SUMMARY MINUTES (DRAFT)
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Administrative Office of the Courts
450 South State Street
Conference Room B & C
Salt Lake City, Utah
June 3, 2005

Present	Excused	Staff
Carol Verdoia	Kristin Brewer	Katie Gregory
Judge Lindsley	Nelson Abbott	
Judge Steele	Marty Olsen	
Paul Wake	Matty Branch	
Pam Vickery	Brent Bartholomew	
Jeanette Gibbons		
Adam Trupp		
Narda Beas Nordell		
Jeff Noland		
Ed Peterson		
Alan Sevison		

I. Minutes and Welcome.

Carol called the meeting to order. Narda moved to approve the minutes of the 3/04/05 meeting and Judge Lindsley seconded the motion. The Motion passed unanimously.

II. Update on Fax Filing Rule.

Katie updated the committee on the fax filing rule and stated that due to the concerns of URJP and other committees, Tim Shea is not going to pursue a fax filing rule at this time. It may be raised again at a later date.

III. Updates on Rules out for Comment.

Katie also updated the committee on URJP 29A and 37A, which are out for comment until June 6, 2005. No comments have been received to date. Both rules had the advisory committee notes removed at the request of URJP due to unresolved issues or the affect of the *Crawford* decision. Both rules were also renumbered to conform to other portions of the rules, a non-substantive change. Katie also mentioned that non-substantive changes were made to URJP 8 regarding changing the reference from Youth Corrections to Juvenile Justice Services.

IV. Future Meeting Dates.

The URJP committee set the following future meeting dates, with all meeting to take place from noon until 2:00 p.m. unless otherwise noticed:
Aug 5, 2005
September 30, 2005 and
November 4, 2005

The August 5th meeting will depend on whether the URJP has sufficient agenda items to require a meeting. Katie will email out a request for agenda items in advance of the meeting and will notify members on whether the meeting will go forward. Katie will also send an email to members containing all three meeting dates, so members may reserve time in their schedules.

V. Pre-trial Hearings in Non-delinquency Cases-Concerns regarding URJP 34(e).

Judge Van Dyke had previously requested that the language in Rule 34(e) be changed from "shall" to "may". Since the last meeting, Judge Steele had communicated with Judge Van Dyke by email to explore Judge Van Dyke's concerns. All members reviewed Judge Van Dyke's email response regarding his concerns with Rule 34(e) and a lengthy discussion followed regarding his concerns. Carol compared the issue to using a nolo plea equivalent in a civil matter and explained a case that was appealed in which the Utah Supreme Court ruled that Utah had jurisdiction to terminate parental rights of parents who did not reside in Utah. In that case, the parents had entered nolo pleas in another state regarding sexual abuse of the child. Utah's rules of evidence regarding nolo pleas prevent the use of the plea to later prove that the parents engaged in the conduct. None of the committee members had seen this concept relied upon in the reverse, where the plea in a child welfare case was then used in a later criminal case.

Judge Van Dyke's second concern was that defendants who successfully defended in a criminal case claim they were coerced into entering a 34e plea (or did not understand/had poor counsel, etc) and want to withdraw the pleas and go to trial on the issues.

The third concern relates to parties who neither admitted or denied the charges, but begin receiving services—only to deny the charges in therapy. Judge Steele has experienced this problem with parties who deny allegations in therapy and get no where with their services. The practical problem is that certain personality types uses the fact that they were not "found guilty" to rationalization in therapy that they were not responsible or did not engage in certain conduct. Alan suggested that this is actually a flaw in person and not in the law.

The committee asked two questions: "What would happen if we changed shall to may? Why have the Rule?" The following comments and concerns were raised:

1) If changed to "may", the parties would still have to go to trial.

2) The judge could follow the "may" language if the judge does not believe that the action really occurred.

3) It is currently helpful to deem the admission so they come within jurisdiction of court and will

get services.

> Many parties want to go forward, get the services they need, while avoiding setting themselves up for criminal action. If they know if they admit or go to trial and are put on witness stand, then their actions/admissions can be used against them. Currently there is an incentive to negotiate aggressively if both parties think their agreement will stand and become part of the order. In this sense, Rule 34e is a negotiating tools, that loses its leverage if it becomes "may." But if you feel that the plea can be used in criminal trial, then even "may" will be a problem.

4) Judge Van Dyke mentions that admissions in child welfare cases are rarely used in a criminal matter because the burden of proof is different.

5) Jeff mentioned that he is seeing more cases where parties going straight to termination.

> A mediation is held before adjudication. The adjudication is cancelled and a pretrial is held without any witnesses. If the standard is changed from "shall" to "may", you could be out of compliance with time lines if you get to the hearing and judge will not accept the 34(e) admissions.

6) Can 34(e) pleas be used in cross examination on in a criminal matter?

> It was felt that the plea would not be especially helpful since the allegations were neither admitted or denied.

7) Others mentioned that they make a record about the voluntariness of the 34(e) plea and that the party understand what they are doing.

> This varies to some extent by court, but committee members felt that generally the attorneys make the record and the judges fill in the questions that are missed.

