

**Rule 1120. Definitions.**

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HEALTH CARE is care related to any medical need including physical, mental, and dental health. This term is used in the broadest sense to include any type of health need.

**INDIAN CHILD is any unmarried person who is under the age of eighteen and is either 1) a member of an Indian tribe or 2) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.**

\* \* \*

**Comment:**

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“Health care” includes, but is not limited to, routine physical check-ups and examinations; emergency health care; surgeries; exploratory testing; psychological exams, counseling, therapy and treatment programs; drug and alcohol treatment; support groups; routine eye examinations and procedures; teeth cleanings, fluoride treatments, fillings, preventative dental treatments, root canals, and other dental surgeries; and any other examination or treatment relating to any physical, mental, and dental needs of the child.

**The definition for “Indian Child” originates from the Indian Child Welfare Act, 25 U.S.C. §§ 1901 *et seq.*, and the Bureau of Indian Affairs regulations, 25 C.F.R. § 23.2.**

\* \* \*

(This is an entirely new rule).

**Rule 1203. Indian Child.**

(a) **Inquiry.**

- (1) At the commencement of the initial proceeding, including a court's acceptance of either jurisdiction of a resident child from another state or supervision pursuant to another state's order, the court shall inquire as to the efforts made by the county agency to determine whether the child is an Indian child and whether any participant has reason to know the child is an Indian child. All responses shall be placed on the record.
- (2) The court shall advise the participants of their obligation to report to the court if they subsequently receive information that provides a reason to know the child is an Indian child.

(b) **Finding of Court.** The court shall make a finding as to whether there is reason to know the child is an Indian child.

(c) **Additional Requirements.**

- (1) If the court finds there is reason to know the child is an Indian child, but lacks sufficient evidence to determine whether the child is an Indian child, the court shall confirm due diligence has been used to make such determination, and the court shall treat the child as an Indian child until it can determine, from the record, that the child does not meet the definition of an Indian child.
- (2) If the court has sufficient evidence to conclude the child is an Indian child, then the notification and rights under the Indian Child Welfare Act shall apply.

**Comment:** The Indian Child Welfare Act, 25 U.S.C. §§ 1901 *et seq.* and the Bureau of Indian Affairs regulations, 25 C.F.R. § 23.107, require the court at the commencement of the initial proceeding to determine if any participant has reason to know whether the child is an Indian child.

For the definition of "Indian child," see Rule 1120. Nothing in this rule is intended to prohibit the court from continuing to inquire at every subsequent proceeding. For determination of a reason to know whether a child is an Indian child, see 25 C.F.R. §

23.107. When a court knows or has reason to know that a child is an Indian child, see 25 C.F.R. § 23.111 for notice requirements. See *also* 25 C.F.R. § 23.11.

For additional requirements concerning the emergency removal or emergency placement of an Indian child, see 25 C.F.R. § 23.113. For additional requirements concerning the non-emergent placement of an Indian child, see 25 C.F.R. §§ 23.121-.122. For the transfer of proceedings to the Indian child's tribe, see 25 C.F.R. §§ 23.115-.119. For requirements concerning voluntary proceedings for the placement of an Indian child, see 25 C.F.R. §§ 23.124-.127. For the placement preferences of an Indian child, see 25 C.F.R. §§ 23.131-.132.

**Rule 1210. Order for Protective Custody.**

**[A.](a) Application of [order] 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] 24** hours. The request shall set forth reasons for the need of protective custody **and include whether the applicant has reason to know the child is an Indian child as defined in Rule 1120.**

**[B.](b) Finding of [court] Court.**

- (1) 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.
- (2) At the time the court issues a protective custody order, the court shall inquire as to whether family finding efforts pursuant to Rule 1149 have been initiated by the county agency, **and as to the efforts made by the applicant to determine whether the child is an Indian child and whether any participant has reason to know the child is an Indian child pursuant to Rule 1203. All responses shall be placed on the record.**
- (3) The order may initially be oral, provided that it is reduced to writing within **[twenty-four] 24** hours or the next court business day.

