

**SUMMARY MINUTES (DRAFT)
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Administrative Office of the Courts
450 South State Street
Education Room (3rd Floor AOC)
Salt Lake City, Utah
September 8, 2006**

Present

Carol Verdoia
Judge Lindsley
Ed Peterson
Paul Wake
Narda Beas-Nordell
Kristin Brewer
Judge Steele
Brent Bartholomew
Claudia Page
Nelson Abbott
Adam Trupp

Excused

Pam Vickery
Jeff Noland
Alan Sevison
Matty Branch

Staff

Katie Gregory

HANDOUTS:

Memos from Brent Johnson dated August 3, 2006 and August 30, 2006 regarding the abortion by minors rule.

Notes from Ed Peterson on the definitions of minor and child pertaining to URJP 6-11, 14-16, and 57.

One page fact sheet from Judge Steele entitled "Hypothetical" pertaining to the definition of minor and child.

One page entitled "Minor/Child Revisions" containing revisions to Rules 21 through 29A.

I. Minutes and Welcome

Carol Verdoia welcomed all members and called for approval of the minutes. The following amendments were requested:

- The final two sentences of Page 5 reference a motion made by Alan Sevison. It was requested that the language be clarified to reflect that a period be placed after

- the second reference to “appeal” in section (h).
- In the middle of page 5 under “Substitute Motion” the word “not” was deleted before the word “information” in the third sentence of the paragraph.
- A sentence was added to the second paragraph on page 3, immediately following the sentence which reads: “An additional question was raised regarding juvenile court jurisdiction, which is assumed in the rule.” The added sentence reads “ The committee noted it does not appear in 78-3a-103 and -104.”
- On page 2, the reference to “work” was changed to “word” in the last sentence of the third full paragraph.
- On page 4, in both the paragraph titled “MOTION” and the paragraph titled “AMENDED MOTION” the word “requires” was changed to “suggests.”

MOTION: Judge Steele moved to approve the minutes of the August 4, 2006 meeting as amended and Paul Wake seconded the motion. The motion passed unanimously.

II. Update on URJP 60–Abortion Bypass Procedure Rule (Katie Gregory)

Katie explained that she and Carol Verdoia reported the committee’s comments on URJP 60 to the Utah Supreme Court on August 9, 2006. Katie then read a memo to the committee from Matty Branch indicating that the Supreme Court had referred Rule 60 back to the URJP for further review and comment prior to the end of the year. Carol explained that the Supreme Court had agreed that we should strike the provision allowing the clerk to enter an order if the judge does not hold a hearing within 3 days. Kristin expressed concern that precedent may be set in the meantime, including precedent regarding whether to appoint a GAL. The committee discussed its ability to expedited consideration and agreed to place the committee’s comments before the Supreme Court as soon as possible.

The Supreme Court also suggested that a representative of the ACLU be invited to address its concerns to the committee. Discussion followed regarding whether other individuals or groups should be invited in addition to the ACLU. After a review of the public comments received on Rule 60, the committee determined that the other public comments all address issues that would require statutory changes and were beyond the jurisdiction of the committee.

Katie agreed to contact both the ACLU and Brent Johnson to see if they were available to meet with the committee. The committee proposed either Sept 29th or October 20th. It was determined the discussion should go forward even if only the ACLU can attend and Brent Johnson is unavailable. Kristin suggested the committee obtain the perspective of the counties since the counties would ultimately bear the financial burden of providing appointed counsel to a minor if the rule deems this appropriate. Adam Trupp mention that he has taken a new position as legal counsel to the Utah Association of Counties and may be able to represent them. Due to

his new position, he will be resigning from the URJP Committee, but may attend the September 29th meeting as a guest on behalf of the counties.

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

Following the June 2, 2006 meeting of the URJP, Carol sent out assignments to members asking them to review particular rules for the use of the terms “child” and “minor.” The following assignments were made:

Rules 21-29A Judge Lindsley, Pam Vickery, and Narda Beas Nordell(12 rules)

Rules 6-11, 14-16, 57 Judge Steele and Ed Peterson(10 rules)

Rules 30-32, 38-39, 51-56 Paul Wake and Nelson Abbott (11 rules)

Rules 12-13, 17-20A, 44, 46-48 Brent Bartholomew and Alan Sevison(11 rules)

Rules 34-37A, 40-43, 45, 49-50, 58 Jeff Noland, Kristin Brewer and Adam Trupp (13 rules)

Rules 1-5, 33 and 59 Carol Verdoia (7 rules)

The definitions from HB 103 are as follows:

Child -- means a person under 18 years of age.

