From: Carol Verdoia
To: Gregory, Katie
Date: 11/23/04 11:50AM
Subject: Re: URJP agenda

It is difficult to estimate how long for each item because sometimes we have a lot of discussion that is difficult to foresee -- especially because I am not as familiar with the delinquency issues. I think items 1, 3, 4 and 7 are probably the most important. #2 -- the one I sent you on withdrawal of admissions -- is important, but anything we do on it might be impacted by the Court of Appeals' decision on the case (and we don't know how long it will take for the decision to come out). The reliable hearsay and rule 47 items have been bumped several times and so I don't consider them urgent by any means.

I would put items 1,3, 4, and 7 on first, then add the rest and we'll address them if we have time. If either Nelson or Adam are not going to be there, or don't want to address the items, then you can leave them off.

Thanks

>>> Katie Gregory 11/22/04 04:23PM >>>
Carol,

I am getting quite a few items for the agenda--especially since our meeting is cut down to just one and a half hours (11:30-1:00) this time.

Can you give me an estimate of how long I ought to allow for these items:

1)URJP 9--delinquency review hearings (Judge Lindsley)

2)Withdrawals of Admissions (the issue you emailed to me)

3)Rule 4-201 Board of Juv. Judges has asked us to consider Rule change to allow AGs and others to list to digital recordings even when a court reporter is present. Mark May presented to the Board on this in October and they asked me to report back at the Dec. 10th Board meeting.

4) Comments to Rule 53--Tim Shea has forwarded two comments he has received (I'll forward his email immediately following this one).

5) Reliable Hearsay--I've emailed Nelson Abbott to see if he wants to pursue this now or later.

6) URJP 47--I've called Adam to see if he is going to attend and whether he still has concerns to address.

7) 2 minute update to tell the committee that the April 2005 publication will make our requested changes to advisory committee notes on Rules 8 and 37A and will change the VII headings in the Table of Contents. I see in the minutes that Crawford also impacted the advisory committee note to Rule 29A and we tabled that discussion to our next meeting.

The good news is that Rick Schwermer is dropping the Uniform Child Testimony Act issue.

That's a very full agenda for our time---Thoughts? Priorities?

Katie

Katie Gregory
Assistant Juvenile Court Administrator
450 South State
P.O. Box 140241
Salt Lake City, Utah 84114-0241

Phone: (801) 578-3929
Fax: (801) 578-3843
Email: katieg@email.utcourts.gov

Katie,

These are the only comments received about the proposed amendment to Rule 53. They will remain on the web page if you need them for future reference.

The next step is to share them with the advisory committee, make any further changes to the rule the committee thinks are warranted, and prepare your recommendations to the Supreme Court for final action. You'll need to get the rule to the Court by early January so they can act by the end of the month. I've attached the draft that was published for comment. Let me know if you have any questions.

Thanks,
Tim

Comments: Utah Rules of Juvenile Procedure

To maintain consistency in language choice, replace unless otherwise allowed by the judge with "unless otherwise allowed by the court."

Posted by Brent Newton October 1, 2004 12:53 PM

The proposed rule is fine so far as it goes. It does not deal with a problem that should be dealt with if the rule is going to be revisited and revised.
Over the years counsel of record have been presented with the difficult choice of either remaining on a case where they should (for any of a variety of reasons) withdraw or presenting their reasons for withdrawl both in writing as a part of a Motion supported by a Memorandum and supplemented by such argument as the Court may wish to hear or just remain as counsel. Many times lawyers have chosen to remain as counsel in a bad situation rather than disclosing to opposing counsel and their parties the reasons for withdrawl which would tend to disclose a roadmap for those counsel and parties to win the case. A lawyer should not have to make the best of two bad choices.
The rule should provide that the Judge has authority to conduct an in camera interview with the counsel who seeks to withdraw. The Judge could then rule as to whether or not the stated reasons justifies the withdrawl without risking significant damage to the cause of the party whose counsel seeks to withdraw.

Posted by Craig G. Adamson September 29, 2004 11:11 AM

Katie Gregory - UJP 53

From: Tim Shea
To: Katie Gregory
Date: 11/22/04 9:08AM
Subject: UJP 53

Katie,

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The next step is to share them with the advisory committee, make any further changes to the rule the committee thinks are warranted, and prepare your recommendations to the Supreme Court for final action. You'll need to get the rule to the Court by early January so they can act by the end of the month. I've attached the draft that was published for comment. Let me know if you have any questions.

