

RULES OF JUVENILE COURT PROCEDURE

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CHAPTER 11 GENERAL PROVISIONS

- 1100. Scope of Rules
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RULE 1100. SCOPE OF RULES

- A. These rules shall govern dependency proceedings in all courts. Unless otherwise specifically provided, these rules shall not apply to orphans' court, domestic relations and delinquency proceedings.

- B. Each of the courts exercising dependency jurisdiction, as provided in the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, may adopt local rules of procedure in accordance with Rule 1121.

COMMENT

The Pennsylvania Rules of Juvenile Court Procedure are split into two categories: delinquency matters and dependency matters. All delinquency matters are governed by Chapters One through Ten (Rules 100 - 1099). All dependency matters are governed by Chapters Eleven through Twenty (Rules 1100 - 2099).

Unless specifically provided in these rules, the Pennsylvania Rules of Civil Procedure and the Pennsylvania Rules of Criminal Procedure do not apply to dependency proceedings commenced pursuant to Rule 1200 and 42 Pa.C.S. § 6301 *et seq.*

These rules govern proceedings when the Juvenile Act vests jurisdiction in the Court of Common Pleas. See 42 Pa.C.S. §§ 6321 and 6302.

Each judicial district may promulgate local rules that follow the requirements of Rule 1121 and Pa.R.J.A. 103.

Official Note: Rule 1100 adopted August, 21, 2006, effective February 1, 2007.
Amended May 12, 2008, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1100 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1100 published with the Court's Order at 38 Pa.B. 2360 (May 12, 2008).

RULE 1101. PURPOSE AND CONSTRUCTION

- A. These rules are intended to provide for the just determination of every dependency proceeding.
- B. These rules establish uniform practice and procedure for courts exercising jurisdiction as provided in the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, and shall be construed to secure uniformity and simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.
- C. These rules shall be interpreted and construed to effectuate the purposes stated in the Juvenile Act, 42 Pa.C.S. § 6301(b).
- D. To the extent practicable, these rules shall be construed in consonance with the rules of statutory construction.

Official Note: Rule 1101 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1101 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1102. CITING THE JUVENILE COURT PROCEDURAL RULES

All juvenile court procedural rules adopted by the Supreme Court of Pennsylvania under the authority of Article V § 10(c) of the Constitution of Pennsylvania, adopted April 23, 1968, shall be known as the Pennsylvania Rules of Juvenile Court Procedure and shall be cited as "Pa.R.J.C.P."

COMMENT

The authority for rule-making is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution, which states in part, "[t]he Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts ... if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions."

Official Note: Rule 1102 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1102 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

PART A
BUSINESS OF COURTS

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RULE 1120. DEFINITIONS

ADULT is any person, other than a child, eighteen years old or older.

AGGRAVATED CIRCUMSTANCES are those circumstances specifically defined pursuant to the Juvenile Act, 42 Pa.C.S. § 6302.

CHILD is a person who is under the age of eighteen who is the subject of the dependency petition, or who was adjudicated dependent before reaching the age of eighteen years and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, but in no event shall remain in a course of instruction or treatment past the age of twenty-one years.

CLERK OF COURTS is that official in each judicial district who has the responsibility and function under state law and local practice to maintain the official juvenile court file and docket, without regard to that person's official title.

COUNTY AGENCY is the county children and youth social service agency established pursuant to the County Institution District Law, 62 Pa.C.S. § 2305 or established through the county commissioners in the judicial districts where the County Institution District Law was abolished, 16 P.S. §§ 2161, 2168, and supervised by the Department of Public Welfare pursuant to the Public Welfare Code, 62 Pa.C.S. § 901 *et seq.*

COURT is the Court of Common Pleas, a court of record, which is assigned to hear dependency matters. Court shall include masters when they are permitted to hear cases under these rules. Juvenile court shall have the same meaning as court.

FAMILY SERVICE PLAN is the document in which the county agency sets forth the service objectives for a family and services to be provided to a family by the county agency.

GUARDIAN is any parent, custodian, or other person who has legal custody of a child, or person designated by the court to be a temporary guardian for purposes of a proceeding.

JUDGE is a judge of the Court of Common Pleas.

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

MASTER is an attorney with delegated authority to hear and make recommendations for dependency matters. Master has the same meaning as hearing officer.

MEDICAL FACILITY is any hospital, urgent care facility, psychiatric or psychological ward, drug and alcohol detoxification or rehabilitation program, or any other similar facility designed to treat a child medically or psychologically.

MINOR is any person under the age of eighteen.

PARTY is a person who is legally entitled to participate in the proceedings but nothing in these Rules confers standing upon a person.

PERMANENCY PLAN is a comprehensive plan that will result in a permanent home for the child.

PETITION is a formal document by which a child is alleged to be dependent.

PETITIONER is any person, who signs or verifies, and files a petition.

POLICE OFFICER is any person, who is by law given the power to arrest when acting within the scope of that person's employment.

PROCEEDING is any stage in the dependency process occurring once a shelter care application has been submitted or a petition has been filed.

PROTECTIVE CUSTODY is when a child is taken into custody for protection as an alleged dependent child pursuant to the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* or custody may be assumed pursuant to 23 Pa.C.S. § 6315.

RECORDING is the means to provide a verbatim account of a proceeding through the use of a court stenographer, audio recording, audio-visual recording, or other appropriate means.

SHELTER CARE FACILITY is a physically unrestricted facility that provides temporary care of a child and is approved by the Department of Public Welfare.

VERIFICATION is a written statement made by a person that the information provided is true and correct to that person's personal knowledge, information, or belief and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

COMMENT

The county agency is a party to the proceeding and should not function as the "Clerk of Courts."

The definition of "clerk of courts" should not necessarily be interpreted to mean the office of clerk of courts as set forth in 42 Pa.C.S. § 102, but instead refers to that official who maintains the official juvenile court files and docket regardless of the person's official title in each judicial district. It is to be determined locally which official is to maintain these records and the associated docket.

The county institution districts in counties of the fourth, fifth, sixth, seventh, and eighth classes were abolished pursuant to 16 P.S. § 2161. It is the county commissioners' duties in the fourth, fifth, sixth, seventh, and eighth classes to provide the children and youth social service agency with the necessary services for the agency to provide care for the child. See 16 P.S. § 2168.

Under the term "court," to determine if masters are permitted to hear cases, see Rule 1187.

For the family service plan, see 55 Pa. Code § 3130.61

The definition of "law enforcement officer" does not give the power of arrest to any person who is not otherwise given that power by law.

The term "petitioner" may include any person; however, if the person is not the county agency, an application to file a petition pursuant to Rule 1320 is to be made. If the court, after a hearing, grants the application, the applicant may file a petition.

Official Note: Rule 1120 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1120 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1120 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009).

RULE 1121. LOCAL RULES

A. **Definition of Local Rule.** For the purpose of this rule, the term, "local rule" shall include every rule, administrative order, regulation, directive, policy, custom, usage, form, or order of general application, however labeled or promulgated, which is adopted or enforced by a court of common pleas to govern juvenile dependency practice and procedure.

B. Vacated Local Rules and Repromulgation.

- 1) All local rules promulgated before February 1, 2007 were vacated at the time of the adoption of these Rules.
- 2) Each judicial district may promulgate new local rules that do not conflict with the Rules of Juvenile Court Procedure after submission under paragraph (D).

C. **Corresponding numbers.** Local rules shall be given numbers that are keyed to the number of the Rules of Juvenile Court Procedure to which the local rules correspond.

D. Submission to Committee.

- 1) All proposed local dependency rules and proposed amendments to local dependency rules shall be submitted in writing to the Juvenile Court Procedural Rules Committee for the Committee to review.
- 2) The adopting court shall not proceed with the proposed local rule or amendments until the adopting court receives written notification from the Committee that the proposed local rule or amendments are not inconsistent with any general rule of the Supreme Court.

E. **Vacating and Suspending Local Rules.** Local rules shall not be inconsistent with any rule of the Supreme Court or any Act of Assembly.

- 1) The Juvenile Court Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule.
- 2) The Juvenile Court Procedural Rules Committee may suspend that local rule pending action by the Court on that recommendation.

F. **Publication of Local Rules.** All local rules shall be published in the *Pennsylvania Bulletin* to be effective and enforceable.

1) The adopting court shall not publish the local rule in the *Pennsylvania Bulletin* until it has received the statement from the Committee that the proposed local rule is not inconsistent with any general rule of the Supreme Court.

2) The adopting court shall submit the following items to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*:

- a) two certified copies of the local rule;
- b) a copy of the local rule on a computer diskette, CD-ROM, or electronic copy that complies with the requirements of 1 *Pa.Code* § 13.11(b) - (f); and
- c) a copy of the written notification, received from the Juvenile Court Procedural Rules Committee, providing that the local rule is not inconsistent with the Pennsylvania Rules of Juvenile Court Procedure.

3) The effective date of the local rule shall not be less than 30 days after the date of publication of the rule in the *Pennsylvania Bulletin*.

G. Filing with AOPC. Contemporaneously with publishing the local rule in the *Pennsylvania Bulletin*, the adopting court shall file one certified copy of the local rule with the Administrative Office of Pennsylvania Courts.

H. Public inspection.

- 1) The local rules shall be kept continuously available for public inspection and copying in the office of the clerk of courts.
- 2) Upon request and payment of reasonable costs of reproduction and mailing, the clerk shall furnish to any person a copy of any local rule.

I. Mandatory Acceptance of Filing.

- 1) No pleading or other legal paper shall be refused for filing by the clerk of courts based on a requirement of a local rule.
- 2) No case shall be dismissed nor request for relief granted or denied because of the failure to comply with a local rule.
- 3) In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the party to comply with the local rule.

COMMENT

The purpose of this rule is to further the policy of the Supreme Court to implement the unified judicial system under the Constitution of 1968, to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of juvenile court procedure normally preempts the subject covered. It is intended that local rules should not repeat general rules or statutory provisions verbatim or substantially verbatim nor should local rules make it difficult for attorneys to practice law in several counties.

The caption or other words used as a label or designation is not to determine whether something is or establishes a local rule; if the definition in paragraph (A) of this rule is satisfied, the matter is a local rule regardless of what it may be called. The provisions of this rule also are intended to apply to any amendments to a "local rule." Nothing in this rule is intended to apply to case-specific orders.

Paragraph (B) vacated all current local rules on February 1, 2007, the original effective date of this rule. The local rules are to be repromulgated to comply with this rule. This includes rekeying pursuant to paragraph (C) and meeting the appropriate filing requirements under paragraphs (F) & (G).

To simplify the use of local rules, local juvenile dependency procedural rules are required to be given numbers that are keyed to the number of the general juvenile dependency procedural rules to which the local rules correspond pursuant to paragraph (C). This requirement is not intended to apply to local rules that govern the general business of the court and which do not correspond to a general juvenile dependency procedural rule.

Paragraph (D), added in 2008, requires that, before publishing the local rule or proceeding with any of the other requirements in paragraphs (F) and (G), the adopting court must submit all proposed local dependency rules or rule amendments to the Juvenile Court Procedural Rules Committee for review.

The 2008 amendments emphasize that the adopting authority is to comply with all the provisions of this rule before any local rule, or any amendment to local rules, will be effective and enforceable.

Paragraph (F) requires the local rule to be published in the *Pennsylvania Bulletin* to be effective. Pursuant to 1 *Pa.Code* § 13.11(b) - (f), any documents that are submitted for publication must be accompanied by a diskette or CD-ROM formatted in MS-DOS, ASCII, Microsoft Word, or WordPerfect or in lieu of a diskette or CD-ROM, an electronic copy may be submitted to Legislative Reference Bureau at pabsupreme@palrb.us. The diskette, CD-ROM, or email cover sheet must be labeled with the court's name and address and the local rule's computer file name. In addition, a copy of the written notification, received from the Juvenile Court Procedural Rules Committee, that the local rule is not inconsistent with the Rules of Juvenile Court Procedure is to be submitted.

Pursuant to paragraph (F)(2), an electronic copy is a document sent via email to the *Pennsylvania Bulletin*.

Although under paragraph (F)(3) a local rule is not to be effective until at least thirty days after the date of publication in the *Pennsylvania Bulletin*, when a situation arises that requires immediate action, the local court may act by specific orders governing particular cases in the interim before an applicable local rule becomes effective.

The Administrative Office of Pennsylvania Courts maintains a web-page containing the text of local rules. That web-page is located at: <http://www.pacourts.us/T/SpecialCourts/LocalRules.htm>.

Paragraph (H) requires that a separate consolidated set of local rules be maintained in the clerk's office.

The purpose of paragraph (I) is to: 1) require that all documents presented for filing are accepted by the clerk of court, *also see* Rule 345 (A)(2); and 2) prevent the dismissal of cases, or the granting or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (I) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph (I), the court may impose a sanction for subsequent noncompliance either on the attorney or the party if unrepresented, but may not dismiss the case, or grant or deny relief because of non-compliance.

Official Note: Rule 1121 adopted August, 21, 2006, effective February 1, 2007. Amended December 12, 2008, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1121 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1121 published with the Court's Order at 38 Pa.B. 7080 (December 27, 2008).

RULE 1122. CONTINUANCES

- A. **Generally.** In the interests of justice, the court may grant a continuance on its own motion or the motion of any party. On the record, the court shall identify the moving party and state its reasons for granting or denying the continuance.
- B. **Notice and rescheduling.** If a continuance is granted, all persons summoned to appear shall be notified of the date, place, and time of the rescheduled hearing.

COMMENT

Whenever possible, continuances should not be granted when they could be deleterious to the safety or well-being of a party. The interests of justice require the court to look at all the circumstances, effectuating the purposes of the Juvenile Act, 42 Pa.C.S. § 6301, in determining whether a continuance is appropriate.

A party seeking a continuance should notify the court and opposing counsel as soon as possible. Whenever possible, given the time constraints, notice should be written.

Under paragraph (B), if a person is summoned to appear and the case is continued, the party is presumed to be under the scope of the original summons and a new summons is not necessary.

See Rules 1344 and 1345 for motion and filing procedures.

See *In re Anita H.*, 351 Pa.Super. 342, 505 A.2d 1014 (1986).

Official Note: Rule 1122 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1122 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1123. SUBPOENAS

A. **Contents.** A subpoena in a dependency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

B. **Service.**

- 1) **Method of Service.** A subpoena shall be served upon a witness by:
 - a) in-person delivery;
 - b) registered or certified mail, return receipt requested; or
 - c) first-class mail.

C. **Duration.** A subpoena shall remain in force until the end of a proceeding.

D. **Bench Warrant.** If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 1140.

E. **Parental notification.**

- 1) **Generally.** If a witness is a minor, the witness's guardian shall be notified that the minor has been subpoenaed.
- 2) **Exception.** Upon prior court approval and good cause shown, a subpoena may be served upon a minor without such notification to the guardian. If and when necessary, request for such prior court approval may be obtained *ex parte*.

COMMENT

A subpoena is used to order a witness to appear and a summons is issued to bring a party to the proceeding.

A *subpoena duces tecum* is to set forth with particularity, the documents, records, or other papers to be produced at the hearing. The items sought are to be relevant to the proceedings. See Rule 1340 on discovery, *In re J.C.*, 412 Pa.Super. 369, 603 A.2d 627 (1992), and *In re A.H.*, 763 A.2d 873 (Pa. Super. Ct. 2000) for production of documents necessary to prepare for a hearing.

Prior to issuing a bench warrant for a minor, the judge should determine if the guardian of the witness was served. Nothing in these rules gives the guardians of witnesses legal standing in the matter being heard by the court or creates a right for witnesses to have their guardians present. In addition, lack of required notice to the guardian does not prevent the minor witness from testifying. See Rule 1140 for procedures on bench warrants.

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. See *In re Crawford*, 360 Pa.Super. 36, 519 A.2d 978 (1987) for punishment of contempt (children). See also *In re Griffin*, 456 Pa.Super. 440, 690 A.2d 1192 (1997) (foster parents), *Janet D. v. Carros*, 240 Pa.Super. 291, 362 A.2d 1060 (1976) (county agency), and *In re Rose*, 161 Pa.Super. 204, 54 A.2d 297 (1947) (parents) for additional guidance on contempt for other parties.

Any person may file a motion to quash the subpoena for a witness and/or for requested items. The court is to rule on the motion prior to the production of the witness or the items.

Official Note: Rule 1123 adopted August, 21, 2006, effective February 1, 2007. Amended May 12, 2008, effective immediately. Amended March 19, 2009, effective June 1, 2009.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1123 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1123 published with the Court's Order at 38 Pa.B. 2360 (May 12, 2008). Final Report explaining the amendments to Rule 1123 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009).

RULE 1124. SUMMONS

A) Requirements of the summons. The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the hearing;
- 3) instruct the parties about the right to counsel; and
- 4) give a warning stating that the failure to appear for the hearing may result in arrest.

