

## INTRODUCTION

The Supreme Court of Pennsylvania has adopted the changes to Rule 407 with this Recommendation. The changes are effective April 1, 2012.

### EXPLANATORY REPORT JANUARY 2012

#### Background

The Juvenile Court Procedural Rules Committee (Committee) looked at admission colloquies used across this Commonwealth for juveniles who were admitting to a delinquent act pursuant to Rule 407. The Committee found that in some judicial districts, the colloquy omitted important information regarding the case and the juvenile's ability to comprehend the admission. The Committee found these colloquies were inadequate and recommended a need for a unified form.

The Committee looked at colloquies from several judicial districts to create its own form. A final collation of these forms was then produced to make one unified colloquy.

After producing a final colloquy and modifying sections of the rule, the Committee sent out a recommendation for modifications to Rule 407. The public comment suggested a more child-friendly form. Juvenile language experts were consulted. The Committee then produced a colloquy written at a fifth-grade level using the Flesch-Kincaid Reading Analysis. Certain legal terms remain in the colloquy but are adequately explained at a fifth-grade level.

One area of debate during the public comment period was whether this form should be mandated. The Committee debated this issue and decided that because of the prevalence of severe inadequacies in several forms being used across this Commonwealth, the colloquy would be mandatory. However, the modified rule allows a judicial district to add more requirements to its own colloquy. Pursuant to Pa.R.J.C.P. 121, a judicial district could submit its colloquy with additional requirements to the Committee for review as a local rule. If the local rule is not in conflict with the statewide rule, the colloquy would be permitted in that judicial district. See *Comment* to Rule 407.

Some paragraphs of the rule were also modified to ensure that the admission was knowingly, intelligently, and voluntarily made.

## **Rule discussion**

### *Paragraph (A)(1)(a)*

Paragraph (A)(1)(a) lays out the requirements for an admission, which provides the admission shall be knowingly, intelligently, and voluntarily made. This is the standard applied for admissions whether the juvenile is being questioned at a police station or the juvenile is admitting to the delinquent acts in court.

### *Paragraph (A)(1)(b)*

Paragraph (A)(1)(b) provides the court must ensure that: i) an attorney has reviewed the admission colloquy with the juvenile; and ii) there is a factual basis for the admission.

The admission colloquy must be reviewed by an attorney with the juvenile. It is not the role of the judge or others to give legal advice to the juvenile which is inherent when allowing a juvenile to waive a constitutionally protected right. If the juvenile did not review this colloquy with an attorney, the judge, master, attorney for the Commonwealth, or juvenile probation officer would have to step in and fulfill this role. This practice utilized in some judicial districts is strictly prohibited. *See Comment to Rule 407.*

When the attorney for the Commonwealth recites the stipulated facts in the case, the court must determine that the facts actually meet the standard for the delinquent act(s) petitioned. If the standards are not met, the court must find on a lower-graded offense(s) or dismiss the offense(s).

### *Paragraph (A)(1)(c)*

This paragraph lays out the questions that the court should ask to determine if the admission is knowingly, intelligently, and voluntarily made. The questions presented are intended to elicit thoughtful responses from the juvenile to aid the court in gathering information as to whether the juvenile understands and the waiver of an adjudicatory hearing is knowingly, intelligently, and voluntarily made. Questions must not be asked that elicit a mere “yes” or “no” answer.

### *Paragraph (A)(2) & (A)(3)*

No changes were made to these paragraphs.

*Paragraph (A)(4)*

Allowing withdrawals of the admission if there is a demonstration of manifest injustice was added to this paragraph. There may be instances in which the court should allow withdrawals. However, the burden of proving manifest injustice rests with the juvenile.

**407(B)**

No changes were made to this paragraph concerning incriminating statements. This paragraph is taken directly from the Juvenile Act. 42 Pa.C.S. § 6323(e).

**407(C)**

This paragraph requires the admission colloquy must be: 1) in writing; 2) reviewed and completed with the juvenile by an attorney; 3) submitted to and reviewed by the court; and 4) substantially in the following form.

*Paragraph (C)(1)*

The admission colloquy must be in writing. This colloquy aids all parties in determining if the juvenile comprehends and appreciates his or her actions before the court.

*Paragraph (C)(2)*

Every admission shall be reviewed by an attorney with the juvenile. It is not the role of the judge or others to give legal advice to the juvenile. A judge, master, attorney for the Commonwealth, juvenile probation officer, or other person is not privy to certain information and cannot aid the juvenile in making a knowingly, intelligently, and voluntarily made admission.

*Paragraph (C)(3)*

The court shall review every document prior to accepting it into the record. It is anticipated that the colloquy will be given to the judge or master during the hearing. The attorney for the Commonwealth will then recite the facts of the case and the court will ask the juvenile if he or she agrees with the recitation of the facts. The court will then enter its finding into the record that there is a factual basis to the admission as required under paragraph (A)(1)(b)(ii).

If there is a factual basis for the admission, the court will proceed into an independent inquiry as required by paragraph (A)(1)(c). After the inquiry, the court will

state on the record whether the admission is knowingly, intelligently, and voluntarily made based on the testimony and colloquy presented to it.

*Paragraph (C)(4)*

The colloquy is mandated and must be substantially in the same form. If a judicial district desires additional requirements, it must follow the procedures of Pa.R.J.C.P. 121.

**Admission colloquy**

The admission colloquy is written at a fifth-grade reading level so most juveniles can read and understand the colloquy. The Committee understands that there may be exceptions. Therefore, the colloquy requires the attorney to explain the colloquy until the juvenile understands. *See also Comment* to Rule 407.

If the juvenile does not understand everything contained in the colloquy or if, at any time, the court or attorney is unsure of the juvenile's understanding or believes the admission is involuntary, the court shall proceed with an adjudicatory hearing pursuant to Pa.R.J.C.P. 406.

*General information*

This information gives the attorney and the court information regarding the juvenile's age and grade to assess the juvenile's ability to comprehend. It also guides the attorney as to whether the juvenile can read and speak English before reviewing the colloquy.

*Knowing and voluntary admission*

This section allows the attorney to address issues related to the voluntariness or comprehensiveness of the admission. Any promises, including plea agreements, should be listed on the admission colloquy.

*Understanding the admission*

To have a knowingly, intelligently, and voluntarily made admission, disclosure of all the rights being waived is important. If there is not full disclosure, then the juvenile does not truly understand waiver of a hearing. It is important to list all of these rights in the colloquy form to ensure: 1) the attorney has reviewed them with the juvenile prior to entering the courtroom; and 2) there is a written colloquy of these rights.

### *Possible consequences of adjudication of delinquency*

Prior to entering the courtroom, it is important to explain to the juvenile possible outcomes to the admission. In addition to the more severe possible consequences listed on the colloquy, the *Comment* to the rule provides a reference to the Pennsylvania Juvenile Collateral Consequence checklist available on the Committee's web-page.

### *Appeals*

The three areas of appeal are disclosed to the juvenile in this section. It is important to note that all other appellate rights are also being waived when a juvenile admits to a delinquent act. This is another factor in determining whether the admission is knowingly, intelligently, and voluntarily made.

### *Lawyer's Representation and Opportunity to Speak with Guardian*

The last two questions relay that the juvenile is satisfied with the attorney and answers whether the guardians have been consulted about this admission. Whether a juvenile is satisfied with the attorney or admits without the advice of a parent is only a factor the court should consider when determining whether the admission is knowingly, intelligently, and voluntarily made.