Thanks,
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Posted by Craig G. Adamson September 29, 2004 11:11 AM

Draft: June 29, 2004

Rule 53. Appearance and withdrawal of counsel.

(a) Appearance. An attorney shall appear in proceedings by filing a written notice of appearance with the court or by appearing personally at a court hearing and advising the court that he is representing a party. Once an attorney has entered an appearance in a proceeding, the attorney shall receive copies of all notices served on the parties.

(b) Withdrawal.

(b)(1) Retained Counsel. Consistent with the Rules of Professional Conduct, a retained attorney may withdraw as counsel of record unless withdrawal may result in a delay of trial or unless a final appealable order has been entered. In such circumstances, a retained attorney may not withdraw except upon written motion and approval of the court.

(b)(2) Court-appointed counsel. Court-appointed counsel may not withdraw as counsel of record except upon motion and signed order of the court. If the court grants appointed counsel's motion to withdraw, the court shall promptly appoint new counsel.

(b)(3) If a motion to withdraw is filed after entry by the court of a final appealable judgment, order, or decree, the motion may not be granted unless counsel, whether retained or court-appointed, certifies in a written statement:

(b)(3)(A) that the represented party has been advised of the right to appeal and that, if appropriate, a Notice of Appeal and a Request for Transcript have been filed; and

(b)(3)(B) that the represented party in a delinquency proceeding has been advised of the availability of a motion for new trial or motion for stay pending appeal and that, if appropriate, the same has been filed.

(b)(4) When an attorney withdraws as counsel of record, written notice of the withdrawal must be served upon the client of the withdrawing attorney by first class mail, to his or her last known address and upon all other parties not in default and a certificate of service must be filed with the court. If a trial date has been set, the notice of withdrawal served upon the client shall include a notification of the trial date.

(b)(5) A guardian ad litem may not withdraw except upon approval of the court.

(c) Parties must submit a written Motion for Substitution of Counsel setting forth in detail the need for new counsel at least ten days prior to the next scheduled hearing date unless otherwise allowed by the judge.

From: Mark May
To: Wahl, Ray
Subject: Rule 4-201

If it is possible, I would like an opportunity to discuss our concerns with Rule 4-201 with the Board on October 8th.

In sum, our concern is this:

Rule 7(f)(2) U.R.Civ.P. requires the prevailing party to prepare and submit a proposed order to the Court within fifteen days of the Court's decision.

Rule 4-201(2)(C) U.R.Jud.Adm. states: "If a proceeding is recorded by a court reporter, an electronic recording of the proceeding shall not be made, except that a judge may direct a single original of an electronic recording be made as part of the judge's notes for personal use in the deliberative process under Utah Code Section 63-2-103(18)(b)(ix)."

The problem we face usually occurs after a long or complicated trial. Some Courts will issue a lengthy verbal ruling and ask our office to prepare the order. In the past, we have asked for a CD copy of the Court's ruling so we can accurately prepare an order within fifteen days. Waiting for a transcript of the Court's ruling would nearly always put us past the fifteen day requirement, in addition to the costs of the transcript.

Rule 4-201 contemplates the Court needing the CD to prepare an Order - but fails to address the need for the CD when someone other than the Court is required to prepare the order.

We do not need the entire transcript, only the portion containing the Court's ruling.

Third Dist Judges mtg earlier this week
Judge Behrens reports they voted for Ct. to keep recording as part of judges notes in tpr trials.

Judge Backman feels we need a Rule change so clerks will give recording to AG.

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We do not need the entire transcript, only the portion containing the Court's ruling.

Rule 4-201. Record of proceedings.

Intent:

To establish the means of maintaining the official record of court proceedings in all courts of record.

To establish the manner of selection and operation of electronic devices.

To establish the procedure for requesting a transcript for a purpose other than for an appeal.

Applicability:

This rule shall apply to all courts of record.

Statement of the Rule:

(1) Guidelines for court reporting methods. The official verbatim record of court proceedings shall be maintained in accordance with the following guidelines:

(1)(A) Except as provided in this rule, a video or audio recording system shall maintain the official verbatim record of all court proceedings.

(1)(B) An official court reporter or approved substitute court reporter shall maintain the official verbatim record in all proceedings in capital felonies.

