

ALABAMA RULES OF JUVENILE PROCEDURE

Rule 24.

Conduct of adjudicatory hearings or taking of admissions.

(A) In an adjudicatory hearing in a delinquency or child-in-need-of-supervision case or in any other hearing in which the child admits the allegations of the petition in a delinquency or child-in-need-of-supervision case, a juvenile court shall begin the hearing by ascertaining if all necessary parties are present and ready to proceed and should so note on the record.

(B)(1) If one or more parties are represented by counsel, the juvenile court shall inquire whether counsel has explained to them the substance of the juvenile petition, the specific allegations contained in the juvenile petition, the nature of the proceedings, the rights of the parties during the proceedings, and the alternatives available to the juvenile court should the allegations of the juvenile petition be admitted or proven. If counsel has explained these things to the parties, the juvenile court shall note these facts on the record.

(2) If a party has counsel but counsel has not explained the items enumerated above to him or her, or if a party is not represented by counsel, then the juvenile court shall explain to that party the substance of the juvenile petition, the specific allegations contained in the juvenile petition, the nature of the proceedings, the rights of the parties during the proceedings, and the alternatives available to the juvenile court should the allegations of the juvenile petition be admitted or proven.

(C) Following these procedures, the juvenile court may inquire of the child whether the child admits or denies all or some of the allegations contained in the juvenile petition. Failure or refusal of the child to admit any allegation shall be deemed a denial of the allegation. If admissions do not obviate the necessity for a hearing, the juvenile court shall then proceed to hear evidence, unless additional time is necessary to prepare for the hearing, and all testimony shall be under oath.

(D) No juvenile probation officer shall elicit testimony at any hearing. Statements made to a juvenile probation officer or a juvenile court intake officer by a child alleged to have committed a delinquent act or by a child alleged to be in need of supervision for the purposes of determining the appropriateness of, or while the child is participating in, diversion from formal juvenile court proceedings or adjudication shall not be admissible as evidence in an adjudicatory hearing for the purposes of determining the appropriateness of diversion from formal juvenile court proceedings or adjudication by a child alleged to have committed a

delinquent act or by a child alleged to be in need of supervision shall not be admissible as evidence in an adjudicatory hearing.

[Amended eff. 5-1-94; Amended eff. 9-14-2007; Amended eff. 1-9-2009; Amended 7-14-2011, eff. 10-1-2011; Amended 5-1-2014, eff. 7-1-2014.]

Comment

See Ala. Code 1975, § 12-15-65. The hearing should be as informal as the requirements of due process and fairness permit.

The probation officer should not be placed in the position of prosecuting attorney. See Ala. Code 1975, § 12-15-5, for the duty of the district attorney to assist the court in juvenile proceedings.

Paragraph (B) was amended, effective May 1, 1994, to make it clear that it is not mandatory that the juvenile courts advise the parties of their rights, the substance of the petition, and specific allegations in the petition except as to a party not represented by counsel or as to a party whose counsel has not explained those things. Therefore, if all parties are represented by counsel and counsel has explained these things, it is within the court's discretion whether to explain these things, but the court should duly note on the record that these things have been explained to the parties by their attorneys. It is strongly recommended that the court explain these things in all cases, even if counsel has already explained them to all parties. The appellate courts have held that a court must follow the procedure in Rule 24; however, if no objection is made to the court's not following the procedure, the error is not preserved for appeal and is waived. See *A.H. v. State*, 601 So.2d 213 (Ala.Cr.App.1992), and *Ex parte Brown*, 540 So.2d 740 (Ala.1989)

Distinguish *M.T.R. v. State*, 522 So.2d 325 (Ala.Cr.App.1988), in which the Court of Criminal Appeals held that the court acted properly when it advised the juvenile of the charges against him, asked if the juvenile had conferred with an attorney concerning his rights, and explained alternatives available to the court upon adjudication of a probation violation. The court noted that this was a special case in that it was in the nature of a probation revocation proceeding, not an initial adjudicatory hearing; thus, Rule 24 procedure was not mandatory in this case.

See Ala. Code 1975, § 12-15-71.1, regarding serious juvenile offenders. The court should inform the child that the child may be subject to treatment as a serious juvenile offender if the court has reason to believe that the child fits the definition of a "serious juvenile offender" provided in § 12-15- 71.1.

[Comment amended eff. 5-1-94.]

Comment to Rule 24(E)
Adopted Effective September 14, 2007

Subsection (E) was added to comply with 42 U.S.C. § 675(5)(G), as amended by the Safe and Timely Interstate Placement of Foster Children Act of 2006, Pub. L. No. 109-239, 120 Stat. 508, which conditions federal foster-care funding on the State's implementation of procedures to ensure that foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the State have a right to be heard in any juvenile court proceeding to be held with respect to the child.

Pursuant to Rule 13(E), adopted effective June 22, 2007, the juvenile court must ensure that foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the State are notified of any proceeding to be held with respect to the child.

For purposes of Rule 13(E) and subsection (E) of this rule, "proceeding" is intended to mean a hearing or review held after a child is placed in foster care in the responsibility of the State of which persons are notified and as to which they have a right to be heard in person before a judge or a referee and out of which findings and/or orders are issued.

The juvenile court may call the foster parent, preadoptive parent, or relative caregiver as a witness. See Rule 614, Alabama Rules of Evidence.

Comment to Amendment to Rule 24
Effective January 9, 2009

The title and subsection (A) of this rule were amended to clarify that subsections (A), (B), and (C) of this rule apply to adjudicatory hearings in the juvenile court. Although not expressly required by this rule, the best practice is for juvenile courts to note the facts in subsections (A) and (B) in writing. Subsection (D) was amended to clarify that no juvenile probation officer shall elicit testimony at any hearing, not just the adjudicatory hearing. Subsection (E) was rescinded because these provisions are now covered in Ala. Code 1975, § 12-15-307, and Rule 13(D) of these Rules. Other nonsubstantive changes were made.

