

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rule 407 be adopted and prescribed. The proposed modified Rule 407 adds a mandatory written admission colloquy in all cases. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the intent of this rule. Please note that the Committee's *Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the explanatory *Reports*.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

A. Christine Riscili, Esq.
Staff Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

no later than Friday, May 8, 2009.

March 30, 2009

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Cynthia K. Stoltz, Esq., Chair

A. Christine Riscili, Esq.
Staff Counsel

EXPLANATORY REPORT

After debating whether the Rules should standardize a written admission colloquy or provide guidelines for the court to follow, the Committee decided that a mandatory standardized admission colloquy was necessary.

The Committee initially drafted a Rule that included a list of questions that the court must ask to elicit specific information from the juvenile in ascertaining whether the admission was made voluntarily and knowingly. In reviewing admission colloquies from several judicial districts, the Committee found that important information regarding the case and the juvenile's ability to comprehend the admission were omitted from the form. These areas of omission were also not being addressed by the court on the record.

In some judicial districts, juveniles are tendering admissions utilizing a written admission colloquy. The judge is asking a few questions concerning the colloquy and then entering the colloquy into the record. In other judicial districts, the juvenile is tendering an admission through an oral colloquy by the judge asking some basic questions on the record.

The Committee found that in both practices, several key issues are being excluded from the colloquy; therefore the court does not have all the facts to make an informed decision as compelled by the "made voluntarily and knowingly" requirement of the Rule.

To alleviate these concerns of the Committee and to enforce the necessity of a voluntary and knowing waiver of the right to an adjudicatory hearing, a mandatory admission colloquy has been included as part of the Admissions Rule.

This colloquy must not substitute questioning by the court to determine whether the admission is made voluntarily and knowingly. Pursuant to paragraph (A)(1), the court must ensure that the juvenile's attorney has reviewed the admission colloquy with the juvenile and that the admission is made voluntarily and knowingly.

To comply with this requirement, the court is required to review the admission. In paragraph (C), the admission colloquy is divided into eight specific areas. The areas include: 1) general information; 2) voluntary admission; 3) understanding the admission; 4) possible consequences; 5) admission agreements; 6) appeals; 7) attorney's representation and guardian's knowledge; and 8) the signature lines for the juvenile, guardian, and attorney acknowledging the contents and their understanding of the admission.

The court must review each area to determine if the admission is made voluntarily and knowingly. The court should weigh all the factors together. If the court is not satisfied with any part of the admission, the court must reject the admission and proceed to an adjudicatory hearing. If the court proceeds to an adjudicatory hearing, any incriminating statements may not be used against the juvenile. See paragraph (B).

If the court is satisfied with the following requirements discussed *infra*, the court may accept the admission and proceed to ruling on the offenses pursuant to

Rule 408 and an adjudication of delinquency pursuant to Rule 409.

Under the first requirement, the court must determine who is the juvenile, the age of the juvenile, the juvenile's grade in school, and whether the juvenile reads, writes, and understands the English language well enough to comprehend the form.

If the juvenile does not read well enough to understand the colloquy, the attorney must read and explain this colloquy in terms that the juvenile understands. If English is not the primary language of the juvenile, an interpreter or attorney that speaks the juvenile's primary language must be provided. When possible, the admission colloquy can be transcribed into the juvenile's native language.

The second requirement compels the court to determine whether there is anything inhibiting the juvenile from making a voluntary admission. If the juvenile has a mental disability, is under the influence of drugs or alcohol that impairs his or her ability to make an informed decision, or has been coerced, threatened, forced, or promised something in exchange for the admission, the court is to prohibit the admission.

Under the third requirement, the court must ascertain if the juvenile understands the admission and all the rights that the juvenile is waiving when admitting to the delinquent acts.

Pursuant to the fourth requirement, the court must determine if the juvenile understands the possible consequences of admitting to the delinquent acts.

The fifth requirement explains that the court is not bound to any agreements made with the Commonwealth and the juvenile fully understands that the court can decide against any agreement.

The sixth requirement sets forth that when an appeal is taken, it is limited to three grounds.

The court must determine if the juvenile is satisfied with his or her representation and whether the guardian knows and agrees with the juvenile's decision. Whether the guardian knows of the admission or is in agreement with the admission is only one factor the court must consider when determining whether the admission is made voluntarily and knowingly.

Finally, the juvenile, guardian, and attorney should sign the form. If the guardian does not sign the form, the admission colloquy can still be accepted by the court. In those instances, "refused to sign" or "not present" should be filled in on the guardian's signature line to notify the court.

