

Introduction

The Committee is soliciting public input on the following proposal. The Committee is reserving its Report until after public comment has been received.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P.O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than June 15, 2011. No deadline extensions will be granted.

May 9, 2011 BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Cynthia K. Stoltz, Esq., Chair

Christine Riscili, Esq.
Counsel

RULE 407. ADMISSIONS

A. **Admissions.** At any time after a petition is filed, the juvenile may admit to a delinquent act[tender an admission to the facts, adjudication of delinquency and/or disposition].

1) **Requirements.**

a) Before the court may [can] accept an admission, [the court shall determine that the admission is made voluntarily and knowingly. The court, at a minimum, shall ask questions to elicit the following information:

- a) Does the juvenile understand the nature of the allegations to which he or she is admitting?
- b) Is there a factual basis for the admission?
- c) Does the juvenile understand that he or she has the right to a hearing before the judge?
- d) Does the juvenile understand that he or she is presumed innocent until found delinquent?
- e) Is the juvenile aware of the dispositions that could be imposed?
- f) Is the juvenile aware that the judge is not bound by the terms of any agreement tendered unless the judge accepts such agreement?
- g) Has the juvenile spoken with his or her attorney or waived the right to counsel in accordance with Rule 152?
- h) Does the juvenile have any questions about admitting to the facts or delinquency based on the allegations?
- i) Has the juvenile had the opportunity to speak with a guardian about his or her decision?]

the juvenile must complete a written admission colloquy. The written admission colloquy shall be:

i) in substantially the form following this rule and entitled "Admission Colloquy";

ii) completed and reviewed with the juvenile by the juvenile's attorney, unless the juvenile has waived counsel in accord with Rule 152; and

iii) submitted to the court.

b) Before the court may accept an admission, the court shall determine in an on the record proceeding that the admission is knowingly, intelligently and voluntarily made. As part of this determination, the court shall conduct a searching inquiry concerning the following:

i) Does the juvenile appear to be fluent in English? If not, has he received the assistance of an interpreter fluent in his native language?

ii) Has the juvenile had the opportunity to speak with a parent or guardian about his decision?

iii) Does the juvenile understand the nature of the allegations to which he is admitting?

iv) Is there is a factual basis for the admission?

v) Does the juvenile understand that by admitting to the delinquent act(s), he is giving up the right to be presumed innocent; the right to a hearing before a judge; the right to remain silent; the right to testify; the right to confront witnesses; the right to present witnesses and evidence; and, if convicted, the right to have a higher court review the trial court's decision, except on very limited grounds?

vi) Has the juvenile's attorney, if counsel has not been waived pursuant to Rule 152, completed and reviewed the written admission colloquy in accord with paragraph (A)(1)(a)(ii)?

vii) Is the juvenile aware of the dispositions that could be imposed and the ramifications of an adjudication of delinquency?

viii) After reviewing the written admission colloquy, the court shall inquire further of the juvenile regarding any matters of concern apparent from such review.

ix) Does the juvenile have any questions about the admission?

2) **Agreements.** If the [parties] **Commonwealth and the juvenile have agreed** upon the terms of [an admission]**the adjudication and/or disposition**, the [tender]**agreement** shall be presented to the court **before or during the on the record proceeding referenced at paragraphs (A)(1)(b) hereof.**

3) **Court action.** If the court accepts the [tender] **agreement**, the court shall enter an order incorporating [any agreement]**it**. If the court does

not accept the [tender] agreement, the case shall proceed before another judge as if no [tender] admission had ever been [made] proffered.

- 4) **Limitations on withdrawals.** An admission [cannot] may be withdrawn [after the court enters the dispositional order]at any time for any reason before disposition, in the court's discretion. Following disposition, an admission can only be withdrawn upon a demonstration of manifest injustice.
- B. **Incriminating statements.** An incriminating statement made by a juvenile [in the discussions or conferences incident to]at any juncture incident to an admission that is not ultimately accepted [by the court]or [otherwise]is permitted to be withdrawn by the court shall not be used against the juvenile over objection in any [criminal]proceeding [or hearing]under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* or in any adult criminal proceeding.

6) Has anyone threatened or forced you to sign this admission?