Minor -- means

(I) a child; or

(ii) a person who is:

(A) at least 18 years of age and younger than 21 years of age; and

(B) under the jurisdiction of the juvenile court.

Judge Steele raised the question of whether the committee must adopt the statutory definitions of minor and child, asserting that the disjunctive definition is confusing. It was agreed that the committee does not have to mirror the statute in the URJP. Some concerns were whether practitioners who rely on both the statute and rules would find differing definitions confusing and whether an additional definition is needed for “adult minors.” For the sake of today’s discussion the committee elected to use the statutory definitions.

In order to accommodate the schedules of some committee members who could not stay for the entire meeting, the rules were discussed in the following order:

Rules 21-29A (Reviewed by Judge Lindsley, Narda Beas-Nardell and Pam Vickery)

A handout was distributed.

Rules 21-25 and Rules 28-29—no changes were proposed.

The following changes were made to Rules 26, 27, 27A and 29A:

Rule 26(e). Rights of minors in delinquency proceedings.

The last sentence of this subsection should be changed to read “A ‘child’ under 14 years of age may not waive such rights outside of the presence of the ‘child’s’ parent, guardian or custodian.”

Rule 27(a). Fingerprinting, photographing, and regulating discovery; HIV testing.

The first line should be changed to read “A motion to photograph or fingerprint a ‘child’ under the age of 14...”

Rule 27A (a)(1) should now read “ If the ‘child’ is under 14 years of age, the ‘child’ is presumed not adequately mature and experienced to knowingly and voluntarily waive or understand a ‘child’s’ rights unless a parent, guardian or legal custodian is present during waiver.”

Rule 29A. Visual recording of statement or testimony of child victim or witness of sexual or physical abuse—Conditions of admissibility.

Numerous references through the rule to “defendant” or “defendant’s should be replaced by “minor” or minor’s.” Judge Steele clarified that minor means anyone up to but not including age 21.

MOTION: Kristin moved to approve the stated changes to Rules 26, 27, 27A and 29A. Judge Lindsley seconded the motion and it passed with Judge Steele voting in opposition and Paul Wake abstaining.

MOTION: Judge Steele made a motion that the committee make its own three definitions to include: 1) the definition of child as currently used in the new statute; 2) minor, including everyone up to 21 years old; and 3) a new third category similar to an “adult minor” including those from 18 up to 21 years old. Paul seconded the motion. Discussion followed regarding use of the term “adult minor” and whether there is a better name for this group. Several members commented that the committee cannot fix underlying infirmities in the statute through the rules. A vote was called and Judge Steele, Nelson and Kristin voted in favor, all others were opposed. The motion failed. Judge Steele further suggested that the committee add a clarifying committee note to the rule where definitions are in question.

Rules 30-32, 38-39,51-56 (Paul Wake and Nelson Abbott)

Rule 30. Citations; applicable offenses and procedures; bail.

The committee discussed Rule 30(d) and noted that it requires notice in some cases to both a minor and a “minor’s parent, guardian, or custodian.” It was noted that some cases involve those who are 18 or older and these individuals do not need their parent to come to court. Kristin suggested that at some point we may need to create a separate rule regarding minors 18 or over. Ed addressed the potential due process and equal protection arguments depending on whether the same individual is just over or just under age 18, and whether we should send notice to their parents/guardian. Using the parents’ address (because it is the only address of record) may not constitute personal service.

MOTION: Kristin made a motion not to change Rule 30 at this time. Brent seconded the motion

and it passed unanimously.

Rule 31. Initiation of truancy proceedings.

The rule currently uses the word “minor.” Discussion followed as to whether this rule applies to individuals over age 18. Judge Lindsley noted that it can impact those in JJS custody after age 18. Members also noted that the rule’s placement in the status offense section is confusing since such offenses do not apply to those over 18.

