

MEMORANDUM

TO: Alicia Davis
FROM: Paul Wake
SUBJECT: Juvenile Rules Committee Agenda for August
DATE: July 17, 2003

There are a couple of matters I think are worth discussion by the committee to see if minor tinkering with the rules is warranted, and if there's time I'd like to broach a couple of other questions for discussion. I brought these up earlier by e-mail, but I think the explanation below might be more clearly written. You could include this in the materials you send to the committee if that would be helpful.

Earlier this year two defense attorneys in Utah County—experienced attorneys who should have known better—raised the argument that the juvenile court does not have jurisdiction over children under 14 with regard to delinquency, because the court doesn't have jurisdiction over children under 14 who commit "crimes." That argument did not prevail, but it illustrates a problem. "Crimes" in the 14-and-over context are things charged by information, which will or may result in handling by the (adult) criminal justice system.¹ Few cases involving children are handled this way. The bulk of bad behavior coming before the juvenile court involves acts of delinquency that would be crimes if committed by an adult, for which someone files a petition asking the court to take jurisdiction (and there is no statutory minimum age for petitions). The distinction between crimes and delinquent acts ought to be clear, but within the rules the Section VII heading causes some confusion. I think we should have Lexis Nexis change the heading so that we can more clearly make the distinction.

Section VII is currently titled "Proceedings Related to Criminal Matters." However, criminal matters are actually dealt with in Section VI (which deals with Serious Youth Offender cases and Certification cases). Section VII really deals with general delinquency matters (which are technically civil in nature, not criminal). It is notable that the Section IX heading references "Non-Delinquency Matters." It seems to me that the Section VII heading should say "Proceedings Related to Delinquency Matters" rather than "Proceedings Related to Criminal Matters." I'd like to pitch the committee to make that change.

¹ Technically traffic offenses committed by minors are also "crimes," but they can be handled by the juvenile court.

Several months ago we proposed moving some juvenile-related provisions from the Code of Judicial Administration to the Juvenile Rules. There was a specific CJA provision stating that in traffic matters (which are usually heard in justice court or in district court rather than in juvenile court), the parents of a minor who got a ticket could address the court. We proposed moving that provision into Rule 46(b), which made sense. Rule 46 deals with disposition hearings, where parents are traditionally given a chance to address the court with regard to whatever act of delinquency brought their son to court. However, upon re-reading the amended rule it occurred to me that since the original juvenile rule did not specifically say that parents can address the court, and the amended rule includes the provision that parents can address the court if the case is a traffic matter, someone could read the rule and get the impression that parents can only address the court regarding disposition if the case involves a traffic matter (since that's the only kind of case referred to in the provision on parents addressing the court). I think we should fix that to make it clear that parents can address the court, period. Perhaps by saying something like "A minor's parent or guardian may address the court regarding the disposition of the case, and may address other issues with the permission of the court."

The beginning of Rule 19 expressly deals with abuse, neglect, and dependency cases, although by subsection (1) there is specific mention of delinquency cases. This leaves my humble mind slightly confused about how many of the rule's subsections apply to delinquency cases, and specifically with whether the new courtesy copy provision applies to delinquency cases. I'm thinking that it does, but I would appreciate clarification from the other members of the committee.

Similarly, I'm a bit confused by the new part of Rule 53(b) that deals with filing certificates of probable cause in the context of withdrawal of counsel. I am unfamiliar with what that means, and would appreciate a simple explanation.

From: Brent Bartholomew
To: Branch, Matty; Brewer, Kristin; Chelsea-McCarty, Esther; Davis, Alicia; Gibbons, Jeanette; internet: epeterson@co.uintah.ut.us; internet: pvickrey@juvlaw.com; internet: utahlawboy@yahoo.com; Lindsley, Judge Elizabeth; molsen@attglobal.net; nbeas-nordell@co.slc.ut.us; nelson@utlawhelp.com; randyskester@qwest.net; Sevison, Alan; Shirl Don LeBaron; Steele, Judge Larry; Trupp, Adam F.; ucadm.paulw@state.ut.us; Verdoia, Carol
Date: 5/19/03 8:26AM
Subject: Re: URJP June Meeting

I do not have any agenda times. I agree with Paul: Those defense attorneys should have known better, but it appears the changes suggested by Paul are warranted to avoid future problems.

