Final - with 9/5/08 Revision

SUMMARY MINUTES
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Conference Rooms B & C
450 South State Street
Salt Lake City, Utah
June 6, 2008

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

I. Welcome and Minutes

Carol Verdoia welcomed all members. The committee reviewed the minutes of February 1, 2008 and the following motion was made:

MOTION: Joan Carroll motioned to approve the minutes of February 1, 2008 as written. Judge Lindsley seconded the motion and it passed unanimously.

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

Katie Gregory provided a brief update of the status of proposed revisions to Rule 25. Carol Verdoia and Katie Gregory met with the Supreme Court who asked them to present the proposed changes to the Board of Juvenile Court Judges. The Board had concerns with the language added to Rule 25(c)(6) incorporating Alford Plea language into the rule and expressed that it would not wish to approve a rule containing the language as drafted. Katie presented this information to the Supreme Court, who in turn, asked for additional clarification from the Board regarding its reasoning and concerns. The Supreme Court asked the Board to draft a letter containing its concerns and to have the Board Chair, Judge Tom Higbee, meet with the Supreme Court regarding the letter. The Supreme Court received the letter from Judge Higbee within the last week and the Court has not yet had an opportunity to meet with Judge Higbee and other Board

members. Judge Steele asked for clarifications regarding the Board's concerns. Carol explained concerns regarding the difficulty in trying to assess the minor's understanding. Also, their was some confusion regarding whether Alford Pleas should be allowed in juvenile court and whether this should be determined by case law rather than placed in rule. The letter also expressed concerns regarding whether it was inappropriate to include criminal concepts into an otherwise civil proceeding. Judge Steele requested a copy of the letter and Matty agreed to make that request of the Supreme Court. Katie agreed to forward it to the Committee if approval is given.

III. Crawford Decision (Paul Wake)

Paul Wake distributed a memo regarding Rule 29A. Crawford prohibited the use of certain video tape (such as a CJC video tape) in the courtroom because of the inability of the defendant to cross exam without the declarant present. Rule 29A and Rule 37A of the juvenile rules tracked URCrP 15.5, which had allowed the use of video tapes in certain situations such as testimony from a child witness outside the courtroom that is then broadcast live in the courtroom by TV.

The Utah Rules of Criminal Procedure (URCrP) Committee made revisions to Rule 15.5 recently and this change is awaiting review by the Supreme Court. Paul reviewed the proposed changes which were attached to his memo. In proposed URCrP 15.5 (a) the URCrP Committee struck the words "or witness," limiting the rule to testimony of a child victim. Discussion followed with some members confused as to whether the change had already been adopted or is currently under consideration by the Supreme Court. Other substantive additions include the addition of subparagraph (a)(1) regarding a child's availability for cross-examined in a manner that does not violate the defendant's right of confrontation. Paul presented a proposed draft of URJP 29A mirroring the changes proposed in URCrP15.5. Paul noted that Rule 15.5 uses the word "defendant," however, the URJP Committee previously changed similar references in the URJP from "defendant" to "minor." The Committee discussed the appropriateness of using one term or the other in the juvenile rule. One alternative is to reference "the minor who is charged with an offense."

Carol raised the issue of whether Crawford been determined not to apply to child welfare proceedings. Members concurred that Crawford should not apply and agreed not to consider changes to Rule 37A at this time.

Subsection (b) of Rule 15.5 addresses the child giving testimony by television with closed circuit equipment. The committee discussed how televised testimony by children is handled in various courtrooms, including whether those in the courtroom are able to observe body language and demeanor.

The Committee agreed to delay a decision on whether to revise Rule 29A and to put the matter back on the agenda when the Supreme Court has acted on URCrP 15.5. Katie will monitor the progress of URCrP 15.5 and place this matter and Paul's memo back on the agenda when the Supreme Court has resolved the issues in Rule 15.5.

