

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

August 14, 2009

Noon to 2:00 p.m.

AOC Education Room

MEETING DATE	TIME	LOCATION	
MEMBERS:		Present Absent Excused	MEMBERS:
Judge Elizabeth Lindsley	<input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	Renee Jimenez
Judge Larry Steele	<input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	David Johnson
Carol Verdoia	<input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	Narda Beas-Nordell
Brent Bartholomew	<input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	Ed Peterson
Matty Branch	<input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	Alan Sevison
Joan Carroll	<input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	Pam Vickery
Angela Fannesbeck	<input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	Paul Wake
Brent Hall	<input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	
AOC STAFF:		Present Absent	GUESTS:
Katie Gregory	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Susan Eisenman
Whitney Kania	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	

AGENDA TOPIC

I. Welcome & Approval of minutes		CHAIR: CAROL VERDOIA	
Corrections to the Minutes: None			
Motion:	By: Judge Lindsley	Second: Joan Carroll	
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: In Favor _____ Opposed _____		

AGENDA TOPIC

II. Rule 36-Cases Certified From District Court	[PRESENTER] CAROL VERDOIA
<p>Discussion:</p> <p>Rule 36 references procedures for certification of issues of support, custody or visitation. However, 78A-6-104 no longer requires certification from district court to the juvenile court. Rule 100 still requires the judges to confer, but does not address where the order must be filed. The question of whether to file in district or juvenile court is a jurisdictional question that would not necessarily be handled in a rule.</p> <p>David Johnson reported on his discussion with the Third District Commissioners regarding Rule 36. They would like to have the orders available for review and asked that we take whatever steps available to facilitate the filing of the relevant juvenile court orders in District Court. Many orders do not have the required double caption and it confuses the clerks. The committee suggested revisions to Rule 36, rather than eliminating the rule. Judge Lindsey agreed to draft proposed language to use in revising the rule and distribute it for discussion at the next meeting. She will consider Rule 36, Rule 3 (Style of Pleadings) and Rule 100 and whether to use the words transfer or coordinate instead of certify. She will also review related statutes and whether</p>	

counsel should make a diligent search for any preexisting orders in either juvenile or district court. Joan Carroll suggested language requiring the dual caption be inserted in Rule 36(b) (2) and Rule 3.	
Action Item:	Judge Lindsley will draft revisions and send them to Katie Gregory for circulation before the next meeting.
Motion:	By: _____ Second: _____
Approval	<input type="checkbox"/> Unanimous <input type="checkbox"/> Vote: _____ In Favor _____ Opposed _____

AGENDA TOPIC

III. Consent by Parent/Guardian/Custodian prior to Juvenile's Waiver of Constitutional Rights if Interrogated by Law Enforcement	[PRESENTER] SUSAN EISENMAN
<p>Discussion: Susan Eisenman joined the discussion and explained the history of the concerns expressed by Mr. Afuvai of JJS in his email of 2/19/09. The committee discussed the differences between Rules 8, 26 and 27A and considered the circumstances in which a parent must be physically present to waive the minor's rights. The Committee further discussed when a written waiver is appropriate and the impact on admissibility of any information obtained.</p> <p>Rule 8(d) regards interviewing kids in detention. A child in detention is entitled to more protections than a child who is not in a locked facility, and their parents must be present. For children under age 14 in detention, the parents have a right to be present when the waiver is made, rather than giving a waiver in writing in advance. If a parent is unavailable (such as an incarcerated parent), law enforcement needs to seek a court order. The Committee acknowledged a difference between questioning a child generally, and waiving rights to be present when questioning a child regarding a crime in which the child may have been involved.</p> <p>The Committee reviewed the Advisory Committee Notes to Rule 8 which reads as follows:</p> <p><i>"The limitation on interviews is intended to extend to interviews regarding the charges for which the minor is being detained and any other charges under investigation. This rule evolved from former rule 10 at a time when the court was responsible for admission to detention. That responsibility now belongs to the Division of Juvenile Justice Services, which has established admission guidelines. Utah Administrative Rules R547-13-1 et seq. This rule and former rule 10 balance the important rights of the minor with those of the public. Because these provisions have historically been found in the juvenile court rules, they have not yet been incorporated into any other rule or statute. Until the Legislature or the Division of Juvenile Justice Services acts to reinstate these provisions, it is necessary that they be stated here."</i></p> <p>JJS has a form for waiving consent to interview children in a detention center, and the committee agreed it would be helpful to review the form. The Committee also discussed clarifying amendments or additions that could be added to Rule 8 to cross reference Rule 27A.</p>	
Action Items:	<p>Susan Eisenman will provide the Committee with a copy of the JJS form representing that law enforcement has obtained the appropriate consent.</p> <p>Paul Wake will draft a proposed section (f) to Rule 8 to include a cross reference to the admissibility provisions of Rule 27A for the</p>