MOTION: Kristin made a motion that the reference in Rule 32 to “minor” be changed to child. Paul seconded the motion and it passed unanimously.

Rule 38. Prosecution of adults.

No changes were made to Rule 38.

Rule 39. Contempt of court.

Rule 39 refers to “Any parent, guardian, or custodian of a minor who willfully fails or refuses to produce the minor in court.....”. Committee members commented that perhaps “minor” should be changed to “child” since a parent could not be compelled to produce the youth if they are over 18. Judge Lindsley explained that the addition of “guardian or custodian” of the minor includes minors over the age of 18 who are in state’s custody. Their guardians or custodians can be compelled to produce them in court. After this explanation, the committee agreed to leave the wording “minor.”

Rule 51. Violation of probation and contempt by a minor.

Rule 51 uses the term “minor.” Rule 51(b)(1) references “the minor’s parent, guardian or custodian” and raises the same issue as Rule 39. Since the Rule applies to individuals in the state’s custody past their 18 birthday, the committee also agreed to leave the reference “minor.”

Rules 52-53

No changes were made to Rules 52-53.

Rule 54. Continuances.

Rule 54(d) addresses “minor victims” in sexual abuse cases. Discussion followed regarding changing the reference to “child victims.”

MOTION: Kristin made a motion to change Rule 54(d) from “minor victims” to “child victims.” Paul seconded the motion and it passed unanimously.

Rule 55. Transfer of minors who present a danger in detention.

The rule references the court’s ability to order the transfer of any minor “age 16 years or older...” It was noted that adult minors are sometimes held in detention, so changing the reference to child would not be appropriate. The committee elected not to change Rule 55.

Rule 56. Expungement

The last sentence of Rule 56(b) refers to the “Juvenile’s record.”

MOTION: Paul made a motion to change “Juvenile’s” to “minor’s” record. Adam seconded the motion and it passes unanimously.

Rules 34-37A, 40-43, 45, 49-50 and 58. (Kristin Brewer and Adam Trupp).

Rule 34. Pre-trial hearing in non-delinquency cases.

No changes were made.

Rule 35. Pre-trial Procedures.

Rule 35c uses “minor” regarding who may be appointed a GAL and should more appropriately use the term “child.”

MOTION” Adam made a motion to change “minor” to “child” in Rule 35c. Judge Lindsley seconded the motion and it passed unanimously.

Rule 36. Cases certified from district court.

Rule 36(a)(4) uses the term “child” which is consistent with the new definition.

Rule 36(b)(1) uses the term “minor” which is also consistent with the new definition. No changes were proposed to Rule 36.

Rule 37A. Visual recording of statement or testimony of child in abuse, neglect and dependency proceedings—Conditions of admissibility.

The committee deferred discussion of Rule 37A to another time due to substantive questions.

Rules 40-43

No changes were proposed to Rules 40-43.

Rule 45. Pre-disposition reports and social studies.

MOTION: Adam made a motion to substitute “minor” for “child” throughout Rule 45(d). Kristin seconded the motion and it passed unanimously.

Rule 50. Presence at hearings.

Rule 50c appropriately refers to “minor” and no changes were recommended.

Rule 58. Victim rights.

No changes were needed.

Rule 5. Definitions.

Committee members discussed the use of the term “persons” in Rule 5c.

MOTION: Judge Lindsey made a motion to change the final reference to “persons” in Rule 5c to the phrase “minors over 18.” Kristin seconded the motion and it passed unanimously.

The committee further discussed the need to review other rules to see if the term “persons” is

used, but deferred this discussion to another meeting.

Rule 44. Findings and conclusions.

MOTION: Adam made a motion to modify Rule 44(e) by substituting the term “child” where the term “minor” appears. Judge Steele seconded the motion and it passed unanimously.

Rule 47. Reviews and modification of orders.

MOTION: Brent made a motion to change the reference to “youth” in Rule 47(e)(1) to the term “minor” and to change both references to “youth” in Rule 47(e)(2) to the term “child.” Adam seconded the motion and it passed unanimously.

Rules 6-11, 14-16, 57 (Judge Steele and Ed Peterson).

