

IN THE SUPREME COURT, STATE OF WYOMING

October Term, A.D. 2006

In the Matter of the Adoption of)
Rules of Procedure for)
Juvenile Courts)

ORDER ADOPTING RULES OF PROCEDURE FOR JUVENILE COURTS

This matter came before the Court upon a recommendation from the Permanent Rules Advisory Committee, Juvenile Division. The Committee has recommended the adoption of Rules of Procedure for Juvenile Courts. This Court, having carefully reviewed the proposed rules, finds that the proposed rules should be adopted. It is, therefore,

ORDERED that the Rules of Procedure for Juvenile Courts, attached hereto, are adopted and that those rules be published in the advance sheets of the Pacific Reporter and in the Wyoming Reporter. The rules shall be effective July 1, 2007, and thereafter shall be spread at length upon the journal of this Court.

DATED this 9th day of February, 2007.

BY THE COURT:

BARTON R. VOIGT
Chief Justice

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Rules of Procedure for Juvenile Courts

Rule 1. Title and Scope.

A. Title. These rules will be known and cited as “The Rules of Procedure for Juvenile Courts.”

B. Scope. These rules govern practice and procedure in the trial courts in all juvenile court actions.

C. Definitions. For purposes of these Rules, the term “State” refers to the county and prosecuting attorney, and/or district attorney. The term “Respondent” refers to any individual required to respond to allegations in a petition filed by the State.

D. Rules. The Wyoming Rules of Evidence shall apply to juvenile proceedings pursuant to W.R.E. 1101 (b)(3).

Rule 2. Hearings.

A. Presence of the Child. A child who is not of suitable age to understand or participate in the proceedings need not be present at hearings unless the court so orders. The court may excuse the presence of a child who is of suitable age if attendance would be detrimental to the child. The child or the child's guardian ad litem may waive the child's right to be present at a particular hearing.

B. Presence of Foster Parent. A foster parent or other out-of-home care provider is entitled to be heard at any hearing. However, the court may limit the presence of the foster parent or care provider to the time during which the person's testimony is being given if it is (1) in the best interest of the child; or (2) necessary to protect the privacy interests of the parties and will not be detrimental to the child.

C. General Public Excluded. Hearings are not open to the public. However, the court may, after due consideration for the welfare of the child and the family, admit specific individuals to a hearing. Victims of delinquent acts, and members of their immediate families may be present pursuant to Wyoming statutes.

D. Notice to Foster Parents, Pre-Adoptive Parents, or Relative Caregivers. Prior to each hearing held pursuant to the Child Protection Act, the county or district attorney, or another entity designated by the court, shall provide written notice of such hearing, including their right to be heard, to the child's foster parents, pre-adoptive parents, or relative

caregivers. This provision shall not be construed to require foster parents, pre-adoptive parents, or relative caregivers to be made a party to the hearing or proceeding solely on the basis of such notice and opportunity to be heard.

Rule 3. Discovery and Inspection – Abuse and Neglect, Delinquency, and CHINS (Child in Need of Supervision).

A. Scope of Section. This section applies to proceedings in which by petition, a child is alleged to be delinquent, abused or neglected, or in need of supervision.

B. Discovery by the State. The State shall without the necessity of a request by the Respondent, and within thirty (30) days of service of the applicable petition, furnish to the Respondent and guardian ad litem:

1. Any material or information within the knowledge, possession or control of the State which tends to negate the involvement of the Respondent as to the offense charged;
2. Any relevant material or information regarding
 - (a) specific searches and seizures;
 - (b) the acquisition of statements made by the Respondent; and
 - (c) prehearing identification of the Respondent by a witness for the State;
3. The name and address of each person the State intends to call as a witness at any hearing to prove its case in chief or to rebut alibi testimony to the extent then known;
4. All statements made by the Respondent to a State agent which the State intends to use at a hearing:
 - (a) A copy of each written or recorded statement; and
 - (b) The substance of each oral statement and a copy of all reports of each oral statement;
5. All statements made by a Co-Respondent to a State agent which the State intends to use at a hearing, unless a severance has been ordered by the court:

- (a) A copy of each written or recorded statement;
and
 - (b) The substance of each oral statement and a copy of all reports of each oral statement;
6. Any written reports or statements made in connection with the particular case by each expert consulted by the State, if the State intends to offer the testimony of the expert or the report at any hearing, including the written substance of any oral reports and conclusions made in connection with the particular case by each expert consulted by the State; the results of any physical or mental examination, scientific test, experiment or comparison; and all information on which the expert's opinion is based;
 7. Any book, paper, document, recording, photograph and any tangible object which the State intends to use at any hearing, in order to permit the Respondent to inspect, copy and/or photograph them;
 8. Any item obtained from or belonging to the Respondent which the State intends to use at any hearing, in order to permit the Respondent to inspect, copy and/or photograph it;
 9. The State's obligations under this section extend to material and information in the possession or control of members of the prosecutor's staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to his office; and
 10. Records created or held by the Department of Family Services (DFS) may be subject to discovery in proceedings in juvenile court, pursuant to this Rule. Respondent shall request discovery of DFS records through the State. Upon a request for discovery, DFS shall provide its records to the State and guardian ad litem. The State may, pursuant to this rule, provide the records to the Respondent, or may contest the discovery request pursuant to these Rules. Discovery requests concerning Child Protection records are further subject to the provisions of Wyo. Stat. Ann. §14-3-214, and access to such records may be limited

pursuant to such statutory section. This Rule is specific to discovery requests in juvenile court proceedings and does not relate to discovery of DFS records in other types of proceedings.

C. Compliance by the State. The State may comply with this rule by advising the Respondent in writing or on the record, that the Respondent may inspect the discoverable portions of the State's file and by allowing such inspection to occur at any time during normal business hours. However, if the State has any exculpatory information specified in this Rule, the State shall promptly furnish such information to the Respondent, whether or not the Respondent has made the inspection provided for by that subsection.

D. Matters Not Subject to Discovery. This section does not require a party to disclose:

1. Any documents to the extent that they contain the opinions, theories, conclusions, or other work product;
2. The identity of a confidential informant of the State, so long as the failure to disclose the informant's identity does not infringe on a constitutional right of the Respondent, and the State does not intend to call the informant as a witness; and
3. Any matter which the court orders need not be disclosed.

E. Discovery by Other Parties.

1. Upon the written request of the State, when pertinent to the issues and upon a showing of good cause, the court may order the Respondent to:
 - (a) Appear in a lineup for identification;
 - (b) Speak for identification;
 - (c) Be fingerprinted, or if the Respondent is a juvenile, be fingerprinted pursuant to Wyo. Stat. Ann. §14-6-240;
 - (d) Pose for photographs not involving reenactment of a scene, or if the Respondent is a juvenile, be photographed pursuant to Wyo. Stat. Ann §14-6-240;
 - (e) Try on articles of clothing;

- (f) Permit the taking of specimens of material under his fingernails;
- (g) Permit the taking from his body of samples of blood, hair, and other material involving no unreasonable intrusion upon his person;
- (h) Provide specimens of his handwriting; or
- (i) Submit to a reasonable physical inspection of his body or a mental examination, or if the Respondent is a juvenile, physical or mental examinations may be ordered pursuant to Wyo. Stat. Ann §14-6-419;

2. Upon written request of the State, the Respondent shall:

- (a) Produce the names and address of each person the Respondent intends to call as a witness at any hearing;
- (b) Produce and permit the State to inspect and copy all written reports made in connection with the particular case by each expert the Respondent intends to call as a witness at the hearing, including the substance of any oral report and conclusion made in connection with the particular case by an expert which the Respondent intends to use at the hearing and the results of any physical or mental examination, scientific test, experiment, or comparison; and
- (c) Furnish, upon designation by the State of the time, place and date of the alleged occurrence, the name and address of each witness other than the Respondent whom the Respondent intends to call as a witness to show he was not present at the time, place and date designated by the State in its request.

F. Procedure for Discovery, Time. The State shall make the disclosure required under this Rule, and may request reciprocal discovery within thirty (30) days from the service of the petition. The Respondent shall furnish the discovery required under this Rule within thirty (30) days after a request is made. The court, for good cause shown, may extend the time for discovery. If discovery is not furnished as required, a motion to compel

discovery may be filed which shall specify the items which have not been furnished. A hearing shall be held no later than three (3) days after the motion is filed. If, at any time during the proceedings, it is brought to the attention of the court that a party has failed to comply with this Rule or an order issued under this Rule, the court may:

1. Order such party to permit the discovery of the matters not previously disclosed;
2. Strike the testimony to which the undisclosed matter relates;
3. Grant a reasonable continuance;
4. Prohibit the party from introducing in evidence the matter not disclosed;
5. Grant a mistrial; or
6. Enter such other order as may be appropriate under the circumstances.

G. Continuing Duty to Disclose. If, subsequent to compliance with a request made under this Rule or with any order compelling discovery, a party learns of additional information previously requested and required to be furnished, he shall promptly furnish the information to the other party or his counsel. If the additional information is learned during a hearing, he shall, in addition to furnishing the information promptly to the other party or his counsel, notify the court that such matter is being furnished.

H. Protective Orders. On motion and a showing of good cause, the court may order that specified disclosures be restricted.

I. Other Orders. In any proceeding, the court may, upon good cause shown, pass such orders in aid of discovery, and inspection of evidence as justice may require.

J. Timely Disclosure Required. All matters and information to which a party is entitled must be disclosed in time to permit its beneficial use.

Rule 4. Submittal of Reports.

Not later than five (5) business days prior to the hearing where any report is to be offered for consideration, the party offering the report shall file the report with the court and provide a copy of the report to be offered to all other parties.

Rule 5. Right to Counsel.

A. Right to Counsel, Generally. The Respondent is entitled to be represented in all proceedings in Juvenile Court by counsel retained by him, his parent, or by counsel appointed pursuant to this Rule. An out-of-state attorney may enter his appearance and participate in a case only after having been admitted in accordance with Rule 11 of the Rules of the Supreme Court of Wyoming Providing for the Organization and Government of the Bar Association and Attorneys at Law of the State of Wyoming, and Rule 104 of the Uniform Rules for the District Courts of the State of Wyoming (admission Pro Hac Vice). Once so admitted, his appearance and participation is limited by the restrictions of those rules.

B. Right to Counsel, Native American. In proceedings subject to the Indian Child Welfare Act, out-of-state attorneys must comply with Rule 5(A). However, in proceedings subject to the exclusive jurisdiction of the tribe pursuant to 25 U.S.C. § 1919, the tribe's attorney may appear for the limited purpose of requesting transfer of the matter to tribal court, without showing compliance with Rule 5(A). If necessary in all other cases, the tribe shall obtain local counsel.

C. Notice of Right. Respondent shall be served with written advice of the right to counsel with any order setting any initial hearing. Such notice shall advise of the availability of appointed counsel, and shall direct a juvenile, parent or guardian requesting counsel to obtain a financial affidavit and present it to the court at least five (5) days before the hearing. The notice shall also advise that failure to request counsel in advance may result in contempt sanctions and liability for costs resulting from delays.

D. Advisement of Right. At the initial hearing the court shall advise of the right to counsel as required by statute. A parent, guardian, or juvenile may waive counsel if the Court finds that such waiver is made in accordance with Wyo.Stat. Ann. § 7-6-107.

Rule 6. Pretrial Conference and Meeting of Parties.

The court may conduct a pretrial conference pursuant to procedures defined by the court.

Rule 7. Stipulations.

Subject to approval by the court, parties may stipulate to any matter, including adjudication and disposition. However, stipulations to adjudication and disposition may be accepted only if the court determines that the parties understand their rights and have had a sufficient opportunity to consult with counsel. In the case of a Native American child, a stipulation to adjudication or disposition is not binding on a parent or Native American custodian unless it is in writing, agreed to in court (whether in person or telephonically), and signed by the parent or Native American custodian. No stipulation may be entered that contravenes any applicable statute.

