

**MINUTES  
SUPREME COURT'S ADVISORY COMMITTEE  
ON THE  
RULES OF JUVENILE PROCEDURE  
Administrative Office of the Courts  
450 South State Street, N31  
Salt Lake City, Utah 84114-0241  
Friday, October 3, 2003**

**Present**

Alicia Davis  
Carol Verdoia  
Judge Lindsley  
Judge Steele  
Narda Beas Nardell  
Ed Peterson  
Kristin Brewer  
Jeff Noland  
Brent Bartholomew

Pres  
KCB

Exc  
PV

1. Welcome, Approval of Minutes

Judge Lindsley moved to approve the August 2003 minutes. Narda seconded the motion, and it passed unanimously.

2. Uniform Child Witness Testimony by Alternative Methods Act

Rick Schwermer reported that the Evidence Advisory Committee has been studying the Uniform Child Witness Testimony by Alternative Methods Act. The National Conference of Uniform State Laws has recently put this out. After consideration, the Evidence Advisory Committee has recommended that it not be adopted.

Here it would likely be a rule of evidence, not a juvenile rule. The Evidence Advisory Committee didn't think it was substantially different than Utah's existing provisions, or if different, not substantially better. While there is an advantage to having a uniform rule, the committee opined that it is appropriate that Utah law on this issue be placed principally in 3 different places: Utah Rule of Criminal Procedure 15.5, Juvenile Procedure 37A, and Utah Code 76-5-411.

Ed opined that the Uniform Law would protect children in divorce proceedings. Kristin agreed that this type of protection does not now exist in regular civil cases. Rick indicated that the Civil Procedure Committee had considered the Uniform Rule and also voted against adoption but it was uncertain whether they specifically considered the protection of children in divorce cases. Kristin indicated that in Third District children

very rarely testify. However, in instances in which they do, these provisions might be helpful. No existing Utah rule talks about how a proceeding could be taped or how. While she was against having one uniform law, she supported a civil/domestic/custody-related provision for custody proceedings.

Carol recommended that we consider our rules in light of the Uniform Act. Ed wanted to look at 37A to consider right to confrontation without the assistance of a video. Kristin stated that 37A provided for closed circuit testimony.

### 3. Rules out for Comment (11/2003)

Carol Verdoia reviewed the Supreme Court meeting to approve rules published for comment. Most of the rules were approved with only minor modifications, but the Supreme Court asked the URJP committee to consider several amendments, mostly changes in wording to simplify matters.

With URJP 19, Justice Wilkins mentioned that courtesy copies provision didn't work in 2nd district. We agreed to delete the last sentence at the Supreme Court meeting. That just meant that it didn't have to be file-stamped.

With URJP 45, the Supreme Court asked who would provide the dispositional report. The problem is that it depends; it could be any agency submitting it. Kristin suggested that 45(e) read: "shall be provided by the author to minor's counsel ..."

URJP 47(5): The Supreme Court asked if it was necessary. At first blush, the Committee felt that it was, and would continue to consider next time.

URJP 54(e): transferred from CJA - Supreme Court asked if that portion was necessary, or if it were redundant... did it just relate sex abuse cases? However, it was pointed out that the provision prevents a case from being continued several times. Judge Steele doesn't want it excluded from Rules of Criminal Procedure. Carol recommended "signed minute entry."

URJP 53. Supreme Court questioned when court-appointed counsel would be off the hook once they tried to withdraw. If jurisdiction terminates, doesn't their appointment terminate? In adjudication, Juvenile Court maintains jurisdiction pending appeal. Thus, Carol didn't think it was necessary to have that provision. After discussion, Carol questioned whether or not it was advisable to have an end-date. Brent raised the issue that sometimes a judge will release the GAL in the court order. Brent stated that "upon written motion" should be removed from URJP 53(b)(5) to instead read: "except upon written approval of the court" so that a written motion to withdraw would not be necessary. Carol suggested that the issue be further considered at the next meeting.