**[C.](c) Law [enforcement] 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.](d) Contents of [order] 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;
- (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; **[and]**
- (8) findings and orders related to the requirements of Rule 1149 regarding family finding[.]; **and**
- (9) findings as to whether there is reason to know the child is an Indian child pursuant to Rule 1203.**

**[E.](e) Execution of [order] 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.

**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, including services and family finding 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. **See** 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).

**The court is required to inquire and determine whether any participants have reason to know whether the child is an Indian child. The court is also required to advise the participants of their obligation to report to the court if they subsequently receive information that provides a reason to know the child is an Indian child. See Pa.R.J.C.P. 1203.**

Pursuant to **[paragraph (D)(8)] subdivision (d)(8)**, the county agency should be looking for family and kin as a resource to aid and assist the family to prevent removal of the child from the home. When removal of the child is necessary, placement with family and kin will help reduce the potential trauma of the removal from the home. See Rule 1149 regarding family finding requirements.

**[Official Note: Rule 1210 adopted August 21, 2006, effective February 1, 2007. Amended July 13, 2015, effective October 1, 2015.]**

***Committee Explanatory Reports:***

**Final Report explaining the provisions of Rule 1210 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1210 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).]**

**Rule 1240. Shelter Care Application.**

**[A.](a) Filings.** A shelter care application may be oral or in writing. If oral, **[within twenty-four hours of exercising protective custody pursuant to Rule 1210,]** the county agency shall file a written shelter care application **within 24 hours of exercising protective custody pursuant to Rule 1210.**

**[B.](b) Application [contents] Contents.** Every shelter care application shall set forth:

- (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) a statement detailing family finding efforts and:
  - [(a)](i)** the reasonable efforts made to prevent placement; and
  - [(b)](ii)** why 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~~[.];~~ **and**
- (10) whether the applicant has reason to know the child is an Indian child as defined in Rule 1120.**

**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] 72** hours of taking the child into protective custody. See **[Rule 1242(D)] Pa.R.J.C.P. 1242(d)**.

Pursuant to **[paragraph (B)(6)] subdivision (b)(6)**, the application is to contain a statement detailing the reasonable efforts made to prevent placement and the specific reasons why there are no less restrictive alternatives available. This statement may include information such as: 1) the circumstances of the case; 2) family finding efforts made by the county agency; 3) contact with family members or other kin; 4) the child's educational, health care, and disability needs; and 5) any need for emergency actions.

See Rule 1149 regarding family finding requirements.

**[Official Note: Rule 1240 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended July 13, 2015, effective October 1, 2015.]**

***Committee Explanatory Reports:***

**Final Report explaining the provisions of Rule 1240 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1240 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the amendments to Rule 1240 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).]**



**Rule 1242. Shelter Care Hearing.**

**[A.](a) Informing of [rights] 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.](b) Manner of [hearing] 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] 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.
- (4) **Advanced [communication technology] Communication Technology.** Upon good cause shown, a court may utilize advanced communication technology pursuant to Rule 1129.

**[C.](c) Findings.** The court shall determine whether:

- (1) there are sufficient facts in support of the shelter care application;
- (2) the county agency has reasonably engaged in family finding;
- (3) custody of the child is warranted after consideration of the following factors:

**[(a)](i)** remaining in the home would be contrary to the welfare and best interests of the child;

**[(b)](ii)** reasonable efforts were made by the county agency to prevent the child's placement;

**[(c)](iii)** the child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there are no less restrictive alternatives available; and

**[(d)](iv)** the lack of efforts was reasonable in the case of an emergency placement where services were not offered;

(4) a person, other than the county agency, submitting a shelter care application, is a party to the proceedings; **[and]**

(5) there are any special needs of the child that have been identified and that the court deems necessary to address while the child is in shelter care[.]; **and**

**(6) the county agency has made efforts to determine whether the child is an Indian child and whether any participant has reason to know the child is an Indian child pursuant to Rule 1203.**

**[D.](d) Prompt [hearing] Hearing.** The court shall conduct a hearing within **[seventy-two] 72** hours of taking the child into protective custody. The parties shall not be permitted to waive the shelter care hearing.

