

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re: Proposed Amendments
to Rules 9 and 25 of the
Utah Rules of Juvenile
Procedure

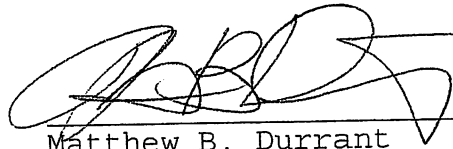
Case No. 20080130-SC

ORDER

IT IS HEREBY ORDERED that the proposed amendments to Rules 9 and 25 of the Utah Rules of Juvenile Procedure are adopted and promulgated effective April 1, 2009.

FOR THE COURT:

2-13-09
Date



Matthew B. Durrant
Associate Chief Justice

Katie Gregory - Questions regarding certain Utah Rules of Juvenile Procedure

From: Jantz Afuvai
To: Katie Gregory
Date: 2/19/2009 4:32 PM
Subject: Questions regarding certain Utah Rules of Juvenile Procedure

Hello,

I received your name from Susan Burke regarding questions that I have. I am from the Division of Juvenile Justice Services and am on the Division's Policy & Procedure Committee.

We are in the process of revising our most confusing DJJS Policy - 05-15 (regarding) Requests by Law Enforcement. The policy attempts to balance the rights of juveniles in our care and those of the public when Law Enforcement requests to question (interview or interrogate) juveniles, during an investigation, who happen to be in our care. The revised policy is focusing on preserving Constitution Rights of juveniles under the age of 14. The problem is confusion regarding consent and waiving these rights for juveniles 14 or older.

The reason for this email is that our policy makes reference to Utah Rules of Juvenile Procedure, and the Rules cited appear to contradict one another.

For example:

Rule 8 - Rights of minors while in detention, reads:

*(d) No person other than a probation officer or a staff member of a detention facility shall be permitted to interview a child 14 years of age or older in a detention facility regarding an offense chargeable against the child without the consent of the child **and** the child's parent, guardian or custodian after first advising said child of constitutional rights as described in Rule 26 and such rights having been knowingly and voluntarily waived by the child.*

Conversely, Rule 26 - Right of minors in delinquency proceedings & Rule 27A - Admissibility of statements given by minors, respectively read:

Rule 26 -

(e) A minor 14 years of age and older is presumed capable of intelligently comprehending and waiving the minor's right to counsel as above and may do so where the court finds such waiver to be knowing and voluntary, whether the minor's parent, guardian or custodian is present. A child under 14 years of age may not waive such rights outside of the presence of the child's parent, guardian or custodian.

Rule 27A -

(a)(2) If the minor is 14 years of age or older, the minor is presumed capable of knowingly and voluntarily waiving the minor's rights without the benefit of having a parent, guardian, or legal custodian present during questioning.

Hence the confusion. Rule 8 implies that consent is needed by a parent, guardian, or custodian prior to the juvenile (14 years of age or older only) waiving their Constitutional Rights if interrogated by Law Enforcement. Rules 26 and 27A indicate otherwise and exclusively imply that the juvenile (14 years of age or older only) is presumed capable of waiving these rights.

Do you know who I can talk to about this? We are wondering if the Rules, particularly Rule 8, can be amended to reflect the same implications.

Additional contact information is as follows:

801 514-2353 Cell
801 626-3397 Office

Thank you,

Jantz Afuvai
Division of Juvenile Justice Services (DJJS)

From: Paul Wake
To: Bartholomew, Brent; Branch, Matty; Carroll, Joan; Edwin T. Peterson; ...
CC: Chelsea-McCarty, Esther; Runyan, Shana
Date: 4/10/2009 8:41 AM
Subject: Re: URJP Agenda for April 17