7) Have you been promised anything in return for your admission?

8) Has your lawyer explained to you that what you did was a delinquent act, and, therefore, against the law?

9) Do you understand if the court accepts your admission it will find you delinquent, which is the official finding that you broke the law?

Possible consequences of a finding of delinquency:

10) Do you understand that if you are found delinquent, the court may order a range of services or supervision, which could include placement outside of your home?

11) Do you understand that if you are found delinquent, your driving license may be suspended now or in the future?

12) Do you understand that if you are found delinquent your record may be used against you in a future hearing in juvenile or adult court? For example, if you commit a crime in the future, this finding of delinquency could result in a longer sentence in adult criminal court.

13) Do you understand that if you are found delinquent certain information may become available to the public, and when you apply for college, military, or a job, your potential college, military recruiter, or employer may be able to learn of your juvenile record?

Admission agreements:

14) Are you aware that the court does not have to accept any agreement between the Commonwealth and you, but if the court rejects an agreement, you have the right to a completely new proceeding before a different judge?

Appeals:

15) If you are found delinquent following an admission, you can have a higher court review your case for only three reasons:

a) You argue that your admission was not knowingly, intelligently, and voluntarily made;

b) You argue that the court was not the proper court to accept your admission; or

c) You argue that the court's disposition (sentence) is illegal.

16) If you do not admit delinquency, you may have other rights if you take an appeal.

Lawyer's representation where counsel has not been waived, and the opportunity to speak with guardian:

17) Are you satisfied with what your lawyer did for you and how your lawyer explained everything?

18) Have you had the opportunity to speak with your parent(s) or guardian(s) about your decision to admit to the delinquent acts?

I promise that I have read the above form. I understand its full meaning and I am still admitting to the acts of delinquency. My admission is of my own free will. I believe that this admission is in my best interest. The signature and initials on each page of this form are mine.

JUVENILE

DATE

I, _____ Esq., Lawyer for _____
state that I have reviewed this colloquy with my client and my client has indicated to me that he or she comprehends and understands what is set forth above.

LAWYER FOR JUVENILE

DATE

(Or leave blank if you waived counsel under Rule 152).

COMMENT

[Under paragraph (A)(1), the court is to determine if the admission is voluntarily and knowingly made. Nothing in this rule is intended to prevent the court from using a written form to ascertain the necessary information, provided the court asks questions of the juvenile, on the record, to authenticate the juvenile's completion and understanding of the form and the juvenile's agreement with the statements made.

Under paragraph (A)(3), if the disposition agreed upon by the parties is unavailable or the court does not agree with the terms of the tender, the case is to proceed as if no tender had been made.]

This new rule requires both a written admission colloquy and an on the record proceeding. Premised upon the supposition that the knowing, intelligent and voluntary nature of an admission will be better assessed when the trial judge speaks with the juvenile, this rule is designed to require a shorter, more understandable and meaningful written admission colloquy, and to mandate that the trial judge conduct a searching inquiry to ensure that the admission is voluntary, knowing and intelligent. In furtherance of this goal, the rule requires that the trial judge read the written admission colloquy and thoroughly explore any factors raised therein which could impact the knowing, voluntary and intelligent nature of the admission. The expectation is that at the conclusion of the written admission colloquy and on the record proceedings, the process will work to ensure a comprehensive review by the trial judge of the juvenile's admission.

Paragraph (A)(1)(a) sets forth the overarching criteria for the written admission colloquy.

Paragraph (A)(1)(b) sets forth the overarching criteria for the on the record proceeding during which the trial judge may accept the written admission colloquy, and details the information the trial judge must elicit from the juvenile during the on the record proceeding regarding acceptance of the colloquy. Ultimately, it falls to the trial judge to ensure that the juvenile has knowingly, intelligently, and voluntarily made an admission by asking questions to ascertain the ability of the juvenile to comprehend the written admission colloquy and to enter into the admission. In paragraph (A)(1)(b), the rule sets forth its mandate that the trial judge shall review the written admission colloquy and examine carefully all potential concerns arising from the juvenile's answers. It should be readily apparent to the trial judge conducting the on the record proceeding whether the juvenile speaks fluent English. If there is any doubt, paragraph (A)(1)(b)(i) makes it incumbent upon the trial judge to protect the juvenile who for whatever reason does not read English well enough to understand the form. The expectation is that an appropriate individual will be provided to the juvenile, and will ensure that the juvenile fully understands the form and all of its consequences.

