FAX

TO: Carol Verdoia, Katie Gregory
FROM: Paul Wake
SUBJECT: 10/1/04 Juvenile Rules Committee
DATE: September 29, 2004

I anticipate making the meeting, but with one of our family vehicles going into the shop today it's not a sure thing, so here's a submission of my take on the agenda items:

Prior Minutes

The 12/5/03 minutes indicate that with regard to Rule 53 we were going to replace the certificate of probable cause language with stay pending appeal language. The 2/6/04 minutes showed some more discussion of the certificate of probable cause language. My 2004 annotated rules volume arrived a month or two ago, and didn't contain the change. My memory is that we made the change, although I don't know that the minutes clearly reflect that. Is that change in the works?

We have previously approved the minutes for 8/1/03, so this might not be the agenda item on which to bring this up, but on that date we agreed to change the section VII heading from "PROCEEDINGS RELATING TO CRIMINAL MATTERS" to "PROCEEDINGS RELATING TO DELINQUENCY MATTERS." Alicia was under the impression that would show up in the 2005 code volumes. It didn't show up in the recent annotated rules volume; it is in the works, isn't it?

Rule 9: Detention Hearings

Apparently the Board of Juvenile Judges, and the Division of Juvenile Justice Services, are concerned that in different areas of the state detention hearings are being done differently. I have two thoughts on that.

First, why is it our issue? If the judges don't like what the judges are doing, the judges can change what they're doing.

Second, why is it an issue at all? The memo from Alicia indicated that there are four different things happening across the state: 1) no hearings at all; 2) no hearings because of stipulations to waive the hearing; 3) file reviews; and 4) face to face hearings. The first two things shouldn't be happening, since the relevant statute—Utah Code § 78-3a-114(4)(c)—says that "[a] hearing for detention or shelter may not be waived". That seems pretty clear. I would think that the third thing, file reviews, isn't quite right, and that the fourth thing is what most people are doing and should be doing. But I am very leery of imposing Wasatch Front standards on every county in the state. What works in Salt Lake should not automatically be the standard for Blanding. I don't think that Rule 9 is the problem.

Reliable Hearsay

Awhile back, Nelson wondered whether "hearsay" in Rule 9 should have a specific definition provided. I think we should see if this is still a concern of his, and if it isn't, we should drop it. I'm all for dropping it.

Rule 9 and rule 13, respectively, allow use of "hearsay and opinion" ("hearsay and opinions" in rule 13) in detention and shelter hearings. The generally idea is that these hearings come early in the process, there isn't a lot of developed evidence, and at that point there often isn't a lot to present to the judge but hearsay and opinion. I don't favor changing this to "reliable hearsay" because I think it risks confusing this hearsay standard with the preliminary hearing hearsay standard, and I think the intent of Rule 9 is to allow relatively liberal use of hearsay at detention hearings.

Article I, section 9 of the Utah Constitution was amended to allow use of "reliable hearsay" at preliminary hearings, and Utah Rule of Evidence 1102 deals with "reliable hearsay" in this context and specifically defines it at some length, and in a way the implicates related statutory provisions dealing with preliminary hearing testimony. Criminal rule 7(g)(2) further deals with "hearsay" (it does not include the word "reliable") in the preliminary hearing context, at which testimony is being taken more formally a ways into the process, and where the people originally giving the information being shared at the preliminary hearing as hearsay were originally warned of criminal penalties for not telling the truth. Juvenile rule 22 also deals with "hearsay" in the preliminary hearing context for serious youth offender and certification cases in which minors are being transferred to the criminal system. It seems to me that the term "reliable hearsay" should be used in every rule dealing with preliminary hearings, since that's what the term most has to do with. But we'd have to change both our rule 22 and the criminal advisory committee would have to change their rule 7 to add "reliable," and I doubt there's much impetus to do that.

Our rule 46(b) speaks of using "reliable hearsay and opinions" at dispositional hearings. This could present a problem since there could be confusion between the rule 46 term and the URE's definition of reliable hearsay for preliminary hearing purposes. At least in the Fourth District, hearsay at dispositional hearings isn't held to the same definition as the URE preliminary hearing-related "reliable hearsay" definition.

I wouldn't want to add "reliable" in front of rule 9's "hearsay" for the reasons given, and if we were to make a change I'd rather leave rule 9 as is, and remove "reliable" from rule 46(b) to hopefully remove potential for confusion over whether URE 1102's definition applies more broadly to juvenile proceedings than just to preliminary hearings. Or do an advisory committee note to rules 9, 13 and 22 stating that "hearsay" as used in those rule should be interpreted more broadly than as defined in URE 1102.

A Pressing Matter That Isn't on the Agenda

The words "Division of Youth Corrections" appear in the advisory committee note to rule 8, and of course it should now read "Division of Juvenile Justice Services." Perhaps emergency rulemaking is in order. (The judicial rules haven't updated 7-304 or 7-308 either.)