

MINUTES
SUPREME COURT=S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Administrative Office of the Courts
450 South State Street, N31
Salt Lake City, Utah 84114-0241
February 7, 2003, 12 p.m.

Present

Carol Verdoia, Chair
Judge Lindsey
Ed Peterson
Judge Steele
Paul Wake
Pamela Vickrey
Jeanette Gibbons
Kristin Brewer
Shirl Don LeBaron

Staff

Alicia Davis

Welcome

Carol Verdoia extended a welcome to all present. An ad has been placed in the Bar Journal to solicit new members to the committee, and the Supreme Court is currently reviewing five resumes. Judge Lindsey moved to approve the minutes as drafted. The motion was seconded and passed unanimously.

I. 2003 Legislation

A. Public Access to Juvenile Courts, HB 222 (Rep. Curtis)(2003).

Kristin Brewer presented information on proposed legislation to open proceedings. Under the proposal, proceedings would be presumed open, and the burden to close would be on the closing party. The standard to close would be contrary to BIC, and whether closure would impair justice. The Judicial Council will choose the sites. Courts want to study the impact on children, but no study funding or specifications have been provided. Kristin asked, assuming it passes what rules need to be changed? She indicated that records were not open. Persons not present could access transcripts, but not psych evals, etc. Ed asked if they wouldn't be able to access exhibits to the record, as one can in district court.

Kristin stated that procedure in the statute is fairly specific, but it is important to decide how kids testify when they do testify. The current rule allows for testimony by closed circuit equipment. Perhaps the rule could (as in district court) for the court to close a portion of hearing. Judge

Lindsey said that the current provisions appear to be sufficient, and also that the ability to close a proceeding if it will impair fact finding allows a judge to ban media or obstreperous audience members. If parents won't admit a petition because a hearing was open, that would be impairment of the fact-finding process, and the court could remove parties for that. It will likely be family members who seek to enter proceedings, but other interested groups will also access hearings, said Kristin.

Kristin wondered if specific language should be drafted to prevent the order of closure being delayed, thus causing delay in the case. Should language be incorporated that it is not an appealable order? Carol indicated that it would probably function like an interlocutory order. After consideration, the Committee decided no rules needed to be amended in response to the legislation.

Carol indicated that this was not our last chance to amend rules, and the committee may have to meet before 3/25 to consider other amendments in response to legislation.

B. Child Protective Orders, SB 128 (2003)

Kristin Brewer presented information on proposed legislation. This bill originally came out of the Standing Committee of Children and Family Law from a concern about people being turned away from both courts. The bill clarifies jurisdictional confusion over certain CPOs. If person is seeking a protective order solely on behalf of child, one goes to juvenile court. Where a mother seeks a po for herself, but checks the box to protect child as well, that goes to district court. Lindsey sees this as becoming like before, when parents would abuse system to prevent weekend visitation. The difference according to Mrs. Brewer is that now court communication is mandatory. Hopefully, this will prevent lack of communication with custody, visitation, and support issues.

Judge Steele stated that the legislation requires a referral to be filed with DCFS with the filing of a protective order, and wondered if other DCFS services would be available. DCFS wants to avoid cursory investigations. Ed asked how they would document making a referral.

Kristin pointed out that under the statute, and under URJP 37, the Respondent may get appointed counsel, but petitioner would not, an issue that the committee recognized as problematic.

Currently the bill has passed the Senate, but several groups disagree with the legislation, and may oppose it.

Carol pointed out that the statute addresses service, income withholding, and the fact that orders are entered on the statewide dv network. After consideration, the committee decided that statute did not conflict with URJP 37, so no rule changes were needed.

II. Update on CJA Reorganization

Carol Verdoia

Carol indicated that the Ad Hoc Committee on the Reorganization of the Code of Judicial Administration would be meeting mid February to finalize the changes recommended by the committee.

III. Other Issues

Judge Gayle Vogel of the Iowa Court of Appeals will be speaking at the Law and Justice Center on 3/7 from 1-12. Iowa has reduced their child welfare appellate time down to 45 days for most cases. The Iowa form for withdrawal of counsel may be the basis for a Utah form; Pam will address this at the next meeting. All committee members are invited to attend, and to RSVP to amberh@email.utcourts.gov.

Judge Oddone recommends amendments to warrants rules. The Utah Rules of Criminal Procedure requires an officer to issue a sworn report to court within 24 hours on a search warrant. He is concerned that someone could make technical argument that a DCFS had not returned to the court within 24 hours and testified that the child was removed. Judge Lindsey stated that a rule amendment need not require that report be executed within 24 hours. Ms. Verdoia opined that a rule amendment was a good idea, and permissible because if the statute does not govern, nor is it contrary. She stated that currently, legislation is proposed to eliminate 78-3a-106, the warrants provision. If legislation passes, district court will do all search warrants. The Committee will stay tuned to legislative adjustments, and consider amendments at the next meeting.

In a memo circulated to the committee, Paul Wake revisited the issue of Rule 15(c) language, and removing the word "guilt" from URJP. Shirl moved that we adopt language proposed by Paul. Kristin seconded the motion and it passed with one opposing vote by Judge Lindsey.

Kristin Brewer raised the issue of Kids in custody of DCFS and not getting the benefit of a diversion. It was recommended that Kristin speak to Sylvester Daniels, in charge of probation and diversions.

IV. Adjourn

Carol Verdoia

The next meeting will be Monday, March 10 from 12-2. There being no further business, the meeting adjourned.