**[E.](e) Court [order] Order.** At the conclusion of the shelter care hearing, the court shall enter a written order setting forth:

(1) its findings pursuant to **[paragraph (C)] subdivision (c);**

(2) any conditions placed upon any party;

(3) any orders regarding family finding pursuant to Rule 1149;

(4) any orders for placement or temporary care of the child;

(5) any findings or orders necessary to ensure the stability and appropriateness of the child's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 1147;

(6) any findings or orders necessary to identify, monitor, and address the child's needs concerning health care and disability, if any, and if

parental consent cannot be obtained, authorize evaluations and treatment needed; **[and]**

(7) any orders of visitation[.]; **and**

**(8) whether there is reason to know the child is an Indian child pursuant to Rule 1203.**

**Comment:** Pursuant to **[paragraph (B)(4)] subdivision (b)(4)**, it is expected that the parties be present. Only upon good cause shown should advanced communication technology be utilized.

Pursuant to **[paragraph (C)] subdivision (c)**, the court is to make a determination that the evidence presented with the shelter care application under Rule 1240 is supported by sufficient facts. After this determination, the court is to determine whether the custody of the child is warranted by requiring a finding that: 1) remaining in the home would be contrary to the health and welfare of the child; 2) reasonable efforts were made by the county agency to prevent the placement of the child; 3) the child was placed in the least restrictive placement available; and 4) if the child was taken into emergency placement without services being offered, the lack of efforts by the county agency was reasonable. Additionally, the court is to state the reasons why there are no less restrictive alternatives available.

Family finding is to be initiated prior to the shelter care hearing. See Comment to Rule 1149 as to level of reasonableness.

Pursuant to **[paragraph (C)(2)] subdivision (c)(2)**, the court is to make a determination whether the county agency has reasonably engaged or is to engage in family finding in the case. The county agency will be required to report its diligent family finding efforts at subsequent hearings. **[See] See** Rule 1149 for requirements of family finding. **[See also Rules 1408(2), 1512(D)(1)(h), 1514(A)(4), 1608(D)(1)(h),] See also Rules 1408(b), 1512(D)(1)(h), 1514(a)(4), 1608(d)(1)(viii)**, and 1610(D) and their Comments for the court's findings as to the county agency's satisfaction of the family finding requirements and Rules **[1210(D), 1409(C) and 1609(D)] 1210(d), 1409(c) and 1609(D)** and Comments to Rules 1408, 1409, 1512, 1514, 1515, **and** 1608[, **1609, 1610, and]** - 1611 on the court's orders.

Pursuant to **[paragraph (C)(4)] subdivision (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.

**The court is required to inquire and determine whether any participants have reason to know whether the child is an Indian child. The court is also required to advise the participants of their obligation to report to the court if they subsequently receive information that provides a reason to know the child is an Indian child. See Pa.R.J.C.P. 1203.**

Under **[paragraph (D)] subdivision (d)**, the court is to ensure a timely hearing. Nothing in **[paragraph (D)] subdivision (d)** is intended to preclude the use of stipulations or agreements among the parties, subject to court review and acceptance at the shelter care hearing.

See 42 Pa.C.S. § 6332 **(Informal Hearing)**.

Pursuant to **[paragraph (E)] subdivision (e)**, the court is to enter a written order. It is important that the court address any special needs of the child while the child is in shelter care. The child's attorney or the county agency is to present any educational, health care, and disability needs to the court, if known at the time of the hearing. These needs may include a child's educational stability, needs concerning early intervention, remedial services, health care, and disability. If the court determines a child is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 1147.