B) Method of Service. The summons shall be served:

- 1) in-person; or
- 2) by certified mail, return receipt and first-class mail.

C) Exception to service. If service cannot be accomplished pursuant to paragraph (B), the party may move for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the person sought to be served and the reasons why service can not be made.

D) Bench Warrant. If any summoned person fails to appear for the hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 1140.

COMMENT

A subpoena is used to order a witness to appear and a summons is issued to bring a party to the proceeding.

In paragraph (D), this rule provides that a summoned person is to fail to appear and the court is to find that sufficient notice was given before a bench warrant may be issued. The Juvenile Act, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the child may abscond or may not attend or be brought to a hearing, is suspended to the extent that it conflicts with this rule. See Rule 1800 for suspensions.

See Rules 1360(A), 1500(A), and 1600(A) for service of the parties for a proceeding.

See Rule 1140 for procedures on bench warrants.

Official Note: Rule 1124 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1124 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1124 published with the Court's Order at 39 Pa.B. 1614(April 4, 2009).

RULE 1126. DEFECTS IN FORM, CONTENT, OR PROCEDURE

A child shall not be released, nor shall a case be dismissed, because of a defect in the form or content of the pleading or a defect in the procedures of these rules, unless the party raises the defect prior to the commencement of the adjudicatory hearing, and the defect is prejudicial to the rights of a party.

COMMENT

A petition, emergency custody authorization form, shelter care application, or warrant may be amended at any time to remedy any defect in form or content. The court may also issue another remedy as interests of justice require. Nothing in this rule is to prevent the filing of a new emergency custody authorization form, a new or amended petition, or the reissuance of process.

Official Note: Rule 1126 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1126 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1127. RECORDING AND TRANSCRIBING JUVENILE COURT PROCEEDINGS

- A. **Recording.** There shall be a recording of all dependency proceedings, including proceedings conducted by masters, except as provided in Rule 1242(B)(2).
- B. **Transcribing.** Upon the motion of any party, upon its own motion, or as required by law, the court shall order the record to be transcribed.
- C. **Modifying.** At any time before an appeal is taken, the court may correct or modify the record in the same manner as is provided by Rule 1926 of the Pennsylvania Rules of Appellate Procedure.

COMMENT

Some form of record or transcript is necessary to permit meaningful consideration of claims of error and effective appellate review. *In re J.H.*, 788 A.2d 1006 (Pa. Super. Ct. 2001). See, e.g., Pa.R.A.P. Rules 1922, 1923, 1924; *Commonwealth v. Fields*, 478 Pa. 479, 387 A.2d 83 (1978); *Commonwealth v. Shields*, 477 Pa. 105, 383 A.2d 844 (1978). This rule is intended to provide a mechanism to ensure appropriate recording and transcribing of court proceedings. Pursuant to Rule 1800, 42 Pa.C.S. § 6336(c) was suspended only to the extent that all proceedings are to be recorded, except as provided in Rule 1242 (B)(2). Full minutes are not recordings. This change was to effectuate effective appellate review.

The rule is intended to apply to all dependency proceedings and to ensure all proceedings are recorded, including proceedings before masters, except for shelter care hearings.

Paragraph (B) of the rule is intended to authorize courts to require transcription of only such portions of the record, if any, as are needed to review claims of error.

Paragraph (C) provides a method for correcting and modifying transcripts before an appeal is taken by incorporating Pa.R.A.P. 1926, which otherwise applies only after an appeal has been taken. It is intended that the same standards and procedures apply both before and after appeal.

Official Note: Rule 1127 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1127 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1128. PRESENCE AT PROCEEDINGS

A. **General Rule.** All parties shall be present at any proceeding unless the exceptions of paragraph (B) apply.

B. Exceptions.

1) **Absence from proceedings.** The court may proceed in the absence of a party upon good cause shown except that in no case shall a hearing occur in the absence of a child's attorney. If a child has a guardian *ad litem* and legal counsel, both attorneys shall be present.

2) **Exclusion from proceedings.** A party may be excluded from a proceeding only for good cause shown. If a party is so excluded, counsel for the party shall be permitted to be present.

C. **Order appearance.** The court may order any person having the physical custody or control of a child to bring the child to any proceeding.

COMMENT

Under paragraph (B)(1), if a child is an infant, that would qualify as good cause. In no case is a proceeding to occur in the absence of the child's attorney. The court has discretion whether to proceed if the court finds that a party received proper notice of the hearing and has willfully failed to appear.

See In re Adoption of S.B.B. and E.P.R., 372 Pa.Super. 456, 539 A.2d 883 (1988).

Nothing in these rules creates a right of a child to have his or her guardian present. See 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

Official Note: Rule 1128 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1128 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1129. OPEN PROCEEDINGS [RESERVED]

RULE 1130. PUBLIC DISCUSSION BY COURT PERSONNEL OF PENDING MATTERS

All court personnel including, among others, court clerks, bailiffs, tipstaffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending dependency case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.

Official Note: Rule 1130 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1130 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1133. MOTION TO INTERVENE.

A. **Contents.** The motion to intervene shall include:

- 1) the name and address of the person moving to intervene;
- 2) the relationship of the intervening person to the child;
- 3) the contact between the child and the intervening person;
- 4) the grounds on which intervention is sought; and
- 5) the request sought.

B. **Action by court.** Upon the filing of a motion to intervene and after a hearing, the court shall enter an order granting or denying the motion.

COMMENT

Under paragraph (B), a motion may be denied if, among other reasons, there are insufficient grounds for the motion, the interest of the movant is already adequately represented, the motion for intervention was unduly delayed, or the intervention will unduly delay or prejudice the adjudication of dependency or the rights of the parties.

To move for intervention in a dependency case, a person is to show that the interest is substantial, direct, and immediate. See, e.g., *South Whitehall Township Police Serv. v. South Whitehall Township*, 521 Pa. 82, 555 A.2d 793 (1989).

Standing is conferred upon a person if the person cares for or controls the child or is accused of abusing the child. *In re J.P.*, 832 A.2d 492 (Pa. Super. Ct. 2003); *In re L.J.*, 456 Pa. Super. 685, 691 A.2d 520 (1997). See 23 Pa. C.S. § 5313 for grandparent intervention. See also *R.M. v. Baxter*, 565 Pa. 619, 777 A.2d 446 (2001) (grandparent standing); *Mitch v. Bucks Co. Children and Youth Social Service Agency*, 383 Pa. Super. 42, 556 A.2d 419 (1989) (prospective adoptive parent standing); *In re M.K.*, 431 Pa. Super. 198, 636 A.2d 198 (1994) (alleged abuser standing). For distinction between foster parent and prospective adoptive parent standing, see *In re N.S.*, 845 A.2d 884 (Pa. Super. Ct. 2004).

A non-custodial parent may intervene in a dependency petition filed by a third party to protect the child from being adjudicated dependent and placed in the custody of the Commonwealth. *In re Anita H.*, 351 Pa. Super. 342, 505 A.2d 1014 (1986).

See also *In re Michael Y.*, 365 Pa. Super. 488, 530 A.2d 115 (1987) and *In re R.T. & A.T.*, 405 Pa. Super. 156, 592 A.2d 55 (1991) for additional parties to proceedings.

See Rule 1344 for motions and Rule 1345 for service.

Official Note: Rule 1133 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1133 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1134. PROCEEDINGS *IN CAMERA*

Upon motion by any party or on the court's own motion, *in camera* proceedings are to be recorded and each party's attorney shall be present.

COMMENT

See *In re Leslie H.*, 329 Pa.Super. 453, 478 A.2d 876 (1984).

If a party is not represented, the court is to make reasonable efforts to protect the due process rights of the party.

Official Note: Rule 1134 adopted August, 21, 2006, effective February 1, 2007.

RULE 1135. CAPTIONS

All court documents and orders shall contain a caption that includes the following:

- 1) "In the Interest of (the child's name);"
- 2) the child's case docket number; and
- 3) the name of the court.

Official Note: Rule 1135 adopted August, 21, 2006, effective February 1, 2007.

RULE 1140 . BENCH WARRANTS FOR FAILURE TO APPEAR

A. Issuance of warrant.

- 1) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.
- 2) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.

B. Party.

1) Where to take the party.

- a) When a party is taken into custody pursuant to a bench warrant, the party shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.
- b) If the party is not brought before a judge, the party shall be released unless the warrant specifically orders detention of the party.
- c) If the warrant specifically orders detention of a party, the party shall be detained pending a hearing.
 - i) **Minor.** If the party is a minor, the party shall be detained in a shelter-care facility or other placement as deemed appropriate by the judge.
 - ii) **Adult.** If the party is an adult, the witness shall be detained at the county jail.

2) Prompt hearing.

- a) If a party is detained pursuant to a specific order in the bench warrant, the party shall be brought before the judge who issued the warrant, a judge designated by the President Judge to hear bench warrants, or an out-of-county judge pursuant to paragraph (B)(4) within seventy-two hours.
- b) If the party is not brought before a judge within this time, the party shall be released.

- 3) **Notification of guardian.** If a party is a child and is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the child's guardian of the child's whereabouts and the reasons for the issuance of the bench warrant.
- 4) **Out-of-county custody.**
 - a) If a party is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.
 - b) Arrangements to transport the party shall be made immediately.
 - c) If transportation cannot be arranged immediately, then the party shall be taken without unnecessary delay to a judge of the county where the party is found.
 - d) The judge will identify the party as the subject of the warrant, decide whether detention is warranted, and order that arrangements be made to transport the party to the county of issuance.
- 5) **Time requirements.** The time requirements of Rules 1242, 1404, 1510, and 1607 shall be followed.

C. Witnesses.

- 1) **Where to take the witness.**
 - a) When a witness is taken into custody pursuant to a bench warrant, the witness shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.
 - b) If the witness is not brought before a judge, the witness shall be released unless the warrant specifically orders detention of the witness.
 - c) A motion for detention as a witness may be filed anytime before or after the issuance of a bench warrant. The judge may order detention of the witness pending a hearing.
 - i) **Minor.** If a detained witness is a minor, the witness shall be detained in a shelter-care facility or other placement as deemed appropriate by the judge.
 - ii) **Adult.** If a detained witness is an adult, the witness shall be detained at the county jail.

2) **Prompt hearing.**

- a) If a witness is detained pursuant to paragraph (C)(1)(c) or brought back to the county of issuance pursuant to paragraph (C)(4)(f), the witness shall be brought before the judge by the next business day.
- b) If the witness is not brought before a judge within this time, the witness shall be released.

3) **Notification of guardian.** If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

4) **Out-of-county custody.**

- a) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.
- b) The witness shall be taken without unnecessary delay and within the next business day to a judge of the county where the witness is found.
- c) The judge will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order that arrangements be made to transport the witness to the county of issuance.
- d) Arrangements to transport the witness shall be made immediately.
- e) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.
 - i) **Minor.** If the witness is a minor, the witness may be detained in an out-of-county shelter-care facility or other placement as deemed appropriate by the judge.
 - ii) **Adult.** If the witness is an adult, the witness may be detained in an out-of-county jail.
- f) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.

- g) If the time requirements of this paragraph are not met, the witness shall be released.

D. Return & execution of the warrant for parties and witnesses.

- 1) The bench warrant shall be executed without unnecessary delay.
- 2) The bench warrant shall be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear bench warrants.
- 3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.
- 4) Upon the return of the warrant, the judge shall vacate the bench warrant.

COMMENT

Pursuant to paragraph (A), the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 1800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (A)(1), the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the party or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. The normal rules of procedure in these rules are to be followed if a child is detained. See Chapter Twelve, Part D.

Pursuant to paragraph (B)(1)(a), the party is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (B)(1)(b), if a bench warrant specifically provides that the party may be detained, the party may be detained without having to be brought before the judge until a hearing within seventy-two hours under paragraph (B)(2)(a). Pursuant to this paragraph, if a hearing is not held promptly, the party is to be released. See paragraph (B)(2)(b).

In paragraphs (B)(1)(c)(i), (C)(1)(c)(i), & (C)(4)(e)(i), “other placement as deemed appropriate by the judge” does not include a detention facility if a child is only alleged to be dependent because the use of detention facilities for dependent children is strictly prohibited. See 42 Pa.C.S. §§ 6302 & 6327(e).

Under paragraphs (B)(2) and (B)(4), a party taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the party is found. See Rule 1242(D).

Pursuant to paragraph (B)(4), the party may be detained out-of-county until transportation arrangements can be made.

Pursuant to paragraph (B)(5), the time requirements of all other rules are to apply to children who are detained. See, e.g., Rules 1242, 1404, 1510, and 1607.

Pursuant to paragraph (C)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (C)(1)(b), if the judge is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph (C)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph (C)(2) is to be held by the next business day or the witness is to be released. See paragraph (C)(2)(b).

Pursuant to paragraph (C)(4)(b), a witness is to be brought before an out-of-county judge by the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy-two hours

of the execution of the bench warrant, the witness is to be brought before the judge who issued the bench warrant by the next business day. See paragraph (C)(4)(f).

Pursuant to paragraph (D)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. See paragraph (D)(3).

Pursuant to paragraph (D)(4), the bench warrant is to be vacated after the return of the warrant is executed so the party or witness is not taken into custody on the same warrant if the party or witness is released. "Vacated" is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

See 42 Pa.C.S. § 4132 for punishment of contempt for children and witnesses.

Throughout these rules, the "child" is the subject of the dependency proceedings. When a witness or another party is under the age of eighteen, the witness or party is referred to as a "minor." When "minor" is used, it may include a child. This distinction is made to differentiate between children who are alleged dependants and other minors who are witnesses. See also Rule 1120 for the definitions of "child" and "minor."

Official Note: Rule 1140 adopted March 19, 2009, effective June 1, 2009.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1140 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009).

PART B(1)
EXAMINATION & TREATMENT OF CHILD

1145. Application or Motion for Examination and Treatment of a Child

RULE 1145. APPLICATION OR MOTION FOR EXAMINATION AND TREATMENT OF A CHILD

- A. **Pre-petition treatment.** Prior to the filing of a dependency petition, an application to the court may be made to treat a child when prompt treatment is necessary.
- B. **Post-petition examination and treatment.** After a petition has been filed, a motion for examination and treatment of a child may be filed.

COMMENT

The term “application” is used in paragraph (A) of this rule. An application is to be made to the court if there is no formal court action pending. Once a dependency petition is filed, a motion, as provided in paragraph (B), is the proper course of action for seeking examination and treatment of a child. All parties are notified and copied on all motions. The procedures of Rule 1344 are to be followed. See Rule 1344.

It should be noted that paragraph (A) only relates to treatment of a child when prompt treatment is necessary.

Pursuant to 42 Pa.C.S. § 6339(b), the court may order the child to be examined at a suitable place by a physician or psychologist and may also order medical or surgical treatment of a child who is suffering from a serious physical condition or illness, which in the opinion of a licensed physician, requires prompt treatment, even if the guardian has not been given notice of a hearing, is not available, or without good cause informs the court of his refusal to consent to the treatment. 42 Pa.C.S. § 6339(b). In addition, 42 Pa.C.S. § 6357 provides a custodian to whom legal custody has been given by the court has the right to the physical custody of the child, the right to determine the nature of the care and treatment of the child, including ordinary medical care and the right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child. An award of legal custody shall be subject to the conditions and limitations of the order and to the remaining rights and duties of the parents or guardian of the child as determined by the court. 42 Pa.C.S. § 6357.

If a child has been adjudicated dependent, the court may order that the county agency participate in the treatment plan of the child as necessary to protect the health, safety, or welfare of the child, including discussions with the individual, facility, or program providing treatment, and the child or the child’s guardian in furtherance of the disposition. 42 Pa.C.S. § 6352.1.

Under paragraph (B), if the legal custodian is the county agency, the county agency is to comply with the regulations of 55 Pa. Code §§ 3130.91 and 3680.52.

Official Note: Rule 1145 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1145 published with the Court’s Order at 36 Pa.B. 5599 (September 2, 2006).

PART B(2)
COUNSEL

- 1150. Attorneys -- Appearances and Withdrawals
- 1151. Assignment of Guardian *ad litem* & Counsel
- 1152. Waiver of Counsel
- 1154. Duties of Guardian *ad litem*
- 1158. Assignment of CASA

RULE 1150. ATTORNEYS – APPEARANCES AND WITHDRAWALS

A. Appearances.

- 1) The Guardian *ad litem* and counsel for each party, except under paragraph (A)(3), shall file an entry of appearance with the clerk of courts promptly after being retained and serve a copy on all other parties.
 - a) If a firm name is entered, the name of the individual lawyer who is designated as being responsible for the conduct of the case shall be entered.
 - b) The entry of appearance shall include the attorney's address, phone number, and attorney ID number.
- 2) When counsel is appointed pursuant to Rule 1151 (Assignment of Counsel), the filing of the appointment order shall enter the appearance of appointed counsel.
- 3) The president judge of each judicial district may enter an order stating that the specified Solicitor's appearance is automatically entered in every dependency case unless another attorney's appearance is entered pursuant to paragraph (A)(1).

