

Tab 2

From: Judge Elizabeth Lindsley
To: Katie Gregory
Date: 10/27/2009 9:29 AM
Subject: Proposed changes
Attachments: Rule 3.doc; Rule 36.doc; Rule 36 Amended.doc

Attached are Rule 36 as it is today, Rule 36 amended with the proposed changes and Rule 3 with proposed changes.

Rule 36. Cases certified from district court.

(a) Pleadings and hearings before juvenile court.

(a)(1) When an issue of support, custody or visitation has been certified by the district court to the juvenile court pursuant to Section 78A-6-104, the juvenile court shall schedule the matter for a pre-trial hearing and notify all parties. At such hearing, the juvenile court shall consider issues relating to discovery, custody evaluations and interim orders and shall schedule a trial hearing on all issues to be tried.

(a)(2) All pleadings and orders prepared subsequent to the certification shall contain the caption for the case in both courts.

(a)(3) The rules concerning discovery, admissibility of evidence and standard of proof applicable to such proceedings in the district court shall be followed in the juvenile court.

(b) Modification of prior district court decrees and orders.

(b)(1) Orders and decrees entered by the juvenile court in proceedings certified from the district court for a determination of issues regarding custody, support and visitation shall constitute a modification of any prior district court order or decree concerning such issues involving the same minor. Certified copies of such juvenile court orders and decrees shall contain the captions of both courts and be filed with the clerk of the district court for inclusion in the district court file.

(b)(2) In cases where a support, custody or visitation determination has been made by the district court and jurisdiction of the district court is continuing,

and an order has been entered in a subsequent juvenile court proceeding that is inconsistent with the prior district court order, on motion of any party or upon the juvenile court's own motion, a certified copy of the juvenile court's order shall be filed with the clerk of the district court.

Rule 36. Case coordination with the district court. (Proposed changes)

(a) Pleadings and hearings before juvenile court.

(a)(1) When an issue of support, custody or visitation has been **transferred** by the district court to the juvenile court pursuant to Section 78A-6-104 **and/or a conference under Rule 100 of the Utah Rules of Civil**

Procedure, the juvenile court shall schedule the matter for a pre-trial hearing and notify all parties. At such hearing, the juvenile court shall consider issues relating to discovery, custody evaluations and interim orders and shall schedule a trial hearing on all issues to be tried.

(a)(2) The party filing documents raising the issue of support, custody or visitation shall inform the court and all parties of any outstanding custody and/or parent time orders from any other court.

(a)(3) All pleadings and orders prepared subsequent to the **transfer** shall contain the caption for the case in both courts.

(a)(3) The rules concerning discovery, admissibility of evidence and standard of proof applicable to such proceedings in the district court shall be followed in the juvenile court.

(b) Modification of prior district court decrees and orders.

(b)(1) Orders and decrees entered by the juvenile court in proceedings **transferred** from the district court for a determination of issues regarding custody, support and visitation shall constitute a modification of any prior district court order or decree concerning such issues involving the same minor. Certified copies of such juvenile court orders and decrees shall

contain the captions of both courts and be filed **by the prevailing party** with the clerk of the district court for inclusion in the district court file.

(b)(2) In cases where a support, custody or visitation determination has been made by the district court and jurisdiction of the district court is continuing, and an order has been entered in a subsequent juvenile court proceeding, a certified copy of the juvenile court's order shall be filed with the clerk of the district court. **Certified copies of such juvenile court orders and decrees shall contain the captions of both courts and be filed by the prevailing party with the clerk of the district court for inclusion in the district court file.** *or as of d by the court,*

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)(5) In cases certified from district court involving issues of custody, support, and visitation:

Rule 3. Style of pleadings and forms. (Proposed changes)

(b) 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 **transferred** from the district court shall show the juvenile court case number and the district court case number.

(b)(5) In cases **transferred** from district court involving issues of custody, support, and visitation:

Tab 3

Katie Gregory - Proposal for modification of URJP--Initials of children on termination summons

From: Brent Bartholomew
To: Gregory, Katie; Johnson, Brent; Shea, Tim; Verdoia, Carol
Date: 10/27/2009 12:18 PM
Subject: Proposal for modification of URJP--Initials of children on termination summons

Given Tim's comments, with which I agree, I submit and propose the following:

Utah R. Juv. P. 18 (a)(2)(A) specifies for abuse, neglect, and dependency cases: "The summons shall contain the name and address of the court, the title of the proceeding"

Utah R. Juv. P. 18 (c) goes on to state: "Service by publication shall be authorized by the procedure and in the form provided in Utah Rule of Civil Procedure 4.