Alan made a motion to end discussion on the Rule. No second was immediately forthcoming and the following additional discuss took place:

Members noted that the current rule is highly favored, especially by parents' counsel and that members did not feel it would be used against individuals in later criminal cases. It was suggested that the fall bench meetings could be a time to address the rule if there are ongoing concerns. Carol suggested we send Judge Van Dyke a letter with the committee's concerns and she agreed to draft the letter and also to encourage any additional input from other judges. The letter will reflect the URJP committee's in depth discussion and its sense that the URJP does not have the same level of concern with the operation of the rule.

Judge Steele amended Alan's motion to add that the URJP send a response to Judge Van Dyke containing the committee's concerns and to note that the URJP committee is open to further

input for Judge Van Dyke or others on the issue. The amendment to the motion was accepted by Alan as a friendly amendment. Adam seconded the amended motion and it was approved unanimously.

VI. Update on Access to Court Records

Judge Steele summarized the presentation he made to the Board of Juvenile Judges in May regarding the need for access to Court records by AGs and other parties. He presented the URJPs analysis to the Board, including an explanation that a recording made when an official court reporter is also present becomes part of the judge's notes. The judge has the discretion to release his or her notes and this would not impact the official record of the proceeding. The Board voted to accept the URJPs analysis and asked that it be conveyed to the entire Juvenile bench.

A discussion followed on how to convey to the URJP position to the bench. Carol agreed to sign a letter to bench from the URJP committee. Judge Steele and Katie agreed to work out the details.

There being no further issues for discussion at this time, the meeting was adjourned.

for URJP agenda 6/3/05

From: Judge Larry Steele
To: Judge Stephen Van Dyke
Date: 3/29/05 1:29PM
Subject: Re: Rule 34(e)

Thank you Judge Van Dyke. I'll send a copy of your email to the committee for discussion at our next meeting.
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>>> Judge Stephen Van Dyke 03/23/2005 9:38:50 AM >>>
Thanks for the interest Larry. Yes, I've had problems with this rule:
1) It is not an admission and no evidence is taken to support the court deeming the petition true "by clear and convincing evidence." That seems an anomoly and injustice to me, in light of the very heavy implications of these cases (possible loss of one's children ultimately). I also fail to see how it saves much in the criminal court, since a knowing and voluntary entering of such a plea is with the very clear understanding that it will result in the civil petition being found true, the essence of what the person is trying to avoid in the criminal action. Attorneys tell me they know of nothing that prevents a prosecutor from using the plea in criminal matters and the rule doesn't seem to have anything in it to prevent that. So-o-o here's how we could use it: the person knew when he entered the plea that all allegations would be found true by clear and convincing evidence as a direct result of the knowing and voluntary plea. He knew it would result in his name being put on the substantiated list for licensing purposes. He knew it would mean he'd have to obey court orders and be limited in his contact or visitation with his children. He knew he could ultimately lose his children by entering such a plea and process. Jurors, draw your own conclusions here. It's a distinction without a difference. The reality is admissions in our civil cases are rarely used in criminal court because the standard of proof is different there, and defendants can make an easy argument that they were admitting something to get services for the family, and with the belief the state could never prove the case against them beyond a reasonable doubt.
2) I have defendants come back after successfully defending in criminal court and claim they were coerced into entering a 34e plea, or did not clearly understand it, or had poor counsel, requesting to withdraw the plea and have a trial on the issues. I can deny such motions, but I'm getting them with fair regularity and they are troubling every time. (Not to mention time consuming.)
3) Having neither admitted nor denied the charges, when services are put in place, the individual is in position to deny them in therapy, and the most egregious cases tend to do so. That stymies therapy and progress on the service plan, and results in prolonged litigation and trial on termination of rights ultimately.

The 34e plea is mandatory, and the court must grant it under the "shall" in the rule. Why take judgement out of the process? Can't we judges look at individual cases and the characters we're dealing with and decide whether the 34e plea will be accepted as appropriate in a given case? That reaps the benefit where appropriate and avoids many of the problems. My own feeling is that in the more egrgious cases we ought to be able to look very carefully at whether such a plea is in the best interests of children and victims involved as well. Why "shall" rather than "May?" Don't we trust us? Thanx...Steve

>>> Judge Larry Steele 03/21/05 03:33PM >>>
Judge Van Dyke - the committee on the Rules of Juvenile Procedure recently discussed a request of yours relating to Rule 34(e). Brent Johnson sent us a memo of a conversation he had with you requesting the word shall be changed to the word may. The committee had more questions and wanted to know more about your experience with this rule and why you were requesting the change. We assumed that you were seeing its use when a parent wanted to avoid making an admission that could be used in criminal court, but wanted to allow the court to deem the petition admitted based on their silence. The experience of the committee was that 34(e) adjudications were set up this way by the stipulation of all parties to accommodate a parent who wanted to avoid a criminal admission. The committee generally favored the use of the rule in this way. Have you had situations where you did not want to accept the agreement of the parties to proceed on 34(e)? Could you explain more of your experience and your reasons for wanting the change? I would like to take your comments back to the committee for further discussion. Thanx.

CC: Carol Verdoia; Katie Gregory