### 4. Limiting Discovery in Substantiation Proceedings

Carol Verdoia

Carol opined however that these proceedings should be streamlined, and put under the purview of the other juvenile rules rather than the civil procedure rules. This matter was tabled for the next meeting due to time constraints. Judge Steele will bring some material from Judge Johansson to the next meeting.

#### 5. Form: Motion for Substitution of Counsel

Alicia Davis represented that the Board of Juvenile Judges had requested a form for litigants to fill out prior to trial if they planned to move for a continuance, alleging that they needed time to hire a new attorney and confer with that attorney. The problem presented itself in 2 cases in which, on the day of trial, the parties announced that they wanted to fire their appointed defense attorney, and have a new attorney appointed. The Court of Appeals stated that the trial judge needed to have a colloquy on the record to determine whether or not grounds existed to continue the proceedings, and appoint new counsel. The Board of Juvenile Judges had reviewed and approved the proposed amendment to URJP 53 and the accompanying form.

Brent asked whether parties would have a hearing on the motion prior to the trial day. The committee felt that most of these motions would be heard immediately preceding the scheduled trial. Judge Steele identified that training probably needed to assure that clerks dealt with these particular motions in an expedited fashion.

The Committee recommended several changes to the form:

- 1) Caption: State of Utah in the interest of (child). Separate caption for substantiation cases.
- 2) DOB and case # in caption
- 3) Notice to movant: "even though you have submitted this motion you are still required to appear at the scheduled hearing."
- 5) lines for movant to initial
- 6) paragraph 3 amended to read that the motion would be set for hearing immediately prior to trial. Other provisions from paragraph 3 were stricken.

Carol is working on a memo for the AGs of all the reason to withdraw from a case which she will share at the next committee meeting.

Kristin said that form doesn't obviate the need for the colloquy, but was a factor to show the information provided to the Court to make a determination.

Carol asked whether asking that trial be reset was realistic given a 5 day timeframe. She recommended that, rather than treating this like a motion for continuance (5 days), it be treated like a motion for an expedited hearing (10 days). That would give other parties the opportunity to respond, and may give the judge the opportunity to use their calendar. Alicia was asked to re-draft a proposal for consideration at the next meeting.

#### 6. Old Business... Tabled for December 5.

The Committee discussed URJP 19 and courtesy copies... Paul requested clarification as to whether amendment applied to delinquency or not. Members are asked to inquire as to what practice is statewide before any changes are pursued.

Paul also asked what was meant in 53(b), with the filing of certificates of probable cause. Committee will consider at next meeting.

Nelson asked what reliable hearsay is. Unlike in district court, the juvenile court has no rule-guidance as to reliable hearsay. Nelson suggested that it might be appropriate as URE 1102, to define 1102 within URJP. Kristin indicated that URJP 78-3a-411 broadens the scope of what is acceptable hearsay.

Paul suggested that Rule 46 could be more like Rules 9 and 13 ("hearsay and opinion") rather than remaining "reliable hearsay" and sounding like URE 1102, which is too narrow a definition of hearsay for Rule 46's purposes, and that perhaps Rule 22 and URCP 7(g)(2) should both track Utah Constitution Article I Section 9 and URE 1102 and refer to "reliable hearsay" instead of just "hearsay." In any event, Paul thought it would be a bad idea to incorporate URE 1102's definition into Rule 5 as a general definition of hearsay for juvenile court purposes, because it is too narrow a definition for purposes of discussion of dispositions (or for DT hearing/shelter hearing purposes). Judge Steele suggested that, before we look at the use of terms, we ought to bring all the statutes, and the case that dealt with that rule within juvenile court. Judge Steele stated that it would be interesting to do a chart, and good to settle the issue. Carol will bring the case and Nelson will gather additional information to provide a framework to work from.

Kristin and Judge Steele will continue to work together to construct a 78-3a-305 form.

#### 7. Other Business and Adjourn

The next meeting will be held on Friday, December 5 at 12:00 p.m.