

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

November 2, 2012
 MEETING DATE

Noon to 2:00 p.m.
 TIME

Executive Dining Room
 LOCATION

MEMBERS:			Present	Absent	Excused	MEMBERS:			Present	Absent	Excused
Judge Elizabeth Lindsley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Brent Hall	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Judge Larry Steele	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Narda Beas-Nordell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Carol Verdoia	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Alan Sevison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Diane Abegglen	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Pam Vickrey	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>				
Brent Bartholomew	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Paul Wake	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Joan Carroll	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Sterling Corbett	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
David Fureigh	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
AOC STAFF:			Present	Absent	GUESTS:			Present	Absent		
Katie Gregory	<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>					
Alison Adams-Perlac	<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>					

AGENDA TOPIC

I. Welcome & Approval of minutes		CHAIR: ALAN SEVISON, ACTING CHAIR FOR CAROL VERDOIA	
Corrections to the Minutes: None			
Motion: To approve the minutes of August 3, 2012 as written.	By: Sterling Corbett	Second: Joan Carroll	
Approval	<input checked="" type="checkbox"/> Unanimous	<input type="checkbox"/> Vote:	In Favor _____ Opposed _____

AGENDA TOPIC

II. Admissibility of Hearsay Evidence in Child Protective Order Proceedings	[PRESENTER] JUDGE ELIZABETH LINDSLEY AND ALISON-ADAMS PERLAC
<p>Judge Lindsley reviewed the status of the committee's discussions to date. At its last meeting, the Committee drafted the following questions and asked Judge Lindsley to send them to all juvenile judges:</p> <ol style="list-style-type: none"> 1) Do you believe the child protective order statute, 78B-7-201, allows you to rely on hearsay that is not otherwise admissible under the Utah Rules of Evidence? 2) Do you require the petitioner to present their case through witnesses in the absence of a stipulation to proffer? 3) Is a child protective order hearing adjudicative or dispositional? <p>Judge Lindsley received numerous responses from the judges and shared them with the Committee. Many of the judges allow hearsay. Some based this on the statute's reference to "evidence or information." A few made a distinction between hearsay presented at the exparte hearing and the ability to present hearsay at the full child protective order hearing. Answers were mixed on the third question with many stating the hearing is adjudicative, but others answered either "both" or "neither."</p> <p>Alison Adams-Perlac summarized her research regarding law in other states. The vast majority of</p>	

states have a rule similar to Utah, which provides the rules of evidence apply, including hearsay rules, to all proceedings unless there is an exception. Most states do not have an exception. Three states apply hearsay rules, but allow testimony to be taken outside the presence of the alleged perpetrator. Five states allow hearsay in protective order proceedings. Arizona and Hawaii allow any relevant evidence. Nevada allows permanent protective orders to be entered without a hearing. New Hampshire specifically states that the court is not bound by the rules of evidence and may consider any relevant and material evidence. Texas allows hearsay describing family violence only by a child 12 years of age or under. In other states, all exceptions were provided by statute, rather than by rule.

The committee debated various potential resolutions, including adding language in rule providing that the court may allow reliable hearsay.

Motion that any committee member who would like to change language in the Rules submit the proposed language for the next meeting.

By: Judge Elizabeth Lindsley Second: Sterling Corbett

Approval:

Unanimous

Vote: Majority
In Favor _____

Opposed _____

AGENDA TOPIC

III. Rule 13-Shelter Hearings

[PRESENTER] ALAN SEVISON

One of the juvenile judges asked the committee to consider whether Rule 13 should apply to all initial hearings pursuant to 78A-6-302, and not just hearings pursuant to 78A-6-306. The question is whether hearsay and opinions may be considered per Rule 13(d) in a private petition case when a motion to transfer custody is filed, or other shelter-type hearing is held. The committee discussed the combined effect of sections 106(4), 304 and 306, which appears to allow a private petitioner who also files a Motion for Expedited Placement in Temporary Custody, to obtain a shelter hearing. Judge Lindsley will contact the judge requesting the change to see if this analysis satisfies his concern, or alternatively to request he provide language for a proposed rule to resolve the concern. Judge Lindsley will report back at the next meeting.

AGENDA TOPIC

IV. Old or New Business

[PRESENTER] ALL

1. Discussion of the Competency statute will be continued to the next meeting. A discussion followed regarding challenges being experienced in obtaining competency evaluations, especially pertaining to recommendations on attainment. The committee set the next meeting for Friday, January 4, 2013 from Noon to 2:00 p.m.