The court's order should address the child's educational stability, including the right to an educational decision maker. The order should address the child's right to: 1) educational stability, including the right to: a) remain in the same school regardless of a change in placement when it is in the child's best interest; b) immediate enrollment when a school change is in the child's best interest; and c) have school proximity considered in all placement changes, 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*; 2) an educational decision maker pursuant to Rule 1147, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 24 P.S. §§ 13-1371 and 13-1372, 55 Pa. Code § 3130.87, and 20 U.S.C. §§ 1400 *et seq.*; 4) the educational services necessary to support the child's transition to successful adulthood pursuant to 42 Pa.C.S. § 6351 if the child is 14 or older; and 5) a transition plan that addresses the child's educational needs pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within 90 days.

When addressing the child's health and disability needs, the court's order should address the right of: 1) a child to receive timely and medically appropriate screenings and health care services, 55 Pa. Code § 3800.32 and 42 U.S.C. § 1396d(r); and 2) a child with disabilities to receive necessary accommodations, 42 U.S.C. § 12132, 28 C.F.R. §§ 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. §§ 84.1 *et seq.*

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a child and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. **See** 42 Pa.C.S. § 6339(b).

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

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

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

**Rule 1320. Application to File a Private Petition.**

**[A.](a) Application [contents] 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)](i)** the date of birth and address of the child;

**[(b)](ii)** the name and address of the child's guardian, or the name and address of the nearest adult relative;

**[(c)](iii) [if a child is Native American, the child's Native American history or affiliation with a tribe] whether the applicant has reason to know the child is an Indian child as defined in Rule 1120;**

**[(d)](iv)** 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.

**[B.](b) Notice to County Agency.** Upon receipt of an application, the court shall provide a copy of the application to the county agency. The county agency shall thereafter receive notice of the hearing.

**Comment:** Any person, other than the county agency, shall first file an application to file a petition under this **[Rule] rule**. Rule 1800 suspends 42 Pa.C.S. § 6334 to the extent it is inconsistent with this **[Rule] rule**.

See Rule 1321 for hearing on application.

This rule is not intended to preclude the county agency from seeking to intervene and participate in the hearing on the application. See **[Rule] Pa.R.J.C.P. 1133** (Motion to Intervene).

**[Official Note: Rule 1320 adopted August 21, 2006, effective February 1, 2007. Amended May 12, 2008, effective immediately. Amended May 16, 2017, effective July 1, 2017.]**

***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 24, 2008). Final Report explaining the amendments to Rule 1320 published with the Court's Order at 47 Pa.B. 3079 (June 3, 2017).]**

**Rule 1321. Hearing on Application for Private Petition.**

**[A.](a) Hearing.** The court shall conduct a hearing within **[fourteen] 14** 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) **the efforts made by the applicant to determine whether the child is an Indian child and whether any participant has reason to know the child is an Indian child pursuant to Rule 1203; and**
- (3)** whether the person applying for the petition is a proper party to the proceedings.

**[B.](b) Findings.**

- (1) **The court shall make a finding as to whether there is reason to know the child is an Indian child pursuant to Rule 1203.**
- (2)** If the court finds sufficient facts to support a petition of dependency, then the applicant may file a petition pursuant to Rule 1330.
- [(2)](3)** If the court finds the person making the application for a petition is a proper party to the proceedings, then the person shall be afforded all rights and privileges given to a party pursuant to law.

**[C.](c) Joinder.** Following grant of an application under this rule, the county agency shall be joined as a party in any further proceedings upon filing and service of a private petition pursuant to Rules 1330 and 1331.

**Comment:** Under **[paragraph (A)] subdivision (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] regardless of whether the applicant** is determined to be a party to the proceedings.