Utah R. Civ. P. 4 (c) (1) specifies: "The summons shall contain the name of the court, the address of the court, the names of the parties to the action, and the county in which it is brought. It shall be directed to the defendant

Utah R. Civ. P. (d)(4)(B) further states: "If the motion [for alternate service] is granted, the court shall order service of process of by other means, provided that the means of notice employed *shall be reasonably calculated, under all circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable.*" (*Italics emphasis added*).

Finally, U. R. Juv. P. 3 designates style of pleading forms. Perhaps we could add a (b)(6) designation for termination of parental rights: In cases where a petition to terminate parental rights is filed: State of Utah, Plaintiff or other named plaintiff vs. parent(s) of the minor child(ren): Initials and birthdates of the children.

If you don't think the foregoing proposal is appropriate, then I have another proposal, which I will share later.

Brent Bartholomew

Tab 4

MEMORANDUM

To: Juvenile Rules Committee Members
FROM: Paul Wake
SUBJECT: Rule 8 Revision
DATE: October 26, 2009

At our last meeting we discussed a JJS employee's concerns regarding Rule 8 (rights in detention regarding getting a phone call, being interviewed, etc.), Rule 26 (rights in general of anyone referred to juvenile court), and Rule 27A (admissibility of statements given by minors) possibly being in conflict. I didn't think these rules were in conflict to the degree the JJS person thought, and having since looked over a number of detention waiver forms related to police interviews—each of which was legally inaccurate and some of which were confusing as well—I think someone at JJS might need to talk to Susan before doing independent legal analysis and drafting. But that's neither here nor there.

We discussed a trap created by the difference between Rule 8 and Rule 27A. Setting aside the question of whether our court procedural rules should be setting JJS detention policy or creating exclusionary rules of evidence governing police interviews on the street, that trap involves the fact that on the street under Rule 27A, for kids under 14, their parents are supposed to be present at waiver if the kids waive their right to remain silent and get an attorney, and if instead they agree to talk to the police (the parent doesn't have to be present during the interview itself). However, in detention under Rule 8, for kids under 14 being interviewed about their own offenses, the parent is supposed to be present during the waiver and the interview, but the parent can opt to give written permission instead of being physically present. What this adds up to is that if an officer reads Rule 8 and dutifully gets a parent's written consent to interview a child in detention, what the kid says might not be admissible under Rule 27A. Since it makes no sense to have confusing rules, I was told to draft language to add to Rule 8 that would essentially cross reference, or point out, Rule 27A.

As I have thought about that, it bothers me. It seems to me that we should just fix the rules themselves by making them more coherent rather than including cross references so that people can try to figure out for themselves how to keep things somewhat congruent. One way to do that would be by adding a written permission clause to the under age 14 part of Rule 27A so that the street rule is not more restrictive than the detention rule. One thing we should not be doing as a procedural committee is inventing rights that do not exist elsewhere, much less instituting them in ways that do not make sense (as by asserting that a kid on the street somehow has a "right" to have his parent give waiver consent in person rather than in writing).

However, since I was commanded by duly constituted lawful authority to draft a provision, here is a stab at it: "8(f) Admissibility of statements given by minors is also governed by Rule 27A." (Our rules don't have a consistent method of referring to other juvenile rules; usually they say "Rule #," but occasionally they say "Utah R. Juv. P. #.")

Katie Gregory - Rule 8 & 27A

From: Judge Larry Steele
To: Susan Eisenman
Date: 8/17/2009 5:13 PM
Subject: Rule 8 & 27A
CC: Carol Verdoia; Paul Wake
Attachments: 02_12_ReqInterview.pdf; 09_05ReqInterviewPolicy_Form.pdf; 02_08ReqInterview.pdf; 09_00ReqInterview.pdf; 09_05ReqInterview.pdf

At our meeting Friday, I mentioned I would send you the "Police Interrogation Request" form that has been submitted to me throughout the years for signature. I was unable to find it. It appears the form I remember has been replaced recently by other forms. I was provided a total of 5 sample forms being used here and there - see attached. (I know - much more than you bargained for.) The one with the policy included was provided to me as the current form. It would be nice if the form was designed in such a simple way to guide everyone through the legal requirements. I think that has been attempted.