B. Duration. Once an appearance is entered or the court assigns counsel for the child, counsel shall represent the child until the closing of the dependency case, including any proceeding upon direct appeal and permanency review, unless permitted to withdraw pursuant to paragraph (C).

C. Withdrawals.

- 1) Upon motion, counsel shall be permitted to withdraw only:
 - a) by order of the court for good cause shown; or
 - b) if new counsel has entered an appearance in accordance with paragraph (A).

2) A motion to withdraw shall be:

- a) filed with the clerk of courts, and a copy concurrently served on the other parties' attorneys, or the party, if unrepresented; or
- b) made orally on the record in open court in the presence of the parties.

COMMENT

Paragraph (A)(3) allows the Solicitor to be automatically entered in the record as counsel for the agency. The order is to include the attorney's address, phone number, and attorney ID number.

Under paragraph (C), withdrawal is presumed when a court's jurisdiction is terminated because the child reaches the age of twenty-one. See 42 Pa.C.S. § 6302.

Under paragraph (C)(1)(a), a court can terminate an attorney's representation if there is good cause shown. The court should allow an attorney to withdraw from a case for good cause if the standards for termination of representation, as provided for in the Rules of Professional Conduct 1.16, are met.

Under paragraph (C)(1)(b), because the county agency will be on notice of the identity of the new attorney, the agency should comply with the discovery requirements of Rule 1340.

Under paragraph (C)(2), counsel is to file a motion to withdraw in all cases. Counsel's obligation to represent a party, whether as retained or appointed counsel, remains until leave to withdraw is granted by the court. See *e.g.*, *Com. v. Librizzi*, 810 A.2d 692 (Pa. Super. Ct. 2002). The court is to make a determination of the status of the case before permitting counsel to withdraw. Although there are many factors considered by the court in determining whether there is good cause to permit the withdrawal of counsel, when granting leave, the court should determine if new counsel needs to be appointed, and that the change in attorneys will not delay the proceedings or prejudice the party, particularly concerning time limits.

See Rule 1167 for service of court orders.

See also Rule 1613 for termination of court supervision.

Official Note: Rule 1150 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1150 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1151. ASSIGNMENT OF GUARDIAN *AD LITEM* & COUNSEL

A. Guardian *ad litem* for child. The court shall assign a guardian *ad litem* to represent the legal interests and the best interests of the child if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:

- 1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the physical, mental or emotional health, or morals;
- 2) has been placed for care or adoption in violation of law;
- 3) has been abandoned by parents, guardian, or other custodian;
- 4) is without a parent, guardian or legal custodian; or
- 5) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety, or welfare of the child.

B. Counsel for child. The court shall appoint legal counsel for a child:

- 1) if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:
 - a) while subject to compulsory school attendance is habitually and without justification truant from school;
 - b) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of the child's guardian and who is ungovernable and found to be in need of care, treatment, or supervision;
 - c) is under the age of ten years and has committed a delinquent act;
 - d) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (B)(1)(b); or
 - e) has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (B)(1)(b); or

2) upon order of the court.

C. **Counsel and Guardian *ad litem* for child.** If a child has legal counsel and a guardian *ad litem*, counsel shall represent the legal interests of the child and the guardian *ad litem* shall represent the best interests of the child.

D. **Time of appointment.**

1) **Child in custody.** The court shall appoint a guardian *ad litem* or legal counsel immediately after a child is taken into protective custody and prior to any proceeding.

2) **Child not in custody.** If the child is not in custody, the court shall appoint a guardian *ad litem* or legal counsel for the child when a dependency petition is filed.

E. **Counsel for other parties.** If counsel does not enter an appearance for a party, the court shall inform the party of the right to counsel prior to any proceeding. If counsel is requested by a party in any case, the court shall assign counsel for the party if the party is without financial resources or otherwise unable to employ counsel. Counsel shall be appointed prior to the first court proceeding.

COMMENT

See 42 Pa.C.S. §§ 6302, 6311, and 6337.

The guardian *ad litem* for the child may move the court for appointment as legal counsel and assignment of a separate guardian *ad litem* when, for example, the information that the guardian *ad litem* possesses gives rise to the conflict and can be used to the detriment of the child. To the extent 42 Pa.C.S. § 6311(b)(9) is inconsistent with this rule, it is suspended. See Rule 1800. See also Pa.R.P.C. 1.7 and 1.8. Under paragraph (C), legal counsel represents the legal interests of the child and the guardian *ad litem* represents the best interests of the child.

Nothing in these rules anticipates that a guardian *ad litem* for an adult is to be appointed by these rules. For appointment of a guardian of the person, see 20 Pa.C.S. § 5501 *et seq.* and Pa.O.C. Rules 14.2 - 14.5.

Official Note: Rule 1151 adopted August, 21, 2006, effective February 1, 2007. Amended February 20, 2007, effective immediately. Amended May 12, 2008, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1151 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to this rule published with the Court's Order at 37 Pa.B. 1123 (March 10, 2007). Final Report explaining the amendments to Rule 1151 published with the Court's Order at 38 Pa.B. 2360 (May 12, 2008).

RULE 1152. WAIVER OF COUNSEL

A. Children.

- 1) **Guardian *ad litem*.** A child may not waive the right to a guardian *ad litem*.
- 2) **Legal Counsel.** A child may waive legal counsel if:
 - a) the waiver is knowingly, intelligently, and voluntarily made; and
 - b) the court conducts a colloquy with the child on the record.

B. Other parties. Except as provided in paragraph (A), a party may waive the right to counsel if:

- 1) the waiver is knowingly, intelligently, and voluntarily made; and
- 2) the court conducts a colloquy with the party on the record.

C. Stand-by counsel. The court may assign stand-by counsel if a party waives counsel at any proceeding or stage of a proceeding.

D Notice and revocation of waiver. If a party waives counsel for any proceeding, the waiver only applies to that proceeding, and the party may revoke the waiver of counsel at any time. At any subsequent proceeding, the party shall be informed of the right to counsel.

COMMENT

Under paragraph (A), a child may not waive the right to a guardian *ad litem*. The right of waiver to legal counsel belongs to the child, not the guardian. See Rule 1800, which suspends 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the child.

It is recommended that, at a minimum, the court ask questions to elicit the following information in determining a knowing, intelligent, and voluntary waiver of counsel:

- 1) Whether the party understands the right to be represented by counsel;
- 2) Whether the party understands the nature of the dependency allegations and the elements of each of those allegations;
- 3) Whether the party is aware of the dispositions and placements that may be imposed by the court, including foster care placement and adoption;
- 4) Whether the party understands that if he or she waives the right to counsel, he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;
- 5) Whether the party understands that counsel may be better suited to defend the dependency allegations; and
- 6) Whether the party understands that the party has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the party, the ability to correct these errors may be lost permanently.

Official Note: Rule 1152 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1152 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1154. DUTIES OF GUARDIAN AD LITEM

A guardian *ad litem* shall:

- 1) Meet with the child as soon as possible following assignment pursuant to Rule 1151 and on a regular basis thereafter in a manner appropriate to the child's age and maturity;
- 2) On a timely basis, be given access to relevant court and county agency records, reports of examination of the guardians or the child, and medical, psychological, and school records;
- 3) Participate in all proceedings, including hearings before masters, and administrative hearings and reviews to the degree necessary to adequately represent the child;
- 4) Conduct such further investigation necessary to ascertain the facts;
- 5) Interview potential witnesses, including the child's guardians, caretakers, and foster parents, examine and cross-examine witnesses, and present witnesses and evidence necessary to protect the best interests of the child;
- 6) At the earliest possible date, be advised by the county agency having legal custody of the child of:
 - a) any plan to relocate the child or modify custody or visitation arrangements, including the reasons, prior to the relocation or change in custody or visitation; and
 - b) any proceeding, investigation, or hearing under the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.* or the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, directly affecting the child;
- 7) Make any specific recommendations to the court relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety;
- 8) Explain the proceedings to the child to the extent appropriate given the child's age, mental condition, and emotional condition; and
- 9) Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court.

COMMENT

If there is a conflict of interest between the duties of the guardian *ad litem* pursuant to paragraphs (7) & (9), the guardian *ad litem* may move the court for appointment of a separate guardian *ad litem* or legal counsel. See Rules 1151 and 1800. See also Pa.R.P.C. 1.7 and 1.8.

Official Note: Rule 1154 adopted August, 21, 2006, effective February 1, 2007.

RULE 1158. ASSIGNMENT OF COURT APPOINTED SPECIAL ADVOCATES

A court appointed special advocate shall follow the duties as set forth in the Juvenile Act, 42 Pa.C.S. § 6342(d) and in the Juvenile Court Judges' Commission's Juvenile Court Standards, 37 Pa. Code, Chapter 200.

Official Note: Rule 1158 adopted August, 21, 2006, effective February 1, 2007.

**PART C
RECORDS**

**PART C(1)
ACCESS TO JUVENILE COURT RECORDS**

1160. Inspection of Juvenile Court File/Records

RULE 1160. INSPECTION OF JUVENILE COURT FILE/RECORDS

All files and records of the court in a proceeding are open to inspection only by:

- 1) The judges, officers, and professional staff of the court;
- 2) The parties to the proceeding and their counsel and representatives, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;
- 3) A public or private agency or institution providing supervision or having custody of the child under order of the court;
- 4) A court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to a proceeding under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*;
- 5) The Administrative Office of Pennsylvania Courts;
- 6) The judges, officers and professional staff of courts of other jurisdictions when necessary for the discharge of their official duties;
- 7) Officials of the Department of Corrections or a State Correctional Institution or other penal institution to which an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, has been committed, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;
- 8) A parole board, court or county probation official in considering an individual's parole or in exercising supervision over any individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at

the discretion of the court.

- 9) The State Sexual Offenders Assessment Board for use in completing assessments;
and
- 10) With leave of court, any other person or agency or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

COMMENT

See the Juvenile Act, 42 Pa.C.S. § 6307, for the statutory provisions on inspection of the juvenile court's file.

Persons specified in 23 Pa.C.S. § 6340 as having access to reports may qualify as persons having a legitimate interest in the proceedings under paragraph (10). See 23 Pa.C.S. § 6340.

This rule is meant to include the contents of the juvenile court file as described in Rule 1166, which does not include agency records.

Official Note: Rule 1160 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1160 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

PART C(2)
MAINTAINING RECORDS

- 1165. Design of Forms
- 1166. Maintaining Records in the Clerk of Courts
- 1167. Filings and Service of Court Orders and Notices

RULE 1165. DESIGN OF FORMS

The Court Administrator of Pennsylvania, in consultation with the Juvenile Court Procedural Rules Committee, shall design and publish forms necessary to implement these rules.

COMMENT

The purpose of the unified judicial system can be further achieved by creating uniform forms to implement a particular rule.

Official Note: Rule 1165 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1165 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1166. MAINTAINING RECORDS IN THE CLERK OF COURTS

- A. **Generally.** The juvenile court file shall contain all original records, papers, and orders filed, copies of all court notices, and docket entries. These records shall be maintained by the clerk of courts and shall not be taken from the custody of the clerk of courts without order of the court.
- B. **Docket entries.** The clerk of courts shall maintain a list of docket entries: a chronological list, in electronic or written form, of documents and entries in the juvenile court file and of all proceedings in the case. The clerk of courts shall make docket entries at the time the information is made known to the clerk.
- C. **Contents of docket entries.** The docket entries shall include, at a minimum, the following information:
- 1) the child's name, address, date of birth, if known;
 - 2) the guardian's name, address, if known;
 - 3) the names and addresses of all attorneys who have appeared or entered an appearance, the date of the entry of appearance(s), and the date of any withdrawal of appearance(s);
 - 4) notations concerning all papers filed with the clerk, including all court notices, appearances, motions, orders, findings and adjudications, dispositions, permanency reviews and adoptions, briefly showing the nature and title, if any, of each paper filed, writ issued, and motion made, and the substance of each order or disposition of the court and of the returns showing execution of process;
 - 5) notations concerning motions made orally or orders issued orally in the courtroom when directed by the court;
 - 6) a notation of every judicial proceeding, continuance, and disposition;
 - 7) the location of exhibits made part of the record during the proceedings; and
 - 8)
 - a) the date of receipt in the clerk's office of the order or court notice;
 - b) the date appearing on the order or court notice; and
 - c) the date and manner of service of the order or court notice; and
 - 9) all other information required by Rule 1345.

COMMENT

This rule sets forth the mandatory contents of the list of docket entries and the juvenile court file. This is not intended to be an exhaustive list of what is required to be recorded in the docket entries. The judicial districts may require additional information to be recorded in a case or in all cases.

The list of docket entries is a running record of all information related to any action in a dependency case in the court of common pleas of the clerk's county, such as dates of filings, of orders, and of court proceedings, including hearings conducted by masters. Nothing in this rule is intended to preclude the use of automated or other electronic means for time-stamping or making docket entries.

This rule applies to all proceedings in the court of common pleas, including hearings conducted by masters, at any stage of the dependency case.

This rule is not intended to include items contained in the county agency records or reports.

The practice in some counties of creating the list of docket entries only if an appeal is taken is inconsistent with this rule.

The requirement of paragraph (C)(3) that all attorneys and their addresses be recorded makes certain there is a record of all attorneys who have appeared for any party in the case. The requirement also ensures that attorneys are served as required by Rules 1167 and 1345. See *also* Rule 1345(C) concerning certificates of service.

In those cases in which the attorney has authorized receiving service by facsimile transmission or electronic means, the docket entry required by paragraph (C)(3) is to include the facsimile number or electronic address.

Paragraph (C)(5) recognizes that occasionally disposition of oral motions presented in open court should be reflected in the docket, such as motions and orders.

Official Note: Rule 1166 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1166 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1167. FILINGS AND SERVICE OF COURT ORDERS AND NOTICES

A. Filings.

- 1) All orders and court notices shall be transmitted promptly to the clerk of courts for filing. Upon receipt by the clerk of courts, the order or court notice shall be time-stamped promptly with the date of receipt.
- 2) All orders and court notices shall be filed in the juvenile court file.

B. Service.

- 1) A copy of any order or court notice shall be served promptly on each party's attorney, and the party, if unrepresented.
- 2) The clerk of courts shall serve the order or court notice, unless the president judge has promulgated a local rule designating service to be by the court or its designee.

3) Methods of service. Service shall be:

a) in writing by:

- i) personal delivery to the party's attorney, and if unrepresented, the party;
- ii) mailing a copy to the party's attorney or leaving a copy for the attorney at the attorney's office;
- iii) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box;
- iv) sending a copy to an unrepresented party by first class mail addressed to the party's place of business, residence, or detention;
- v) sending a copy by facsimile transmission or other electronic means if the party's attorney, and if unrepresented, the party has filed written request for this method of service or has included a facsimile number or an electronic address on a prior legal paper filed in the case;
- vi) delivery to the party's attorney, and if unrepresented, the party by carrier service; or

b) orally in open court on the record.

C. **Unified Practice.** Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a person to file or serve orders or court notices.

COMMENT

Court notices, as used in this rule, are communications that ordinarily are issued by a judge or the court administrator concerning, for example, calendaring or scheduling, including proceedings requiring the party's presence.

A facsimile number or electronic address set forth on the letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(a)(v). The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization is to be filed in each case by the party, if unrepresented, or by the attorney who wants to receive documents by this method of service.

Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time-stamping.

Official Note: Rule 1167 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1167 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

**PART D
PROCEEDINGS IN CASES BEFORE MASTER**

- 1185. Appointment to Cases
- 1187. Authority of Master
- 1190. Stipulations Before Master
- 1191. Master's Findings and Recommendation to the Judge

RULE 1185. APPOINTMENT TO CASES

- A. **Appointment.** If necessary to assist the juvenile court judge, the president judge or his or her designee may appoint masters to hear designated dependency matters.
- B. **Prohibited practice.** Masters shall not engage in practice before the juvenile court in the same judicial district where they preside over dependency matters.

COMMENT

Under paragraph (A), the president judge of each judicial district may restrict the classes of cases to be heard by the master, in addition to the restrictions of Rule 1187. See 42 Pa.C.S. § 6305(b) and Rule 1187.

Official Note: Rule 1185 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1185 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1187. AUTHORITY OF MASTER

A. No authority. A master shall not have the authority to:

- 1) preside over:
 - a) termination of parental rights hearings;
 - b) adoptions;
 - c) any hearing in which any party seeks to establish a permanency goal of adoption or change the permanency goal to adoption;
- 2) enter orders for emergency or protective custody pursuant to Rules 1200 and 1210;
- 3) issue warrants; and
- 4) issue contempt orders.