I'll miss you all next week. Here are my two cents regarding the JJS query on questioning of minors. I've assumed that rule 27A has to do with interrogations on the street. Rule 8 has to do with questioning once a minor is in detention. I'm not sure there's a conflict--it seems to me there's just a decision that these are different circumstances, with more rigamarole for the detention situation. Rule 26(e) isn't about interrogations on the street or in detention, it's more about the judge talking to a kid in court and specifically about the kid waiving the right to counsel. I don't know that there's as much of a conflict between these rules as JJS thinks there is, and I note that JJS has frequently been know to go all over the place with regard to police interviewing kids in detention even when interpreting one rule. A thing to keep in mind if clarification of the rules is necessary, is the difference between interviewing kids about their own alleged offenses, versus interviewing them about other things that they might have been a witness to; the latter ought to be easy for police to do. Another thing to keep in mind is that our rule doesn't say the police can't interview kids under 14, it just says that if they do conduct such an interview without a parent, prosecutors probably won't be able to use in court any confession the kid gives.

--

Paul Wake
Deputy Utah County Attorney

Katie Gregory - Re: URJP Agenda for April 17

From: David Johnson
To: Alan Sevison; Angela Fannesbeck; Brent Bartholomew; Brent Hall; Carol Verdoia; Edwin T. Peterson; Joan Carroll; Judge Elizabeth Lindsley; Judge Larry Steele; Katie Gregory; Matty Branch; nbeas-nordell@co.slc.ut.us; Pam Vickrey; Renee Jimenez; ucadm.paulw@state.ut.us; Whitney Kania
Date: 4/10/2009 10:55 AM
Subject: Re: URJP Agenda for April 17
CC: Esther Chelsea-McCarty; Shana Runyan

Katie,

I will be out of town and will not be able to attend the meeting. I have done some leg-work on Rule 36 issues of certified CW proceedings between district and juvenile courts. As it is not pressing, I would suggest we table this issue until the next meeting.

After a consult with the 3rd district commissioners, it appears the resolution will be a relatively simple one.

Regards,

David

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MEMORANDUM

To: Judge Steele, Rules Committee

From: Whitney Kania, Law Clerk

Date: November 28, 2008

RE: Survey of Procedures for Withdrawal of Plea by Juveniles

ISSUE: Discussion of plea withdrawal procedures and rules in Ohio, New York, California, Arizona and Illinois.

DISCUSSION: I researched Criminal and Juvenile Rules of Procedure in several different states in order to determine how they govern plea withdrawals of juveniles. Most states simply apply the Rules of Criminal Procedure to their Juvenile proceedings. The Ohio and New York courts specifically state that there are some situations in which special rules will be used for juveniles. However, plea withdrawals are not included in those special situations. Plea withdrawals are still governed by the Rules of Criminal Procedure.

Ohio: The Ohio courts use the rules applicable in criminal proceedings unless otherwise specifically provided. The Ohio Rules of Juvenile Procedure have a specific colloquy to be used in taking pleas from juveniles. However, the procedure for plea withdrawals is the same as that used in adult court.

New York. New York follows the Family Court Act when determining procedures for juveniles. However, the Family Court Act uses almost the same proceedings as the New York Rules of

Criminal Procedure in cases of plea withdrawals. The cases involving juvenile plea withdrawals all use adult case law in their analysis.

Procedures for withdrawing guilty plea: Discretion of the trial court:

Most of the statutes allow more leeway for defendants moving to withdraw their guilty plea before sentencing occurs. In **Ohio**, “generally, a motion to withdraw a guilty plea filed before sentencing will be freely allowed; however, a motion to withdraw a guilty plea will not be granted automatically. State v. Lambros, 44 Ohio App. 3d 102 (1988).

Illinois gives broad discretion to the courts when deciding to grant or deny a motion to withdraw a plea. “The denial of the defendant’s motion to withdraw his guilty plea lies within the trial court’s sound discretion. People v. Wilson, 295 Ill. App. 3d 228 (1998). **Illinois** leaves the “denial of a defendant’s motion to withdraw his guilty plea” to the discretion of the trial court. “A reviewing court will not disturb the trial court’s decision absent an abuse of discretion.” People v. Hirsch, 312 Ill. App. 3d 174, 179 (2000). However, “a defendant has no absolute right to withdraw a guilty plea and bears the burden of demonstrating to the trial court the necessity of withdrawing his plea.” Id.