27A(a) bugs me. It says "if a minor is in custody" for a crime, you must advise him of his rights. So, if he is not in custody, we do not have to advise him of his rights??? What do you think? Thanks for your time with the Rules Com.

**DIVISION OF YOUTH CORRECTIONS DETENTION CENTER
INTERROGATION REQUEST FORM**

RULE 8: OF THE UTAH JUVENILE COURT PROCEDURES REQUIRES THAT NO PERSON OTHER THAN A PROBATION OFFICER OR A STAFF MEMBER OF A DETENTION FACILITY BE PERMITTED TO INTERVIEW A MINOR UNDER 14 YEARS OF AGE WITHOUT THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN PRESENT UNLESS, THE PARENT OR GUARDIAN HAS GIVEN WRITTEN PERMISSION FOR THE INTERVIEW,..... THE PARENT HAS BEEN ADVISED OF THE MINORS CONSTITUTIONAL RIGHTS,.....AND HAS WAIVED SUCH RIGHTS AND THE MINOR HAS BEEN ADVISED OF HIS CONSTITUTIONAL RIGHTS,.....AND HAS INTELLIGENTLY WAIVED SUCH RIGHTS,.....

NO PERSON OTHER THAN A PROBATION OFFICER OR A STAFF MEMBER OF A DETENTION FACILITY BE PERMITTED TO INTERVIEW A MINOR 14 YEARS OF AGE OR OLDER ,.....WITHOUT THE CONSENT OF THE MINOR AND THE MINORS PARENT, GUARDIAN OR CUSTODIAN AFTER FIRST ADVISING SAID MINOR OF HIS CONSTITUTIONAL RIGHTS,..... AND SUCH RIGHTS HAVING BEEN INTELLIGENTLY WAIVED BY THE MINOR.....IF THE MINORS PARENT, GUARDIAN OR CUSTODIAN IS NOT AVAILABLE, AUTHORIZATION SHALL BE OBTAINED FROM THE COURT BEFORE INTERVIEWING A MINOR IN A DETENTION FACILITY.

RULE 26: OF THE UTAH JUVENILE COURT PROCEDURES REQUIRES THAT A MINOR AGE 14 YEARS OF AGE AND OLDER IS PRESUMED CAPABLE OF INTELLIGENTLY COMPREHENDING AND WAIVING THE MINORS RIGHT TO COUNSEL,.....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 MINOR UNDER 14 YEARS OF AGE MAY NOT WAIVE SUCH RIGHTS OUTSIDE OF THE PRESENCE OF THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN.

RULE 26 PROVIDES FULL DUE PROCESS RIGHTS FOR JUVENILES.... TO REMAIN SILENT AND TO BE ADVISED THAT ANYTHING THE MINOR SAYS CAN AND WILL BE USED AGAINST THE MINOR.....

IN COMPLIANCE WITH RULES OF THE JUVENILE COURT, COMPLETION OF THIS FORM IS REQUIRED OF ANY LAW ENFORCEMENT OFFICER PRESENTING HIMSELF/HERSELF TO THE DETENTION FACILITY STAFF FOR THE PURPOSE OF CONDUCTING INTERVIEWS WITH ANY YOUTH DETAINED.

**COMPLETE THE FOLLOWING
(PLEASE PRINT)**

Name and Badge Number of Officer: _____

Law Enforcement Agency: _____

Name of Child: _____

Has the Youth been advised of their Constitutional Rights: Yes _____ NO _____

The following Authorization has been obtained: _____ Check one.

Age of Youth 13 or Under:

_____ Written Permission of: Parent _____ Legal Guardian _____ Attorney _____

_____ Present for the Interview: Parent _____ Legal Guardian _____ Attorney _____

_____ Written Permission of the Court

Age of Youth 14 or Older:

_____ Written/Verbal Consent to the Interrogation of: Parent _____ Legal Guardian _____

_____ Written/Verbal Consent to the Interrogation of: Attorney _____

Officers Signature: _____ Date: _____

Authorized by Split Mountain Youth Center staff: _____ Date: _____

THIS FORM IS TO BE PLACE IN THE YOUTHS DETENTION FILE.