At (A)(1)(b)(v), the rule requires that during the on the record proceeding the trial judge ensures that the juvenile understands the basic constitutional rights which are being waived as a result of the juvenile's decision to admit delinquency.

Paragraph (A)(2) requires that if the Commonwealth and juvenile have agreed upon the terms of either the adjudication of delinquency or the disposition of the case, the agreement shall be presented to the trial judge during the on the record proceeding regarding the written admission colloquy.

Paragraph (A)(3) provides that the trial judge has the traditional discretion to accept or reject such agreement. If the court accepts the agreement, it shall be incorporated into the order accepting the written admission colloquy, and finding that the juvenile has knowingly, intelligently, and voluntarily entered into the admission. Importantly, if the trial judge does not accept the agreement, the juvenile shall have a right to a *de novo* proceeding before another judge, which shall occur as if no admission had ever been proffered.

Paragraph (A)(4) provides that if a juvenile desires to withdraw the admission even though the trial judge is willing to accept it, the admission can be withdrawn at any time for any reason before disposition so long as the trial judge, in its discretion, grants permission. Following disposition, the admission can only be withdrawn upon a demonstration of manifest injustice.

Paragraph B provides that to the extent that the admission is not accepted in accord with paragraph (A)(3) or is accepted but then withdrawn by the juvenile in accord with paragraph (A)(4), any incriminating statements made by the juvenile shall not be used against the juvenile over objection in any juvenile or adult criminal proceeding.

As stated at the outset of this comment, the written admission colloquy is intended to be readily understandable to the juvenile, and to serve to raise potential areas necessitating furthering inquiry by the trial judge during the on the record proceedings.

No. 1 of the written admission colloquy asks the juvenile to state “that I did the following things:.” The formal charges will be listed in the caption. The purpose of this inquiry is to permit the juvenile to state in his/her own words what he/she did. For instance, the juvenile could recite that he took Ms. Smith’s purse, when the captioned act may just say “robbery.” As further example, the juvenile might say I “beat up Joe,” where the captioned act may just say “simple assault.” As set forth above, the purpose of the written admission colloquy is to emphasize for the trial judge areas necessitating further inquiry during the on the record proceeding. This is one place where that could occur.

No. 4 of the written admission colloquy asks whether the juvenile is currently being treated for mental illness. Presumably the trial judge will know whether the juvenile has been transported from a mental health facility, but it may not know if he is under current outpatient treatment for a mental illness. If the juvenile answers yes, further inquiry is mandated.

No. 5 of the written admission colloquy asks whether in the last 24 hours the juvenile has taken any drugs and/or alcohol that would impair the juvenile’s ability to make an informed decision. If the juvenile answers yes, further inquiry is mandated.

Nos. 10 through 13 were intentionally drafted so that the colloquy would be generally applicable to all scenarios. Accordingly, the colloquy warns of possible consequences of a finding of delinquency, even though some or all of these consequences may not be applicable to a given case.

No. 14 provides that if the trial judge does not accept an agreement, the juvenile has a right to a *de novo* proceeding before a different judge.

No. 17 inquires as to the juvenile’s satisfaction with counsel. If the juvenile has not waived counsel and indicates dissatisfaction, it falls to the trial judge to determine what remedies are appropriate.

No. 18 inquires into the juvenile’s opportunity to speak with a parent or guardian and attorney concerning the juvenile’s decision to admit delinquency. Again, if the juvenile has not had this opportunity, it falls to the trial judge to determine what remedies are appropriate.

The court is not to accept a plea of *nolo contendere*. See *In re B.P.Y.*, 712 A.2d 769 (Pa. Super. Ct. 1998).

This admission colloquy is downloadable from the Court’s webpage at <http://www.pacourts.us/T/BoardsCommittees/JuvenileCourtProcedural/>.

Official Note: Rule 407 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 407 published with the Court’s Order at 35 Pa.B. 2214 (April 16, 2005).