

Rule 25A – Withdrawal of plea

(1) – A denial of an offense may be withdrawn at any time prior to adjudication.

(2) – An admission or a plea of no contest may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made.

(3) – A request to withdraw an admission or a plea of no contest, including a plea held in abeyance, shall be made within thirty (30) days after entering the plea, even if the court has imposed disposition. If the court has not imposed dispositional orders then disposition shall not be announced unless the motion to withdraw is denied.

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:

Rule 25A – Withdrawal of plea – *Time limit - 30 days*

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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~~ **transferred** 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~~ **transferred** from district court involving issues of custody, support and ~~visitation~~ **parent time**: "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.

Rule 36. Cases ~~certified from~~ coordinated with the district court.

(a) Pleadings and hearings before juvenile court.

(a)(1) When an issue of support, custody or ~~visitation~~ **parent time** has been ~~certified~~ 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 parent time shall inform the court and all parties of any outstanding custody and/or parent time orders from any other court.

(a)(2)(3) All pleadings and orders prepared subsequent to the ~~certification~~ **transfer** shall contain the caption for the case in both courts.

(a)(3)(4) 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.

(a)(4)(5) The juvenile court may appoint a guardian ad litem for the child in such proceedings and assess the cost to one or both parties.

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

(b)(1) Orders and decrees entered by the juvenile court in proceedings ~~certified~~ transferred from the district court for a determination of issues regarding custody, support and ~~visitation~~ **parent time** 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, or as otherwise directed by the court, with the clerk of the district court for inclusion in the district court file.

(b)(2) In cases where a support, custody or ~~visitation~~ **parent time** 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. Certified copies of such juvenile court orders and decrees shall contain the captions of both courts and be filed by the prevailing party, or as otherwise directed by the court, with the clerk of the district court for inclusion in the district court file.