DEPARTMENT OF HUMAN SERVICES
DIVISION OF JUVENILE JUSTICE SERVICES
POLICY AND PROCEDURES

Policy No.: 05-14	Effective Date: 07/05	Revision Date: 05/07/09
Subject: Requests by Law Enforcement		

I. Policy Statement

Law enforcement shall be permitted to interrogate juveniles suspected of committing crime(s) and interview juvenile(s) associated with an investigation. The Division shall ensure that juveniles under its care are afforded their constitutional rights in accordance with the Utah Rules of Juvenile Procedure and state statute. Requests for juvenile photographs and fingerprints, or HIV testing shall be obtained in accordance with state statute.

II. Rationale

Division staff have a responsibility, as custodians, to protect the rights of juveniles in their care and to assist law enforcement.

III. Definitions

- A. An "Interrogation" is a Law Enforcement action whereby an Officer questions a juvenile suspected of committing a crime.
- B. An "Interview" is a Law Enforcement action whereby an Officer questions any juvenile having information that a crime has been committed, this includes a juvenile as a witness.

IV. Procedures

- A. Requests by law enforcement for photographs, fingerprinting, or HIV testing shall be allowed only after approval is documented, or statutorily authorized, in accordance with UCA 78A-6-1104 regarding juveniles 14 years of age or older; and Rule 27 of the Utah Rules of Juvenile Procedures regarding juveniles under 14 years of age.
- B. Division staff shall accommodate all Law Enforcement requests to conduct interrogations of juveniles 14 years of age or older.
- C. Division staff shall accommodate all Law Enforcement requests to conduct interviews of any juvenile.
- D. Division staff shall not intentionally or otherwise interview a juvenile, in Division care, concerning allegations that the juvenile has committed a crime. This shall be reserved for Law Enforcement. Any information obtained unintentionally shall be documented in an Incident Report and processed.

DEPARTMENT OF HUMAN SERVICES
DIVISION OF JUVENILE JUSTICE SERVICES
POLICY AND PROCEDURES

Policy No.: 05-14

Effective Date: 07/05

Revision Date: 05/07/09

Subject: Requests by Law Enforcement

- E. Division staff shall accommodate Law Enforcement's requests to interrogate juveniles, under the age of 14, in accordance with the Utah Rules of Juvenile Procedure as follows:
1. The juvenile's parent, guardian, or legal custodian is present during the interrogation so that the parent, guardian, or custodian can knowingly and voluntarily waive the juvenile's constitutional rights; or
 2. If the juvenile's parent, guardian, or custodian is not present during the interrogation then, prior to the interrogation, Law Enforcement shall provide Division staff with written permission from the juvenile's parent, guardian or custodian that the interrogation can be held outside their presence. Division staff shall make a copy of the written permission to serve as a record that consent was obtained in accordance with Rule 8. The Division shall then presume that Law Enforcement has met all other criteria established by the Utah Rules of Juvenile Procedure regarding the juveniles under the age of 14;
or
 3. Consent to interrogate has been obtained by way of the court. This may be due to the juvenile's parent, guardian, or custodian not being available or for any other reason. A Court Order shall then be submitted to Division staff prior to the interrogation and serve as a record that consent was obtained in accordance with the Utah Rule of Juvenile Procedure. In the event that a verbal order from the court was obtained, Division staff shall document the name of Judge granting consent on the Interrogation Request Form.
- F. Division staff shall complete the Interrogation Request Form prior to allowing the interrogation of a juvenile under the age of 14. The Interrogation Request Form is only to be filled out when the juvenile is under the age of 14 and the officer intends on interrogating the juvenile.
- G. Division staff shall cooperate with law enforcement in their investigation of any alleged law violations.
- H. All interrogations and interviews shall be conducted in private areas, and shall not be monitored by any Division auditory devices.

V. Continuous Renewal

This policy shall be reviewed every three (3) years to determine its effectiveness and appropriateness. This policy may be reviewed before that time to reflect substantive change.

