

IN THE SUPREME COURT OF ALABAMA
November 2, 2009

ORDER

IT IS ORDERED that Rule 12, Rule 15, and Rule 25, Alabama Rules of Juvenile Procedure, be amended to read in accordance with Appendices A, C, and E, respectively;

IT IS FURTHER ORDERED that the Comment to Amendment to Rule 12 Effective November 2, 2009; the Comment to Amendment to Rule 15 Effective November 2, 2009; and the Comment to Amendment to Rule 25 Effective November 2, 2009, are hereby adopted to read in accordance with Appendices B, D, and F, respectively;

IT IS FURTHER ORDERED that these amendments and the adoption of the comments are effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 12, Rule 15, and Rule 25:

"Note from the reporter of decisions: The order amending effective November 2, 2009, Rule 12, Rule 15, and Rule 25, and adopting effective November 2, 2009, the Comment to Amendment to Rule 12 Effective November 2, 2009; the Comment to Amendment to Rule 15 Effective November 2, 2009; and the Comment to Amendment to Rule 25 Effective November 2, 2009, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 3d."

Cobb, C.J., and Lyons, Woodall, Stuart, Smith, Bolin, Parker, Murdock, and Shaw, JJ., concur.

APPENDIX A

RULE 12. INITIATION OF CASES.

(A) Any person having knowledge of the facts or being informed of them and believing them to be true may make a complaint, under oath, to the juvenile court intake officer; the complaint shall allege facts sufficient to establish the subject-matter jurisdiction and venue of the juvenile court and the child's delinquency, dependency, need of supervision, or violation of an order of probation or aftercare. A complaint is made when it is filed with the juvenile court intake officer, who shall immediately note thereon the date and time of filing. An individual shall not serve as a complainant and a juvenile court intake officer in the same case.

(B) When a complaint is made, the juvenile court intake officer shall conduct a preliminary inquiry to determine whether the acts or conditions alleged are within the subject-matter jurisdiction and venue of the juvenile court and whether probable cause exists to believe that the child is delinquent, dependent, in need of supervision, or in violation of an order of probation or aftercare. For this purpose, the juvenile court intake officer may receive and consider supplements to the complaint in the form of sworn written statements.

(C) If it appears from the preliminary inquiry that the requirements of subsection (B) have been met, the juvenile court intake officer shall either:

(1) Utilize the informal-adjustment process provided by Rule 15 in delinquency or child-in-need-of-supervision cases; or

(2) File a petition if the juvenile court intake officer finds that the best interests of the child or of the public requires judicial action.

(D) If it appears from the preliminary inquiry that one or more of the requirements of subsections (B) and (C) (2) have not been met, the juvenile court intake officer shall take no further action.

(E) The filing of a petition shall occur within 14 days of receipt of the complaint, except as provided in Rule 15 or when a child has been detained.

(F) If a Uniform Traffic Ticket and Complaint ("UTTC") is issued to a child, the UTTC may serve as a complaint and, if the requirements of this rule have been met, a petition. However, the UTTC shall serve only as a complaint in a felony traffic case.

APPENDIX B

Comment to Amendment to Rule 12
Effective November 2, 2009

Subsection (A) of this rule was amended to provide that any person having knowledge of the facts or being informed of them and believing them to be true may make a sworn complaint to a juvenile court intake officer. The phrase "being informed of them and believing them to be true" was added to be consistent with a similar requirement for petitions in Ala. Code 1975, § 12-15-121(a). Also, pursuant to Ala. Code 1975, § 12-15-118(1), complaints are required to be sworn. Although Ala. Code 1975, § 12-15-121(a), provides that a juvenile petition must be signed by a person 18 years of age or older, no similar age restriction was placed in this rule for filing a complaint. This provision does not take away the juvenile court intake officer's discretion to file the complaint in the rare instance when a person under the age of 18 files a complaint with the juvenile court intake officer; however, the juvenile court intake officer would not be able to proceed with filing a petition, because Ala. Code 1975, § 12-15-121(a), restricts the signing of a petition to a person, other than the juvenile court intake officer, who is 18 years of age or older.

Cases involving violations of probation or aftercare orders were added to this rule because such cases must be processed through the juvenile court intake office pursuant to Ala. Code 1975, §§ 12-15-118(1) and 12-15-132(b). The last sentence of subsection (A) was added to clarify that a person who makes a complaint in the juvenile court must not also perform duties as a juvenile court intake officer concerning the complaint. For example, a juvenile probation officer, who may have been designated as a juvenile court intake officer by the juvenile court, may file a petition to revoke probation or aftercare pursuant to Ala. Code 1975, § 12-15-132(b), which must be screened, reviewed, and prepared in the juvenile court intake office. If the juvenile probation officer has been designated as a juvenile court intake officer, then, pursuant to this subsection, the juvenile probation officer, as the petitioner, may not also process the case as the juvenile court intake officer.

