reflect the nature of juvenile court, such as the use of the term "offense" rather than "crime."

MOTION: Ed Peterson made a motion that URCrP Rule 11(e)(4)(b) be incorporated into Rule 25 as a new section (c)(6) which reads as follows: "that there is a factual basis for the plea. A factual basis is sufficient if it establishes that the charged offense was actually committed by the minor or, if the minor refuses or is otherwise unable to admit culpability, that the prosecution has sufficient evidence to establish a substantial risk that the offense would be found true." (This version of the motion was result of numerous friendly amendments which were accepted by Ed).

Judge Lindsley seconded the motion as amended. Discussion followed regarding whether the motion needs to go further to address *Alford* at this time or whether the issue can be considered at a later time. The Committee reviewed the timing of the rule making cycle and the Supreme Court's ability to issue revisions under expedited rule making procedures. Following the discussion, Ed agreed to table his motion until all issues may be raised and considered together.

MOTION: Ed Peterson (with Judge Lindsley's friendly amendment included) made a motion that Rule 25 (c)(4) be revised to read "that the minor and, if present, the minor's parent, guardian, or custodian have been advised of the consequences which may be imposed after acceptance of the admission of the alleged offence or plea of no contest." The motion was seconded. Discussion followed regarding the order of motions on the table. The Committee returned to Judge Steele's earlier motion to forward revisions to the Supreme Court separately.

MOTION: Judge Steele moved to forward to the Supreme Court the previously agreed amendments that create a new Rule 25 (c)(5) regarding the nature and elements of the offense, but wait to deal with the *Alford* plea issue at a later date. Paul seconded the motion. The motion failed with Pam Vickery, Ed Peterson, Judge Lindsley, Alan Sevison and David Johnson voting against the motion.

MOTION: Judge Lindsley made a motion that the Committee meet on February 1, 2008, and resolve all Rule 25 amendments, (including the *Alford* issues) and forward all revisions to the Supreme Court for its meeting on February 13, 2008. Pam Vickery seconded the motion. A vote was called and the motion failed.

TABLED MOTION RENEWED: The Committee returned to Ed Peterson's tabled motion regarding Rule 25 (c)(4) which provided the following revision: "that the minor and, if present, the minor's parent, guardian, or custodian have been advised of the consequences which may be imposed after acceptance of the admission of the alleged offence or plea of no contest." A vote was called and the motion passed.

TABLED MOTION RENEWED: Ed Peterson renewed his earlier motion proposing that the language of URCrP Rule 11(e)(4)(b) be incorporated into Rule 25 as a new section (c)(6) which reads as follows: "that there is a factual basis for the plea. A factual basis is sufficient if it establishes that the charged offense was actually committed by the minor or, if the minor refuses or is otherwise unable to admit culpability, that the prosecution has sufficient evidence to establish a substantial risk that the offense would be found true." The motion was previously seconded before it was tabled. A vote was called and the motion passed with six voting in favor and four opposed.

Paul Wake suggested three additional issues for future consideration:

1. Should the word "speedy" be placed in front of "trial?"
2. Limited right of appeal language.
3. Prior to *K.M.* the Committee raised an issue regarding whether the URJP Committee should make a rule regarding when a plea can be withdrawn. Others expressed a desire to address this issue at the next meeting.

The Committee agreed that Carol should request that the Supreme Court expedite today's proposed changes to Rule 25.

The following items were proposed for the next meeting:

1. Rule 9 (Judge Lindsley). Discussion to include revisions requested by Judge Oddone related to Rule 9(j).
2. Notice by Publication in Termination of Parental Rights
3. Rule 29A and Rule 37 regarding the *Crawford* decision. Paul Wake noted that Rule of Criminal Procedure Committee currently has a rule out for comment and members should comment if they have concerns.

The Committee set the next meeting for Friday, February 1, 2008 from noon until 2:00 p.m.