

**SUMMARY MINUTES (DRAFT)  
SUPREME COURT'S ADVISORY COMMITTEE  
ON THE  
RULES OF JUVENILE PROCEDURE  
Administrative Office of the Courts  
450 South State Street  
Executive Dining Room, W18A  
Salt Lake City, Utah  
October 1, 2004**

**Present**

Carol Verdoia  
Judge Lindsley  
Brent Bartholomew  
Kristin Brewer  
Jeff Noland  
Ed Peterson  
Paul Wake  
Narda Beas Nardell

**Excused**

Judge Steele  
Adam Trupp  
Matty Branch  
Alan Sevison  
Pam Vickery  
Marty Olsen  
Jeanette Gibbons  
Nelson Abbott  
Ester Chelsea-McCarty

**Staff**

Katie Gregory

**I. Minutes and Welcome**

Ed moved that the minutes of 2/6/04 be approved as written. Narda seconded the motion, and it was approved unanimously.

**II. URJP 9**

The committee discussed concerns raised by Youth Corrections and the Board of Juvenile Court Judges that districts may be failing to conduct 7-day review hearings for youth in detention. Carol read the minutes of the Board meeting in which the concerns were discussed and Judge Lindsley elaborated on some of the concerns. Apparently some districts are performing face-to-face reviews, while others are performing only file reviews. In some districts, reviews may not be occurring at all due to the 5-day arraignment rule.

Rule 9 requires youth in detention be reviewed every 7 days, while Utah Code Ann. Section 78-3a-114(4)(e) requires "periodic reviews" to ensure that continued detention is necessary. No 7-day reviews are required by statute. Rule 9 only applies predisposition. Discussion followed regarding the time required to reach disposition. Judge Lindsley clarified that the time may vary. While some cases may reach disposition in 14 days, others may take longer. This often occurs in the case of a sex offender if the court is waiting for a psycho-sexual evaluation to be completed.

The committee discussed whether Rule 9 may be broader than statute and no longer match practice. Carol reported that Judge Bachman had been looking into the issue. Judge Lindsley agreed to discuss the matter with Judge Bachman at the next meeting of

the Board of Juvenile Court Judges and report back to the committee on whether the committee should pursue the issue. Judge Lindsley moved to table the Rule 9 discussion to hear back from the judges. Ed seconded the motion and it was approved unanimously.

### **III. Expedited Appeals**

Brent stated that his questions regarding expedited appeals had been answered since the last meeting. Jeff raised the issue of transcript costs and the availability of audio-recordings. A lengthy discussion followed regarding whether recordings should be made in the courtroom if a court reporter is present. It appears that Third District may have instructed clerks not to record in this situation. This is causing a problem for Attorney's General who must prepare the order quickly and have been relying on the audio recording to draft orders. Currently, GALs have access to CARE and can listen to the record from CARE. The group debated whether this is a proper issue for this committee. Judge Lindsley agreed to discuss the matter with Judge Hornak and report back to Katie on whether or not Bruce Thomas and/or Dennis Martinez from third district should be invited to the next meeting so the committee may better understand the scope of the problem. The committee agreed to place the matter on the next agenda.

### **IV. Limiting Discovery**

Carol stated that this item is no longer pressing and on Carol's recommendation, the committee agreed to take the matter off the agenda.

### **V. Reliable Hearsay**

Carol reported that this issue was of concern to Nelson Abbott, who was not in attendance. Nelson wanted to define "reliable hearsay" as used in Rule 46(b). Paul addressed concern in adopting the definition of reliable hearsay contained in the Utah Rules of Evidence. Judge Lindsley also expressed concerns about using a reliable hearsay standard at detention hearings, which typically rely on probable cause statements. The matter was tabled until Nelson could be present to explain his concerns.

### **VI. Uniform Child Testimony Act**

Carol asked Katie to discuss this matter with Rick Schwermer and invite him to present on the issue at the next meeting.

### **VII. URJP 47**

Adam will be invited to present his concerns regarding URJP 47 at the next meeting.

### **VIII. New Business**

A. Rule 37A Advisory Committee Note

Carol explained her concerns that the Advisory Committee Note to Rule 37A needs to be modified following the recent *Crawford* decision which overruled *Ohio v. Roberts*. Currently, the Note relies on *Ohio v. Roberts* and states "This rule is based upon provisions governing admissibility of out-of-court statements of child victims of sexual abuse in adult criminal proceedings. This rule is intended to be interpreted using the case law developed under Utah Code Section 76-5-411 and Rule of Criminal Procedure 15.5." Judge Lindsley made a motion to remove the Committee Note. Kristen seconded the motion and it passed unanimously. The Committee Note to Rule 29A contains similar language and the committee agreed to hold discussion on a potential change to Rule 29A until its next meeting.

B. Housekeeping Matters

The Committee noted that the heading to Section VII in the Table of Contents to the URJP was to be changed from "PROCEEDINGS RELATING TO CRIMINAL MATTERS" TO "PROCEEDINGS RELATING TO DELINQUENCY MATTERS." Katie will send a note to Tim Shea requesting the heading change be reflected in the Spring 2005 volume. Paul also noted that the Advisory Committee Note to Rule 8 still mentions "Division of Youth Corrections" in two places. The Division has changed its name to "Juvenile Justice Services" and the Committee agreed that both changes should be submitted to the publisher.

Carol reported that changes recommended previously to Rules 44, 45, 46, and 53 have been approved by the Supreme Court. Only one change in Rule 53 is outstanding, regarding motions for substitution of counsel. The change is currently out for comment. Paul had raised concern that language was not changed in Rule 53 from "certificate of probable cause" to "stay pending appeal." Carol reported that the change had occurred, but would not appear in print until the Fall 2004 Supplement arrives in a few weeks.

**IX. Next Meeting and Adjourn**

The next meeting was set for Friday, December 3 from 11:30 a.m. to 1:00 p.m. There being no further business, the meeting was adjourned.