Subsection (A) was also amended to clarify that the complaint must allege facts sufficient to establish the subject-matter jurisdiction and venue of the juvenile court so that the juvenile court intake officer may conduct a preliminary inquiry pursuant to subsections (B) and (C). This language was added so that a juvenile court intake officer can determine and endorse on the petition, if one is filed, that the juvenile court has subject-matter jurisdiction and venue over the case and that the filing of the petition is in the best interests of the public and/or the child. See Ala. Code 1975, § 12-15-120(b). Other technical changes were made to subsection (A).

Subsection (B) was amended to add the requirement that a determination be made by a juvenile court intake officer as to whether probable cause exists to believe that the child is delinquent, dependent, in need of supervision, or in violation of an order of probation or aftercare. The probable-cause determination made by a juvenile court intake officer is similar to this function performed by a magistrate in an adult criminal case. Cases involving violations of probation or aftercare orders were added to this rule because such cases must be processed through the juvenile court intake office pursuant to Ala. Code 1975, §§ 12-15-118(1) and 12-15-132(b). The last sentence of subsection (B) was added to provide that the juvenile court intake officer may receive and consider supplements to the complaint in the form of sworn written statements to ensure that the juvenile court intake officer has sufficient information to make a determination whether to file a petition.

The language providing that a juvenile court intake officer must make a determination "whether the best interests of the child or of the public require that a petition be filed" that appeared in subsection (B) before this amendment has been moved to subsection (C) (2) because that determination need not be made if a juvenile court intake officer wishes to utilize the informal-adjustment process. Other technical changes were made to subsection (B).

Subsection (C) (1) was amended to provide that informal adjustment applies only in delinquency and child-in-need-of-supervision cases, to be consistent with Ala. Code 1975, § 12-15-119; informal adjustment would not apply in dependency

cases or in cases involving violations of orders of probation or aftercare.

A new subsection (D) was added to instruct juvenile court intake officers to take no further action if it appears from the preliminary inquiry that any one of the requirements of subsections (B) and (C)(2) have not been met.

Former subsection (D) was relettered subsection (E); former subsection (E) was relettered subsection (F) and amended to provide that if a Uniform Traffic Ticket and Complaint ("UTTC") is issued to a child, the UTTC may serve as a complaint and, if the requirements of this rule have been met, a petition. However, the UTTC shall serve only as a complaint in a felony traffic case. In nonfelony traffic cases, some juvenile court intake officers may use the UTTC as the sworn complaint and decide to issue a separate petition, while other juvenile court intake officers may choose to use the UTTC as the petition in lieu of filing a separate petition.

APPENDIX C

RULE 15. INFORMAL ADJUSTMENT.

(A) Upon the receipt of a complaint alleging that a child is delinquent or in need of supervision and following advisement of rights to the child and his or her parent(s), legal guardian(s), or legal custodian(s), including the right to counsel at this and all other stages of the juvenile court proceeding, upon recommendation of a juvenile probation officer who has been designated a juvenile court intake officer, the matter may be held open and the juvenile probation officer who has been designated a juvenile court intake officer may attempt, with the consent of the child and his or her parent(s), legal guardian(s), or legal custodian(s), to make satisfactory informal adjustment.

(B) Informal adjustment shall include counseling and advising a child and his or her parent(s), legal guardian(s), or legal custodian(s) by the juvenile probation officer who has been designated a juvenile court intake officer. At the discretion of the juvenile probation officer who has been designated a juvenile court intake officer, counseling and advising may be performed by other appropriate persons, who may include the judge of the juvenile court. Informal adjustment may also include, with the consent of the child and his or her parent(s), legal guardian(s), or legal custodian(s), supervision by the juvenile probation officer who has been designated a juvenile intake officer and temporary placement of the child with persons other than his or her parent(s), legal guardian(s), or legal custodian(s). Referrals may be made by the juvenile probation officer who has been designated a juvenile intake officer to public and private agencies, which may provide assistance or services to the child and his or her parent(s), legal guardian(s), or legal custodian(s).

(C) A juvenile probation officer who has been designated to be a juvenile court intake officer may either terminate the informal-adjustment process and dismiss a child without further proceedings or terminate the informal-adjustment process and file a petition in the juvenile court if at any time:

(1) It appears that the child and his or her parent(s), legal guardian(s), or legal custodian(s) have received the maximum benefit from the informal-adjustment process;

(2) The child or one of his or her parents, a legal guardian, or a legal custodian declines to participate further in the informal-adjustment process;

(3) The child or one of his or her parents, a legal guardian, or a legal custodian denies the jurisdiction of the juvenile court;

(4) The child or one of his or her parents, a legal guardian, or a legal custodian expresses a desire that the facts be determined by the juvenile court;

(5) The child fails without reasonable excuse to attend scheduled conferences;

(6) The child appears unable or unwilling to benefit from the informal-adjustment process;

(7) The juvenile probation officer who has been designated to be a juvenile court intake officer becomes apprised of new or additional information that makes it appear that further efforts at informal adjustment would not be in the best interests of the child or of society; or

(8) Other sufficient reasons exist for terminating the informal-adjustment process.

