

RULE 1120. DEFINITIONS

* * *

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) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

* * *

COMMENT

* * *

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.

Official Note:

* * *

Amended _____, 2017, effective _____, 2017.

Committee Explanatory Reports:

Final Report explaining the amendments of Rule 1120 published with the Court’s Order at Pa.B. _____ (_____, 2017).

(This is an entirely new rule).

RULE 1205. INDIAN CHILD

A. Inquiry and Determination.

- 1) At the commencement of the initial proceeding, 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) Unless the court is convinced there is no reason to know whether the child is an Indian child, the court shall make such inquiry at all subsequent proceedings.
- 3) The court shall advise the participants of their obligation to report to the court if they subsequently learn 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 the child is an Indian child.

C. Additional Requirements.

- 1) In the event the court has reason to know the child is an Indian child, but lacks sufficient evidence to make such a finding, the court must 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 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, requires the court to determine if any participant has reason to know whether the child is an Indian child. The Act and federal regulations define an Indian child as one who is 1) unmarried, 2) under eighteen, and 3) a tribal member or eligible for tribal membership. 25 U.S.C. § 1903(4) and 25 C.F.R. § 23.2. The regulations place the burden on the court to ask every participant if there is any reason to know whether the child is an Indian child and to inform each participant of

their ongoing obligation to inform the court if they subsequently learn of any reason to believe the child is an Indian child. If the court finds there is reason to believe the child is an Indian child, certain notification and rights become effective. See the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.* and the Bureau of Indian Affairs regulations, 25 C.F.R. Part 23.

The court must make a finding, on the record, as to whether the child is an Indian child.

In the event the court has reason to believe the child is an Indian child but does not have sufficient evidence to make a finding either way, the protections and notifications of the Act apply until such a time the record supports a determination that the child is not an Indian child. The tribe has exclusive jurisdiction and the authority to determine whether a child is either a member of the tribe or eligible for tribal membership. Specific notification and rights become applicable once a court makes a judicial determination that the child is an Indian child. See the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.* and the Bureau of Indian Affairs regulations, 25 C.F.R. Part 23.

Official Note

Rule 1148 adopted _____, 2017, effective _____, 2017.

Committee Explanatory Reports:

Final Report explaining the adoption of Rule 1205 published with the Court's Order at ___ Pa.B. _____ (_____, 2017).

RULE 1210. ORDER FOR PROTECTIVE CUSTODY

A. Application of [o]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 [c]Court.

* * *

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 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 1205. All responses must be placed on the record.**

* * *

C. Law [e]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. Contents of [o]Order. The court order shall include:

* * *

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 1205.

E. Execution of [o]Order. The court shall specify:

* * *

COMMENT

* * *

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

The court is also to determine if any participant has reason to know whether the child is an Indian child. Paragraph (B)(2) and (D)(9) are intended to implement the requirements of 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. See Rule 1205.

Pursuant to paragraph (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. **Amended _____, 2017, effective _____, 2017.**

Committee Explanatory Reports:

* * *

The provisions of this Rule 1210 amended July 13, 2015, effective October 1, 2015, 45 Pa.B. 3987. Immediately preceding text appears at serial pages (357345) to (357346). **Final Report explaining the amendments to Rule 1210 published with the Court's Order at Pa.B. _____ (_____, 2017).**

RULE 1240. SHELTER CARE APPLICATION

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.

B. Application [c]Contents. Every shelter care application shall set forth:

* * *

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) a statement 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 1205.

COMMENT

* * *

See Rule 1149 regarding family finding requirements.

Paragraph (B)(10) is intended to aid the court in complying with the requirements of 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. See Rule 1205.

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. **Amended _____, 2017, effective _____, 2017.**

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1240 published with the Court's Order at Pa.B. _____ (_____, 2017).

RULE 1242. SHELTER CARE HEARING

A. Informing of [r]Rights. Upon commencement of the hearing, the court shall ensure that:

* * *

B. Manner of [h]Hearing.

* * *

C. Findings. The court shall determine whether:

* * *

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 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 1205.

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

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

* * *

COMMENT

* * *

Pursuant to 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.

Pursuant to paragraph (C)(6) the court is also to determine 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 1205. Paragraph (C)(6) is intended to implement the requirements of 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. See Rule 1205.

