

IN THE SUPREME COURT OF THE STATE OF UTAH
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FILED
UTAH APPELLATE COURTS

APR 27 2006

In re: Proposed New Rules to
the Utah Rules of Juvenile
Procedure and the Utah Rules of
Appellate Procedure Resulting
from Passage of H.B. 85

No: 20060383-SC

*need
revised
version*

ORDER

IT IS HEREBY ORDERED that the proposed rules attached to this order captioned "Rule ____ Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion, and Rule ____ Judicial Bypass Appeals", necessitated by passage of H.B. 85, are adopted and promulgated effective May 1, 2006, pursuant to the expedited rulemaking provisions contained in Rule 11-101(6)(F) of the Supreme Court Rules of Professional Practice.

For the Court:

April 27, 2006
Date

Michael J. Wilkins
Michael J. Wilkins
Associate Chief Justice

DRAFT

Rule _____. Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion

(a) Petition. An action for order authorizing a minor to consent to an abortion without the consent of a parent or guardian is commenced by filing a petition. The petitioner is not required to provide an address or telephone number but must state that she is a resident of Utah and identify the county of residence. Blank petition forms will be available at all juvenile court locations. The court will provide assistance and a private, confidential area for completing the petition.

(b) Filing. The petition may be filed in any county. No filing fee will be charged.

(c) Appointment of Counsel. If the petitioner is not represented by a private attorney, the juvenile court shall consider appointing an attorney under Utah Code Ann. § 78-3a-913 and/or the Office of Guardian ad Litem Under § 78-3a-911. The clerk shall immediately notify the attorney and/or the Office of Guardian ad Litem of the appointment.

(d) Expedited Hearing. Upon receipt of the petition, the court shall schedule a hearing to be held within three judicial days. The clerk shall immediately provide notice of the hearing date and time. The hearing shall be closed to everyone except the petitioner, the petitioner's attorney, the guardian ad litem, and any individual invited by the petitioner, the petitioner's attorney or the guardian ad litem. Upon request, the petitioner may be allowed to participate telephonically at court system expense. The hearing may be held in chambers if recording equipment or a reporter is available.

(e) Findings and Order. The court shall enter an order immediately after the hearing is concluded. The court shall grant the petition if the court finds by a preponderance of the evidence that one of the statutory grounds for dispensing with parental consent exists. Otherwise, the court shall deny the petition. If the petition is denied, the court shall inform the petitioner of her right to an expedited appeal to the Utah Court of Appeals. The court shall provide a copy of the order to individuals designated by the petitioner.

(f) If the court does not hold a hearing within three judicial days, the petition shall be deemed granted. Upon request of the petitioner, the clerk of the juvenile court shall prepare a certificate indicating that a hearing was not held and that the petition is deemed granted pursuant to this rule.

(g) Confidentiality. The petition and all hearings, proceedings, and records are confidential. Court personnel are prohibited from notifying a minor's parents, guardian, or custodian that a minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

(h) Appeal. A petitioner may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal within three judicial days after entry of the order. The clerk shall immediately notify the clerk of the Court of Appeals that the notice of appeal has been filed.

(i) This rule supercedes all other procedural rules for actions filed under § 76-7-304.5

DRAFT

Rule _____. Judicial Bypass Appeals

(a) Scope. This rule applies to an appeal from an order denying or dismissing a petition filed by a minor to bypass parental consent to an abortion under Utah Code Ann. § 76-7-304.5. In such appeals, this rule supercedes the other appellate rules to the extent they may be inconsistent with this rule.

(b) Jurisdictional Limitation. This rule does not permit an appeal to be taken in any circumstances in which an appeal would not be permitted by Rule 3.

(c) Notice of Appeal.

(1) A minor may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal in the juvenile court within three judicial days after entry of the order. The notice of appeal may be filed in person, by mail, or by fax, and must be accompanied by a copy of the order from which the appeal is taken. No filing fee will be charged. The clerk of the juvenile court shall immediately notify the clerk of the court of appeals that the appeal has been filed.

(2) The notice of appeal must indicate that the appeal is being filed pursuant to this rule, but the court will apply this rule to cases within its scope whether they are so identified or not.

(3) Blank notice of appeal forms will be available at all juvenile court locations and will be mailed or faxed to a minor upon request. No fee will be charged for this service or other services provided to a minor in an appeal under this rule.

(d) Record on Appeal. The record on appeal consists of the juvenile court file, including all papers and exhibits filed in the juvenile court, and a recording or transcript of the proceedings before the juvenile court. The clerk of the court of appeals shall request the record immediately upon receiving notice that the appeal has been filed. Upon receiving this request, the clerk of the juvenile court shall immediately transmit the record to the court of appeals by overnight mail or in another manner that will cause it to arrive within 48 hours after the notice of appeal is filed.