Brent Bartholomew

P. S. I will be unable to attend a meeting on August 1st, as I will be on a week-long campout with the Boy Scouts.

>>> Alicia Davis 05/16/03 03:41PM >>>
Committee Members:

At our last meeting, we decided that we would hold off until **Friday, August 1** unless pressing issues arose requiring immediate action.

The only agenda item I have received is included below, and no comments to the amended rules have been received. (Comment period ends June 6). Please review Paul Wake's request for URJP action, included here. Unless any additional items are suggested, we can postpone discussion on this action until August, and still be able to meet the fall publication of rules for comment.

Please email me any agenda items by Wednesday 5/21. I will let you know on Thursday or Friday whether the meeting will be held in June or August.

Thanks! Alicia

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>>> <wake@xmission.com> 04/28/03 09:51AM >>>
Request for Juvenile Rules Committee action:

I'm interesting in fixing any language in the juvenile rules or headings using the work "criminal," because this year alone two local and experienced defense attorneys (who should know better, and probably do) have argued in my cases that the juvenile court has no jurisdiction over offenders under 14 years of age. There is a rule that says that the court doesn't have jurisdiction over crimes committed by kids under 14, but that refers to cases in which kids are charged by information with an offense that can get them transferred to district court. It does not mean every kid petitioned because of a delinquent offense, and the Section VII heading confuses the issue.

The rules are broken up into sections. Section VI deals with Serious Youth Offender matters, Section VII is titled "Proceedings Relating to Criminal Matters," and Section VIII covers dependency ("non-delinquency") matters. The only criminal matters dealt with in juvenile court are Serious Youth Offender matters (dealt with in Section VI, not VII), the occasional traffic

matters that don't go to justice or district court, and the rare instances of prosecuting adults in juvenile court instead of justice or district court for something like contributing to delinquency. Everything else is civil, including the many delinquency cases dealt with under Section VII's provisions.

The rules within Section VII speak of "delinquency," and they obviously apply largely to the delinquency cases dealt with daily by the court. Section VIII speaks of "non-delinquency," apparently to contrast it with the prior section's delinquency provisions. This makes it appear to me that the titling of section VII is an error (sort of like how they put a section division in the wrong place in the rules a few years ago) that should be fixed by asking Lexis Publishing to change "Criminal Matters" to "Delinquency Matters." Can we talk about fixing that?

Paul Wake

From: Alicia Davis
To: URJP
Date: 5/22/03 9:39AM
Subject: Fwd: Re: URJP June Meeting

Thanks for your comments, Brent. Having received no other agenda items, let's plan to meet on August 1.

Paul submits these additional comments for our discussion then:

>>> "Paul Wake" <ucadm.paulw@state.ut.us> 05/16/03 04:35PM >>>
Alicia, the only other agenda items I would like to discuss sometime are these three things:

The rule 46(b) amendment is one of those rules where we put part of the CJA into the URJP. The CJA provision was a narrow one, allowing parents to address the court in traffic cases. Brought into the juvenile rule, the juvenile rules now says that in traffic cases, parents can address the court. I'm concerned that someone might read that and assume that since the provision only refers to traffic cases, it doesn't allow parents to address the court in other cases. Parents can address the court in all delinquency matters, and I'm wondering if the committee thinks we have done something that may confuse this in some people's minds? If so, it would be easy to fix. If not, no big deal.

Another provision brought over from the CJA is proposed for 53(b), which deals with certificates of probable cause. That seems more oriented to criminal procedure than juvenile procedure, and it isn't my impression that most areas of the state use them in a juvenile context. I'm wondering if we should revisit that also.

It isn't clear to me whether Rule 19(f) is intended to require courtesy copies in dependency and delinquency matters, or only dependency. I may just be confused, but if others on the committee think that provision needs clarification we could discuss it.

Thank you for another opportunity to dabble in minutia. Although this may not be the best time to bring it up, I note that my term expires this summer. I've enjoyed my time on the rules committee, and wonder if and how it might be possible to serve another term?

Paul Wake