DEPARTMENT OF HUMAN SERVICES
DIVISION OF JUVENILE JUSTICE SERVICES
POLICY AND PROCEDURES

Policy No.: 05-14	Effective Date: 07/05	Revision Date: 05/07/09
Subject: Requests by Law Enforcement		

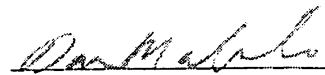
This policy has been reviewed by the Board of Juvenile Justice Services and is approved upon the signature of the Director.



Kirk J. Allen, Chair
Board of Juvenile Justice Services

05/07/09

Signature Date



Dan Maldonado, Director
Division of Juvenile Justice Services

05/07/09

Signature Date



Interrogation Request Form
For Juvenile's Under the Age of 14

Date: _____

Officer's Name: _____

Badge Number: _____

Officer's Agency: _____

Name of Juvenile: _____ DOB: _____

Will the juvenile be advised of their Constitutional Rights per Miranda?

Yes _____ No _____

If yes, how was the juvenile's consent to waive their Constitutional Rights and be interrogated authorized?

- ☐ Parent, Guardian, or Custodian present during interrogation
- ☐ Written permission obtained from Parent, Guardian, or Custodian
- ☐ Court Order obtained granting consent
- ☐ Verbal Order from the Court obtained granting consent

Name of Judge: _____

Officer's Signature: _____

Date: _____

Division Staff Name: _____

(Please Print)

Title: _____

Division Staff Signature: _____

Date: _____

YOUTH CORRECTIONS DETENTION CENTER
INTERROGATION REQUEST FORM

RULE 8: OF THE UTAH JUVENILE COURT PROCEDURES REQUIRES THAT NO PERSON OTHER THAN A PROBATION OFFICER OR A STAFF MEMBER OF A DETENTION FACILITY BE PERMITTED TO INTERVIEW A MINOR UNDER 14 YEARS OF AGE WITHOUT THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN PRESENT UNLESS, THE PARENT OR GUARDIAN HAS GIVEN WRITTEN PERMISSION FOR THE INTERVIEW, ...THE PARENT HS BEEN ADVISED OF THE MINOR'S CONSTITUTIONAL RIGHTS,...AND HAS WAIVED SUCH RIGHTS...

NO PERSON OTHER THAN A PROBATION OFFICER OR A STAFF MEMBER OF A DETENTION FACILITY BE PERMITTED TO INTERVIEW A MINOR 14 YEARS OF AGE OR OLDER, ...WITHOUT THE CONSENT OF THE MINOR AND THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN AFTER FIRST ADVISING SAID MINOR OF HIS CONSTITUTIONAL RIGHTS,...AND SUCH RIGHTS HAVING BEEN INTELLIGENTLY WAIVED BY THE MINOR,... IF THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN IS NOT AVAILABLE, AUTHORIZATION SHALL BE OBTAINED FROM THE COURT BEFORE INTERVIEWING A MINOR IN A DETENTION FACILITY.

RULE 26: OF THE UTAH JUVENILE COURT PROCEDURES REQUIRES THAT A MINOR AGE 14 YEARS OF AGE AND OLDER IS PRESUMED CAPABLE OF INTELLIGENTLY COMPREHENDING AND WAIVING THE MINOR'S RIGHT TO COUNSEL,...AND MAY DO SO WHERE THE COURT FINDS SUCH WAIVER TO KNOWING AND VOLUNTARY, WHETHER THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN IS PRESENT. A MINOR UNDER 14 YERS OF AGE MAY NOT WAIVE SUCH RIGHTS OUTSIDE OF THE PRESENCE OF THE MINOR'S PARENT, CUARDIAN OR CUSTODIAN.

RULE 26 PROVIDES FULL DUE PROCESS RIGHTS FOR JUVENILES,...TO REMAIN SILENT AND TO BE ADVISED THAT ANYTHING THE MINOR SAYS CAN AND WILL BE USE AGAINST THE MINOR.

IN COMPLIANCE WITH RULES OF THE JUVENILE COURT, COMPLETION OF THIS FORM IS REQUIRED OF ANY LAW ENFORCEMENT OFFICER PRESENTING HIMSELF/HERSELF TO THE DETENTION FACILITY STAFF FOR THE PURPOSE OF CONDUCTING INTERVIEWS WITH ANY YOUTH DETAINED.