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

**The court is required to inquire and determine whether any participants have reason to know whether the child is an Indian child. The court is also required to advise the participants of their obligation to report to the court if they subsequently receive information that provides a reason to know the child is an Indian child. See Pa.R.J.C.P. 1203.**

**[Official Note: Rule 1321 adopted August 21, 2006, effective February 1, 2007. Amended May 16, 2017, effective July 1, 2017.]**

***Committee Explanatory Reports:***

**Final Report explaining the provisions of Rule 1321 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1321 published with the Court's Order at 47 Pa.B. 3079 (June 3, 2017).]**

**Rule 1330. Petition: Filing, Contents, Function, Aggravated Circumstances.**

**[A.](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)] subdivision (a)(2)** shall be met.
- (2) Within **[twenty-four] 24** hours of the shelter care hearing, the county agency shall file a dependency petition with the clerk of courts **[when] if**:
  - [(a)](i)** the child remains in protective custody pursuant to Rule 1201, 1202 or 1210; or
  - [(b)](ii)** 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.](b) Petition [contents] 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] whether the petitioner has reason to know the child is an Indian child as defined in Rule 1120**;
- (5) a statement **[that]**:
  - [(a)](i)** **that** it is in the best interest of the child and the public that the proceedings be brought; **and**
  - [(b)](ii)** **whether** the child is **[or is not]** currently under the supervision of the county agency;

- (6) a statement detailing family finding efforts and **[, if whether the county agency is seeking placement:**
- [(a)](i)** the reasonable efforts made to prevent placement; and
- [(b)](ii)** why there are no less restrictive alternatives available;
- (7) a concise statement of facts in support of the allegations for which the petition has been filed **[;] with**
- [(a)](i)** facts for each allegation **[shall be]** set forth separately; **and**
- [(b)](ii)** the relevant statute or code section **[shall be]** set forth specifically for each allegation;
- (8) 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;
- (9) the signature of the petitioner and the date of the execution of the petition; and
- (10) the whereabouts of the child unless disclosure is prohibited by court order and if taken into custody, the date and time thereof.

**[C.](c) Aggravated [circumstances] 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)] Subdivision (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.

Pursuant to **[paragraph (B)(6)] subdivision (b)(6)**, when the county agency is seeking placement, the petition is to include the reasonable efforts made to prevent placement, including efforts for family finding, and why there are no less restrictive alternatives available. **[See See Rule 1149 for family finding requirements. [See also Rule 1242(C)(2) & (3)(b) & (c)] See also Rule 1242(c)(2), (c)(3)(ii)-(c)(3)(iii), and Comments to Rules 1242, 1409, 1515, and 1608[, 1609, 1610, and] - 1611 for reasonable efforts determinations.**

If a petition is filed after the county agency has discontinued family finding for non-court cases, the county agency is to aver reasons for the discontinuance in the petition. See 67 Pa.C.S. § 7503.

A motion for finding of aggravated circumstances may be brought in a dependency petition. See **[Rule] Pa.R.J.C.P. 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.

## Rule 1408. Findings on Petition.

The court shall enter findings, within seven days of hearing the evidence on the petition or accepting stipulated facts by the parties:

- [(1)](a)** by specifying which, if any, allegations in the petition were proved by clear and convincing evidence; **[and]**
- [(2)](b)** **[its findings]** as to whether the county agency has reasonably engaged in family finding as required pursuant to Rule 1149[.]; **and**
- (c)** **as to the efforts made by the county agency to determine whether the child is an Indian child and whether any participant has reason to know the child is an Indian child pursuant to Rule 1203.**

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

Pursuant to **[paragraph (2)] subdivision (b)**, the court is to **[make a determination] determine** whether the county agency has reasonably engaged in family finding in the case. The county agency will be required to report its diligent family finding efforts at subsequent hearings. **[See] See** Rule 1149 for requirements of family finding. **[See also] See also** Rules **[1210(D)(8), 1242(E)(3), 1512(D)(1)(h), 1514(A)(4), 1608(D)(1)(h)] 1210(d)(8), 1242(e)(3), 1512(D)(1)(h), 1514(a)(4), 1608(d)(1)(viii)**, and 1610(D) and their Comments for the court's findings as to the county agency's satisfaction of the family finding requirements and Rules **[1242(E)(3), 1409(C)] 1242(e)(3), 1409(c)**, 1609(D), and 1611(C) and Comments to Rules 1242, 1409, 1512, 1514, 1515, **and** 1608[, 1609, 1610, and ] - 1611 on the court's orders.