(1)(C) At the judge's discretion and subject to availability, an official court reporter or approved substitute court reporter should maintain the official verbatim record in:

(1)(C)(i) all evidentiary hearings after arraignment and all trials in first degree felonies;

(1)(C)(ii) in cases in which the judge finds that an appeal of the case is likely, regardless of the outcome in the trial court;

(1)(C)(iii) in cases in which the judge determines there is a substantial likelihood a video or audio recording would jeopardize the right to a fair trial or hearing; or

(1)(C)(iv) in any other proceeding or portion of a proceeding, upon a showing of good cause.

(1)(D) Reporters shall be assigned to cover courtroom proceedings as set forth above. In the event of a conflict in the request for an official court reporter, the trial court executive or managing reporter shall confer with the presiding judge, who shall resolve the conflict.

(1)(E) A recording technology other than the presumed technology may be used if the presumed technology is not available. The use of a technology other than the presumed technology shall not form the basis of an issue on appeal.

(1)(F) The Administrative Office shall periodically study the state of the art of electronic recording technology and technology employed in computer integrated courtrooms and make recommendations to the Judicial Council of systems to be approved.

(2) Operating and maintaining the electronic recording system.

(2)(A) The clerk of the court or designee shall operate the electronic recording system in the courtroom so as to accurately record the proceedings . The operator shall be trained in the operation of the system. The operator shall maintain a log of each recorded proceeding.

(2)(B) When a video recording system is used to maintain the official verbatim record of court proceedings, at least two

original recordings shall be made. One original recording and log shall be filed with the clerk of the court as part of the official court record. A second original recording shall be kept in a secure, off site storage area. The clerk of the court shall keep the original recording at the courthouse in accordance with the record retention schedule. When an audio recording system is used to maintain the official verbatim record of court proceedings one original recording shall be made.

(2)(C) If a proceeding is recorded by a court reporter, an electronic recording of the proceeding shall not be made, except that a judge may direct a single original of an electronic recording be made as part of the judge's notes for personal use in the deliberative process under Utah Code Section 63 2 103(18)(b)(ix).

(3) The official court record.

(3)(A) In proceedings in which a video or audio recording system is used, the court's original video or audio record and log shall be the official court record. In proceedings in which an official court reporter is used, the reporter's shorthand notes shall be the official court record. The Utah Rules of Appellate Procedure govern the record on appeal.

(3)(B) The official court record shall be filed with the clerk of the court.

(3)(C) The clerk of the court shall be the custodian of the official court record and may release the official court record only to a judge, the clerk of the Supreme Court or Court of Appeals, the trial court executive, or the official court transcriber. The clerk shall enter in the docket the name of the recipient and when the official court record was released and returned. Obtaining a copy of the official court record shall be governed by rules regulating access to court records.

(4) Requests for transcripts.

(4)(A) A request for transcript for an appeal is governed by Utah R.App.P. 11 and Utah R.App.P. 12.

(4)(B) A request for transcript shall be accompanied by the fee established by Section 78-56-108 and filed with the court executive. A request for an expedited transcript shall be accompanied by the fee established by Section 78-56-108 and filed with the court executive. The court executive shall assign the preparation of the transcript in the same manner as Utah R.App.P. 12.

Supreme Court of Utah

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Clerk

Christine M. Durham
Chief Justice

Michael J. Wilkins
Associate Chief Justice

Matthew B. Durrant
Justice

Jill N. Parrish
Justice

Ronald E. Nehring
Justice

MEMORANDUM

TO: Tim Shea

FROM: Matty Branch MB

DATE: November 10, 2004

RE: Fax Filing Rule Amendment

The Supreme Court considered your memo of November 3, 2004, concerning a fax filing rule amendment at its court conference today. The court agrees that a uniform fax filing policy should be incorporated into the procedural rules but believes that the rule should not only be located in the civil rules but also in the criminal, juvenile, and appellate rules, and possibly the rules of small claims procedure, if appropriate. Several of the justices feel that the rule needs to clarify whether the time for date-stamping of fax filed documents is limited to regular business hours (8:00 a.m. to 5:00 p.m., weekdays). For example, will a fax bearing a filing time of 11:45 p.m. be stamped as received on the next business day?