Comment to Amendment to Rule 24
Effective October 1, 2011

Subsection (A) was amended to clarify that the provisions of this rule apply to adjudicatory hearings or hearings in which the child admits to the allegations in the petition in delinquency or child-in-need-of-supervision cases.

Subsection (D) was amended to provide that statements made to a juvenile probation officer or a juvenile court intake officer for the purposes of determining the appropriateness of diversion from formal juvenile court proceedings or adjudication by a child alleged to have committed a delinquent act or by a child alleged to be in need of supervision shall not be admissible as evidence in an adjudicatory hearing. These statements to a juvenile probation officer or juvenile court intake officer during the preliminary inquiry process pursuant to Rule 12(B) of these Rules could be compromised if the juvenile probation officer or juvenile court intake officer is required to testify in the adjudicatory hearing. Further, statements that could be made to a juvenile probation officer for the purpose of preparing a dispositional recommendation could be compromised if the juvenile probation officer is required to testify in the adjudicatory hearing.

Additionally, Rule 410, Alabama Rules of Evidence, provides, in pertinent part:

"Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

"(1) a plea of guilty which was later withdrawn;

"(2) a plea of nolo contendere in a federal court or criminal proceeding in another state;

"(3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or

"(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn."

Comment to Amendment to Rule 24
Effective July 1, 2014

Subsection (D) of Rule 24 was amended to prohibit the admission as evidence at an adjudicatory hearing of statements made by an alleged delinquent child or child in need of supervision while a child is participating in diversion from formal juvenile court proceedings or adjudication.

Note from the reporter of decisions: The order adopting, effective September 14, 2007, Rule 24(E), Alabama Rules of Juvenile Procedure; Comment to Rule 24(E) Adopted Effective September 14, 2007; Rule 32, Alabama Rules of Juvenile Procedure; and Comment to Rule 32 Adopted Effective September 14, 2007, is published in that volume of Alabama Reporter that contains Alabama cases from 963 So.2d.

Note from the reporter of decisions: The order amending effective January 9, 2009, Rule 1(A), Rule 8, Rule 13, Rule 20(A), Rule 24, Rule 28, and Rule 31, and adopting effective January 9, 2009, the Comment to Amendment to Rule 1(A) Effective January 9, 2009; the Comment to Amendment to Rule 8 Effective January 9, 2009; the Comment to Rescission of Rule 11 Effective January 9, 2009; the Comment to Amendment to Rule 13 Effective January 9, 2009; the Comment to Rescission of Rule 16 Effective January 9, 2009; the Comment to Amendment to Rule 20(A) Effective January 9, 2009; the Comment to Amendment to Rule 24 Effective January 9, 2009; the Comment to Amendment to Rule 28 Effective January 9, 2009; the Comment to Amendment to Rule 31 Effective January 9, 2009; and the Comment to Rescission of Rule 32 Effective January 9, 2009, is published in that volume of Alabama Reporter that contains Alabama cases from 996 So. 2d.

Note from the reporter of decisions: The order amending effective October 1, 2011, Rule 1, Rule 2, Rule 3, Rule 5, Rule 6, Rule 8, Rule 9, Rule 12, Rule 13, Rule 14, Rule 15, Rule 15.1, Rule 17, Rule 18, Rule 20, Rule 23, Rule 24, Rule 25, Rule 26, Rule 28, and Rule 31 and adopting effective October 1, 2011, Rule 8.1 and the Comment to Amendment to Rule 1 Effective October 1, 2011; the Comment to Amendment to Rule 2 Effective October 1, 2011; the Comment to Amendment to Rule 3 Effective October 1, 2011; the Comment to Amendment to Rule 5 Effective October 1, 2011; the Comment to Amendment to Rule 6 Effective October 1, 2011; the Comment to Amendment to Rule 8 Effective October 1, 2011; the Comment to Adoption of Rule 8.1 Effective October 1, 2011; the Comment to Amendment to Rule 9 Effective October 1, 2011; the Comment to Amendment to Rule 12 Effective October 1, 2011; the Comment to Amendment to Rule 13 Effective October 1, 2011; the Comment to Amendment to Rule 14 Effective October 1, 2011; the Comment to Amendment to Rule 15 Effective October 1, 2011; the Comment to Amendment to Rule 15.1 Effective October 1, 2011; the Comment to Amendment to Rule 17 Effective

October 1, 2011; the Comment to Amendment to Rule 18 Effective October 1, 2011; the Comment to Amendment to Rule 20 Effective October 1, 2011; the Comment to Amendment to Rule 23 Effective October 1, 2011; the Comment to Amendment to Rule 24 Effective October 1, 2011; the Comment to Amendment to Rule 25 Effective October 1, 2011; the Comment to Amendment to Rule 26 Effective October 1, 2011; the Comment to Amendment to Rule 28 Effective October 1, 2011; and the Comment to Amendment to Rule 31 Effective October 1, 2011, is published in that volume of *Alabama Reporter* that contains Alabama cases from ____ So. 3d.

Note from the reporter of decisions: The order amending Rule 1, Rule 2, Rule 3, Rule 5, Rule 5.1, Rule 6, Rule 8, Rule 8.1, Rule 12, Rule 13, Rule 14, Rule 15, Rule 18, Rule 20, Rule 24, Rule 26, Rule 28, and Rule 31 effective July 1, 2014, is published in that volume of *Alabama Reporter* that contains Alabama cases from ____ So. 3d.