IV. Rule 9-Detention Hearings

Judge Lindsay distributed a handout containing a rule change proposed by Judge Oddone. Rule 9 may have been added because some kids were not receiving a prompt review after being placed in detention. Currently, however, most kids are seen within 7 days of their detention hearing. Home detention is used in other cases. Due to this change, Judge Oddone proposed to add language to Rule 9(j) as follows:

(j) Any predisposition order of detention, or order of home detention exceeding fifteen days, shall be reviewed by the court once every seven days. Orders placing a minor in an alternative detention program for a specific period of time not to exceed thirty days do not need to be reviewed except on motion of any party. The court may, on its own motion or on the motion of any party, schedule a detention review hearing at any time.

This addition would eliminate the need for a youth on home detention to attend a hearing every 7 days unless the court or a party felt the review was needed. In Third District, it would also cover the more restrictive early intervention program alternative. The Committee discussed the meaning of "an alternative detention program."

Judge Steele inquired whether any statute governs the issue, or whether it is controlled only by rule. No conclusion was reached. Home detention staff track children on home detention daily and report to the Probation Officer. Should home detention continue and if so, must it be reviewed every 7 days? In some areas motions are filed to release the child from home detention, but there seems to be a problem with all parties getting notice that home detention is continuing.

Not all children have an advocate to request that they be released from home detention if a regular review is not held. In some cases probation officers make the request and attorneys make the request if the child has an attorney. Discussion followed regarding ways that parties could be made aware that a child should be released from home detention. Not only may it be unfair to the child, but it may also use resources wastefully. Another concern is children held in detention waiting for a placement.

Judge Lindsley will look at the statute and report at the next meeting. She will also talk to Dan Maldanado to get JJS input and see if there are administrative rules that affect this issue.

V. Notice of Publication by Initials (Carol Verdoia and Brent Bartholomew)

Carol introduced the issue and reported that her law clerk had performed research on the issue but found no case law in Utah. On the issue of notice, Rule 18 of the URJP refers to Rule 4 of the URCP. Rule 4 states, "service of process by publication shall be reasonably calculated under all circumstances to apprise the interested parties of the pendency of the action, to the extend reasonably possible or practicable." A 2004 case from the Utah Supreme Court says the publication standard in Rule 4 is a relatively low threshold to satisfy. The law clerk reviewed the

law of other states. Six states in our area have specific statutes requiring the use of the child's full name. Georgia lists the child's initials, sex and birth date.

Brent Bartholomew explained the case that caused him to raise this issue initially. The father's rights had been terminated and they were trying to terminate the mother's rights so the child could be adopted. The issue usually arises when the father is unknown or the paternity is contested. Discussion followed regarding whether the father would effectively have notice. While the mother would have knowledge of the birth, the father may not. The issue is further complicated because the child often does not have the same name as one or both of the parents. It may be more important to name the parents than the child to truly provide notice. Another problem is that the father which the mother chooses to list on the birth certificate may not, in fact, be the father.

Questions still exist as to when notice must be given for termination, rather than for adoption. We are not necessarily required to give notice to individuals who have not established paternity. Some judges error on the side of caution and require notice to a father named on the birth certificate. Carol cautioned the committee that we may not want to create a rule that would bind us to publish on individuals who have not established paternity.

Brent would like to draft a rule that provides when publication is used, the notice would only use the child's initials, whether or not it names the parents. Brent will have language prepared to discuss at the next meeting.

VI. Old Business

Paul Wake raised an additional issue regarding Rule 25 and withdrawing a plea. Pam Vickery expressed concerns about orders for "further disposition under advisement," which never give the client a final disposition. Further disposition implies that the order can be changed at any time in the future and may result in the order never being a final appealable order. No rule currently covers this issue and practice varies. A question was raised as to whether judges who use the term "under advisement" have to report this on their monthly report under advisement report.

The committee agreed to further discuss the issue on a future agenda. Matty Branch will alert the Supreme Court that the committee is discussing a supplemental issue on Rule 25. Pam clarified that an order of further disposition for a specific purpose or for a specific period of time such as 45 days may not raise the issue. However, the problem arises when the court simply continues "for further disposition." The committee will try to resolve the issue at its next meeting and get back to the Supreme Court as soon as possible.

The next meeting is set for September 5, 2008 from 11:30 a.m. to 1:00 p.m.