According to **New York’s** Criminal Procedure Law (CPL) 220.60(3), “At any time before it imposes sentence, a court in its discretion may permit a defendant to withdraw a guilty plea.” People v. Alexander, 97 N.Y.2d 482 (2002). Even though Alexander involved an adult defendant, the case was cited in People v. Fletcher, a juvenile plea withdrawal. 2005 N.Y Slip Op. 9215.

Arizona applies the “strict manifest injustice” standard used by the Federal Rules of Criminal Procedure when determining all requests for withdrawal, even if the withdrawal comes before

sentencing. Arizona Rules of Court Rule 17.5 Withdrawal of Plea. However, the rule is to be liberally interpreted with any doubts applied in favor of allowing the withdrawal of the plea. Duran v. Superior Court ex rel. County of Maricopa, 162 Ariz. 206 (1989).

After sentencing has been imposed, the standard for withdrawing a guilty plea becomes more rigorous. In **Ohio**, “a motion made after sentencing to withdraw a plea may be granted only to correct manifest injustice.” State v. Barnett, 73 Ohio App. 3d 244

Timelines for filing a motion to withdraw guilty plea:

The **California** Penal Code §1018 has a six month time limit for a defendant to withdraw his guilty plea. The court lacks jurisdiction to hear a motion made more than six months after the plea was entered. People v. Miranda, 123 Cal App 4th 1124 (2004).

When a motion to withdraw plea should be granted:

According to the law in **California, New York, Arizona** and **Ohio**, a motion to withdraw a guilty plea should be granted to avoid manifest injustice. Also, if the court finds that the plea was not voluntary, knowing or intelligent, the motion may be granted.

CONCLUSION: Based on the states I researched, the common practice appears to be the use of the state’s criminal rules in juvenile plea withdrawal proceedings. The trial courts have very broad discretion in denying or granting the motion to withdraw. After sentencing, withdrawing a guilty plea is generally reserved to avoid manifest injustice. California has a six month limitation for filing a motion to withdraw and after that period is up, the court lacks jurisdiction to hear the motion.

Katie Gregory - References to Titles 78 and 63

From: Tim Shea
To: Brent Johnson; Katie Gregory; Matty Branch; Rick Schwermer
Date: 2/19/2009 4:16 PM
Subject: References to Titles 78 and 63

Lexis has sent this note, identifying rules that continue to refer to sections in Title 78 or 63 instead of the re-codified sections.

Tim

URAP 6, 28A(e), 37 (committee note),

Appellate Form 7(2), (9), (11),

Appellate Form 8;

S. Ct. standing orders 5 and 6;

URJP 2(c) and ~~46(e)~~;

URE 508(a)(1) and committee notes in 501, 502, 503, 605, 608, 903 (also committee notes in Evid 504, 506, and 601, but the context is listing superseded statutes so updating the section number is arguably not required).

63-46b-15(2) = 63G-4-402

Rule

Index to Rules

59. Material witnesses.

60. Judicial bypass procedure to authorize minor to consent to an abortion.

SECTION I. GENERAL PROVISIONS**Rule 1. Scope and effective date.**

- (a) These rules shall govern procedures in the juvenile court.
- (b) These rules are intended to provide a just, speedy, and efficient determination of the cases before the court and shall be construed to further those goals.
- (c) These rules shall be known as the Utah Rules of Juvenile Procedure and may be cited as Utah R. Juv. P.
- (d) When appropriate, the use of singular nouns and pronouns shall be construed to include the plural, and the use of plural nouns and pronouns shall be construed to include the singular.
- (e) These rules shall take effect on January 1, 1995.

Repeals and Reenactments. — The Utah Juvenile Court Rules of Practice and Procedure were adopted effective January 1, 1995, and the existing Utah Rules of Juvenile Procedure were simultaneously repealed.

Rule 2. Applicability of Rules of Civil Procedure and Criminal Procedure.