(e) Brief. A brief is not required. However, the minor may file a typewritten memorandum in support of the appeal. The memorandum shall be submitted within two judicial days after the notice of appeal is filed.

(f) Oral Argument. If ordered by the court, oral argument will be held within three judicial days after the notice of appeal is filed. The court of appeals clerk will immediately notify the minor of the date and time for oral argument. Upon request, the minor will be allowed to participate telephonically at court system expense.

(g) Disposition. The court shall enter an order stating its decision immediately after oral argument or, if oral argument is not held, within three judicial days after the date the notice of appeal is filed. The clerk shall immediately notify the minor of the decision. The court may issue an opinion explaining the decision at any time following entry of the order. The opinion shall be written to ensure the confidentiality of the minor.

(h) Confidentiality. Documents and proceedings in an appeal under this rule are confidential. Court personnel are prohibited from notifying the minor's parents, guardian, or custodian that the minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

(i) Attorney. If the minor is not represented by an attorney, the court shall consider appointing an attorney or the Office of Guardian ad Litem to represent the minor in the appeal. If an attorney or the Office of Guardian ad Litem was appointed to represent the minor in the trial court, the appointment continues through appeal.

Rule 60. Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion

(a) Petition. An action for order authorizing a minor to consent to an abortion without the consent of a parent or guardian is commenced by filing a petition. The petitioner is not required to provide an address or telephone number but must ~~state that she is a resident of Utah and~~ identify the county and state of residence. Blank petition forms will be available at all juvenile court locations. The court will provide assistance and a private, confidential area for completing the petition.

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(c) Appointment of Counsel. If the petitioner is not represented by a private attorney, the juvenile court shall consider appointing an attorney under Utah Code Ann. § 78-3a-913 and/or the Office of Guardian ad Litem Under § 78-3a-911. The clerk shall immediately notify the attorney and/or the Office of Guardian ad Litem of the appointment.

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(e) Findings and Order. The court shall enter an order immediately after the hearing is concluded. The court shall grant the petition if the court finds by a preponderance of the evidence that one of the statutory grounds for dispensing with parental consent exists. Otherwise, the court shall deny the petition. If the petition is denied, the court shall inform the petitioner of her right to an expedited appeal to the Utah Court of Appeals. The court shall provide a copy of the order to individuals designated by the petitioner.

(f) If the court does not hold a hearing and resolve the petition within three judicial days, the petition shall be deemed granted. If the court continues a hearing for 24 hours under paragraph (d), the petition shall be deemed granted if the petition is not resolved by the expiration of the additional 24 hours. Upon request of the petitioner, the clerk of the juvenile court shall prepare a certificate indicating that a hearing was not held and that the petition is deemed granted pursuant to this rule.

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Rule 60 should be revised to make it a simple rule providing a procedure for someone to appear before the judge to seek an order, without including in the rule such things as getting abortion approval from a clerk.

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The Office of the Guardian ad Litem has concerns regarding this Rule. The legislation itself does not call for the appointment of a guardian ad litem. The court placed a fiscal note on the legislation and the GAL office did not because under the statute we would not be involved. By providing for our appointment by rule, we are unable to receive any additional resources to address the time that will be spent by GALs appointed. We concede that the juvenile court has discretion to appoint a GAL in any matter pursuant to Utah Code Ann. Section 78-3a-912(1)(a)(I). The rule, however, is unclear about the role of the guardian ad litem.

It seems to us that the rule should be amended to state that the court would first determine whether the minor is competent. Only if the minor is determined incompetent should a guardian ad litem be appointed to ascertain and argue for the best interest of the minor seeking the judicial bypass.

Posted by Kristin Brewer, Director
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Posted by kristin brewer May 25, 2006 11:18 AM

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I'm sorry, but I cannot support a rule change to this extent. If the Court is able to protect the minor's rights--up to and including an abortion--the Court can certainly continue such protection even if the parents of the petitioner are given notice of the hearing and are allowed to attend. I recommend the proposed Rule 60 (Judicial and Appellate) changes be revised to allow notice to and appearance by parental representatives at such hearings.

Be assured that I have worked with a number of juveniles and been an advocate for victims rights for battered spouses and neglected or abused children throughout the past 25 years. I realize the problems involved in many (if not most) cases of juvenile pregnancy when parents are involved in the abortion decision. I'm sure that is what the whole concept of "hearing" is designed to accomplish in cases of pregnancy: to give the juvenile an opportunity to obtain an abortion without obtaining parental consent. I don't disagree with that opportunity in appropriate cases.

Nevertheless, parental objection to an abortion may be based on sound, important bases of physiology, sociology, law, and principle. The Court will never know if its decision is best if the Court--contrary to hundreds of years of common law tradition--purposefully excludes even the opportunity of hearing arguments in opposition to the proposed petition.

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