

**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
December 5, 2003, 12 p.m.**

Present

Carol Verdoia, Chair
Kristin Brewer
Ed Peterson
Paul Wake
Brent Bartholomew
Nelson Abbot
Judge Steele
Narda Beas Nardell

Excused

Marty Olsen
Judge Lindsley
Pamela Vickrey
Jeanette Gibbons
Alan Sevison

Staff

Alicia Davis

1. Welcome and Approval of Minutes

Carol Verdoia called the meeting to order. Judge Steele moved that the minutes be approved. No opposing votes. Minutes were approved as written.

2. Rules Reissued for Comment

All procedural rules and rules of administration approved in the last couple of cycles have been reissued for comment as of November 3, 2003. There was some concern that electronic notification of rules out for comment had not allowed for sufficient notice.

3. Appointment of Secretary

Assistance in recording secretaries was requested. Narda and Carol will check with availability of interns in their office.

4. Expedited Appeals

Carol reviewed the Iowa process, how form petitions and other procedural changes had greatly shortened the appeals process. The transcript filed within four days of petition for appeal. Court of Appeals takes laboring oar in reviewing the record instead of parties. If a case of insufficiency of the evidence or other developed case law issues, they can make a summary review. Otherwise, they can require a full briefing. Judge Steele questioned if anyone had considered the issue of ineffective assistance of counsel, Rule 55b. The only way the Iowa

system works is for trial counsel to raise the issues, even if they are ineffective assistance of counsel claims. While Iowa does not have many ineffective claims, Utah does. It may be uncomfortable for Utah attorneys, but it is the Court of Appeals that reviews the record. The submitting attorney really only has to submit a petition alleging the claim. Judge Steele indicated that Rule 2 allowed for all kinds of flexibility. Iowa allows for a legitimate reason if a signature on appeal cannot be obtained, i.e. if parent is incarcerated. The intent is to require appellant to sign the petition. Judge Steele questioned whether that was clear as stated in Utah Code Ann. 78-3a-909(3). Carol indicated that some judges were concerned about notifying parties of their appellate rights. But because of the shortened timeframe, such notification is necessary. It is preferable to do such notification in court as opposed to mailing because often parties will change addresses immediately after the hearing. The record could read, "Let the record reflect that Party was served with notification of his or her rights of appeal." A notice allowing for an initial line could also be maintained as part of the record. Issues of literacy and language competency may become problematic with written notices.

Carol also indicated that a response is not required unless a full briefing is ordered. Some juvenile rule changes include URJP 52 and 53 as documented in the materials. Carol indicated that a legislator had been approached, and this would take effect as of May 2004.

All members present approved the rules relevant to juvenile procedure subject to approval of the other rules. The forms would be a part of the Appellate packet.

5. **URJP 47 and 53** will be considered at the end of the comment period.

6. **Limiting Discovery** is an in-depth discussion, and will be tabled for next month.

7. **Substitution of Counsel.** Alicia reviewed the form that was presented at the October meeting, and documented in that meeting. Changes stemming from that discussion were incorporated into the form, and the form was presented for final approval before being presented to the Board of Juvenile Judges. Judge Steele asked if 10 days was sufficient to calendar a new event. The committee suggested that a date line and a mailing certificate be added. The committee moved that the form be sent to Juvenile Board for approval.

8. **Uniform Child Testimony Act.** Rick Schwermer could not be present, but he will update the Committee on the Rule of Civil Procedure at the next meeting.

9. **78-3a-905 Petition.** Kristin and Judge Steele stated that it was unclear whether all judges wanted to have it available. Judge Steele piloted it in his district. Judge Steele moved that it be stricken from the agenda. If appropriate, the issue will be considered in the future.

10. **Reliable Hearsay** is an in-depth discussion, and will be tabled for next month. Nelson will bring materials next time.

11. **URJP 46.** Paul asked to strike URJP 46 from the agenda as the issue was corrected in August.

12. **URJP 19.** Paul circulated a memo dealing with URJP 19 and 53 dated 12/3/03. With courtesy copies, Narda indicated that they are generally not provided with delinquencies. After discussion, the Committee decided that URJP 19 was sufficient as written.

13. **URJP 53.** With regards to URJP 53, Paul questioned the provision dealing with the "certificate of probable cause" whether that was a hold-over from the CJA provisions. Paul indicated that he had never heard of this provision being applied in juvenile court. Criminal Rule 27 refers to it. The criminal rules are incorporated within Rule 19. Paul asked that the provision be stricken. Ed indicated that perhaps a CPC could be filed if a sanction were involved, that striking the provision may eliminate a currently existing right. Carol indicated that this provision dealt with what an attorney has to do before a final appealable order could be entered. Kristin questioned if this was just syntax, the certificate of probable cause representing a "stay pending appeal." A certificate of probable cause is why you would prevail in appeal, and why the defendant is not a flight risk or danger to the community. If you want to apply for one, you go ahead and apply for one under (d)(2). Kristin suggested that the policy should be studied concerning stays pending appeal. You have the right to seek a new trial or a CPC. The way that you seek a CPC is a motion for a stay pending appeal. After discussion, the Committee moved that URJP 53 be amended to strike CPC language, substituted by "motion for stay pending appeal." Brent suggested that URJP 53(b)(5) read: "GAL may not withdraw except upon approval by the Court." The committee will again revisit this issue at the next meeting, discuss it again, and vote on it at the next meeting. Brent questioned why "pending motion" language was not adopted into URJP when it was taken from the CJA, to make it more burdensome to withdraw when a motion was pending. Kristin indicated that in civil practice, one could not withdraw if any motion were pending except by leave of the court. Carol raised the issue of whether or not there was an end point for appellate counsel to be off the hook on a case, a question posed by the Supreme Court.

Next meeting will be February 6 at 12:00.