- (a) When the proceeding involves neglect, abuse, dependency, permanent deprivation of parental rights, adoption, status offenses or truancy, the Utah Rules of Civil Procedure shall apply unless inconsistent with these rules.
- (b) When the proceeding involves an offense which would be a criminal act if committed by an adult, only the Utah Rules of Criminal Procedure which have been specifically adopted by these rules shall apply.
- (c) In substantiation proceedings, the procedure set forth in U.C.A. 63-46b-15(2) shall apply.
(Amended effective August 22, 2002.)

Rule 3. Style of pleadings and forms.

- (a) Pleadings in the juvenile court include, but are not limited to, petitions, motions, and responsive pleadings. Pleadings and other papers filed with the juvenile court shall comply with Utah R. Civ. P 10. Pleadings and other papers in cases certified from the district court shall show the juvenile court case number and the district court case number.
- (b) Matters filed in the court shall be captioned as follows:
- (b)(1) In minors' cases or private petition cases: "State of Utah, in the interest of _____, a minor under _____ years of age."
- (b)(2) In cases of adults charged with any crime: "State of Utah, Plaintiff, vs. _____, Defendant."
- (b)(3) In cases requesting protective orders: "_____, Plaintiff, vs. _____, Defendant."
- (b)(4) In adoptions: "In the matter of the adoption of _____."
- (b)(5) In cases certified from district court involving issues of custody, support and visitation: "State of Utah, in the interest of _____, In the matter of _____, Plaintiff, vs. _____, Defendant."
- (c) Forms used in the juvenile court shall be those standardized and adopted by the Board of Juvenile Court Judges or the Judicial Council, and may be single spaced when so authorized.

(b) The order on review shall be signed by the agency head or by a person designated by the agency for that purpose and shall be mailed to each party.

(c) The order on review shall contain:

- (i) a designation of the statute or rule permitting or requiring review;
- (ii) a statement of the issues reviewed;
- (iii) findings of fact as to each of the issues reviewed;
- (iv) conclusions of law as to each of the issues reviewed;
- (v) the reasons for the disposition;
- (vi) whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;
- (vii) a notice of any right of further administrative reconsideration or judicial review available to aggrieved parties; and
- (viii) the time limits applicable to any appeal or review. 2008

63G-4-302. Agency review — Reconsideration.

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be mailed to each party by the person making the request.

(3) (a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied. 2008

PART 4

JUDICIAL REVIEW

63G-4-401. Judicial review — Exhaustion of administrative remedies.

(1) A party aggrieved may obtain judicial review of final agency action, except in actions where judicial review is expressly prohibited by statute.

(2) A party may seek judicial review only after exhausting all administrative remedies available, except that:

(a) a party seeking judicial review need not exhaust administrative remedies if this chapter or any other statute states that exhaustion is not required;

(b) the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

- (i) the administrative remedies are inadequate; or
- (ii) exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

(3) (a) A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued or is considered to have been issued under Subsection 63G-4-302(3)(b).

(b) The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in this chapter. 2008

63G-4-402. Judicial review — Informal adjudicative proceedings.

(1) (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all state agency actions relating to:

- (i) the removal or placement of children in state custody;
- (ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78A-6-1106; and
- (iii) substantiated findings of abuse or neglect made by the Division of Child and Family Services, after an evidentiary hearing.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains the petitioner's principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

- (i) the name and mailing address of the party seeking judicial review;
- (ii) the name and mailing address of the respondent agency;
- (iii) the title and date of the final agency action to be reviewed, together with a copy, summary, or brief description of the agency action;
- (iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;
- (v) a copy of the written agency order from the informal proceeding;
- (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;
- (vii) a request for relief, specifying the type and extent of relief requested; and
- (viii) a statement of the reasons why the petitioner is entitled to relief.

(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

(b) The Utah Rules of Evidence apply in judicial proceedings under this section. 2008

63G-4-403. Judicial review — Formal adjudicative proceedings.

(1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings