

**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
January 5, 2007**

Present

Carol Verdoia
Judge Lindsley
Kristin Brewer
Paul Wake
Nelson Abbott
Alan Sevison
Narda Beas-Nordell
Brent Bartholomew

Excused

Ed Peterson
Judge Steele
Matty Branch
Claudia Page
Jeff Noland
Pam Vickery

Staff

Katie Gregory

Guests

Mark May
Spencer Sevison

I. Minutes and Welcome

Carol Verdoia welcomed all members and introduced Mark May, Division Chief of the Child Protection Division of the Attorney General's Office. Carol mentioned that she had invited Mark to attend due to his participation on the Standing Committee on Children and Family Law's subcommittee on warrant practices in abuse, neglect and dependency cases. The minutes of the meetings of September 8, 2006 and December 1, 2006 were held pending the arrival of a quorum.

II. Search Warrants After *Anderson v. Taylor*

Carol explained that the Supreme Court requested the URJP committee to immediately address the impact of its December, 2006 decision in *Anderson v. Taylor* on the Rule of Juvenile Procedure regarding retaining copies of search warrants and other documents.

Copies of UCA 78-3a -106 were provided. The statute governs both delinquency and dependency matters. It essentially says the Court has the authority to issue search warrants in both types of proceeding (delinquency and abuse/neglect/dependency) and this is done through the same procedures as set forth in the code of Criminal Procedure. Carol then commented on her review of revised Rule 40 of the Rules of Criminal Procedure. A copy of revised Rule 40 was previously distributed to the committee. She noted that the revised Rule 40 appears to have taken some things out of Title 77, the search warrant statute, and those portions are no longer included in statute. Since the juvenile statute refers to the criminal statute and not to the criminal

rules, confusion may result. The juvenile rules refer to civil rules and not to criminal rules in abuse, neglect and dependency proceedings. Concern was expressed that any rule created direct attorneys who practice in the area, rather than direct court clerks on how to perform their job.

It was noted that the Criminal Code in Title 77 refers to “persons to be seized” so a search warrant could apply to warrants for immediate custody to remove a child. Carol believes that URJP added detailed language in Rule 7 prior to the additions to 78-3a-106. Section 106 lumps search warrants and warrants for custody together.

Mark May noted that Rule 40 and Title 77 deal with one issue and the warrants committee was trying to deal with another by making its changes in statute rather than rule. However, some clarifications are needed in Rule 7 of the Rules of Juvenile Procedure. The committee heard suggestions from Mark regarding what should be added to Rule 7, but decide to table these until a later meeting.

Alan expressed concern regarding whether we are opening a door that will extend criminal procedures to civil dependency matters, which have never been considered criminal or quasi-criminal in nature. One option is to create a search warrant for evidence and then use Rule 7 for a separate search warrant for custody of minors. However, every search warrant should be retained in a central file. Paul sees it as a constitutional issue rather than purely a question of civil vs. criminal law.

Mark asked a question about whether we could use telephonic warrants in child welfare and whether amendments to the rules could clarify in this area. For example, line 112 seems to allow an AG to sign a judge’s name to a telephonic warrant. Judge Lindsley noted that telephonic warrants are used at the scene when removal of the child is being considered. The worker may be sitting outside the home to make sure the child is not taken away. Mark notes that practice around the state is not uniform on how we do telephonic warrants in child welfare, especially as to who must contact the judge. Alan suggested clarifying telephonic methods by making reference to the criminal side for evidence matters and then copy this into our rules for juvenile procedure for warrants for custody of a child. One copy of warrant must stay at court from the beginning to maintain the integrity of the process.

Discussion followed to explore whether to incorporate Criminal Rule 40 into the URJP as Rule 61, or to add a juvenile rule as Rule 7A. A procedure is need to seal the warrant prior to its being executed. The warrant is good for 10 days and no one should be allow to come to court and view the warrant’s contents during that time and before it is executed.

The committee then analyzed the changes made to Rule 40 by the Utah Rules of Criminal Procedure Committee. Revised Rule 40 appears to add portions of Title 77, Chapter 23 into the existing Rule 40, and then tacks on to the end some of the Supreme Court’s requirements from *Anderson v. Taylor*. Line 67 of Rule 40 refers to the retention and sealing of warrant, etc.

Mark noted that Rule 7(e)(7) reads “on verbal request from a probation officer or other individual a warrant for custody may be issued telephonically during non business hours or under exigent

circumstances.” The warrant committee tried to make it clear under 7-3a-106 that if you have exigent circumstances you do not need a warrant. Judge Lindsley noted that this provision is usually used when a child has run away after hours. It was suggested to remove the word “exigent.”

MOTION: Judge Lindsley made a motion to delete the word “exigent” in Rule 7(e)(7). Narda seconded the motion and it passed unanimously.

MOTION: Judge Lindsley moved that the committee adopt Rule 40 as a new juvenile Rule 7A with the title “Search Warrants” and that existing Rule 7 be amended as follows:

--In the title, delete the words “search warrant”

--In subsection (a), add a reference at the end to 78-3a-106

--Delete all of revised subsection (b)

--Strike all of subsection (f)

--Add subsection(I) from Rule 40 (lines 67-83) as our Rule 7A and designate the section as subparagraph (I) to Rule 7.

--Adopting Criminal Rule of Procedure 40 as a new Juvenile Rule 7A.

Discussion followed regarding whether to incorporate portions of Rule 40 verbatim or just make a reference to it in Rule 7. The deciding factor was whether the committee wanted to control the language by copying it verbatim or run the risk that it would change by reference any time the Rule of Criminal Procedure committee amended its Rule 40. The committee agreed to use a later meeting to discuss these issues and whether “arrest” language should be included in the custody section.

AMENDED MOTION: Alan offered a friendly amendment to the motion by suggesting that we strike “Title 77, Chapter 7, Arrest” from Rule 7(a). After discussion, he withdraw the amendment and it will be reviewed again at a future meeting. A concern was that Title 77 not be construed to apply to child welfare proceedings.

Alan seconded the original motion.

A vote was called and the motion passed with five voting in favor and Paul and Nelson voting against the motion. Judge Lindsley left the meeting to attend a hearing.

Additional discussion followed regarding fine tuning the preceding motion at a future meeting, but completing some revisions today to met the Supreme Court’s time frame. Concern was expressed that the addition of the new subparagraph (I) to Rule 7 will cause its provisions to apply to the entire rule (search warrants and immediate custody). The committee felt it would be helpful in the next meeting to go through the provisions of Rule 40(I) and determine its impact on child welfare proceedings.

MOTION: Alan made a motion to table Judge Lindsleys’ motion and the vote for future consideration, and not submit the changes to the Supreme Court at this time. Instead, the committee would submit the current Rule 7 with URCP Rule 40(I) added to it as the last subparagraph. Kristin seconded the motion. The committee wanted more time to consider how the rules fit together before sending the entire concept to the Supreme Court. Discussion

followed as to whether the new proposed Rule 7A would apply to delinquency and the collection of evidence, while Rule 7 would apply to taking a child into custody. Several members were not comfortable moving ahead prior to a thorough review of Rule 40.

A motion was made to end discussion. Kristin seconded the motion.

Katie asked for a clarification as to whether Rule 7 should be submitted with the definition of "minor and child" changes made at the last meeting. The committee agreed that the prior changes could be submitted.

The motion passed with four voting in favor and two opposed. (Nelson and Paul voted against).

The next meeting was set for **Friday, February 2, 2007 from noon until 2:00 p.m.**