COMPLETE THE FOLLOWING (PLEASE PRINT)

Name, Badge Number and Law Enforcement Agency of Officer: _____

Name of Child: _____
Has the Youth been advised of their Constitutional Rights: (Miranda) Yes _____ No _____

The following Authorization has been obtained: Check One.

If Age of Youth 13 or Under:

Written Permission of: Parent _____ Legal Guardian _____ Attorney _____
Present for the Interview: Parent _____ Legal Guardian _____ Attorney _____
Written Permission of the Court _____

Age of Youth 14 or Older:

Written/Verbal Consent of: Parent _____ Legal Guardian _____ Attorney _____
Present for the Interview: Parent _____ Legal Guardian _____ Attorney _____
Written/Verbal Permission of the Court _____

Officer's Signature: _____
Authorized By Detention Staff Member: _____

Date: _____
Date: _____

SPLIT MOUNTAIN YOUTH DETENTION CENTER
POLICE INTERROGATION REQUEST

OFFICER'S NAME: _____

LAW ENFORCEMENT AGENCY: _____

YOUTH TO BE VISITED: _____

Check below the proper authorization to question the above-named youth, as required by the Utah State Board of Juvenile Court Judges Rules of Practice and Procedure.

If the youth is 13 or under:

_____ Written permission of parent, legal guardian or attorney

_____ Presence of parent, legal guardian or attorney

_____ Permission of Juvenile Court Judge

_____ Written authorization

* _____ Verbal authorization

If the youth is 14 or older:

_____ Parent or legal guardian's consent

_____ Written authorization

* _____ Verbal authorization

_____ Attorney's consent

_____ Written authorization

* _____ Verbal authorization

_____ Juvenile Court Judge consent

_____ Written authorization

* _____ Verbal authorization

MIRANDA WARNING MUST BE GIVEN

Signature of Questioning Officer

Signature of Parent, Legal Guardian,
Attorney or Juvenile Court Judge

* ALL VERBAL AUTHORIZATIONS MUST BE VERIFIED BY YOUTH CORRECTIONS STAFF BEFORE VISIT.

Youth Corrections Staff Signature

SEE JUVENILE COURT RULES OF PRACTICE AND PROCEDURE, RULES 10 & 32
VISITATION RIGHTS

8th DISTRICT JUVENILE COURT
LAW ENFORCEMENT INTERROGATION REQUEST
MINOR CHARGED WITH A CRIME

Date: _____

OFFICER'S NAME: _____

LAW ENFORCEMENT AGENCY: _____

YOUTH TO BE VISITED: _____

Check below the proper authorization to question the above-named youth, as required by Rule 8, Juvenile Rules of Procedure:

_____ The youth is 13 years old or under.

_____ I have met one of the following requirements:

_____ I have obtained the written permission of parent, legal guardian or custodian (permission attached); or

_____ the interview shall be in the presence of the parent, legal guardian or custodian; and

_____ I have or will advise the parent, guardian or custodian of the minor's constitution rights under Rule 26(a) and have or will obtain a knowing and voluntary waiver from the parent, guardian or custodian; and

_____ I have or will advise the minor of the minor's constitution rights under Rule 26(a) and have or will obtain a knowing and voluntary waiver from the minor.

_____ The youth is 14 years old or older:

_____ I have or will advise the minor of the minor's constitution rights under Rule 26(a) and have or will obtain a knowing and voluntary waiver from the minor; and

_____ After having advised the minor of his rights as stated above, I have or will obtain the knowing and voluntary consent of the minor; and

_____ I have met one of the following requirements:

_____ After having advised the minor of his rights as stated above, I have or will obtain the knowing and voluntary consent of the parent, legal guardian or custodian of the minor;

_____ I have made reasonable efforts to contact the parent, legal guardian or custodian and the same is not available to provide consent. I request the Juvenile Court provide consent to interview the minor while in the detention center.

Consent to interview the minor in detention is given:

Signature of Questioning Officer

Signature of Parent, Legal Guardian,
Attorney or Juvenile Court Judge

From: Paul Wake
To: Gregory, Katie; Verdoia, Carol
Date: 4/24/2009 11:04 AM
Subject: Juvenile Rule 27A

Here's a rule we have:

Rule 27A. Admissibility of statements given by minors.

