SUMMARY MINUTES (DRAFT)
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Appellate Conference Room
450 South State Street
Salt Lake City, Utah
February 1, 2008

Present	**Excused**
Carol Verdoia	Angela Fonnesbeck
Brent Bartholomew	Renee Jimenez
Narda Beas-Nordell	Matty Branch
Paul Wake	
Judge Lindsley	
Judge Steele	**AOC Staff**
Brent Hall	Katie Gregory (via telephone)
Joan Carroll	Maile Verbica
David Johnson	Shana Runyan
Alan Sevison	
Ed Peterson	**Guests**
Pam Vickery	Karlee Manzione

I. Welcome and Minutes

Carol Verdoia welcomed all members and indicated that Katie Gregory would be joining the group via telephone. The committee reviewed the minutes of January 4, 2008 and the following motion was made:

MOTION: David Johnson motioned to approve the minutes of January 4, 2008 as written. Ed Peterson seconded the motion and it passed unanimously.

II. Rule 25-Supreme Court's K.M. Decision

Carol summarized her meeting with the Supreme Court Justices on January 9, 2008, regarding proposed changes to Rule 25, Rule 52 and the minor and child revisions. The Court issued an order approving the changes to Rule 52 and the minor and child changes on January 11, to become effective April 1, 2008. The Court also indicated that all changes to Rule 25 should be made at the same time, rather than making the "nature and elements" revisions necessary to comply with *In re K.M.* and then addressing the other revisions at a later date.

Carol elaborated on the revisions to Rule 25 that she discussed with the Supreme Court. The first is the revision to Rule 25(c)(5) regarding the "nature and elements" language and the Court was in agreement with the proposed language. The second revision concerned the introduction

of Alford plea language into Rule 25 at subsection (c)(6). Carol compared subsection (c)(6) to (c)(2), which requires the court to find the plea is voluntarily made. This may create an inconsistency that could give rise to the same constitutional due process concerns raised in K.M. because of developmental competence issues. Specifically the language "refuses or is otherwise unable to admit culpability" raises the question of whether the inability to admit culpability is a developmental issues that also impacts the ability to understand the nature and the elements.

Some judges have not accepted Alford pleas since the issuance of *In re K.M.* It was noted that this will increase the number of cases that go to trial. The committee also discussed the situation in which parents or attorneys place pressure on youth to accept a plea. The parent may not always have the child's best interest at heart, and may even be a victim of the child. It is very difficult to determine at what level children comprehend plea issues versus reacting to pressure by adults. Committee members discussed this as one of the reasons we have juvenile courts and why we give children different consequences than adults.

Judge Steele reviewed language in Alford which states "Some cases have concluded that they should not force any defense on the defendant in a criminal case, particularly when advancement of the defense might end in disaster." In the Alford case, there was arguably enough evidence that the defendant would be convicted of capital homicide, and it was a better deal to go forward with the lesser included. Judge Steele suggested that forcing a defense on a juvenile is equally unfair, but questioned whether a parent or legal counsel should be able to advice child that they have reviewed the plea and it is a better deal.

The committee further noted that we may be creating quasi-criminal proceedings for juveniles. The proceeding is civil in nature, but children are also given some criminal protections. Maile noted that there is no consensus in case law as to whether Alford pleas should be used in juvenile court. Maile reviewed the pros and cons of using Alford pleas in juvenile court cases. Some of the benefits are: 1) avoiding trial; 2) potentially better outcomes by entering plea; 3) saving dignity and avoiding shame and embarrassment; 4) protecting a child's fragile psyche; and 5) protecting privacy. The disadvantages are: 1) pleas may undermine the concept of proof beyond a reasonable doubt; 2) children may feel coercive pressure to enter a plea; and 3) pleas may facilitate psychological denial in cases of sexual abuse.

Discussion followed regarding the pros and cons listed. Some noted that achieving a disposition through a plea results in the youth accessing therapy more quickly. It may be more productive to admit and accept behavior to move forward. Others felt that juvenile court has unique restraints and protections and it is not appropriate to require a child to comprehend at the same level as an adult. Additional questions were raised regarding the ability to accept Alford pleas if a child has a competency issue. The committee discussed at length the question of whether in juvenile court the issue of intent is different than competency. Is this a special issue, or are all juveniles incompetent by nature of their age and development? The issue is very different between children and adults. Adults are judged on their I.Q. or mental health status, but other factors may impact juveniles.

MOTION: Judge Lindsley made the motion to additionally revise the proposed Rule 25(c)(6) to read as follows: "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, the minor understands that the prosecution has sufficient evidence to establish a substantial risk that the offense would be found true." Joan Carroll seconded the motion.

Discussion followed, and members of the committee indicated that the judge must both find that the minor understands and also that there is factual basis for the plea.

FRIENDLY AMENDMENT TO THE MOTION: Alan Sevison proposed a friendly amendment to the motion as follows: "...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, and that the minor understands this." There was no second.

The committee discussed the wording, and indicated that they wanted the phrase to represent that they want the minor to understand that the prosecution has sufficient evidence, and not that the minor understands the items listed in the entire sentence.

SECOND FRIENDLY AMENDMENT: Judge Steele proposed a second friendly amendment to the motion as follows: "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, and that the minor understands that the prosecution has, sufficient evidence to establish a substantial risk that the offense would be found true." Alan Sevison accepted the friendly amendment. [Judge Lindsley having previously left the meeting, Carol agreed to verify these changes with her]. Ed seconded the amended motion. The motion passed with Paul Wake abstaining from voting.

The Supreme Court will meet again on February 13, 2008, and Carol and Katie will present the revised version of Rule 25 to them on that date.

Paul raised a second issue concerning Rule 25(c)(3). He proposed that the language "right to trial" be replaced with "right to a speedy trial with a presumption of innocence." Joan Carroll additionally questioned whether 25(c)(2) should use the term "plea" or "admission" and a discussion followed on this issue.

After discussion, Ed Peterson and Alan Sevison proposed changes to 25(c)(3) and the committee worked on a number of grammatical clarifications. Judge Steele ultimately made the following motion:

MOTION: Judge Steele made a motion to revise existing Rule 25(c)(3) to state, "that the minor and, if present, the minor's parent, guardian, or custodian, have been advised of, and the minor understands and has knowingly waived, the right against compulsory

self-incrimination, the right to a speedy trial, the right to be presumed innocent, the right to confront and cross-examine opposing witnesses, the right to testify and to have process for the attendance of witnesses;" Brent Bartholomew seconded the motion and it passed unanimously.

Paul Wake distributed a handout for discussion regarding when it is appropriate to deny a charge or withdraw a plea. It was noted that there are no provisions in the juvenile rules to withdraw a plea. The committee agreed that this would be an issue for the future, since the *K.M* decision remand is not yet final.

The committee considered items for its next agenda. A question arose regarding the competency of appellate counsel to handle a child welfare appeal. Rule 38B of the appellate rules sets standards for appellate counsel that may not be met when trial counsel handle a child welfare appeal. Although this is an appellate rule, rather than a juvenile rule, the committee could make recommendations to the Utah Rules of Appellate Procedure Committee.

Other pending issues for the committee included Rule 9 issues and notice of publication issues.

Meeting Adjourned

The next URJP Meeting will be held May 2, 2008 from 12:00 noon– 2:00 p.m. in the Executive Dining Room. (Note: meeting later canceled and rescheduled to June 6th).