The committee agreed to discuss changes to this group of rules at another meeting.

At this point in the meeting, numerous members had to leave and the quorum was lost. The remaining members agreed to finish reviewing the rules and either send out an email seeking ratification of the changes or address the changes at the next meeting.

Rules 1-5, 33, 59, 13 and 14 (Carol Verdoia)

Carol reported that Rules 1 and 2 did not contain any references to either “minor” or “child.”

Rule 3. Style of pleadings and forms.

The committee discussed Rule 3(b)(1) and considered changes to the caption which reads “a minor under ___ years of age.” Carol stated that the AGs pleadings are captioned “a child” or “children” under 18 years of age and Claudia noted that the official form on CARE uses “child/children.” It was also noted that the juvenile court act refers to “persons.”

MOTION: Kristin made a motion that the caption language in Rule 3(b)(1) which reads “a minor under ___ years of age” be changed to read “a person under ___ years of age” to achieve parity with statute. Judge Steele seconded the motion and all present were in favor, although a quorum was lacking.

Rule 4. Time.

No changes were proposed to Rule 4.

Continued discussion of Rule 5. Definitions.

Rule 5(d), (h) and (j) all contain references to “minor.” The committee determined the references in subparagraph (d) and (h) were satisfactory as written, but the reference in subparagraph (j) to “minor” should be changed to “child.”

MOTION: Kristin moved to change the reference to “minor” in Rule 5(j) to “child.” Judge Steele seconded the motion and all present were in favor, although a quorum was lacking.

Rule 33. Preliminary orders and summary proceedings.

Rule 33(a)(1) and (2): Carol requested the committee’s assistance regarding whether pre-

adjudication exams and evaluations apply to the 18-21 year old age group. In subparagraph (a)(2), the court may also order similar exams of a parent. The committee discuss whether the rule is intended to apply to delinquency matters as well as abuse and neglect cases. Assuming these are abuse and neglect cases or cases involving status offenses, it seems most appropriate to use “child.”

MOTION: Kristin made a motion that “minor be changed to “child” in Rule 33(a)(1) and (2). Nelson seconded the motion and all present were in favor, although a quorum was lacking.

MOTION: Kristin made a motion that the Rule 33(b)(1) reference to “minor” be changed to “child” and subparagraph (b)(2) be left as is. Claudia seconded the motion. The committee also discussed the confusion caused by the referenced to a minor as a “runaway” if the minor is over 18. After further discussion the motion was withdrawn and Rule 33(b) was left as currently written.

Rule 33c: This subparagraph addresses consent to medical treatment by a “minor.” The committee initially determined that by nature, the rule should reference a child because those 18 or older may consent to medical treatment. After additional discussion, members were concerned that situations might exit where consent is needed for a minor by someone other than the minor and changing the reference to “child” might be too restrictive. The committee, therefore, determined that Rule 33c should remain as “minor.”

Rule 33(d): The committee agreed that the reference to “minor” was appropriate and should remain as written.

Rule 59. Material witnesses.

Rule 59c (1) addresses material witnesses and goes to the defendant’s right to confront witnesses. The committee agreed that the use of “minor” refers to the minor as a defendant and should not be changed to keep the reference as broad as possible.

Rule13. Shelter hearings.

Rule 13c: The committee determined that the reference to “the court shall advise all ‘persons’ present” did not specifically mean to include minors and should be left as currently written.

Rule 13(g): Similarly, the committee determined that the reference to “any person” in subparagraph 13(g) did not specifically mean a minor and was left as written.

Rule 14. Reception of referrals; preliminary determination.

Rule 14(a)(1): This subparagraph contains two references to “persons.” The committee determined that neither reference specifically meant a minor and no further changes were recommended.

III. *URJP 52–15 Day Language Regarding Appeals* (Brent Bartholomew)

This issue was not addressed due to time constraints.

IV. *URJP 53-Review of rules for withdrawal of counsel in expedited child welfare appeals*
(Carol Verdoia)

This issue was not addressed due to time constraints.

The next meeting was set for Friday, September 29, 2006 from noon until 2:00 p.m.
There being no further time available, the meeting adjourned at 2:25 p.m.