(D) The informal-adjustment process shall not continue beyond a period of six months from its commencement.

(E) Upon termination of the informal-adjustment process and dismissal of a child without further proceedings, the juvenile probation officer who has been designated to be a juvenile court intake officer shall notify the child and his or her parent(s), legal guardian(s), or legal custodian(s) thereof and report that action to the juvenile court.

APPENDIX D

Comment to Amendment to Rule 15
Effective November 2, 2009

Subsection (A) was amended by substituting the language "[u]pon the receipt of a complaint alleging that a child is delinquent or in need of supervision" for the language "[i]f there is sufficient evidence to bring the child within the jurisdiction of the court," because informal adjustment occurs after the filing of a complaint and before the filing of a petition. See Ala. Code 1975, § 12-15-119.

Also, throughout this rule, the language "juvenile probation officer who has been designated to be a juvenile court" was added before the term "intake officer" to clarify that the informal-adjustment process should be handled by juvenile probation officers who have been designated as juvenile intake officers because juvenile probation officers are better trained to deal with this process than are other employees of the judicial branch. Other technical changes were made.

APPENDIX E

RULE 25. FINDINGS AND ORDERS.

(A) At any adjudicatory hearing the juvenile court may handle all matters at one time or in phases. A hearing to determine if a child alleged to be delinquent needs to be transferred to adult court is not considered an adjudicatory hearing.

If the allegations of the juvenile petition are denied, the juvenile court shall direct that testimony of witnesses be taken. A dependency hearing shall be conducted consistent with legal and due-process requirements and shall proceed generally in a manner similar to the trial of a civil action before the court sitting without a jury. A delinquency or child-in-need-of-supervision hearing shall be conducted consistent with legal and due-process requirements and shall proceed generally in a manner similar to the trial of a criminal action before the court sitting without a jury. If the child admits the allegations of the petition, the juvenile court may hear evidence to corroborate the admissions of the child. At the close of the hearing, the juvenile court shall make one of the following findings in writing:

(1) That the facts alleged in the juvenile petition are true and the child is dependent, in need of supervision, or delinquent; or

(2) That the facts alleged in the juvenile petition are not proved or that the child is not in need of care or rehabilitation, in which event the juvenile petition shall be dismissed.

(B) Following a finding that the child is a delinquent child, a dependent child, or a child in need of supervision, the child shall remain subject to orders of the juvenile court pending the dispositional phase.

(C) When a juvenile court makes a finding that a child is a delinquent child, a dependent child, or a child in need of supervision, the juvenile court shall make a disposition of the matter concerning the child or set the matter for a dispositional hearing. When possible, the judge or judicial

officer who presided at the adjudicatory hearing should preside at the dispositional hearing.

(D) At the close of the dispositional phase, the juvenile court shall make its finding in writing. If the disposition is probation, the order shall set forth the conditions of probation. In termination-of-parental-rights cases, the juvenile court shall make its finding by docket entry or written order within 30 days of completion of the trial.

APPENDIX F

Comment to Amendment to Rule 25 Effective November 2, 2009

Subsection (A) was amended to clarify that the provisions of this subsection apply to all adjudicatory hearings in juvenile court. Hearings to determine if a child alleged to be delinquent needs to be transferred to adult court are not considered adjudicatory hearings. The language in the former subsection (A) providing "except that the child may not be compelled to be a witness" was deleted in the provision dealing with the conduct of a dependency hearing because the Fifth Amendment right against self-incrimination does not attach in civil-type cases.

Language was also added in subsection (A) to provide that delinquency and child-in-need-of-supervision hearings shall be conducted consistent with legal and due-process requirements and shall proceed generally in a manner similar to the trial of a criminal action before the court sitting without a jury. This provision was added to differentiate between the legal and due-process requirements applicable in dependency cases and those applicable in delinquency and child-in-need-of-supervision cases.

The phrase "and is in need of care or rehabilitation" was deleted from subsection (A)(1) because it is duplicative language -- this element must be met to adjudicate a child a "delinquent child" pursuant to Ala. Code 1975, § 12-15-102(7).

The child's presence in any juvenile court hearing is a matter left to the sound discretion of the juvenile court. See Ala. Code 1975, § 12-15-129, providing that, "[i]f the juvenile court finds that it is in the best interests of the child under the jurisdiction of the juvenile court, the child may be temporarily excluded from the hearings, except while allegations of delinquency or in need of supervision are being heard."

Former subsection (E) was rescinded because provisions for the parties to request a rehearing in cases heard by referees is now covered by Ala. Code 1975, § 12-15-106. Other technical changes were made.