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
August 4, 2006

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

I. Minutes and Welcome

Carol Verdoia welcomed all members and called for approval of the minutes. Judge Lindsley moved to approve the minutes of the June 2, 2006 meeting and Narda seconded the motion. The motion passed unanimously.

II. *Finalize Committee's Comments on Proposed Rule 60 Re: Judicial Bypass Procedure to Authorize Minor to Consent to Abortion (Carol Verdoia)*

Carol discussed how proposed Rule 60 was created through the Supreme Court's emergency rule making procedure and the various groups who had already provided input to the courts. She also acknowledge the number of comments that were publically submitted and the July 26, 2006 memo prepared by Brent Johnson for the Board of Juvenile Court Judges. Carol reported that she must supply the committee's written comments to the Utah Supreme Court by Monday and she and Katie will meet with the Supreme Court on Wednesday August 9th to review the comments.

As a preliminary matter, the committee considered whether the use of the term "minor" in proposed Rule 60 was confusing following the definitional changes in this year's legislation on minor and child. After discussion, the committee decided the use of "minor" was acceptable.

Carol then proposed a review of each paragraph of proposed rule 60 as follows:

(a) Petition. An action for order authorizing a minor to consent to an abortion without the consent of a parent or guardian is commenced by filing a petition. The petitioner is not required to provide an address or telephone number but must ~~state that she is a resident of Utah and~~ identify the county and state of residence. Blank petition forms will be available at all juvenile court locations. The court will provide assistance and a private, confidential area for completing the petition.

The committee discussed issues pertaining to whether the lack of available address would cause a notice problem (especially if the hearing date or time was changed) or prevent an appointed GAL from contacting the minor in advance of the hearing. Judge Lindsley noted that the burden is on the individual to provide the information if it is an issue. Most agreed the language was included to protect confidentiality. No motion to change the language was offered and the committee moved to the next subparagraph. [Note: In a previous meeting the committee voted to change the work "will" to "shall" in the last sentence of the subparagraph.]

(b) Filing. The petition may be filed in any county. No filing fee will be charged.

The committee discussed the rationale in allowing a minor to file in any county. Some felt this could lead to forum shopping. Kristin noted that it was not appropriate for the court to consider the community norm. Judge Lindsley noted that it could also be an issue of confidentiality, especially in smaller communities. She mentioned an Alabama appellate case setting out an extensive colloquy for the judge to use in determining if a minor is "mature and capable." The committee also noted that the United States Supreme Court requires that the minor must be provided confidentiality, not complete anonymity. Katie recalled that the rationale was to allow the minor to file where the medical procedure was to be performed.

MOTION: Alan made a motion to close debate until the committee can determine whether the law allows the courts to legally restrict the county in which the minor may file. Kristin seconded the motion. The motion passed with one member voting in opposition. Judge Lindsley raised a further question regarding why these cases do not have a filing fee. A brief discussion followed.

(c) Appointment of Counsel. If the petitioner is not represented by a private attorney, the juvenile court shall consider appointing an attorney under Utah Code Ann. § 78-3a-913 and/or the Office of Guardian ad Litem Under § 78-3a-911. The clerk shall immediately notify the attorney and/or the Office of Guardian ad Litem of the appointment.

It was noted that the reference to section 78-3a-911 was most likely intended to be 78-3a-912.

MOTION: Kristin moved to change the statutory reference from 78-3a-911 to 912. Judge Steele seconded the motion and it passed unanimously.

Kristin expressed concerns regarding the appointment of a GAL and noted that Ms. Spencer's memorandum does not fully address the difference between having an attorney to represent the minor and having a GAL to represent the minor's best interest. A GAL is needed only if the state determines the minor is not mature and capable and the second prong of the statute is considered. Kristin discussed constitution law generally pertaining to the appointment of a GAL. A statutory change may be necessary to clarify the appointment issue. If the minor is given appointed counsel other than a GAL, it raises questions regarding who would represent the minor and who would pay for the representation. An additional question was raised regarding juvenile court jurisdiction, which is assumed in the rule. One statutory reference to the ability of the minor to petition the juvenile court was noted. The question was raised because the statutory provisions regarding appointment of counsel and/or a GAL for a juvenile are also in the juvenile court section of the code.

MOTION: Adam moved that subsection c of the proposed rule 60 reference only 78-3a-913 and that the reference to 78-3a-912 be removed. Brent seconded the motion. Discussion followed: Adam explained we cannot fix the 78-3a-913 problem of the county appointing counsel. As to 912, there is no basis to appoint a GAL until the court makes a finding the minor is incapable and needs a GAL to represent her best interest.

SUBSTITUTE MOTION: **Alan made a substitute motion to add that if the first prong of the test is not met, than the reference to 78-3a-912 applies.** Adam accepted the substitute as a friendly amendment. Discussion followed. Judge Lindsley considered circumstances where a judge may feel a GAL is appropriate in addition to an attorney. Jeff brought up that some of his clients are minors who are pregnant and provided an example where the pregnant minor needs both types of counsel. Pam raised the constitutional question whether a minor is entitled to an attorney, not to GAL. Alan suggested that if the first prong is not met, than a GAL may be appropriate. Discussion followed regarding how this differs with a very young minor, such as a 13 year old who may herself be the victim of child rape. One suggestion was to change the Rule to reflect whether the right to request counsel is at the discretion of the judge or the minor. For example, can the minor say she does not want either an attorney or a GAL?