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

* * *

Official Note

Rule 1242 adopted August 21, 2006, effective February 1, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended July 13, 2015, effective October 1, 2015. **Amended _____, 2017, effective _____, 2017.**

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1242 published with the Court's Order at Pa.B. _____ (_____, 2017).

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

* * *

B. Petition [c]Contents. Every petition shall set forth plainly:

* * *

4) **[if a child is Native American, the child's Native American history or affiliation with a tribe]whether there is reason to know the child is an Indian child;**

* * *

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

COMMENT

* * *

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.

Paragraph (B)(4) is intended to aid the court in complying with the requirements of 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. See Rule 1205.

Pursuant to paragraph (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 Rule 1149 for family finding requirements. See *also* Rule 1242(C)(2) & (3)(b) & (c) and *Comments* to Rules 1242, 1409, 1515, 1608[, **1609, 1610, and**] - 1611 for reasonable efforts determinations.

* * *

Official Note

Rule 1330 adopted August 21, 2006, effective February 1, 2007. Amended July 13, 2015, effective October 1, 2015. **Amended _____, 2017, effective _____, 2017.**

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1330 published with the Court's Order at Pa.B. _____ (_____, 2017).

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) by specifying which, if any, allegations in the petition were proved by clear and convincing evidence; **[and]**

2) its findings as to whether the county agency has reasonably engaged in family finding as required pursuant to Rule 1149[.]; **and**

3) its findings 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 1205.

COMMENT

* * *

Pursuant to paragraph (2), the court is to make a determination 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 Rule 1149 for requirements of family finding. See *also* Rules 1210(D)(8), 1242(E)(3), 1512(D)(1)(h), 1514(A)(4), 1608(D)(1)(h), 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), 1609(D), and 1611(C) and *Comments* to Rules 1242, 1409, 1512, 1514, 1515, 1608[, **1609, 1610, and]** - 1611 on the court's orders.

The court is also to determine 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 1205. Paragraph (3) is intended to implement the requirements of 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. See Rule 1205.

Official Note

Rule 1408 adopted August 21, 2006, effective February 1, 2007. Amended July 13, 2015, effective October 1, 2015. **Amended _____, 2017, effective _____, 2017.**

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1408 published with the Court's Order at Pa.B. (, 2017).

RULE 1409. ADJUDICATION OF DEPENDENCY AND COURT ORDER

A. Adjudicating the [c]Child [d]Dependent. Once the court has made its findings under Rule 1408, the court shall enter an order whether the child is dependent.

* * *

C. Court [o]Order. The court shall include the following in its court order:

* * *

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 (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).

* * *

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 62 P. S. § 1301 *et seq.* See also Rules 1242(E)(3) and 1609(D) and *Comments* to Rules 1242, 1408, 1512, 1514, 1515, 1608[, **1609, 1610, and]_ 1611.**

The court is also to determine 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 1205. See 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. See Rule 1205.

Official Note

Rule 1409 adopted August 21, 2006, effective February 1, 2007. Amended July 13, 2015, effective October 1, 2015.

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to the comment to Rule 1409 published with the Court's Order at Pa.B. (, 2017).

RULE 1512. DISPOSITIONAL HEARING

A. Manner of [h]Hearing. The court shall conduct the dispositional hearing in an informal but orderly manner.

* * *

C. Duties of the [c]Court. The court shall determine on the record whether the parties have been advised of the following:

* * *

D. Court's [f]Findings. The court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 1515.

1) On the record in open court, the court shall state:

* * *

j) any findings 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]**

k) a visitation schedule, including any limitations[.]; **and**

l) findings 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 1205.

* * *

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.

* * *

Pursuant to paragraph (D)(1)(k), the court is to include siblings in its visitation schedule. See 42 U.S.C. § 671(a)(31), which requires reasonable efforts be made to place siblings together unless it is contrary to the safety or well-being of either sibling and that frequent visitation be assured if joint placement cannot be made.

Pursuant to paragraph (D)(1)(I), the court is also to determine 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 1205. Paragraph (D)(1)(I) is intended to implement the requirements of 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. See Rule 1205.

See Rule 1127 for recording and transcribing of proceedings.

See Rule 1136 for *ex parte* communications.