B. Right to hearing before judge.

- 1) Prior to the commencement of any proceeding, the master shall inform all parties of the right to have the matter heard by a judge. If a party objects to having the matter heard by the master, the case shall proceed before the judge.
- 2) If a party objects to having the matter heard by the master pursuant to paragraph (B)(1), the master or the court's designee for scheduling cases shall immediately schedule a hearing before the judge. The time requirements of these rules shall apply.

COMMENT

A master's authority is limited under this rule. To implement this rule, Rule 1800 suspends 42 Pa.C.S. § 6305(b) only to the extent that masters may not hear all classes of cases.

Under paragraph (A)(1)(c), once the permanency goal has been approved for adoption by a judge, all subsequent reviews or hearings may be heard by the master unless a party objects pursuant to paragraph (B).

Under paragraph (A)(3), nothing is intended to limit the master's ability, in a proper case before the master, to recommend to the court that a warrant be issued. This includes arrest, bench, and search warrants.

Concerning the provisions of paragraph (B), see 42 Pa.C.S. § 6305(b).

Under paragraph (B)(2), it should be determined whenever possible before the date of the hearing whether there will be an objection to having the matter heard before a master. If it is anticipated that there will be an objection, the case is to be scheduled in front of the judge, rather than the master to prevent continuances and delays in the case.

See Rule 1127 for recording of proceedings before a master.

Official Note: Rule 1187 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1187 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1190. STIPULATIONS BEFORE MASTER

A. **Types of cases.** Masters may accept stipulations in any classes of cases that they are permitted to hear pursuant to Rule 1187.

B. **Requirements.** The stipulation requirements of Rule 1405 shall be followed.

COMMENT

Under paragraph (A), a master may accept stipulations in those permissible classes of cases pursuant to Rule 1187. In addition, the president judge of each judicial district may further restrict the classes of cases. See Rule 1185.

The court is to receive corroborating evidence, in addition to the stipulated facts, to make an independent determination that a child is dependent. See Rule 1405 and its *Comment*.

Official Note: Rule 1190 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1190 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1191. MASTER'S FINDINGS AND RECOMMENDATION TO THE JUDGE

- A. **Announcement of Findings and Recommendation.** At the conclusion of the hearing, the master shall announce in open court on the record, the master's findings and recommendation to the judge.
- B. **Submission of Papers and Contents of Recommendation.** Within two business days of the hearing, the master shall submit specific findings and a recommendation to the juvenile court judge. If requested, a copy of the findings and recommendation shall be given to any party.
- C. **Challenge to Recommendation.** A party may challenge the master's recommendation by filing a motion with the clerk of courts within three days of receipt of the recommendation. The motion shall request a rehearing by the judge and aver reasons for the challenge.
- D. **Judicial Action.** Within seven days of receipt of the master's findings and recommendation, the judge shall review the findings and recommendation of the master and:
- 1) accept the recommendation by order;
 - 2) reject the recommendation and issue an order with a different disposition;
 - 3) send the recommendation back to the master for more specific findings; or
 - 4) conduct a rehearing.

COMMENT

The juvenile court may promulgate a form for masters to use. The findings and recommendation may take the form of a court order to be adopted by the court.

If a party contests the master's decision, the copy of the findings and recommendation may be used as an attachment in a motion for a rehearing in front of the judge.

The master's decision is subject to approval of the judge. When the judge, in rejecting the master's recommendation, modifies a factual determination, a rehearing is to be conducted. The judge may reject the master's findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations. *See In re Perry*, 313 Pa.Super. 162, 459 A.2d 789 (1983). Nothing in this rule prohibits the court from modifying conclusions of law made by the master.

Official Note: Rule 1191 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1191 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

CHAPTER 12
**COMMENCEMENT OF PROCEEDINGS, EMERGENCY CUSTODY, AND PRE-
ADJUDICATORY PLACEMENT**

PART A
COMMENCING PROCEEDINGS

- 1200. Commencing Proceedings
- 1201. Procedures for Protective Medical Custody
- 1202. Procedures for Protective Custody by Police and County Agency

PART B
EMERGENCY CUSTODY

- 1210. Order for Protective Custody

PART C
SHELTER CARE

- 1240. Shelter Care Application
- 1241. Notification of Shelter Care Hearing
- 1242. General Conduct of Shelter Care Proceeding
- 1243. Shelter Care Rehearing

**PART A
COMMENCING PROCEEDINGS**

- 1200. Commencing Proceedings
- 1201. Procedures for Protective Medical Custody
- 1202. Procedures for Protective Custody by Police and County Agency

RULE 1200. COMMENCING PROCEEDINGS

Dependency proceedings within a judicial district shall be commenced by:

- 1) the filing of a dependency petition;
- 2) the submission of an emergency custody application;
- 3) the taking of the child into protective custody pursuant to a court order or statutory authority;
- 4) the court accepting jurisdiction of a resident child from another state; or
- 5) the court accepting supervision of child pursuant to another state's order.

COMMENT

See 42 Pa.C.S. §§ 6321, 6324, 23 Pa.C.S. §§ 6315, 6369, 62 P.S. § 761.

If a county agency has custody of a child under a voluntary placement agreement and custody will exceed thirty days, dependency proceedings are to be commenced by the filing of a petition by the thirtieth day. A dependency petition is to be filed if a guardian requests return of the child and the county agency refuses to return the child. A dependency petition is to be filed at the time of refusal of return by the county agency. See 55 Pa. Code § 3130.65 for provisions on voluntary agreements.

For procedures on protective medical custody, see Rule 1201. For procedures on protective custody by police and the county agency, see Rule 1202.

For proceedings that have already been commenced in another judicial district, see Rule 1302 for inter-county transfer of the case.

Official Note: Rule 1200 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1200 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1201. PROCEDURES FOR PROTECTIVE MEDICAL CUSTODY

When a physician examining or treating a child, a director, or a person specifically designated in writing by the director, of any hospital or other medical institution takes a child into custody pursuant to Rule 1200, the following provisions shall apply:

a) **Notice.**

- 1) The person taking the child into custody shall notify the guardian and the county agency of:
 - a) the whereabouts of the child, unless disclosure is prohibited by court order; and
 - b) the reasons for taking the child into custody.
- 2) Notice may be oral. The notice shall be reduced to writing within twenty-four hours.

- b) **Duration of custody.** No child may be held in protective custody in a hospital or other medical institution for more than twenty-four hours unless the appropriate county agency is immediately notified that the child has been taken into custody and the county agency obtains an order permitting the child to be held in custody for a longer period. The president judge of each judicial district shall ensure that a judge is available twenty-four hours a day, every day of the year to accept and decide actions brought by the county agency within the twenty-four hour period.

COMMENT

Notice to the county agency under paragraph (A) is to insure that appropriate proceedings are commenced. Notice may be oral but is to be reduced to writing within twenty-four hours.

A child taken into protective custody is to be placed during the protective custody in an appropriate medical facility, foster home, or other appropriate facility approved by the Department of Public Welfare for this purpose.

A conference between the guardian of the child taken into protective custody and the employee designated by the county agency to be responsible for the child should be held within forty-eight hours of the time that the child is taken into custody for the purpose of: 1) explaining to the guardian the reasons for the temporary detention of the child and the whereabouts of the child, unless disclosure is prohibited by court order; 2) expediting, whenever possible, the return of the child to the custody of the guardian when protective custody is no longer necessary; and 3) explaining to the guardian the rights provided for by 42 Pa.C.S. §§ 6337, 6338.

See *In re J.R.W.*, 428 Pa.Super. 597, 631 A.2d 1019 (1993) and 23 Pa.C.S. § 6315.

Official Note: Rule 1201 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1201 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1202. PROCEDURES FOR PROTECTIVE CUSTODY BY POLICE AND COUNTY AGENCY

A. Protective custody.

1) No court order.

- a) A police officer may take a child into protective custody pursuant to Rule 1200 if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from the surroundings and removal is necessary.
- b) Without unnecessary delay, but no more than twenty-four hours after a child is taken into custody, an application for a protective custody order shall be made to provide temporary emergency supervision of a child pending a hearing pursuant to Rule 1242. The president judge of each judicial district shall ensure that a judge is available twenty-four hours a day, every day of the year to accept and decide actions brought by the county agency within the twenty-four hour period.

2) Court order.

- a) A police officer or county agency may obtain a protective custody order removing a child from the home if the court finds that remaining in the home is contrary to the welfare and the best interests of the child.
- b) Pursuant to 23 Pa.C.S. § 6315 and after a court order, the county agency shall take the child into protective custody for protection from abuse. No county agency may take custody of the child without judicial authorization based on the merits of the situation.

B. Notice.

- 1) In all cases, the person taking the child into custody immediately shall notify the guardian and the county agency of:
 - a) the whereabouts of the child, unless disclosure is prohibited by court order; and
 - b) the reasons for taking the child into custody.
- 2) Notice may be oral. The notice shall be reduced to writing within twenty-four hours.

C. Placement. A child shall be placed in an appropriate shelter care facility or receive other appropriate care pending a shelter care hearing pursuant to Rule 1242.

COMMENT

Under paragraph (A)(1)(a) & (A)(2)(a), the police officer's duty is to protect the child and remove the child safely. A police officer may bring the child to the county agency for supervision of the child pending a court order that should be given immediately. The police officer's duty is enforcement and removal, whereas the county agency's duty is to supervise the child and find an appropriate placement for the child. Only a police officer may take custody of the child. See Rule 1800 for suspension of 42 Pa.C.S. § 6324, which provides that law enforcement officers may take a child into custody. See Rule 1120 for definition of police officer, which may include a probation officer exercising their power of arrest when authorized by law.

Paragraph (B) is to ensure that if the guardian is not present when the child is removed, the guardian knows the whereabouts of the child and the reasons the child is taken into custody. If the person removing the child is not a caseworker, the county agency is to be notified to commence proceedings in juvenile court.

Under paragraph (C), a child taken into protective custody is to be placed during the protective custody in an appropriate shelter care facility or receive other appropriate care.

A conference between the guardian of the child taken into protective custody and the employee designated by the county agency to be responsible for the child should be held within forty-eight hours of the time that the child is taken into custody for the purpose of: 1) explaining to the guardian the reasons for the temporary detention of the child and the whereabouts of the child, unless disclosure is prohibited by court order; 2) expediting, whenever possible, the return of the child to the custody of the guardian when protective custody is no longer necessary; and 3) explaining to the guardian the rights provided for by 42 Pa.C.S. §§ 6337, 6338.

See 42 Pa.C.S. §§ 6324 & 6326 and 23 Pa.C.S. § 6369.

Official Note: Rule 1202 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1202 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

**PART B
EMERGENCY CUSTODY**

1210. Order for Protective Custody

RULE 1210. ORDER FOR PROTECTIVE CUSTODY

- A. **Application of order.** The application for a court order of protective custody may be orally made; however, the request shall be reduced to writing within twenty-four hours. The request shall set forth reasons for the need of protective custody.
- B. **Finding of court.** A child may be taken into protective custody by court order when the court determines that removal of the child is necessary for the welfare and best interests of the child. The order may initially be oral, provided that it is reduced to writing within twenty-four hours or the next court business day.
- C. **Law enforcement.** The court may authorize a search of the premises by law enforcement or the county agency so that the premises may be entered into without authorization of the owner for the purpose of taking a child into protective custody.
- D. **Execution of order.** The court shall specify:
- 1) the limitations of the order;
 - 2) the manner in which the order is to be executed; and
 - 3) who shall execute the order.
- E. **Contents of order.** The court order shall include:
- 1) the name of the child sought to be protected;
 - 2) the date of birth of the child, if known;
 - 3) the whereabouts of the child, if known;
 - 4) the names and addresses of the guardians;
 - 5) the reasons for taking the child into protective custody;
 - 6) a finding whether reasonable efforts were made to prevent placement of the child; and

- 7) a finding whether the reasons for keeping the child in shelter care and that remaining in the home is contrary to the welfare and best interests of the child.

COMMENT

See 42 Pa.C.S. § 6324 for statutory provisions concerning taking into custody.

For a discussion of the due process requirements for taking a child into emergency custody, see *Patterson v. Armstrong County Children and Youth Services*, 141 F. Supp. 2d 512 (W.D. Pa. 2001).

The court is to determine whether reasonable efforts were made to prevent placement or in the case of an emergency placement where services were not offered and could not have prevented the necessity of placement, whether this level of effort was reasonable due to the emergency nature of the situation, safety considerations and circumstances of the family. 42 Pa.C.S. § 6332.

See also *In re Petition to Compel Cooperation with Child Abuse Investigation*, 875 A.2d 365 (Pa. Super. Ct. 2005).

Official Note: Rule 1210 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1210 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

**PART C
SHELTER CARE**

- 1240. Shelter Care Application
- 1241. Notification of Shelter Care Hearing
- 1242. General Conduct of Shelter Care Proceeding
- 1243. Shelter Care Rehearing

RULE 1240. SHELTER CARE APPLICATION

A. **Filings.** A shelter care application may be oral. Within twenty-four hours of exercising protective custody pursuant to Rule 1210, the county agency shall reduce to writing and file a shelter care application with the Juvenile Court.

B. **Application contents.** Every shelter care application shall set forth plainly:

- 1) the name of the applicant;
- 2) the name, date of birth, and address of the child, if known;
- 3) the name and address of the child's guardian, or if unknown, the name and address of the nearest adult relative;
- 4) the date that the child was taken into custody;
- 5) a concise statement of facts in support of the allegation of dependency;
- 6) if a child is in shelter care, a statement that reasonable efforts to prevent placement were made and there are no less restrictive alternatives available;
- 7) a verification by the applicant that the facts set forth in the petition are true and correct to the applicant's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;
- 8) the signature of the applicant and the date of the execution of the application;
and
- 9) the whereabouts of the child unless the county agency has determined it would pose a risk to the safety of the child or the guardian, or disclosure is prohibited by the court.

COMMENT

In lieu of a shelter care application, the county agency may file a petition as set forth in Rule 1330.

The primary focus of the shelter care application is to assert that protective custody is needed and the child should remain in the custody of the county agency. A shelter care hearing is to be held within seventy-two hours of taking the child into protective custody. See Rule 1242(D).

Official Note: Rule 1240 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1240 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1241. NOTIFICATION OF SHELTER CARE HEARING

A. **Generally.** The applicant for the shelter care hearing shall notify the following persons of the date, time, and place of the shelter care hearing:

- 1) the child;
- 2) the guardian(s) of the child;
- 3) the attorney for the child;
- 4) the attorney(s) for the guardian(s);
- 5) the attorney for the county agency;
- 6) the county agency; and
- 7) any other appropriate person.

B. **Counsel.** The guardian of the child shall be notified of the right to counsel immediately after a child is taken into protective custody and before a shelter care hearing.

COMMENT

Notice should be as timely as possible. Because there is a seventy-two hour time restriction, notice may be oral. Every possible attempt to notify all parties is to be made. It is not sufficient to notify only one guardian. All guardians are to be notified. See *In re M.L.*, 562 Pa. 646, 757 A.2d 849 (2000).

The hearing may go forward if a guardian is not present. However, if a guardian has not been notified, a rehearing is to be ordered under Rule 1243 upon submission of an affidavit by the guardian.

The court is to direct the county agency to provide the child's foster parent, preadoptive parent or relative providing care for the child with timely notice of the hearing. See 42 Pa.C.S. § 6336.1.

If a court appointed special advocate is involved in the case, the court appointed special advocate is to be notified as any other appropriate person pursuant to paragraph (A)(7).

Official Note: Rule 1241 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1241 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1242. GENERAL CONDUCT OF SHELTER CARE HEARING.

A. **Informing of rights.** Upon commencement of the hearing, the court shall ensure that:

- 1) a copy of the shelter care application is provided to the parties; and
- 2) all parties are informed of the right to counsel.

B. **Manner of hearing.**

- 1) **Conduct.** The hearing shall be conducted in an informal but orderly manner.
- 2) **Recording.** If requested, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.
- 3) **Testimony and evidence.** All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The child's attorney, the guardian, if unrepresented, and the attorney for the guardian shall be afforded an opportunity to examine and controvert written reports so received.

C. **Findings.** The court shall determine whether:

- 1) there are sufficient facts in support of the shelter care application;
- 2) custody of the child is warranted;
- 3) a) remaining in the home would be contrary to the welfare and best interests of the child;
b) reasonable efforts were made by the county agency to prevent the child's placement; or
c) in the case of an emergency placement where services were not offered, whether the lack of efforts were reasonable; and
- 4) if a shelter care application is submitted by a person other than the county agency, the court shall make a determination if the person is a party to the proceedings.

D. **Prompt hearing.** The court shall conduct a hearing within seventy-two hours of taking the child into protective custody.

E. **Court order.** At the conclusion of the shelter care hearing, the court shall enter a written order as to the following:

- 1) its findings pursuant to paragraph (C);
- 2) any conditions placed upon any party;
- 3) any orders for placement or temporary care of the child; and
- 4) any orders of visitation.