(a) If a minor is in custody for the alleged commission of an offense that would be a crime if committed by an adult, any statement given by a minor in response to questions asked by a police officer is inadmissible unless the police officer informed the minor of the minor's rights before questioning begins.

(a)(1) If the child is under 14 years of age, the child is presumed not adequately mature and experienced to knowingly and voluntarily waive or understand a child's rights unless a parent, guardian, or legal custodian is present during waiver.

(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.

(b) The presumptions outlined in paragraphs (a)(1) and (a)(2) may be overcome by a preponderance of the evidence showing the ability or inability of a minor to comprehend and waive the minor's rights.

I was reading it this week while trying to answer a detective's question about whether he could interview a kid outside the presence of a parent, even if the parent wanted to be present. I noticed that 27A(a)(1) says that for kids under 14, such kids are presumed incapable of waiving their rights and so any confession obtained from such a kid probably won't be admissible unless the parents were present "at waiver." That implies that when the kid waives the right to remain silent, the parent has to be there to advise the kid, but it doesn't state that the parent has to be there during the questioning itself. However, I then noticed that in 27A(a)(2), dealing with kids 14 and older being presumed capable of waiving their rights, it speaks of them being able to do so without having the parent being present "during questioning." Those two clauses don't seem congruent. They also raise the possibility that someone could argue that 27A(a)(1) has to be read in conjunction with 27A(a)(2), so that a parent should be present during waiver and questioning. I'd guess that isn't the intent of the rule, but that "at waiver" means "at waiver." What I'm wondering is whether the committee should discuss that to see if 27A(a)(2) should say "at waiver" also instead of "during questioning"? If we have time at the next meeting, it might be good to bring up.

Were any delinquency-related rules changed at the last meeting?

--

Paul Wake
Deputy Utah County Attorney

Katie Gregory - Proposal for modification of URJP--Initials of children on termination summons

From: Brent Bartholomew
To: Gregory, Katie; Johnson, Brent; Shea, Tim; Verdoia, Carol
Date: 10/27/2009 12:18 PM
Subject: Proposal for modification of URJP--Initials of children on termination summons

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Finally, U. R. Juv. P. 3 designates style of pleading forms. Perhaps we could add a (b)(6) designation for termination of parental rights: In cases where a petition to terminate parental rights is filed: State of Utah, Plaintiff or other named plaintiff vs. parent(s) of the minor child(ren): Initials and birthdates of the children.

If you don't think the foregoing proposal is appropriate, then I have another proposal, which I will share later.

Brent Bartholomew

>>> Tim Shea 10/27/2009 7:58 AM >>>

So much for process being governed by supreme court rule . But I did not see anything in the statute that would change my earlier opinion. Putting Section 78A-6-109 and URCP 4 side by side adds a few things, but still enables the approach I suggested earlier.

Subsection (3) requires that a published summons include a statement that a proceeding concerning the minor is pending in the court; and an adjudication will be made. I don't know whether those are magic words. They are in essence the same concept as URCP 4(c)(1), which requires the summons to state that the complaint is on file with the court and that in case of failure to [answer], judgment by default will be rendered In either event, its boilerplate.

Subsection (13) adds particulars about the method of publication but does not speak to the content of the summons. The reference to 45-1-101 adds electronic publication to the traditional newspaper.

Subsection (2) is interesting in that it sets up a direct conflict with URCP 4(c)(3). The rule requires a published summons to briefly state the subject matter [of the action]. (A personally served summons can omit this presumably because the petition will be in the respondents hands.) But the statute is opposite: except for a published summons, a brief statement of the

substance of the allegations in the petition. Ill leave to better minds than mine how to get around that one.

Personally, I recommend repealing 90% of -109. You need part of it as a long-arm jurisdiction statute, and there are probably a few other provisions that give the judge this or that authority, but all of the process is already governed - and probably better governed - in URCP 4.

In my earlier email I recommended identifying the child by initials and month and year of birth. Thats the protocol of Rule 4-202.09(9), and that should be enough to meet a due process standard of notice to the respondent of what the case is about. Im not sure of the case naming conventions in the juvenile court. Its probably something like In the matter of termination of parental rights to XYZ (using the childs initial) or In the matter of the termination of the parental rights of Timothy Shea (using the parents name). Either could be published as the case name.