By copy of this memo sent to the chairs of the four advisory procedural rule committees, the court is requesting that each of these committees review the proposed amendment and provide input to you as to suggested changes or additions. In connection with this review, the court asks that you schedule presentations with each of these committees at one of their upcoming meetings. Thank you for your assistance.

cc w/attached amendment: Fran Wikstrom, Carol Verdoia, Todd Utzinger, Michael Wims, Brent Johnson, ~~Rick Schwermer~~, and Katie Gregory

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Supreme Court
From: Tim Shea
Date: November 3, 2004
Re: Fax filing

The Judicial Council recommends a rule amendment to regulate filing documents by fax. All or nearly all of the courts accept faxed documents. Indeed, the genesis of this draft is a written policy proposed by the Fifth District Court. The Judicial Council recommends a statewide policy.

Since the amendment will affect how parties and lawyers process their cases, The Council recommends using the Rules of Procedure, rather than the Code of Judicial Administration as the vehicle for the change. This change to URCP 5 should be sufficient to include criminal and juvenile cases. URCP 81(e); URJP 2. If you agree that a statewide policy is sound, but conclude that the criminal and juvenile rules should contain an express provision, I can prepare similar amendments to the other rules.

This proposal has circulated among the Board of District Court Judges, Trial Court Executives and Clerks of Court, as well as the Policy and Planning Committee of the Judicial Council and the Council itself. It has not been reviewed by your advisory committees, nor has it been published for comment.

I will be happy to meet with the Court or to present this proposal to your advisory committees.

Encl. URCP 5

450 South State Street / P.O. Box 140241 / Salt Lake City, Utah 84114-0241 / 801-578-3808 / Fax: 801-578-3843 / email: tims@email.utcourts.gov

Rule 5. Service and filing of pleadings and other papers.

(a) Service: When required.

(a)(1) Except as otherwise provided in these rules or as otherwise directed by the court, every judgment, every order required by its terms to be served, every pleading subsequent to the original complaint, every paper relating to discovery, every written motion other than one heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties.

(a)(2) No service need be made on parties in default for failure to appear except as provided in Rule 55(a)(2)(default proceedings). Pleadings asserting new or additional claims for relief against a party in default shall be served in the manner provided for service of summons in Rule 4.

(a)(3) In an action begun by seizure of property, whether through arrest, attachment, garnishment or similar process, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Service: How made and by whom.

(b)(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing a copy to the last known address or, if no address is known, by leaving it with the clerk of the court.

(b)(1)(A) Delivery of a copy within this rule means: Handing it to the attorney or to the party; or leaving it at the person's office with a clerk or person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or, if consented to in writing by the person to be served, delivering a copy by electronic or other means.

(b)(1)(B) Service by mail is complete upon mailing. If the paper served is notice of a hearing and if the hearing is scheduled 5 days or less from the date of service, service shall be by delivery or other method of actual notice. Service by electronic means is complete on

transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(b)(2) Unless otherwise directed by the court:

(b)(2)(A) an order signed by the court and required by its terms to be served or a judgment signed by the court shall be served by the party preparing it;

(b)(2)(B) every other pleading or paper required by this rule to be served shall be served by the party preparing it; and

(b)(2)(C) an order or judgment prepared by the court shall be served by the court.

(c) Service: Numerous defendants. In any action in which there is an unusually large number of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before or within a reasonable time after service. The papers shall be accompanied by a certificate of service showing the date and manner of service completed by the person effecting service. Rule 26(i) governs the filing of papers related to discovery.

(e) Filing with the court defined.

(e)(1) The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may accept the papers, note thereon the filing date and forthwith transmit them to the office of the clerk.

(e)(2) A party may transmit by fax a pleading or other paper intended for filing. Fax transmissions are limited to 10 pages, excluding the cover page, unless otherwise permitted by the clerk of the court. A document transmitted by fax is the equivalent of the original document, including a signed original, for all purposes under these rules. Courtesy copies may not be transmitted by fax unless permitted by the judge. Transmitting a document by fax is not filing; filing is complete upon acceptance by the clerk of the court. If the clerk determines that there has been an error in transmission or failure to comply with this rule or that the fax is of poor quality,

the clerk shall notify the sender of the error as soon as practical. The clerk shall issue a receipt for fees paid, but is not required to notify a party of receipt of a fax or acceptance for filing. A party transmitting a document by fax:

(e)(2)(A) shall keep the original document safe, in good condition and available for production until completion of all appeals or until the time to appeal has expired;

(e)(2)(B) shall send the document to the fax number designated by the clerk of the court;

(e)(2)(C) shall include on a fax cover page the information required by Rule 10(a), the sender's fax number, the credit card number to be billed if there is a fee for filing the pleading or other paper, and the number of pages being faxed; and

(e)(2)(D) assumes all risk of failure of the transmission.