SUBSTITUTE MOTION: Adam made a substitute motion to strike paragraph c because the right to appoint already exists in the statute in 78-3a-912 and 913 and is unnecessary in the rule. Alan seconded the motion.

SUBSTITUTE MOTION: Judge Lindsley made a substitute motion that the language of subparagraph (c) end after the word "attorney," and the remaining language in the subparagraph be deleted. Pam seconded the motion. Discussion followed regarding the need for the GALs appointment up front and that striking all the language would better accomplish this goal. Concern was also expressed by Alan that the "shall" language should remain in subparagraph c

because the statute, unlike the rule, does not affirmatively require that the judge consider whether to appoint an attorney.

The committee then voted on Judge Lindsley's substitute motion. The motion passed with seven members voting yes (Judge Lindsley, Pam Vickery, Narda Beas-Nardell, Alan Sevison, and Paul Wake, Kristin Brewer and Jeff Noland). Four members voted against the substitute motion (Judge Steele, Brent Bartholomew, Nelson Abbott and Adam Trupp).

(d) Expedited Hearing. Upon receipt of the petition, the court shall schedule a hearing to be held and the petition resolved within three judicial days. The court may continue the hearing for no more than 24 hours if the court determines that the additional time is necessary to gather and receive more evidence. The clerk shall immediately provide notice of the hearing date and time. The hearing shall be closed to everyone except the petitioner, the petitioner's attorney, the guardian ad litem, and any individual invited by the petitioner~~, the petitioner's attorney or the guardian ad litem~~. Upon request, the petitioner may be allowed to participate telephonically at court system expense. The hearing may be held in chambers if recording equipment or a reporter is available.

The committee discussed reasons why the rule imposes time limits when the statute does not. Paul cited constitutional law indicating that you must expedite cases of this type and that waiting two weeks is not considered expeditious. The committee also questioned the term "judicial days," which was unfamiliar to all.

MOTION: Brent made a motion to change "judicial days" to "business days." Alan second the motion. During discussion, Paul referenced United States Supreme Court case law regarding the use of business and calendar days and requires that "days" be interpreted in the shortest manner possible. The intent was to expedite. The committee also noted that URJP 4 uses the word "days" and serves the same purpose in calculation of time as the use of the term "judicial days."

AMENDED MOTION: Brent amended his motion to change judicial days to "within three days" and the reference to 24 hours to "one day." Alan seconded the amended motion. Nelson and Paul reiterated that the United States Supreme Court requires that "days" be read as restrictively as possible, which might mean weekends and holidays.
The motion passed with Nelson Abbott voting in opposition to the amended motion.

(e) Findings and Order. The court shall enter an order immediately after the hearing is concluded. The court shall grant the petition if the court finds by a preponderance of the evidence that one of the statutory grounds for dispensing with parental consent exists. Otherwise, the court shall deny the petition. If the petition is denied, the court shall inform the petitioner of her right to an expedited appeal to the Utah Court of Appeals. The court shall provide a copy of the order to individuals designated by the petitioner.

The committee made no changes to subsection (e).

(f) If the court does not hold a hearing and resolve the petition within three judicial days, the petition shall be deemed granted. If the court continues a hearing for 24 hours under paragraph (d), the petition shall be deemed granted if the petition is not resolved by the expiration of the additional 24 hours. Upon request of the petitioner, the clerk of the juvenile court shall prepare a certificate indicating that a hearing was not held and that the petition is deemed granted pursuant to this rule.

MOTION: Brent made a motion to change the reference to judicial day and 24 hours to be consistent with the changes made in paragraph (d) above. Kristin seconded the motion.

Paul raised additional concerns regarding the requirement that the clerk signing a certificate rather than the judge signing an"order" in those circumstances where the petition is not timely resolved. The certificate of the clerk appears to operate as a default as sometimes occurs in other proceedings. Discussion followed regarding why the default type provision was included. Is a certificate signed by the clerk enough for a doctor to rely upon? Some members felt that the minor must have an actual order. It was noted that subsection (d) of the rule requires the court "shall" have a hearing and "shall" enter an order and therefore, might be in conflict.

SUBSTITUTE MOTION: Paul made a substitute motion to strike subsection (f) in its entirety. Adam seconded. All voted in favor with two abstaining. The committee asked that a note be included that subsection (f) was stricken because the committee did not have not information on why this provision was made available.

(g) Confidentiality. The petition and all hearings, proceedings, and records are confidential. Court personnel are prohibited from notifying a minor's parents, guardian, or custodian that a minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

Adam considered whether this subsection conflicts with the requirement of notifying a GAL. Does it require the judge to make a referral to DCFS or law enforcement if the minor discloses the pregnancy resulted from sexual abuse? The committee noted that the statute requires the physician to make the referral.

(h) Appeal. A petitioner may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal within three judicial days after entry of the order. The clerk shall immediately notify the clerk of the Court of Appeals that the notice of appeal has been filed.

MOTION: Judge Steele made a motion to eliminate "judicial." Brent seconded the motion and it passed unanimously. Discussion followed regarding the timing of appeals.

MOTION: Alan made a motion to place a period after the word "appeal" in the first sentence and delete the remainder of the sentence. Kristin seconded the motion. The motion passed with

Paul Wake and Judge Lindsley voting against the motion.

III. *Discussion regarding Impact of H. B. 103–Changes to Definition of Child and Minor*

This agenda item was tabled to the next meeting due to time constraints.

The next meeting was set for Friday, September 8, 2006 from noon until 2:00 p.m.
There being no further time available, the meeting adjourned at 2:00 p.m.