COMMENT

Under paragraph (C)(4), the court is to determine whether or not a person is a proper party to the proceedings. Regardless of the court's findings on the party status, the court is to determine if the application is supported by sufficient evidence.

Under paragraph (D), the court is to ensure a timely hearing.

Under paragraph (E), the court is to include in its order specific findings that: 1) there are sufficient facts in support of the dependency petition; 2) custody of the child is warranted; and 3) remaining in the home would be contrary to the welfare and best interests of the child, or reasonable efforts were made by the county agency to prevent the child's placement, or in the case of an emergency placement where services were not offered, whether the lack of efforts were reasonable.

See 42 Pa.C.S. § 6332.

Nothing in this rule prohibits informal conferences, narrowing of issues, if necessary, and the court making appropriate orders to expedite the case through court. The shelter care hearing may be used as a vehicle to discuss the matters needed and narrow the issues. The court is to insure a timely adjudicatory hearing is held.

See 42 Pa.C.S. § 6339 for orders of physical and mental examinations and treatment.

See Rule 1330(A) for filing of a petition.

Official Note: Rule 1242 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1242 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1243. SHELTER CARE REHEARINGS

- A. **Mandatory Rehearing.** If the guardian submits an affidavit to the county agency alleging that the guardian was not notified of the shelter care hearing and that the guardian did not appear or waive appearance at the shelter care hearing, a rehearing shall be held within seventy-two hours of the submission of the affidavit.
- B. **Discretionary Rehearing.** The court may grant a rehearing upon request of a party or on its own motion.
- C. **Forum.** The judge, who heard the original shelter care hearing or adopted the findings of the master, shall hold the rehearing, unless the judge assigns the case to a master.

COMMENT

See 42 Pa.C.S. § 6332(b).

Under paragraph (A), upon receiving an affidavit, the county agency is to schedule a rehearing, forward the affidavit to the proper person to schedule a rehearing, or submit the affidavit to the court for rescheduling.

Under paragraph (C), only a judge may hold a rehearing, unless the judge orders a master to hear the case.

Official Note: Rule 1243 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1243 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

**CHAPTER 13
PRE-ADJUDICATORY PROCEDURES**

**PART A
VENUE**

- 1300. Venue
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- 1320. Application to File a Private Petition
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PART A
VENUE

- 1300. Venue
- 1302. Inter-County Transfer

RULE 1300. VENUE

A. **Generally.** A dependency proceeding shall be commenced in:

- 1) the county in which the child is present; or
- 2) the child's county of residence.

B. **Change of venue.** For the convenience of parties and witnesses, the court, upon its own motion or motion of any party, may transfer an action to the appropriate court of any county where the action could originally have been brought or could be brought at the time of filing the motion to change venue.

C. **Transmission of juvenile court file.** If there is a change of venue pursuant to paragraph (B), the transferring court shall forward certified copies of all documents, reports, and summaries in the child's court file to the receiving court.

COMMENT

See 42 Pa.C.S. § 6321.

For procedures regarding motions and answers, see Rule 1344. In addition to the procedures for service of orders under Rule 1167, an order changing venue is to be served upon the new county agency and the receiving court so they may begin proceedings in the receiving county.

Official Note: Rule 1300 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1300 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1302. INTER-COUNTY TRANSFER

- A. **Transfer.** A court may transfer a case to another county at any time.
- B. **Transmission of juvenile court file.** If the case is transferred under paragraph (A), the transferring court shall transmit certified copies of all documents, reports, and summaries in the child's court file.

COMMENT

See 42 Pa.C.S. § 6321.

Official Note: Rule 1302 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1302 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

PART B
APPLICATION FOR PRIVATE PETITION

1320. Application to File a Private Petition

1321. Hearing on Application for Private Petition

RULE 1320. APPLICATION TO FILE A PRIVATE PETITION

A. **Application contents.** Any person, other than the county agency, may present an application to file a private petition with the court. The application shall include the following information:

- 1) the name of the person applying for a petition;
- 2) the name of the alleged dependent child;
- 3) the relationship of the person presenting this application to the child and to any other parties;
- 4) if known, the following:
 - a) the date of birth and address of the child;
 - b) the name and address of the child's guardian, or the name and address of the nearest adult relative;
 - c) if a child is Native American, the child's Native American history or affiliation with a tribe;
 - d) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child;
- 5) a concise statement of facts in support of the allegations for which the application for a petition has been filed;
- 6) a statement that the applying person has reported the circumstances underlying this application to the county agency or a reason for not having reported the circumstances underlying the application;
- 7) a verification by the person making the application that the facts set forth in the application are true and correct to the person's personal knowledge, information, or belief, and that any false statements are subject to the

penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and

- 8) the signature of the person and the date of the execution of the application for a petition.

COMMENT

Rule 1330 requires that the county agency file a petition. Any person, other than the county agency, is to file an application to file a petition under this Rule. Rule 1800 suspends 42 Pa.C.S. § 6334, which provides any person may file a petition.

See Rule 1321 for hearing on application and finding that a petition is to be filed by the county agency.

Official Note: Rule 1320 adopted August, 21, 2006, effective February 1, 2007. Amended May 12, 2008, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1320 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1320 published with the Court's Order at 38 Pa.B. 2360 (May 12, 2008).

RULE 1321. HEARING ON APPLICATION FOR PRIVATE PETITION

A. **Hearing.** The court shall conduct a hearing within fourteen days of the presentation of the application for a petition to determine:

- 1) if there are sufficient facts alleged to support a petition of dependency;
and
- 2) whether the person applying for the petition is a proper party to the proceedings.

B. **Findings.**

- 1) If the court finds sufficient facts to support a petition of dependency, a petition may be filed pursuant to Rule 1330.
- 2) If the court finds the person making the application for a petition is a proper party to the proceedings, the person shall be afforded all rights and privileges given to a party pursuant to law.

COMMENT

Under paragraph (A), at a hearing, the court is to determine if: 1) there are sufficient facts alleged to support a petition of dependency; and 2) the applying person is a proper party to the proceedings. A petition of dependency may go forward whether or not the applying person is determined to be a party to the proceedings.

If a child is in custody, the hearing under paragraph (A) may be combined with the shelter care hearing pursuant to Rule 1242.

Official Note: Rule 1321 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1321 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

**PART C
PETITION**

- 1330. Petition: Filing, Contents, Function, Aggravated Circumstances
- 1331. Service of Petition
- 1333. Separate Petitions and Consolidated Hearing
- 1334. Amendment of Petition
- 1335. Withdrawal of Petition
- 1336. Re-filing of the Petition After Withdrawal or Dismissal

RULE 1330. PETITION: FILING, CONTENTS, FUNCTION, AGGRAVATED CIRCUMSTANCES

A. Filings.

- 1) A dependency petition may be filed at any time; however, if a child is taken into custody, the requirements of paragraph (A)(2) shall be met.
- 2) Within twenty-four hours of the shelter care hearing, the county agency shall file a dependency petition with the clerk of courts when:
 - a) the child remains in protective custody pursuant to Rule 1201, 1202 or 1210; or
 - b) the child is not in protective custody but it is determined at a shelter care hearing pursuant to Rule 1242 that the filing of a dependency petition is appropriate.

B. Petition contents. Every petition shall set forth plainly:

- 1) the name of the petitioner;
- 2) the name, date of birth, and address of the child, if known;
- 3) the name and address of the child's guardian, or if unknown, the name and address of the nearest adult relative;
- 4) if a child is Native American, the child's Native American history or affiliation with a tribe;
- 5) a statement that:
 - a) it is in the best interest of the child and the public that the proceedings be brought;

- b) the child is or is not currently under the supervision of the county agency;
- 6) a concise statement of facts in support of the allegations for which the petition has been filed;
 - a) facts for each allegation shall be set forth separately;
 - b) the relevant statute or code section shall be set forth specifically for each allegation;
- 7) a verification by the petitioner that the facts set forth in the petition are true and correct to the petitioner's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;
- 8) the signature of the petitioner and the date of the execution of the petition; and
- 9) the whereabouts of the child unless disclosure is prohibited by court order and if taken into custody, the date and time thereof.

C. Aggravated circumstances. A motion for finding of aggravated circumstances may be brought in the petition pursuant to Rule 1701(A).

COMMENT

Petitions should be filed without unreasonable delay.

Under paragraph (A)(2), a petition is to be filed twenty-four hours after the shelter care hearing if the requirements of (A)(2)(a) and (b) are met. Rule 1800 suspends 42 Pa.C.S. § 6331 only as to the time requirement of when a petition is to be filed.

Additionally, paragraph (A)(2) requires that the county agency file a petition. Any other person, other than the county agency, is to file an application to file a petition under Rule 1320. Rule 1800 suspends 42 Pa.C.S. § 6334, which provides any person may file a petition.

For the safety or welfare of a child or a guardian, the court may order that the addresses of the child or a guardian not be disclosed to specified individuals.

A motion for finding of aggravated circumstances may be brought in a dependency petition. See Rule 1701(A). If aggravated circumstances are determined to exist after the filing of a petition, a written motion is to be filed pursuant to Rules 1701 and 1344.

The aggravated circumstances, as defined by 42 Pa.C.S. § 6302, are to be specifically identified in the motion for finding of aggravated circumstances.

Official Note: Rule 1330 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1330 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1331. SERVICE OF PETITION

A. **Copy.** Upon the filing of a petition, a copy of the petition shall be served promptly upon the child, the child's guardian, the child's attorney, the guardian's attorney, the attorney for the county agency, and the county agency.

B. Method of Service.

1) Child and guardian. The petition shall be served upon the child and all of the child's guardians by:

- a) certified mail, return receipt requested and first-class mail; or
- b) delivery in-person.

2) Attorneys and the county agency. The petition shall be served upon the attorneys and county agency by:

- a) first-class mail;
- b) delivery in-person; or
- c) another agreed upon alternative method.

C. **Proof of service.** An affidavit of service shall be filed prior to the adjudicatory hearing.

COMMENT

Under paragraph (B)(1), if a parent is not the child's custodial guardian, the parent is to also receive service of the petition. See Rule 1120 for definition of "guardian."

Alternative methods of services that may be utilized under paragraph (B)(2)(c) could be electronic transmission, facsimile, county agency inter-office mail, and other similar methods.

Official Note: Rule 1331 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1331 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1333. SEPARATE PETITIONS AND CONSOLIDATED HEARING

- A. A separate petition for dependency shall be filed for each child alleged to be dependent.
- B. If there are multiple petitions filed alleging the dependency of siblings, there shall be a reference in each petition to the sibling's petition.
- C. Petitions alleging the dependency of siblings shall be consolidated for one hearing, unless otherwise ordered by the court.

Official Note: Rule 1333 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1333 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1334. AMENDMENT OF PETITION

A. Amendment.

- 1) **Mandatory.** The court shall allow a petition to be amended when there is a defect in:
 - a) form;
 - b) the description of the allegations;
 - c) the description of any person or property; or
 - d) the date alleged.
- 2) **Discretionary.** Absent prejudice to any party, the court may allow a petition to be amended if the petition alleges a different set of events or allegations, where the elements or matters of proof by any party are materially different from the elements or matters of proof to the allegation originally petitioned.

B. Continuance. Upon amendment, the court may:

- 1) grant a continuance of the adjudicatory hearing; or
- 2) order other relief as is necessary in the interests of justice.

COMMENT

If a petition is amended, a continuance may be appropriate to allow a party to prepare adequately.

For continuances, see Rule 1122.

Official Note: Rule 1334 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1334 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1335. WITHDRAWAL OF PETITION

The attorney for the county agency may withdraw the petition. The withdrawal shall be filed with the clerk of courts.

COMMENT

See Rule 1345 for the procedures on filings and service.

Official Note: Rule 1335 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1335 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1336. RE-FILING OF THE PETITION AFTER WITHDRAWAL OR DISMISSAL

- A. **Re-filing.** A petition may be re-filed after the petition has been withdrawn pursuant to Rule 1335 or dismissed by the court.
- B. **Motion for dismissal.** The court may entertain a motion by any party to dismiss the re-filed petition.

COMMENT

If a petition is re-filed, the procedures of Rule 1330 are to be followed. It may be necessary to have a shelter care hearing under the procedures of Rule 1242.

Official Note: Rule 1336 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1336 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

PART D
PROCEDURES FOLLOWING FILING OF PETITION

- 1340. Discovery and Inspection
- 1342. Pre-Adjudicatory Conference.

RULE 1340. DISCOVERY AND INSPECTION

A. **Informal.** Before any party can seek any disclosure or discovery under these rules, the parties or their counsel shall make a good faith effort to resolve all questions of discovery, and to provide information required or requested under these rules as to which there is no dispute. When there are items requested by one party that the other party has refused to disclose, the demanding party may make an appropriate motion to the court. Such motion shall be made as soon as possible prior to the hearing. In such motion, the party shall state that a good faith effort to discuss the requested material has taken place and proved unsuccessful. Nothing in this rule shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

B. **Mandatory disclosure.**

- 1) **By the county agency.** In all cases, on request by a party and subject to any protective order which the county agency might obtain under this rule, the county agency shall disclose to a party, all of the following requested items or information, provided they are material to the instant case. The county agency shall, when applicable, permit a party to inspect and copy or photograph such items:
 - a) the name and last known address of each witness to the occurrence that forms the basis of allegations of dependency unless disclosure is prohibited by law;
 - b) the name and last known address of each witness who did not witness the occurrence but is expected to testify;
 - c) copies of any written statements made by any party or witness unless disclosure is prohibited by law;
 - d) any results or reports of scientific tests or expert opinions that are within the possession or control of the county agency that the county agency intends to use as evidence at a hearing;
 - e) any police reports, records of prior county agency involvement, or records of current or prior reports involving the Child Protective

Services Law, 23 Pa.C.S. § 6301 *et seq.*, that the county agency intends to use as evidence at a hearing;

- f) if any physical or mental condition of a party is in controversy, any physical or mental examinations, including oral or written reports that a party intends to use as evidence at the hearing;
 - g) any tangible objects, including documents, photographs, or other tangible evidence unless disclosure is prohibited by law;
 - h) the names, addresses, and curriculum vitae of any expert witness that a party intends to call at a hearing and the subject matter about which each expert witness is expected to testify, and a summary of the grounds for each opinion to be offered; and
 - i) any other evidence that is material to adjudication, disposition, dispositional review, or permanency unless disclosure is prohibited by law, and is within the possession or control of the county agency;
- 2) **By all other parties.** All other parties shall provide discovery to the county agency and all other parties and shall disclose, all of the following requested items or information that the party intends to use at a hearing, provided they are material to the instant case unless disclosure is prohibited by law. The party shall, when applicable, permit the county agency to inspect and copy or photograph such items:
- a) the names and last known addresses of each witness who is expected to testify;
 - b) copies of any written statements made by any party or witness;
 - c) any tangible objects, including documents, photographs, or other tangible evidence;
 - d) the names, addresses, and curriculum vitae of any expert witness that a party intends to call at a hearing and the subject matter about which each expert witness is expected to testify, and a summary of the grounds for each opinion to be offered; and
 - e) any other evidence that a party intends to introduce at a hearing.

C. **Discretionary.** Upon motion of any party for discovery, the court may order any discovery upon a showing that the evidence is material to the preparation of the case and that the request is reasonable.

- D. **Continuing Duty to Disclose.** If, prior to or during a hearing, either party discovers additional evidence or material previously requested or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party promptly shall notify the opposing party or the court of the additional evidence, material, or witness.
- E. **Remedy.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing evidence or witnesses not disclosed, or it may enter such other order as it deems just under the circumstances.
- F. **Protective orders.** Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate to protect the best interests of the child. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court. If the court enters an order granting relief, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.
- G. **Work Product.** Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for a party, or members of their legal staffs.

COMMENT

Discovery under this rule applies to discovery for the adjudicatory hearing, dispositional hearing, dispositional review hearings, or permanency hearings of dependency proceedings governed by the Juvenile Act. See Rule 1100 for scope of rules. See Rule 1123 for production of documents pursuant to a *subpoena duces tecum*. See also *In re A.H.*, 763 A.2d 873 (Pa. Super. Ct. 2000).

The purpose of paragraph (A) is to encourage an informal discovery process. Only when the informal process fails and there is a genuine dispute as to discovery, should a motion to compel discovery be made. Motions may be oral or written, see Rule 1344.

The items listed in paragraph (B) are to be disclosed to ensure a party has the ability to prepare adequately for the hearing. See *In re J.C.*, 412 Pa.Super. 369, 603 A.2d 627 (1992).

See Rule 1800 for suspension of 23 Pa.C.S. § 6339, which provides for the confidentiality of reports made pursuant to the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.*, which is suspended only insofar as the Law is inconsistent with Rule 1340(B)(1)(e), which provides for the disclosure of such reports if the reports are going to be used as evidence in a hearing to prove dependency of a child. It is important to note that this section is only suspended if the reports are going to be used as evidence during a hearing. If the reports are not going to be used, the confidentiality requirements of 23 Pa.C.S. § 6339 still apply. In addition, confidential sources are protected and the name of the source does not have to be disclosed. See 23 Pa.C.S. § 6340 (c) for protection of confidential sources reporting allegations of abuse under the Child Protective Services Law. 23 Pa.C.S. § 6301 *et seq.*

Under paragraph (C), the following are examples of evidence that may be material to the preparation of the case, but the list is not meant to be exhaustive: 1) domestic violence treatment records; 2) drug and alcohol treatment records; 3) mental health records; 4) medical records; 5) any other evidence specifically identified, provided the requesting party can additionally establish that its disclosure would be in the interests of justice, including any information concerning any person involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable

consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the person in connection with his or her involvement in the case. Items listed in this paragraph are subject to rules of confidentiality and this rule is not intended to subrogate those rules.

Under paragraph (C), the court has discretion, upon motion, to order an expert who is expected to testify at a hearing to prepare a report. However, these provisions are not intended to require a prepared report in every case. The court should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

It is intended that the remedies provided in paragraph (E) apply equally to all parties, as the interests of justice require.

The provision for a protective order, paragraph (F), does not confer upon any party any right of appeal not presently afforded by law.

In addition to information requested under this rule, an attorney has the right to inspect all court records and files. See Rule 1160.

Official Note: Rule 1340 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1340 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1342. PRE-ADJUDICATORY CONFERENCE.

- A. **Scope of conference.** At any time after the filing of a petition, upon motion, or upon its own motion, the court may order the parties to appear before it for a conference.
- B. **Objections.** The parties shall have the right to record an objection to rulings of the court during the conference.
- C. **Record.** The court shall place on the record the agreements or objections made by the parties and rulings made by the court as to any of the matters considered in the pre-adjudicatory conference. Such order shall control the subsequent proceedings unless modified at the adjudicatory hearing to prevent injustice.

COMMENT

This rule does not prevent other forms of pre-adjudicatory conferences. A judge may order a pre-adjudicatory conference between parties without the judge's presence at the conference to discuss preliminary matters.

Under paragraph (A), the court may consider: 1) the terms and procedures for pre-adjudicatory discovery and inspection; 2) the simplification or stipulation of factual issues, including admissibility of evidence; 3) the qualification of exhibits as evidence to avoid unnecessary delay; 4) the number of witnesses who are to give testimony of a cumulative nature; 5) whether expert witnesses will be called; 6) whether the hearing will be scheduled in front of the master or judge; and 7) such other matters as may aid in the disposition of the proceeding.

Official Note: Rule 1342 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1342 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

PART D(1)
MOTION PROCEDURES

- 1344. Motions and Answers
- 1345. Filing and Service

RULE 1344. MOTIONS AND ANSWERS

- A. **Generally.** All motions and answers shall be made orally on the record or in writing. An answer to a motion is not required unless ordered by the court or otherwise provided in these rules. Failure to answer shall not constitute an admission of the well-pleaded facts alleged in the motion.

- B. **Filings by attorneys.** If a party is represented by an attorney, the attorney shall make or file all motions and answers.

- C. **Requirements for motions.** All motions shall comply with the following requirements:
 - 1) The person making a written motion shall sign the motion. The signature shall constitute a certification that the motion is made in good faith. An oral motion shall be made on the record and the oral motion shall constitute a certification that the motion is made in good faith.

 - 2) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested.

 - 3) If the motion sets forth facts that do not already appear of record in the case, a verification shall be included or an oral statement shall be given that the facts set forth in the motion are true and correct to the movant's personal knowledge, information, or belief.

 - 4) If the motion is written, a certificate of service as required by Rule 1345(C) shall be included.

- D. **Requirements for answers.** All answers, including those that are required either by court order or otherwise required by these rules, shall comply with the following requirements:
 - 1) The person making the answer shall sign the answer or shall reply to the motion on the record. The signature or oral answer on the record shall constitute a certification that the answer is being made in good faith.

 - 2) The answer shall meet the allegations of the motion and shall specify the type of relief, order, or other action sought.

- 3) If the answer sets forth facts that do not already appear of record in the case, a verification shall be included or an oral answer shall include a statement that the facts set forth in the answer are true and correct to the respondent's personal knowledge, information, or belief.
- 4) If the answer is written, a certificate of service as required by Rule 1345(C) shall be included.

E. **Alternative relief.** Any motion may request such alternative relief as may be appropriate.

COMMENT

Under paragraph (A), oral motions and answers are permitted because of the emphasis on prompt disposition in juvenile court. Answers to written motions may be made orally if the answer complies with the requirements of this rule.

Under paragraphs (C)(4) and (D)(4), a certificate of service is required for all written motions and answers. See Rule 1345(B) for service of documents and Rule 1345(C) for certificates of service.

Official Note: Rule 1344 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1344 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1345. FILING AND SERVICE

A. Filings.

- 1) **Generally.** Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the clerk of courts.
- 2) **Clerk of courts' duties.** Except as provided in paragraph (A)(3), the clerk of courts shall docket a written motion, notice, or document when it is received and record the time of filing in the docket. The clerk of courts promptly shall transmit a copy of these papers to such person as may be designated by the court.
- 3) **Filings by represented parties.** In any case in which a party is represented by an attorney, if the party submits for filing a written motion, notice, or document that has not been signed by the party's attorney, the clerk of courts shall not file the motion, notice, or document in the child's court file or make a docket entry, but shall forward it promptly to the party's attorney.
- 4) **Method of filing.** Filing may be accomplished by:
 - a) personal delivery to the clerk of courts; or
 - b) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing.

B. Service.

- 1) **Generally.** The party filing the document shall serve the other party concurrently with the filing.
- 2) **Method of service to parties.** Service on the parties shall be by:
 - a) personal delivery of a copy to a party's attorney, or, if unrepresented, the party; or
 - b) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or
 - c) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box; or

- d) sending a copy to an unrepresented party by first class mail addressed to the party's place of residence.

C. Proof of service. All documents that are filed and served pursuant to this rule shall include a certificate of service.

COMMENT

See Rule 1166 for maintaining records in the clerk of courts.

Under paragraph (A)(2), the court is to designate a court official to process motions and other matters for appropriate scheduling and disposition.

Under paragraph (B)(1), the party filing a document is required to serve the other party.

This rule does not affect court orders, which are to be served upon each party's attorney and the guardian, if unrepresented, by the clerk of courts as provided in Rule 1167.

For service of petitions, see Rule 1331.

Official Note: Rule 1345 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1345 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

PART D(2)
ADJUDICATORY SUMMONS AND NOTICE PROCEDURES

- 1360. Adjudicatory Summons
- 1361. Adjudicatory Notice
- 1363. Service of Summons
- 1364. Failure to Appear on the Summons

RULE 1360. ADJUDICATORY SUMMONS

- A. **Summons.** The court shall issue a summons compelling all parties to appear for the adjudicatory hearing.
- B. **Order appearance.** The court may order the person having the physical custody or control of the child to bring the child to the hearing.
- C. **Requirements.** The summons shall:
 - 1) be in writing;
 - 2) set forth the date, time, and place of the adjudicatory hearing;
 - 3) instruct the child and the guardian about their rights to counsel, and if the child's guardian is without financial resources or otherwise unable to employ counsel, the right to assigned counsel;
 - 4) give a warning stating that the failure to appear for the hearing may result in arrest; and
 - 5) include a copy of the petition unless the petition has been previously served.

COMMENT

Section 6335 of the Juvenile Act provides that the court is to direct the issuance of a summons to the parent, guardian, or other custodian, a guardian *ad litem*, and any other persons as appear to the court to be proper and necessary parties to the proceedings. It also provides for ordering the person having the physical custody or control of the child to bring the child to the proceeding. 42 Pa.C.S. § 6335. Pursuant to Rule 1361, all parents and relatives providing care for the child are to receive notice of the hearing. Under paragraph (A), the custodial guardian is to receive a summons.

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

Section 6335(a) of the Juvenile Act requires a copy of the petition to accompany the summons. 42 Pa.C.S. § 6335(a). Under paragraph (C)(5), a petition is to be included with the summons and served pursuant to Rule 1363 unless the petition has already been served pursuant to Rule 1331. See Rule 1800 for suspension of 42 Pa.C.S. § 6335, only to the extent that it conflicts with this rule.

See Rule 1128 for presence at proceedings. See Rule 1124 for general summons procedures.

Official Note: Rule 1360 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1360 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1361. ADJUDICATORY NOTICE

The court shall give notice of the adjudicatory hearing to:

- 1) the attorney for the county agency;
- 2) the child's attorney;
- 3) the guardian's attorney;
- 4) the parents, child's foster parent, preadoptive parent, or relative providing care for the child;
- 5) the county agency;
- 6) the court appointed special advocate, if assigned; and
- 7) any other persons as directed by the court.

COMMENT

All parties are to receive a summons pursuant to Rule 1360.

Official Note: Rule 1361 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1361 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1363. SERVICE OF SUMMONS

A. **Method of Service.** The summons shall be served:

- 1) in-person; or
- 2) by certified mail, return receipt and first-class mail.

B. **Time of Service.**

- 1) **Child in custody.** If the child is in protective custody, the summons shall be served no less than seven days prior to the adjudicatory hearing.
- 2) **Child not in custody.** If the child is not in protective custody, the summons shall be served no less than fourteen days prior to the adjudicatory hearing.

C. **Proof of service.** Affidavit of service shall be filed prior to the adjudicatory hearing.

D. **Efforts Made to Serve.** In the absence of an affidavit of service under paragraph (C), the serving party shall advise the court of what efforts were made to notify a person. The court may proceed to a hearing upon a showing of reasonable efforts to locate and notify all persons pursuant to Rule 1360.

COMMENT

Pursuant to Rule 1360, all parties are to be served a summons. Pursuant to Rule 1361, the attorneys, the parents, child's foster parent, preadoptive parent, and relative providing care for the child are to receive notice.

A copy of the petition is to be included with the summons unless the petition has already been served pursuant to Rule 1331. See Rule 1360 (C)(5).

Official Note: Rule 1363 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1363 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1364. FAILURE TO APPEAR ON THE SUMMONS

If any summoned person fails to appear for the adjudicatory hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 1140.

COMMENT

See Rule 1140 for issuance of a bench warrant.

Official Note: Rule 1364 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1364 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1364 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009).

PART E
PRESERVATION OF TESTIMONY AND EVIDENCE

1380. Preservation of Testimony After Commencement of Proceedings

1381. Preservation of Testimony by Video Recording

RULE 1380. PRESERVATION OF TESTIMONY AFTER COMMENCEMENT OF PROCEEDINGS

A. By Court Order.

- 1) At any time after the commencement of proceedings, upon motion of any party, and after notice and hearing, the court may order the taking and preserving of the testimony of any witness who may be unavailable for the adjudicatory hearing or for any other proceeding, or when due to exceptional circumstances, it is in the interests of justice that the witness' testimony be preserved;
- 2) The court shall state on the record the grounds on which the order is based;
- 3) The court's order shall specify the time and place for the taking of the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony;
- 4) The testimony shall be taken in the presence of the court, all parties and their attorneys, unless otherwise ordered; and
- 5) The court shall rule on the admissibility of the preserved testimony if it is offered into evidence at the adjudicatory hearing or other judicial proceeding.

B. By agreement of the parties.

- 1) At any time after the commencement of proceedings, the testimony of any witness may be taken and preserved upon the express written agreement of all parties;
- 2) The agreement shall specify the time and place for taking the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony;
- 3) The testimony shall be taken in the presence of all parties and their attorneys unless they otherwise agree;

- 4) The agreement shall be filed with the clerk of courts pursuant to Rule 1345(A); and
- 5) The court shall rule on the admissibility of the preserved testimony if it is offered into evidence at the adjudicatory hearing or other judicial proceeding.

COMMENT

This rule is intended to provide the means by which testimony may be preserved for use at a current or subsequent stage in the proceedings, which includes the taking of a deposition during the adjudicatory hearing to be used at a later stage of the adjudicatory hearing.

When testimony is to be preserved by video recording, see also Rule 1381.

This rule does not address the admissibility of the preserved testimony. The court is to decide all questions of admissibility. See the Pennsylvania Rules of Evidence.

"May be unavailable," as used in paragraph (A)(1), is intended to include situations in which the court has reason to believe that the witness will be unable to be present or to testify at the adjudicatory hearing or other proceedings, such as when the witness is dying, or will be out of the jurisdiction and therefore can not be effectively served with a subpoena, or may become incompetent to testify for any legally sufficient reason.

Under paragraph (A)(4), the court should preside over the taking of testimony. The court, however, may order that testimony be taken and preserved without the court's presence when exigent circumstances exist or the location of the witness renders the court's presence impracticable. Furthermore, nothing in this rule is intended to preclude the parties, their attorneys, and the court from agreeing on the record that the court need not be present. Paragraph (B)(3) permits the parties and their attorneys to determine among themselves whether the court should be present during the taking of testimony. That determination should be made a part of the written agreement required by paragraph (B)(1).

Nothing in this rule is intended to preclude the parties from waiving their presence during the taking of testimony.

The means by which the testimony is recorded and preserved are within the discretion of the court under paragraph (A) and the parties under paragraph (B), and may include the use of electronic or photographic techniques such as videotape or digital video diskette. There are, however, additional procedural requirements for preservation of testimony by video recording mandated by Rule 1381.

The party on whose motion testimony is taken should normally have custody of and be responsible for safeguarding the preserved testimony. That party should also promptly provide a copy of the preserved testimony to the other parties. Additionally, this rule is not intended to conflict with the requirements of the Pennsylvania Rules of Judicial Administration. For reporting and transcripts by court-employed reporters, see the Pa.R.J.A. Nos. 5000.1 – 5000.13.

When testimony is taken under this rule, the proceeding should afford the parties full opportunity to examine and cross-examine the witness. Counsel should not reserve objections at the time of the adjudicatory hearing.

For the definition of "court," see Rule 1120.

Official Note: Rule 1380 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1380 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1381. PRESERVATION OF TESTIMONY BY VIDEO RECORDING

- A. When the testimony of a witness is taken and preserved pursuant to Rule 1380 by means of video recording, the testimony shall be recorded simultaneously by a stenographer.
- B. The following technical requirements shall be made part of the court order required by Rule 1380(A) or the written agreement provided in Rule 1380(B):
 - 1) The video recording shall begin with a statement on camera that includes:
 - a) the operator's name and business address;
 - b) the name and address of the operator's employer;
 - c) the date, time, and place of the video recording;
 - d) the caption of the case;
 - e) the name of the witness;
 - f) the party on whose behalf the witness is testifying; and
 - g) the nature of the judicial proceedings for which the testimony is intended;
 - 2) The court and the persons shall identify themselves on camera;
 - 3) The witness shall be sworn on camera;
 - 4) If the length of the testimony requires the use of more than one video recording, the end of each video recording and the beginning of each succeeding video recording shall be announced on camera;
 - 5) At the conclusion of the witness' testimony, a statement shall be made on camera that the testimony is concluded. A statement shall also be made concerning the custody of the video recording(s);
 - 6) Statements concerning stipulations, exhibits, or other pertinent matters may be made at any time on camera;
 - 7) The video recording shall be timed by a digital clock on camera that continually shows the hour, minute, and second of the testimony;

- 8) All objections and the reasons for them shall be made on the record. When the court presides over the video recording of testimony, the court's rulings on objections shall also be made on the record;
- 9) When the court does not preside over the video recording of testimony, the video recording operator shall keep a log of each objection, referenced to the time each objection is made. All rulings on objections shall be made before the video recording is shown at any judicial proceeding; and
- 10) The original video recording shall not be altered.

COMMENT

This rule provides the basic technical requirements for taking and preserving testimony by video recording under Rule 1380. The list of requirements is not intended to be exhaustive. Rather, it is recommended that all recording by video be carefully planned and executed, and that in addition to complying with the basic requirements, each court order or written agreement for the video recording of testimony be tailored to the nature of the case and the needs of the persons.

Generally, the camera should focus on the witness to the extent practicable.

Under paragraph (B)(9), the court may rule on objections by either reviewing pertinent sections of the video recording, aided by the video operator's log, or by reviewing the stenographic transcript required by paragraph (A).

Any editing procedure ordered by the court or agreed upon by the persons may be used as long as it comports with current technology and does not alter the original video recording. Paragraph (B)(10) is intended to insure preservation of the original video, thereby providing for those situations in which a dispute arises over editing procedures.

This rule authorizes the use of video recording devices only for the preservation of testimony under Rule 1380. It is not intended to affect other rules governing recording devices.

Official Note: Rule 1381 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1381 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

CHAPTER 14 ADJUDICATORY HEARING

- 1401. Introduction to Chapter Fourteen
- 1404. Prompt Adjudicatory Hearing
- 1405. Stipulations
- 1406. Adjudicatory Hearing
- 1408. Findings on Petition
- 1409. Adjudication of Dependency & Court Order

RULE 1401. INTRODUCTION TO CHAPTER FOURTEEN

Under these rules and the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, a determination for each case requires separate and distinct findings. First, the court is to hold an adjudicatory hearing, governed by Rule 1406 or accept stipulations, governed by Rule 1405. Second, after hearing the evidence or accepting the stipulations, the court is to make specific findings on the petition as to each allegation pursuant to Rule 1408, stating with particularity the allegations proven by clear and convincing evidence. Third, after entering its findings, the court is to determine if the child is dependent, pursuant to Rule 1409. If aggravated circumstances are alleged, the court is to determine if aggravated circumstances exist, pursuant to Rule 1705. After the court has made these findings and if the court finds that the child is dependent, the court is to hold a dispositional hearing as provided for in Rule 1512 and is to enter a dispositional order under Rule 1515. Nothing in these rules precludes the court from making these determinations at the same proceeding as long as the requirements of each rule are followed.

Official Note: Rule 1401 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1401 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1404. PROMPT ADJUDICATORY HEARING

- A. **Child in custody.** If a child has been removed from the home, an adjudicatory hearing shall be held within ten days of the filing of the petition.

- B. **Child not in custody.** If a child has not been removed from the home, the adjudicatory hearing shall be held as soon as practical but within forty-five days of the filing of the petition.

Official Note: Rule 1404 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1404 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1405. STIPULATIONS

A. **Agreements.** At any time after the filing of a petition, any party may present stipulations or agreements by all parties to the court in writing or orally on the record to any or all of the following:

- 1) Findings of fact to be deemed admitted by the parties;
- 2) A statement of the parties' agreement for placement;
- 3) A statement of the parties' agreement for visitation;
- 4) Time frame within which the stipulation shall be in effect;
- 5) Time frame within which court shall review compliance; or
- 6) Any other stipulation or agreement found to be appropriate by the court.

B. **Court action.** The court shall decide whether to accept the stipulations.

1) **Court accepts stipulations.**

a) **Stipulation to all allegations.** If the court accepts the stipulations to all the allegations, the court shall:

- i) take additional testimony as necessary to make an independent determination of dependency; and
- ii) enter its findings pursuant to Rule 1408 and an adjudication of dependency pursuant to Rule 1409.

b) **Stipulations to some allegations or agreements for disposition.** If the parties agree to some allegations or placement, visitation, or other disposition resolutions, the court shall hold an adjudicatory hearing as to the remaining contested allegations in the petition pursuant to Rule 1406, followed by its finding on the petition pursuant to Rule 1408 and an adjudication of dependency pursuant to Rule 1409.

2) **Court rejects stipulations.** If the court rejects the stipulations, the court shall proceed with an adjudicatory hearing pursuant to Rule 1406, followed by its findings on the petition pursuant to Rule 1408 and an adjudication of dependency pursuant to Rule 1409.

COMMENT

If all parties do not agree to all the allegations in the petition, the court is to hold an adjudicatory hearing as to the remaining allegations pursuant to Rule 1406.

Under paragraph (B)(2), the court may reject the stipulations and proceed to an adjudication of dependency pursuant to Rule 1406.

The court is to make an independent determination that a child is dependent. Before accepting the stipulation the judge is to be satisfied that the facts are credible and solidly based and not the product of speculation as to what the child may do in the future. *In re Mark T.*, 296 Pa.Super. 533, 442 A.2d 1179 (1982). Furthermore, to be accepted by the court, such stipulation is to be joined by all the parties. If accepted by the court, the stipulation has evidentiary value and may be considered alone or in conjunction with other evidence. The judge is to consider all of the evidence presented as well as the relevant law to arrive at a reasoned decision regarding dependency. *In re Michael Y.*, 365 Pa.Super. 488, 530 A.2d 115 (1987). See *In re A.S.*, 406 Pa.Super. 466, 594 A.2d 714 (1991) and 42 Pa.C.S. § 6341.

Official Note: Rule 1405 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1405 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1406. ADJUDICATORY HEARING

A. **Manner of hearing.** The court shall conduct the adjudicatory hearing in an informal but orderly manner. Prior to commencing the proceedings, the court shall ascertain:

- 1) whether notice requirements pursuant to Rules 1360 and 1361 have been met; and
- 2) whether unrepresented parties have been informed of the right to counsel pursuant to 42 Pa.C.S. § 6337.

B. **Recording.** The adjudicatory hearing shall be recorded. The recording shall be transcribed:

- 1) pursuant to a court order; or
- 2) when there is an appeal.

C. **Evidence.** Each party shall be given the opportunity to:

- 1) introduce evidence;
- 2) present testimony; and
- 3) to cross-examine any witness.

D. **Ex parte Communication.**

- 1) Except as provided by these rules, no person shall communicate with the court in any way.
- 2) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.

COMMENT

Due process requires that the litigants receive notice of the issues before the court and an opportunity to present their case in relation to those issues. *In re M.B.*, 356 Pa.Super. 257, 514 A.2d 599 (1986), *aff'd*, 517 Pa. 459, 538 A.2d 495 (1988).

A full record of the hearing is to be kept. *In re J.H.*, 788 A.2d 1006 (Pa. Super. Ct. 2001). See also 42 Pa.C.S. § 6336.

Under paragraph (B), notes of testimony should be provided to counsel for a party upon good cause shown. The court may place conditions of release on the notes of testimony. Under paragraph (B)(2), when an appeal is taken, the record is to be transcribed pursuant to Pa.R.A.P. 1922. See Pa.R.A.P. 1911 for request of transcript.

Under paragraph (C), the court is to receive evidence from all interested parties and from objective, disinterested witnesses. The judge's findings should be supported by a full discussion of the evidence. See *In Re Clouse*, 244 Pa.Super. 396, 368 A.2d 780 (1976).

For application of the Rules of Evidence, see Pa.R.E. 101.

Under paragraph (D), no *ex parte* communications regarding the facts and merits of the case with the court are to occur. Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented. Normal methods of practice and procedure such as motions, scheduling, communications with court personnel, are not considered *ex parte* communications. See Pa.R.P.C. Rules 3.5, 3.3(d), and 8.3(a) and the Code of Judicial Conduct, Canons 1, 2, and 3.

Official Note: Rule 1406 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1406 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1408. FINDINGS ON PETITION

After hearing the evidence on the petition or accepting stipulated facts by the parties but no later than seven days, the court shall enter a finding by specifying which, if any, allegations in the petition were proved by clear and convincing evidence.

COMMENT

The court is to specify which allegations in the petition are the bases for the finding of dependency.

Official Note: Rule 1408 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1408 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1409. ADJUDICATION OF DEPENDENCY & COURT ORDER

A. **Adjudicating the child dependent.** Once the court has made its findings under Rule 1408, the court shall enter an order whether the child is dependent.

- 1) **Dependency.** If the court finds from clear and convincing evidence that the child is dependent, the court shall proceed to a dispositional hearing under Rule 1512.
- 2) **No dependency.** If the court finds the child not to be dependent or the court finds a parent ready, willing, and able to provide proper parental care or control, the court shall:
 - a) dismiss the petition;
 - b) order the child to be discharged from custody and any restrictions ordered in the proceedings; and
 - c) enter an order identifying individual(s) who will have the legal and physical custody until such order is modified by further order of the court.

B. Timing.

- 1) **Child in custody.** If a child is removed from the home, the court shall enter an adjudication of dependency within seven days of the adjudicatory hearing and enter its findings pursuant to Rule 1408.
- 2) **Child not in custody.** If a child is not removed from the home and if the court fails to enter an order of dependency, the court shall hold a status hearing every thirty days.

C. **Court order.** The court shall include the following in its court order:

- 1) A statement pursuant to paragraph (A):
 - a) as to whether the court finds the child to be dependent from clear and convincing evidence;
 - b) including the specific factual findings that form the bases of the court's decision;
 - c) including any legal determinations made; and
- 2) Any orders directing the removal of a child from the home or change in the current residential status, including:

- a) orders as to placement; or
 - b) visitation; or
 - c) change in custody; and
- 3) Any orders as to any aids in disposition that may assist in the preparation of the dispositional hearing.

COMMENT

Before the court can find a child to be dependent, there must be clear and convincing evidence in support of the petition. The burden of proof is on the petitioner. The court's inquiry is to be comprehensive and its findings are to be supported by specific findings of fact and a full discussion of the evidence. *In re LaRue*, 244 Pa.Super. 218, 366 A.2d 1271 (1976). See also *In re Frank W.D., Jr.*, 315 Pa.Super. 510, 462 A.2d 708 (1983); *In re Clouse*, 244 Pa.Super. 396, 368 A.2d 780 (1976). The evidence must support that the child is dependent. *In the Matter of DeSavage*, 241 Pa.Super. 174, 360 A.2d 237 (1976). The court is not free to apply the best interest of the child standard as the requirements of the Juvenile Act, 42 Pa.C.S. § 6341(c), require clear and convincing evidence that the child is dependent is the proper standard. *In re Haynes*, 326 Pa.Super. 311, 473 A.2d 1365 (1983). A child, whose non-custodial parent is ready, willing, and able to provide adequate care for the child, cannot be found dependent on the basis of lacking proper parental care and control. *In re M.L.*, 562 Pa. 646, 757 A.2d 849 (2000). A trial court has the authority to transfer custody or modify custody to the child's non-custodial parent without a finding of dependency if sufficient evidence of dependency would have existed but for the availability of the non-custodial parent. *In re Justin S.*, 375 Pa.Super. 88, 543 A.2d 1192 (1988).

The court is to specify which allegations in the petition are the bases for the finding of dependency pursuant to Rule 1408. The court is to make an adjudication of dependency based upon the allegations in the petition, not on alternative grounds. Due process and fundamental fairness require adequate notice of the allegations to afford a reasonable opportunity to prepare a defense. *In re R.M.*, 567 Pa. 646, 790 A.2d 300 (2002).

Under paragraph (B), if a child is removed from the home, a finding of dependency is to be made within seven days.

Under paragraph (C)(3), aids in disposition may include, but are not limited to, any services, investigations, evaluations, studies, treatment plans, and any other appropriate reports that may aid the court in making its determination at the dispositional hearing. See 42 Pa.C.S. § 6339 for orders of a social study or physical and mental examinations and treatment.

See also 42 Pa.C.S. §§ 6341 & 6302.

Official Note: Rule 1409 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1409 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

**CHAPTER 15
DISPOSITIONAL HEARING**

**PART A
SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING**

- 1500. Summons for the Dispositional Hearing
- 1501. Dispositional Notice

**PART B
DISPOSITIONAL HEARING AND AIDS**

- 1509. Aids in Disposition
- 1510. Prompt Dispositional Hearing
- 1511. Pre-Dispositional Statement
- 1512. Dispositional Hearing
- 1514. Dispositional Finding Before Removal From Home
- 1515. Dispositional Order
- 1516. Service of Dispositional Order

RULE 1500. SUMMONS FOR THE DISPOSITIONAL HEARING

- A. **Summons.** The court may issue a summons compelling any party to appear for the dispositional hearing.
- B. **Order appearance.** The court may order the person having the physical custody or control of the child to bring the child to the hearing.
- C. **Requirements.** The general summons procedures of Rule 1124 shall be followed.

COMMENT

Section 6335 of the Juvenile Act provides that the court is to direct the issuance of a summons to the parent, guardian, or other custodian, a guardian *ad litem*, and any other persons as appear to the court to be proper and necessary parties to the proceedings. 42 Pa.C.S. § 6335(a).

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

Official Note: Rule 1500 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1500 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1501. DISPOSITIONAL NOTICE

The court or its designee shall give notice of the dispositional hearing to:

- 1) all parties;
- 2) the attorney for the county agency;
- 3) the child's attorney
- 4) the guardian's attorney;
- 5) the parents, child's foster parent, preadoptive parent, or relative providing care for the child;
- 6) the court appointed special advocate, if assigned; and
- 7) any other persons as directed by the court.

Official Note: Rule 1501 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1501 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1509. AIDS IN DISPOSITION

- A. **Examinations.** The court may order the child, parent, guardian, or other person being considered as a dispositional placement resource to undergo any examination permitted by law, as it deems appropriate to aid in the decision for disposition.
- B. **Experts.** Experts may be utilized during the dispositional hearing. Discovery pursuant to Rule 1340 shall occur prior to the dispositional hearing.
- C. **Family Service Plan or Permanency Plan.** If the county agency has completed a family service plan or permanency plan, it shall be given to all parties immediately and submitted to the court upon request.

COMMENT

Section 6341(e) of the Juvenile Act requires the court to receive reports and other evidence bearing on the disposition. *In re McDonough*, 287 Pa.Super. 326, 430 A.2d 308 (1981).

For discovery rules for the dispositional hearing, see Rule 1340 and its *Comments*.

Because of time constraints, a family service plan might not be prepared prior to the original dispositional hearing. If the family service plan has been prepared, all parties are to receive the plan to prepare for the dispositional hearing. In all cases, the family service plan is to be completed by the county agency within sixty days of accepting a family for service. See 55 Pa. Code § 3130.61.

Official Note: Rule 1509 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1509 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1510. PROMPT DISPOSITIONAL HEARING

If the child has been removed from the home, the dispositional hearing shall be held no later than twenty days after the findings on the petition under Rule 1408.

COMMENT

For continuances, see 42 Pa.C.S. § 6341(e).

Official Note: Rule 1510 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1510 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1511. PRE-DISPOSITIONAL STATEMENT

The petitioner shall state its recommended disposition in a pre-dispositional statement. The statement shall be filed with the court at least three days prior to the dispositional hearing.

COMMENT

This statement may be included in other court documents, such as, the family service plan or petition.

Official Note: Rule 1511 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1511 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1512. DISPOSITIONAL HEARING

- A. **Manner of hearing.** The court shall conduct the dispositional hearing in an informal but orderly manner.
- 1) **Evidence.** The court shall receive any oral or written evidence which is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.
 - 2) **Opportunity to be heard.** Before deciding disposition, the court shall give the parent, child's foster parent, preadoptive parent, relative providing care for the child and court appointed special advocate, if assigned, an opportunity to make a statement.
- B. **Recording.** The dispositional hearing shall be recorded. The recording shall be transcribed:
- 1) pursuant to a court order; or
 - 2) when there is an appeal.
- C. **Ex parte Communication.**
- 1) Except as provided by these rules, no person shall communicate with the court in any way.
 - 2) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.

COMMENT

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a child should preside over the dispositional hearing for the same child.

Paragraph (A)(2) does not infringe on the right to call witnesses to testify, in addition to those specified individuals. See Rule 1123 for subpoenaing a witness.

For transcription of the record under paragraph (B), see also Rule 1127.

Under paragraph (C), no *ex parte* communications with the court are to occur. Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented. Normal methods of practice and procedure such as motions, scheduling, communications with court personnel, are not considered *ex parte* communications.

Official Note: Rule 1512 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1512 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1514. DISPOSITIONAL FINDING BEFORE REMOVAL FROM HOME

A. **Required findings.** Prior to entering a dispositional order removing a child from the home, the court shall enter into the record the following specific findings:

- 1) Continuation of the child in the home would be contrary to the welfare, safety, or health of the child; and
- 2) One of the following:
 - a) Reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from the home, if the child has remained in the home pending such disposition; or
 - b) If preventive services were not offered due to the necessity for emergency placement, whether such lack of services was reasonable under the circumstances; or
 - c) If the court previously determined that reasonable efforts were not made to prevent the initial removal of the child from the home, whether reasonable efforts are under way to make it possible for the child to return home.

B. **Aggravated circumstances.** If the court has previously found aggravated circumstances to exist and that reasonable efforts to remove the child from the home or to preserve and reunify the family are not required, a finding under paragraphs (A)(2)(a) through (c) is not necessary.

COMMENT

See 42 Pa.C.S. § 6351(b).

Official Note: Rule 1514 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1514 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1515. DISPOSITIONAL ORDER

A. **Generally.** When the court enters a disposition, the court shall issue a written order, which provides that the disposition is best suited to the safety, protection, and physical, mental, and moral welfare of the child. The order shall include:

- 1) the terms, conditions, and limitations of the disposition;
- 2) the name of any person or the name, type, category, or class of agency, licensed organization, or institution that is to provide care, shelter, and supervision of the child;
- 3) any findings pursuant to Rule 1514 if a child is being removed from the home;
- 4) any ordered evaluations, tests, counseling, or treatments;
- 5) any ordered family service plan or permanency plan if not already prepared;
- 6) any visitations, including any limitations;
- 7) the date of the order; and
- 8) the signature and printed name of the judge entering the order.

B. **Transfer of legal custody.** If the court decides to transfer legal custody of the child to a person or agency found to be qualified to provide care, shelter, and supervision of the child, the dispositional order shall include:

- 1) the name and address of such person or agency, unless the court determines disclosure is inappropriate;
- 2) the limitations of the order; and
- 3) any visitation rights.

C. **Orders concerning guardian.** The court shall include any conditions, limitations, restrictions, and obligations in its dispositional order imposed upon the guardian.

COMMENT

See 42 Pa.C.S. §§ 6310, 6351.

45 CFR § 1356.21 provides a specific foster care provider may not be placed in a court order to be compliance with and receive funding through the Federal Financial Participation.

Dispositional orders should comport in substantial form and content to the Juvenile Court Judges' Commission model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social Security Act. For model orders, see <http://www.jcjc.state.pa.us> or <http://www.dpw.state.pa.us> or request a

copy on diskette directly from the Juvenile Court Judges' Commission, Room 401, Finance Building, Harrisburg, PA 17120.

See In re Tameka M., 525 Pa. 348, 580 A.2d 750 (1990).

Official Note: Rule 1515 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1515 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1516. SERVICE OF THE DISPOSITIONAL ORDER

Upon entry of the disposition, the court shall issue a dispositional order and the order shall be served promptly upon all parties, their attorneys, and any other person as directed by the court.

Official Note: Rule 1516 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1516 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

**CHAPTER 16
POST-DISPOSITIONAL PROCEDURES**

**PART A
SUMMONS AND NOTICE**

- 1600. Summons for the Permanency Hearing
- 1601. Permanency Hearing Notice

**PART B
PERMANENCY HEARING**

- 1607. Regular Scheduling of Permanency Hearing
- 1608. Permanency Hearing
- 1609. Court Order of Permanency Hearing Determinations
- 1613. Termination of Court Supervision
- 1616. Post-Dispositional Procedures; Appeals [RESERVED]

**PART A
SUMMONS AND NOTICE**

RULE 1600. SUMMONS FOR THE PERMANENCY HEARING

- A. **Summons.** At least fifteen days prior to the permanency hearing, the court may issue a summons compelling any party to appear for the permanency hearing.
- B. **Order appearance.** The court may order the person having the physical custody or control of the child to bring the child to the hearing.
- C. **Requirements.** The general summons procedures of Rule 1124 shall be followed.

COMMENT

Section 6335 of the Juvenile Act provides that the court is to direct the issuance of a summons to the parent, guardian, or other custodian, a guardian *ad litem*, and any other persons as appear to the court to be proper and necessary parties to the proceedings. 42 Pa.C.S. § 6335(a).

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

Official Note: Rule 1600 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1600 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1601. PERMANENCY HEARING NOTICE

At least fifteen days prior to the hearing, the court or its designee shall give notice of the permanency hearing to:

- 1) all parties;
- 2) the attorney for the county agency;
- 3) the child's attorney
- 4) the guardian's attorney;
- 5) the parents, child's foster parent, preadoptive parent, or relative providing care for the child;
- 6) the court appointed special advocate, if assigned; and
- 7) any other persons as directed by the court.

Official Note: Rule 1601 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1601 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

**PART B
PERMANENCY HEARING**

RULE 1607. REGULAR SCHEDULING OF PERMANENCY HEARINGS

A. **Thirty days.** The court shall conduct permanency hearings within thirty days of:

- 1) an adjudication of dependency at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made;
- 2) a permanency hearing at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made and the permanency plan for the child is incomplete or inconsistent with the court's determination;
- 3) an allegation that aggravated circumstances exist regarding a child who has been adjudicated dependent; or
- 4) a motion alleging that the hearing is necessary to protect the safety or physical, mental, or moral welfare of a dependent child.

B. **Six months.** The court shall conduct a permanency hearing within six months of:

- 1) the date of the child's removal from the child's guardian for placement pursuant to 42 Pa. C.S. §§ 6324 or 6332, or pursuant to a transfer of legal custody or other disposition pursuant to Rule 1515; or
- 2) each previous permanency hearing until the child is returned to the child's guardian or removed from the jurisdiction of the court pursuant to Rule 1613.

COMMENT

See 42 Pa.C.S. § 6351(e)(3).

Official Note: Rule 1607 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1607 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1608. PERMANENCY HEARING

- A. **Purpose of hearing.** For every case, the court shall conduct a permanency hearing for purposes of determining or reviewing:
- 1) the permanency plan of the child;
 - 2) the date by which the goal of permanency for the child might be achieved; and
 - 3) whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child.
- B. **Court's findings.** At the permanency hearing, the court shall making findings consistent with 42 Pa.C.S. § 6351(f).
- C. **Recording.** The permanency hearing shall be recorded. The recording shall be transcribed:
- 1) pursuant to a court order; or
 - 2) when there is an appeal.
- D. **Evidence.** Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court.
- E. **Family Service Plan or Permanency Plan.** The county agency shall review the family service plan or permanency plan at least every six months. If the plan is modified, the county agency shall provide all parties and when requested, the court, with the modified plan at least fifteen days prior to the permanency hearing.

COMMENT

See 42 Pa.C.S. §§ 6341, 6351.

Permanency planning is a concept whereby children are not relegated to the limbo of spending their childhood in foster homes, but instead, dedicated effort is made by the court and the county agency to rehabilitate and reunite the family in a reasonable time, and failing in this, to free the child for adoption. *In re M.B.*, 449 Pa.Super. 507, 674 A.2d 702 (1996) quoting *In re Quick*, 384 Pa.Super. 412, 559 A.2d 42 (1989).

To the extent practicable, the judge or master that presided over the adjudicatory and original dispositional hearing for a child should preside over the permanency hearing for the same child.

Under paragraph (B), the court is to make a finding consistent with 42 Pa.C.S. § 6351(f), in that the court is to determine all of the following: 1) the continuing necessity for and appropriateness of the placement; 2) the appropriateness, feasibility, and extent of compliance with the permanency plan developed for the child; 3) the extent of progress made toward alleviating the circumstances which necessitated the original placement; 4) the appropriateness and feasibility of the current placement goal for the child; 5) the likely date by which the placement goal for the child might be achieved; 6) whether reasonable efforts were made to finalize the permanency plan in effect; 7) whether the child is safe; 8) if the child has been placed outside the Commonwealth, whether the placement continues to be best suited

to the safety, protection, and physical, mental, and moral welfare of the child; 9) the services needed to assist a child who is sixteen years of age or older to make the transition to independent living; and 10) if the child has been in placement for at least fifteen of the last twenty-two months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made, whether the county agency has filed or sought to join a motion to terminate parental rights and to identify, recruit, process, and approve a qualified family to adopt the child unless: a) the child is being cared for by a relative best suited to the physical, mental, and moral welfare of the child; b) the county agency has documented a compelling reason for determining that filing a motion to terminate parental rights would not serve the needs and welfare of the child; or c) the child's family has not been provided with necessary services to achieve the safe return to the child's guardian within the time frames set forth in the permanency plan.

For family service plan requirements, see 55 PA CODE §§ 3130.61 & 3130.63.

Official Note: Rule 1608 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1608 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1609. COURT ORDER OF PERMANENCY HEARING DETERMINATIONS

- A. **Findings.** After every permanency hearing, the court shall issue a written order, which provides whether the permanency plan is best suited to the safety, protection, and physical, mental, and moral welfare of the child.
- B. **Determination made.** The court's order shall reflect a determination made consistent with 42 Pa.C.S. § 6351(f.1).
- C. **Transfer of legal custody.** If the court decides to transfer permanent legal custody of the child to a person found to be qualified to provide care, shelter, and supervision of the child, the permanency order shall include:
- 1) the name and address of such person unless disclosure is prohibited by court order;
 - 2) the limitations of the order; and
 - 3) any temporary visitation rights of parents.
- D. **Orders concerning guardian.** The court shall include any conditions, limitations, restrictions, and obligations in its permanency order imposed upon the guardian.

COMMENT

Under paragraph (B), the court's order is to reflect whether: 1) If the court finds that return of the child is best suited to the safety, protection, and physical, mental, and moral welfare of the child, the court shall specify: a) the conditions of the return of the child; and b) the projected date of the return of the child; or 2) If the court finds that the return of the child is not best suited to the safety, protection, and physical, mental, and moral welfare of the child, the court shall determine if and when the child will be placed: a) for adoption and the county agency will file for termination of parental rights pursuant to Pa.O.C.R., Rule 15.4; b) with a legal custodian; c) with a fit and willing relative; or d) in another living arrangement intended to be permanent in nature which is approved by the court and where the county agency has documented a compelling reason explaining why options under (a) through (c) are not feasible.

Official Note: Rule 1609 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1609 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1613. TERMINATION OF COURT SUPERVISION

A. **Concluding Supervision.** Any party, or the court on its own motion, may move for the termination of supervision when court-ordered services from the county agency are no longer needed and:

- 1) the child has remained with the guardian and the circumstances which necessitated the dependency adjudication have been alleviated;
- 2) the child has been reunified with the guardian and the circumstances which necessitated the dependency adjudication and placement have been alleviated;
- 3) the child has been placed with a ready, willing, and able parent who was not previously identified by the county agency [has come forward];
- 4) the child has been adopted and services from the county agency are no longer needed;
- 5) the child has been placed in the custody of a permanent legal custodian and services from the county agency are no longer needed;
- 6) the child has been placed in the custody of a fit and willing relative and services from the county agency are no longer needed;
- 7) the child has been placed in another living arrangement intended to be permanent and services from the county agency are no longer needed;
- 8) the child has been adjudicated delinquent and services from the county agency are no longer needed;
- 9) the child has been emancipated by the court;
- 10) the child is eighteen years old and [no longer wants service] refusing further services from the county agency;
- 11) the child has died;
- 12) a court in another county of this Commonwealth has accepted jurisdiction; or
- 13) a court in another state has accepted jurisdiction.

B. **Ready, willing, and able parent.** When services from the county agency are no longer necessary because the court has determined that the child is not dependent pursuant to paragraph (A)(3) because a non-custodial parent has been found by the court to be able and available, the court shall enter an order awarding custody to

that parent and the court order shall have the effect and be docketed as a decision entered pursuant to Pa.R.C.P.

- C. **Objection.** Any party may object to a motion under paragraph (A) and request a hearing.
- D. **Hearing.** If objections have been made under paragraph (C), the court shall hold a hearing and give each party an opportunity to be heard before the court enters its final order.
- E. **Cessation of services.** When all of the above listed requirements have been met, the court may discharge the child from its supervision and close the case.

COMMENT

For procedures on motions, see Rule 1344. For procedures on the dispositional order, see Rule 1515.

For guidelines under paragraph (A), see 42 Pa.C.S. §§ 6301(b) & 6351(f.1).

Pursuant to paragraph (A)(8), if a child has been adjudicated delinquent, the court may terminate court supervision unless dependency is necessary for placement. *In re Deanna S.*, 422 Pa.Super. 439, 619 A.2d 758 (1993). The court may also decide to retain dependency jurisdiction regardless of the delinquency adjudication because the child still needs dependency services.

For procedures on emancipation pursuant to paragraph (A)(9), see *Berks County Children and Youth Services v. Rowan*, 428 Pa.Super. 448, 631 A.2d 615 (1993). See also, 22 Pa.Code § 11.11, 55 Pa.Code § 145.62.

Pursuant to paragraph (A)(10), a child who was adjudicated dependent prior to reaching the age of eighteen and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, may remain in the course of instruction or treatment until the age of twenty-one. 42 Pa.C.S. § 6302. See also, 55 Pa.Code §§ 3130.5 & 3130.87; *In re S.J.*, 906 A.2d 547 (Pa. Super. Ct. 2006).

The court may not terminate jurisdiction solely because the dependent child is a runaway. *In re Deanna S.*, 422 Pa.Super. 439, 619 A.2d 758 (1993).

A child whose non-custodial parent is ready, willing, and able to provide adequate care for the child may not be found dependent. *In re M.L.*, 562 Pa. 646, 757 A.2d 849 (2000). See paragraph (B).

Pursuant to 42 Pa.C.S. § 6351(a)(2.1), a court may transfer permanent legal custody to a person found by the court to be qualified to receive and care for the child. 42 Pa.C.S. § 6351(a)(2.1). See also *Justin S.*, 375 Pa.Super. 88, 543 A.2d 1192 (1988).

Official Note: Rule 1613 adopted August, 21, 2006, effective February 1, 2007. Amended July 29, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1613 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1613 published with the Court's Order at 39 Pa.B. 4887 (August 15, 2009).

RULE 1616. POST-DISPOSITIONAL PROCEDURES; APPEALS [RESERVED]

CHAPTER 17
AGGRAVATED CIRCUMSTANCES

- 1701. Motion for Finding of Aggravated Circumstances
- 1702. Filing of Motion for Finding of Aggravated Circumstances
- 1705. Adjudication of Aggravated Circumstances

RULE 1701. MOTION FOR FINDING OF AGGRAVATED CIRCUMSTANCES

- A. **Dependency Petitions.** A motion for finding of aggravated circumstances may be included in a dependency petition pursuant to Rule 1330.

- B. **Motion for Aggravated Circumstances.** If it is determined that aggravated circumstances exist after the filing of the petition, a request for a finding of aggravated circumstances shall be made by motion pursuant to Rule 1344. The motion shall be written.

COMMENT

See 42 Pa.C.S. §§ 6302, 6334(b).

Under paragraph (B), all motions for a finding of aggravated circumstances are to be written. Oral motions under Rule 1344 do not apply to motions for finding of aggravated circumstances.

The aggravated circumstances, as defined by 42 Pa.C.S. § 6302, are to be specifically identified in the motion for finding of aggravated circumstances.

Official Note: Rule 1701 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1701 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1702. FILING OF MOTION FOR FINDING OF AGGRAVATED CIRCUMSTANCES

A motion for finding of aggravated circumstances shall be filed with the clerk of courts by the county agency as soon as possible but no later than twenty-one days from the determination by the county agency that aggravated circumstances exist.

COMMENT

See 42 Pa.C.S. § 6334(b).

Official Note: Rule 1702 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1702 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1705. ADJUDICATION OF AGGRAVATED CIRCUMSTANCES

- A. **Finding after adjudication of dependency.** After a finding of dependency pursuant to Rule 1409, the court shall determine if aggravated circumstances exist.
- B. **Reasonable efforts.** If the court finds aggravated circumstances exist, the court shall determine whether reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family shall be made or continue to be made and the court shall proceed to a dispositional hearing under Rule 1512.
- C. **Court order.** If the court finds that reasonable efforts pursuant to paragraph (B) were made, the court shall include a statement in its order to that effect.

COMMENT

Under paragraph (A), the court is to find a child dependent before determining if aggravated circumstances exist. See 42 Pa.C.S. § 6341(c.1). The petition may be amended to include aggravated circumstances pursuant to Rule 1330(C).

A statement as to whether reasonable efforts were made under paragraph (B) are to be included in the court order under Rule 1409(C).

Official Note: Rule 1705 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1705 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

CHAPTER 18 SUSPENSIONS

1800. SUSPENSIONS OF ACTS OF ASSEMBLY

This rule provides for the suspension of the following Acts of Assembly that apply to dependency proceedings only:

- 1) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the child may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rules 1124, 1140, and 1364, which require a summoned person to fail to appear and the court to find that sufficient notice was given.
- 2) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rules 1127(A) & 1242(B)(2), which require all proceedings to be recorded, except for shelter care hearings.
- 3) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6311(b)(9), which provides that there is not a conflict of interest for the guardian *ad litem* in communicating the child's wishes and the recommendation relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety, is suspended only insofar as the Act is inconsistent with Rule 1151, which allows for appointment of separate legal counsel and a guardian *ad litem* when the guardian *ad litem* determines there is a conflict of interest between the child's legal interest and best interest.
- 4) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the child, is suspended only insofar as the Act is inconsistent with Rule 1152, which does not allow a guardian to waive the child's right to counsel and a child may not waive the right to a guardian *ad litem*.
- 5) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or classes of cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 1187, which allows masters to hear only specific classes of cases.
- 6) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6324, which authorizes law enforcement officers to take a child into custody, is suspended only insofar as the Act is inconsistent with Rule 1202, which provides for police officers taking a child into custody.

- 7) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty-four hours or the next business day of the admission of the child to shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the shelter care hearing if the child is in protective custody under Rules 1242 and 1330(A).
- 8) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 1320, 1321, and 1330, which provide that the county agency may file a petition and any other person shall file an application to file a petition.
- 9) The Act of December 19, 1990, P.L. 1240, No. 206, § 2, 23 Pa.C.S. § 6339, which provides for the confidentiality of reports made pursuant to the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.*, is suspended only insofar as the Law is inconsistent with Rule 1340(B)(1)(e), which provides for the disclosure of such reports if the reports are going to be used as evidence in a hearing to prove dependency of a child.
- 10) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides that a copy of the petition is to accompany a summons, is suspended only insofar as the Act is inconsistent with Rule 1360, which provides that the summons is to include a copy of the petition unless the petition has been previously served.

COMMENT

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. *See also* Rule 1102.

Official Note: Rule 1800 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1800 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1800 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009).