Rule 8. CASA Provisions. (Court Appointed Special Advocates Program)

A. General Requirements. The local Court Appointed Special Advocates Program serving the judicial district where the Juvenile Court is located may provide volunteers to serve without compensation as Court Appointed Special Advocates (CASAs) at the order of the Juvenile Court. The local Court Appointed Special Advocates Program must have completed the required standards for current members in good standing with the National Court Appointed Special Advocates Association. The local Court Appointed Special Advocates Program shall designate the individual CASA volunteer for assignment to a case.

B. Qualifications of Court Appointed Special Advocates. The CASA must have successfully completed the screening and training as required by the local Court Appointed Special Advocate Program and mandated by the National Court Appointed Special Advocates Association. All CASAs are subject to the direction of their local Court Appointed Special Advocates Program.

C. Appointment. The Juvenile Court may appoint a CASA to serve the best interests of a child in abuse or neglect actions. All CASAs must be sworn in by the Juvenile Court before beginning their duties. The CASA serves at the pleasure of the court. The CASA volunteer shall not act as the legal representative or attorney guardian ad litem of any child in any appointed case. The CASA serves a role that is separate from the role of the attorney guardian ad litem although it is the expectation of the court that the attorney guardian ad litem and the

CASA would collaborate and cooperate in the best interests of the child. The CASA serves until the case is concluded or the court enters an order for removal.

D. Duties of Court Appointed Special Advocates. The Court Appointed Special Advocate shall:

1. Serve the best interests of the child in abuse proceeding, neglect proceeding or both;
2. Provide independent, factual information including, but not limited to, a written report to each party regarding the cases to which the CASA is appointed;
3. Submit a written report to the parties at least five (5) business days prior to each dispositional or other post-adjudicatory hearing involving the child/children;
4. Be allowed to observe all depositions, pretrial conferences, and hearings;
5. Upon appointment, have access to review and make copies of all Department of Family Services records regarding the child and his or her family with the consent of the guardian ad litem; have access to review and make copies of the court file in the judicial district court where the action is pending; and have access to review and receive copies of other records as allowed and ordered by the court;
6. Receive reasonable notice from the Department of Family Services of changes in placement, school, or any other change of circumstances affecting the child;
7. Monitor cases to which they are appointed to assist in assuring that the terms of the court's orders are fulfilled and timely permanency for the child is achieved; and
8. Ascertain the wishes of the child and assist in making the wishes known to the parties.

Rule 9. Inadmissibility of Certain Evidence.

A. Agreements. The State may enter into an agreement or plea bargain which provides that information derived directly from a parent during the multi-disciplinary or case planning process pursuant to a

proceeding under Wyo. Stat. Ann. § 14-3-401 *et seq.*, or from a juvenile pursuant to proceedings under Wyo. Stat. Ann. § 14-6-201 *et seq.*, and Wyo. Stat. Ann. § 14-6-401 *et seq.* will not be admissible in a subsequent criminal proceeding arising from the same episode. The provisions of this subsection shall not be construed to prevent any law enforcement officer from independently producing or obtaining the same or similar facts, information, or evidence for use in any criminal prosecution.

B. Confidentiality. Notwithstanding any other provision of law to the contrary, a juvenile's admissions or incriminating statements to a professional made in the course of treatment ordered by the Juvenile Court shall not, without the juvenile's consent, be admitted into evidence in any criminal or juvenile delinquency case brought against the juvenile, except that the privilege shall not apply to statements regarding future misconduct.

Rule 10. Concurrent Criminal and Juvenile Proceedings.

Proceedings in Juvenile Court shall not be delayed nor stayed pending criminal proceedings in District Court or Circuit Court. This prohibition includes criminal proceedings involving the juvenile or the juvenile's parent, legal guardian or caretaker. All proceedings in Juvenile Court shall proceed pursuant to the timelines set forth by the various articles of Title 14 of the Wyoming Statutes.