

**SUMMARY MINUTES (DRAFT)
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Administrative Office of the Courts
450 South State Street
Conference Rooms B & C
Salt Lake City, Utah
February 6, 2009**

Present

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

Excused

Angela Fannesbeck
Matty Branch

AOC Staff

Katie Gregory
Whitney Kania

I. Minutes and Welcome

Carol Verdoia welcomed all members and called for approval of the minutes of November 7, 2008.

MOTION: Ed Peterson made a motion to approve the minutes of November 7, 2008. Judge Steele seconded the motion and it passed unanimously.

**II. Professional Practice Disclosures-New Requirement of Rule 11-101(4)
Supreme Court Rules of Professional Practice (Katie Gregory)**

Katie Gregory explained new language added to Rule 11-101 which states: "At the first meeting of a committee in any calendar year, and at every meeting at which a new member of the committee first attends, each committee member shall briefly disclose the general nature of his or her legal practice." Since the meeting was the first meeting of 2009, committee members made the disclosures contemplated in the rule.

III. Update on Rule 9 and Rule 25 (Katie Gregory)

The comment periods for Rules 9 and 25 have closed. Carol Verdoia will present the rules to the

Supreme Court for final issuance on February 11, 2009. The committee discussed the Supreme Court's decision to remove the proposed Alford plea language from proposed Rule 25. Carol will update the committee if she obtains any additional information during her meeting with the Supreme Court.

IV. Rule 36-Cases Certified from District Court (Carol Verdoia)

Katie distributed copies of Rule 36 and U.C.A. section 78A-6-104 regarding an issue brought to the committee's attention by members of the Office of the Guardian ad litem. Rule 36 needs to be updated because there is no longer a provision that cases can be "certified" from district court. URCP Rule 100 also requires the district and juvenile court judges to confer regarding the transfer of cases. All parties have a continuing duty to notify the district court if there is a pending matter in juvenile court and Rule 100 requires that judges "shall communicate and consult with each other." The court has the option of consolidating the cases per Rule 100, but there is no longer a provision for mandatory certification. A lengthy discussion followed regarding instances in which custody actions are pending in either juvenile or district court and how they are resolved.

Another issue arises when the only court involved is the juvenile court and an order of permanent custody and guardianship is issued. The juvenile court's permanent custody order survives termination of court jurisdiction, even after the case is closed. The only way to reopen this order is to file a modification of the order in juvenile court. Because no district court case was ever opened, the juvenile court is the only court with jurisdiction over the modification. If there is a district court case number, the juvenile court order acts as a modification of the district court order. Future action is handled by the district court in which the case is pending.

Case certification is no longer mandated, although cases may be transferred in certain situations with agreement between the courts. A discussion followed regarding whether section 78A-6-103(1) places exclusive jurisdiction in juvenile court once new allegations of abuse or neglect are filed in juvenile court, despite the pending divorce case in district court. Ultimately Rule 100 should govern the decision on which court hears the issues.

Committee options are to change the title of Rule 36 and fix the references to certification, or delete the rule entirely. A lengthy discussion ensued on current practice and the various ways the rule could be changed. Joan Carroll felt that while clerks transfer very few cases each year, they file a much higher number of juvenile court orders in district court pursuant to Rule 36(b). Joan agreed to take the issue to the Clerk's of Court meeting in March for input on the practice that is occurring in various districts. Members asked Joan to discuss with the clerks whether Rule 36 (b)(1) and (b)(2) are consistent with current practice.

MOTION: Judge Lindsley made a motion for the committee to revisit the Rule 36 issue at its next meeting after members have been able to consider the issue further. Brent Hall seconded the motion and it passed unanimously.

Members discussed individuals in their practice areas who they could contact for additional

input. Judge Lindsley agreed to discuss this with district court judges and commissioners. GAL representatives will also discuss the issue with their district court counterparts. Katie recommended that this group come up with a proposal and then take it to the Standing Committee on Children and Family Law and the District Court Board.

V. Rule 25—Additional Issues Regarding Orders for Continuing Disposition and Withdrawal of Pleas (Carol Verdoia)

Carol Verdoia reviewed prior discussions on Rule 25 issues and summarized the chart created previously by Paul Wake. Some of the additional issues include the timing and manner in which a youth may withdraw a plea. Currently, an admission or a plea of no contest may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily. The committee discussed problems that arise when the court takes further disposition under advisement, which confuses the issue of when withdrawal of a plea is appropriate. In some cases a youth may enter a plea on one charge and receive probation, but the court also orders future disposition under advisement. When the youth is in court on a later review, the court may order the youth to detention for another issue such as not doing well in school. This is different than a violation of a court order, such as a probation order. Concern was also expressed that some clerks put “future disposition under advisement” on the minutes in every case, even if it is not said on the record.

Judge Lindsley discussed whether a time line for withdrawal of pleas can be set for an appropriate amount of time, such as 30 days. This could be accomplished during a colloquy in which youth are informed that if they choose to withdraw their plea, they have 30 days to do so.

Judge Steele will obtain Whitney Kania’s research on what other states have done and distribute it to the committee. He will forward it to Katie to distribute for review before the next meeting. The committee agreed to table the remainder of the discussion to its next meeting.

VI. Rule 29A: Affect of the Crawford Decision

This item was tabled to the next meeting. Paul Wake asked members to look at Judge Steele’s proposal prior to the meeting.

The next meeting was scheduled for Friday, April 17, 2009 from noon until 2:00 p.m.