I think using the conventions Ive suggested can be done under the existing statutes and rules.

Tim

>>> Carol Verdoia 10/26/2009 5:27 PM >>>

Sorry, let me try this again. I forgot the citation and forgot to copy Brent.

There is also a juvenile court statute that deals with some aspects of publication -- 78A-6-109 -- thus the question of whether we can change it by rule or whether a statutory change is necessary.

>>> Katie Gregory 10/26/2009 5:08 PM >>>

Brent,

I remembered that the URJP had asked me to contact Tim Shea and get his opinion about the publication question. I've attached the response that he sent to Carol and me.

Katie

> Tim Shea 10/26/2009 9:15 AM >>>

Katie,

I recommend publishing the childs initials and month and year of birth, but in the end, the summons will have to include whatever the judge says.

I did not see a service or summons rule in the juvenile procedures, so URCP 4 (<http://www.utcourts.gov/resources/rules/urcp/urcp004.html>) will govern. That rule describes the content of the summons generally, URCP 4(c)(1), and [i]f service is made by publication, the summons shall briefly state the subject matter and the ... relief demanded, and that the complaint is on file with the court. URCP 4(c)(3).

If youre looking for a standardized form or protocol, I think that termination of parental rights in XYZ, born March 2008 would be sufficient notice of the relief demanded. Typically, the petition itself is not published under Rule 4, although we are working towards a method of electronic publication that would include the petition. However, that is for the future, and I wouldnt worry about it.

Rule 4(d)(4)(B) goes on to say: The court's order [directing publication] shall also specify the content of the process to be served and the event or events as of which service shall be deemed complete. So thats why I conclude that whatever the judge says, goes.

This is just a plain reading of the rules. I have not researched any of the caselaw mentioned in the minutes. So if that comes back with a different result, I stand to be corrected.

Tim

>>> Katie Gregory 10/22/2009 12:20 PM >>>

Brent and Tim:

I'm not sure which one of you to approach with this question, so I'm sending it to both of you. The URJP is

discussing issues related to whether we must include a child's name when publishing notice on a parent to terminate parental rights, or whether the child's initials are sufficient. Attached is a portion of the discussion from URJP minutes. At the end of the discussion you will see where the committee "asked for a legal opinion from Tim Shea regarding whether publication by the child's initials is sufficient in juvenile court" and whether the question could be addressed by rule or required a statutory change.

Carol Verdoia and I were directed to address this with you and report back. We meet again on Friday, November 6th. Please let me know what you think on this issue.

Katie

From: Tim Shea
To: Tim Shea
Date: 10/5/2009 4:13 PM
Subject: Notice of Proposed Amendments to Utah Court Rules

The Supreme Court and the Judicial Council invite comments to proposed amendments to the following court rules. The comment period expires November 17, 2009.

Summary of proposed amendments

Rules of Civil Procedure

URCP 065C. Post-conviction relief. Amend Recognizes Utah's Post-Conviction Remedies Act as the law governing post-conviction relief.

Rules of Juvenile Procedure

URJP 25A. Withdrawal of plea. New. Establishes standards and procedures for withdrawal of a plea in juvenile court.

Code of Judicial Administration

CJA 04-0409. Council Approval of Problem Solving Courts. Amend. Establish best-practices criteria and require recertification biannually.

CJA 07-0304. Probation supervision. Amend. Add an assessment tool based on evidence-based practices for working with low-risk offenders.

How to view redline text of the proposed amendments

To see proposed rule amendments and submit comments, click on this link to:
<http://www.utcourts.gov/resources/rules/comments/>. Then click on the rule number.

How to submit comments

You can comment and view the comments of others by clicking on the "comments" link associated with each body of rules. It's more efficient for us if you submit comments through the website, and we encourage you to do so. After clicking on the comment link, you will be prompted for your name, which we request, and your email address and URL, which are optional. This is a public site. If you do not want to disclose your email address, omit it. Time does not permit us to acknowledge comments, but all will be considered.

Submit comments directly through the website or to:

Tim Shea

Email: tims@email.utcourts.gov Please include the comment in the message text, not in an attachment.

Fax: 801-578-3843

Administrative Office of the Courts

POB 140241

Salt Lake City, Utah 84114-0241

One method of submitting a comment is sufficient.