(e)(3) The clerk shall destroy the fax cover page after charging the fees and recording the transaction.

From: Joanne Slotnik
To: Verdoia, Carol
Date: 10/19/04 2:23PM
Subject: withdrawal of admissions in juv. ct.

Carol,

Attached is an excerpt from a brief I just filed, outlining the gap in juv. ct. law governing withdrawals of admissions. I think the problem could be fixed simply by enacting a juvenile counterpart of the recently-revised UCA 77-13-6.

Let's talk if you have questions.

Joanne

CC: Voros, Fred

EXCERPT: Br. of Appellee, STATE V. K.M., case no. 20040131CA, filed October 15, 2004.

Juvenile entered admission to petition alleging one count of child abuse homicide, a third degree felony if committed by an adult. Soon thereafter, she moved to withdraw the admission. The juvenile court denied the motion, and this appeal followed.

Rule 25 of the Utah Rules of Juvenile Procedure provides in relevant part:

(c) The court may refuse to accept an admission or a plea of no contest and may not accept such plea until the court has found:

> (1) that the right to counsel has been knowingly waived if the minor is not represented by counsel;
>
> (2) that the plea is voluntarily made;
>
> (3) that the minor and, if present, the minor's parent, guardian, or custodian, have been advised of, and the minor has knowingly waived, the right against compulsory self-incrimination, the right to trial, the right to confront and cross-examine opposing witnesses, the right to testify and to have process for the attendance of witnesses;
>
> (4) that the minor and, if present, the minor's parent, guardian, or custodian have been advised of the consequences which may be imposed after acceptance of the plea of guilty or no contest;
>
> (5) that there is a factual basis for the plea . . . .

Utah R. Crim. P. 25(c).

The initial task facing this Court is to determine what law applies to a juvenile's motion to withdraw an admission. Rule 25, while governing acceptance of admissions, makes no reference to withdrawal of admissions.[1] In contrast, rule 11, the

counterpart of rule 25 in the Utah Rules of Criminal Procedure, explicitly references withdrawals of admissions or pleas. See Utah R. Crim. P. 11(e)(7), -(f). In addition, while the Utah Code in effect when this case arose statutorily permitted withdrawal of pleas in adult criminal cases "upon good cause shown and with leave of the court," no such comparable provision appeared in the Utah Code chapter governing juvenile courts. See Utah Code Ann. § 77-13-6 (2002)(governing plea withdrawal in criminal cases). A gap thus exists in the law governing juvenile courts with respect to withdrawal of admissions.

A survey of other states provides limited guidance. Some states simply apply criminal rules and statutes to motions to withdraw admissions made in juvenile court. See, e.g., State v. Sledge, 947 P.2d 1199, 1205 (Wash. 1997) ("Principles regarding duties of state and prosecutor under plea agreements apply with equal force in the juvenile context"); In re Flynn, 656 N.E.2d 737, 739 (Ohio App. 1995) ("Our review . . . of the juvenile adjudication hearing is similar to that of a criminal rule 11(c) hearing"). Others refuse to do so. See, e.g., Interest of Bradford, 705 A.2d 443, 445, 447 (Pa. Super. 1997)(rules of criminal procedure do not apply to withdrawal of admission; applicable standard is best interest of child); In re Beasley, 362 N.E.2d 1024 (Ill. 1977)(holding that rule relating to

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[1] Rule 25(e) does reference "plea discussions and agreements," specifically authorizing them "in conformity with the provisions of Utah Rule of Criminal Procedure 11." Utah R. Juv. P. 25(e). The rule nowhere, however, references withdrawals of pleas.

standards for acceptance of guilty pleas does not apply to juvenile proceedings).