RULE 407. ADMISSIONS

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

1) **Requirements.** Before the court can accept an admission, the court shall determine that the admission is made voluntarily and knowingly. The court shall ensure that the juvenile's attorney has reviewed the admission colloquy with the juvenile pursuant to paragraph (C).[, 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?]**

2) **Agreements.** If the parties agree upon the terms of an admission, the tender shall be presented to the court.

3) **Court action.** If the court accepts the tender, the court [shall] may enter an order incorporating any agreement. If the court does not accept the agreement [tender], the case shall proceed as if no tender had been made.

4) **Limitations on withdrawals.** An admission cannot be withdrawn after the court enters the dispositional order.

B. **Incriminating statements.** An incriminating statement made by a juvenile in the discussions or conferences incident to an admission that is not ultimately accepted by the court or otherwise 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.*

C. Written admission colloquy. If a juvenile is tendering an admission, the colloquy shall be as follows:

treated for a mental illness?
If yes, where?

7) Are you under the influence of any drugs (prescription or illegal) and/or alcohol that would impair your ability to make an informed decision?
If yes, specify type of drugs and/or alcohol:

8) Is this admission voluntary?

a. Has anyone coerced, threatened, or forced you to sign this admission?

b. Have you been promised something in exchange for this admission?

Understanding the admission:

9) Has your attorney explained to you that your conduct is defined as the delinquent act(s) to which you are admitting?

10) By admitting to the delinquent act(s), do you understand that you are giving up the following rights?

a. You are presumed innocent until the Commonwealth proves you have committed the delinquent act(s) beyond a reasonable doubt.

b. You have the right to have a judge hear the testimony of witnesses, examine the evidence, and determine whether you have committed the delinquent act(s).

c. You have the right to remain silent and your silence can not be held against you.

d. You have the right to confront and cross-examine all Commonwealth witnesses.

e. You can, but are not obligated to, present witnesses or evidence as a defense to the delinquent act(s).

f. You may present any motions to the court.

11) Do you understand that before you can be adjudicated delinquent the court must find that you committed the delinquent act(s) and that you are also in need of "treatment, rehabilitation, and supervision?"

Initials (page 2 of 4)

Possible consequences:

12) Do you understand that if you are adjudicated delinquent, the court may place you in a juvenile facility or on probation until your 21st

birthday?

13) Are you aware that if you are admitting to

that your driving privileges will be suspended?

(cross off or write n/a if this question is not applicable in this case).

14) Do you understand that the record of this admission can be used against you in any future proceeding in adult or juvenile court when appropriate and can result in a longer sentence in adult court?

15) Do you understand that certain information for some offenses is available to the public and when you apply for college or a job, your potential college or employer may be able to see your juvenile record?

Admission agreements:

16) Are you aware that the court is not bound to any agreement between you, your attorney, and the District Attorney?

Appeals:

17) The appeal for an admission is limited to three grounds:

- a) Your admission was not knowing, intelligent, and voluntary;
- b) The court did not have jurisdiction to accept your admission; or
- c) The court's disposition is beyond the maximum penalty authorized by law.

By admitting to the delinquent act(s), do you understand that you are giving up the right to appeal your case to a higher court, except on these three grounds?

Attorney's Representation & Guardian's Knowledge

18) Are you satisfied with the representation of your attorney?

19) Has your attorney explained to you the meaning of the terms in this document?

20) Have you spoken with your parent or guardian about your decision to admit to the delinquent act(s)?

Does your parent or guardian agree with your admission?

Initials (page 3 of 4)

I affirm that I have read the above document in its entirety. I understand its full meaning and I am still admitting to the offenses specified. Also, my admission is knowingly, intelligently, and voluntarily made. I further affirm that my signature and initials on each page of this document are true and correct.

JUVENILE

PARENT OR GUARDIAN (if present)

DATE

I, _____, Esq., Attorney for _____ state
that I have advised my client of the meaning of this document; that it is my belief that my client comprehends and understands what is set forth above; that I am prepared to try this case; and that the juvenile understands what he/she is doing by entering an admission.

ATTORNEY FOR JUVENILE

Initials (page 4 of 4)

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 **agreement [tender]**, the case is to proceed as if no tender had been made.

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).

Pursuant to paragraph (C), the attorney is to review this colloquy with the juvenile prior to entering the courtroom. The court is to ensure that the juvenile has voluntarily and knowingly made this admission by asking questions to ascertain the ability of the juvenile to comprehend this document and to enter into an admission.

If a guardian does not sign the admission colloquy, the court may still move forward and accept the admission. The signature of the guardian is only one factor that the court is to consider when determining whether the admission is made voluntarily and knowingly.

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).