**The court is required to inquire and determine whether any participants have reason to know whether the child is an Indian child. The court is also required to advise the participants of their obligation to report to the court if they subsequently receive information that provides a reason to know the child is an Indian child. See Pa.R.J.C.P. 1203.**

**[Official Note: Rule 1408 adopted August 21, 2006, effective February 1, 2007. Amended July 13, 2015, effective October 1, 2015.]**

### ***Committee Explanatory Reports:***

Final Report explaining the provisions of Rule 1408 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the

**amendments to Rule 1408 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).]**

**Rule 1409. Adjudication of Dependency and Court Order.**

**[A.](a) Adjudicating the [child dependent] 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] 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)](i)** dismiss the petition;

**[(b)](ii)** order the child to be discharged from custody and any restrictions ordered in the proceedings; and

**[(c)](iii)** 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.](b) Timing.**

- (1) **Child in [custody] 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] 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] 30** days.

**[C.](c) Court [order] Order.** The court shall include the following in its court order:

- (1) A statement pursuant to **[paragraph (A)] subdivision (a)**:

**[(a)](i)** as to whether the court finds the child to be dependent from clear and convincing evidence;

**[(b)](ii)** including the specific factual findings that form the bases of the court's decision;

- [(c)](iii) 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)](i) orders as to placement; [or]
  - [(b)](ii) visitation; or
  - [(c)](iii) change in custody; and
- (3) Any orders as to any aids in disposition that may assist in the preparation of the dispositional hearing, including orders regarding family finding.
- (4) **Whether there is reason to know the child is an Indian child pursuant to Rule 1203.**

**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 (Pa. Super. 1976). See also *In re Frank W.D., Jr.*, [315 Pa. Super. 510,] 462 A.2d 708 (Pa. Super. 1983); *In re Clouse*, [244 Pa. Super. 396,] 368 A.2d 780 (Pa. Super. 1976). The evidence must support that the child is dependent. *In the Matter of DeSavage*, [241 Pa. Super. 174,] 360 A.2d 237 (Pa. Super. 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. The court must apply the clear and convincing evidence standard (not the best interest of the child standard) that the child is dependent per the requirements of the Juvenile Act, 42 Pa.C.S. § 6341(c).** *In re Haynes*, [326 Pa. Super. 311,] 473 A.2d 1365 (Pa. Super. 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 (Pa. 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 (Pa. Super. 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 (Pa. 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)] subdivision (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 **(Adjudication) [&] and 6302 (Definitions)**.

Pursuant to **[paragraph (C)(3)] subdivision (c)(3)**, when making its determination for reasonable efforts made by the county agency, the court is to consider the extent to which the county agency has fulfilled its obligation pursuant to Rule 1149 regarding family finding. **[See also Rules 1242(C)(2) & (3)(b) & (c) and 1330(B)(6)] See also Rule 1242(c)(2), (c)(3)(ii)-(c)(3)(iii), Rule 1330(b)(6)**, and Comments to Rules 1242, 1330, 1515, **and** 1608[, 1609, 1610, and] - 1611 for reasonable efforts determinations.

If the requirements of Rule 1149 regarding family finding have not been met, the court is to make necessary orders to ensure compliance by enforcing this legislative mandate. See 67 Pa.C.S. §§ 7501 *et seq.* See also Pa.R.J.C.P. **[1242(E)(3)] 1242(e)(3)** and 1609(D), and Comments to Pa.R.J.C.P. 1242, 1408, 1512, 1514, 1515, and 1608-1611.