Other states, recognizing the statutory nature of most juvenile courts, demand specific juvenile court legislation, thus implicitly declining to invoke criminal court statutes and rules. See, e.g., In the Matter of S.L.L., 906 S.W.2d 190, 193 (Tex. App. 1995)(juvenile not entitled as matter of right to withdraw plea because juvenile courts are creature of statute and legislature has not extended such right to juveniles); In Interest of B.P.Y., 712 A.2d 769 (Pa. Super. 1998) (juvenile court erred in accepting nolo contendere plea because Juvenile Act contained no such provision and dispositions not set forth in Act are beyond power of court).

Many states have enacted statutes or promulgated rules to specifically govern withdrawal of admissions in juvenile court. See, e.g., Cal. Juv. Code, Welfare and Institutions Code § 775 (admission may be set aside "as the judge deems meet and proper"); Fla. Stat. Ann. R. Juv. P. Rule 8.075(e) ("The court may for good cause shown at any time prior to the beginning of a disposition hearing permit a plea of guilty to be withdrawn..."); [Wash.] D.C. R. Juv. Rule 32(e) ("A motion to withdraw a plea of guilty may be made only before a dispositional order is entered; but to correct manifest injustice the judicial officer . . . may. . . permit the respondent to withdraw the plea); Minn. R. Juv. P. 8.04(2)(B) ("[t]he court may allow the child to withdraw a guilty plea...at any time, upon showing that withdrawal is necessary to correct a manifest injustice").

Finally, courts most often review denials of motions to withdraw admissions under an abuse of discretion standard. See, e.g., In the matter of S.L.L., 906 S.W.2d at 193 (whether to allow a juvenile respondent to withdraw his or her plea is "purely a matter of discretion"); People in Interest of J.F.C., 660 P.2d 7 (Colo. App. 1982) ("juvenile court did not abuse its discretion in denying juvenile's motion to withdraw his plea of admission"); Matter of Michael P., 376 N.Y.S.2d 613 (N.Y.A.D. 1975) ("refusal to allow withdrawal of guilty plea was not abuse of discretion").

In Utah, recognizing that the laws and rules governing juvenile courts are silent on the matter, permitting withdrawal would not be inconsistent with either the civil nature of juvenile court proceedings or with the juvenile court's purposes of educating, rehabilitating, and treating minors. See Utah Code Ann. § 78-3a-102(5)(2003)(articulating purposes of juvenile court). A juvenile should be permitted to withdraw an admission upon the same basis as an adult now can: "upon leave of the court and a showing that it was not knowingly and voluntarily made." Utah Code Ann. § 77-13-6(2)(a)(2003). This standard is consistent with the current criminal standard, the constitutional standard, and the post-conviction standard.[2] See Utah Code Ann.

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[2] At the time this case arose, the standard governing plea-taking in criminal cases required that the plea be taken in "strict compliance" with rule 11, Utah Rules of Criminal Procedure. Such compliance then created a presumption that the plea was knowing and voluntary. See, e.g. State v. Benvenuto, 1999 UT 60, ¶11, 983 P.2d 556 (citing State v. Abeyta, 852 P.2d 993, 995 (Utah 1993). If the court failed to strictly comply

§ 77-13-6(2)(a)(2003)("A plea of guilty may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made"); State v. Humphrey, 2003 UT App 95, ¶10, 79 P.3d 960 (defendant may overcome presumption that plea was entered voluntarily by demonstrating that it was in fact involuntary); Salazar v. Warden, 852 P.2d 988, 991 (Utah 1993)(on collateral attack, petitioner must show constitutional violation in order to obtain relief).

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with rule 11, defendant had good cause to withdraw the plea. State v. Vasilacopulos, 756 P.2d 92, 95 (Utah App. 1988). Strict compliance was driven at least in part by the criminal court's focus on the consequences of the plea; that is, the punishment accorded a defendant who admits to a crime. See Boykin v. Alabama, 395 U.S. 238, 243-44 (1969)(noting that "[w]hat is at stake for an accused facing [punishment] demands the utmost solicitude of which courts are capable in canvassing the matter with the accused. . . ").

State law has since changed. The current "knowingly and voluntarily made" standard is more appropriate for juvenile court admissions because when a juvenile enters an admission, the court focuses primarily on an equitable disposition that will best rehabilitate and educate the offender, while still protecting society. This focus on the best outcome for the individual child makes a standard less formalistic than strict compliance more appropriate. Cf. State v. Gutierrez, 2003 UT App 95, ¶7, 68 P.3d 1035 (holding that in "collateral attacks, strict compliance with rule 11 is not necessary").