Official Note

Rule 1512 adopted August 21, 2006, effective February 1, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended July 13, 2015, effective October 1, 2015. **Amended _____, 2017, effective _____, 2017.**

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1512 published with the Court's Order at Pa.B. _____ (_____, 2017).

RULE 1514. DISPOSITIONAL FINDING BEFORE REMOVAL FROM HOME

A. Required [f]Findings. Prior to entering a dispositional order removing a child from the home, the court shall state on the record in open court the following specific findings:

* * *

4) The county agency has reasonably satisfied the requirements of Rule 1149 regarding family finding; **[and]**

5) One of the following:

* * *

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[.]; **and**

6) 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 1205.

B. Aggravated [c]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)(5)(a) through (c) is not necessary.

COMMENT

* * *

Pursuant to paragraph (A)(4), the court is to determine whether the county agency has reasonably satisfied the requirements of Rule 1149 regarding family finding. If the county agency has failed to meet the diligent family finding efforts requirements of Rule 1149, the court is to utilize its powers to enforce this legislative mandate. See 62 P.S. § 1301 *et seq.* See also Rules 1210(D)(8), 1242(E)(3), 1409(C), 1609(D), and 1611(C) and *Comments* to Rules 1242, 1408, 1409, 1512, 1515, 1608[, **1609, 1610, and]**-1611.

Pursuant to paragraph (A)(6), the court is to determine 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 1205. Paragraph (A)(6) is intended to implement the requirements of 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. See Rule 1205.

Official Note

Rule 1514 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended July 13, 2015, effective October 1, 2015. **Amended _____, 2017, effective _____, 2017.**

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1514 published with the Court's Order at Pa.B. _____ (_____, 2017).

RULE 1515. DISPOSITIONAL ORDER

* * *

B. Transfer of [c]Custody. If the court decides to transfer 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:

* * *

COMMENT

* * *

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 62 P.S. § 1301 *et seq.* See *also* Rules 1210(D)(8), 1242(E)(3), 1409(C), 1609(D), and 1611(C) and *Comments* to Rules 1242, 1408, 1409, 1512, 1514, 1608[, **1609, 1610, and]** - 1611. 45 C.F.R. § 1356.21 provides a specific foster care provider may not be placed in a court order to be in compliance with and receive funding through the Federal Financial Participation.

The court is also to determine 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 the requirements of 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. See Rule 1205.

Dispositional orders should comport in substantial form and content to the 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.pacourts.us/forms/dependency-forms>.

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

Official Note

Rule 1515 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended July 13, 2015, effective October 1, 2015. **Amended _____, 2017, effective _____, 2017.**

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1515 published with the Court's Order at Pa.B. (, 2017).

RULE 1608. PERMANENCY HEARING

A. Purpose and [t]Timing of [h]Hearing. For every case, the court shall conduct a permanency hearing at least every six months for purposes of determining or reviewing:

* * *

D. Court's [f]Findings.

1) Findings at all six-month hearings. At each permanency hearing, the court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 1609. On the record in open court, the court shall state:

* * *

p) whether sufficient steps have been taken by the county agency to ensure the child has been provided regular, ongoing opportunities to engage in age-appropriate or developmentally-appropriate activities, including:

i) consulting the child in an age-appropriate or developmentally-appropriate manner about the opportunities to participate in activities; and

ii) identifying and addressing any barriers to participation; **[and]**

q) whether the visitation schedule for the child with the child's guardian is adequate, unless a finding is made that visitation is contrary to the safety or well-being of the child[.]; **and**

r) 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 1205.

* * *

COMMENT

* * *

In addition to the permanency hearing contemplated by this rule, courts may also conduct additional **[and/]**or more frequent intermittent review hearings or status

conferences that address specific issues based on the circumstances of the case and assist the court in ensuring timely permanency.

* * *

Pursuant to paragraph (D)(1)(o), the county agency is to testify and enter evidence into the record on how it took sufficient steps to ensure the caregiver is exercising the reasonable and prudent parent standard. For the definition of “caregiver” and the “reasonable and prudent parent standard,” see Rule 1120. Pursuant to paragraph (D)(1)(p), when documenting its steps taken, the county agency is to include how it consulted with the child in an age-appropriate or developmentally-appropriate manner about the opportunities of the child to participate in activities. For the definition of “age-appropriate or developmentally-appropriate,” see Rule 1120. These additions have been made to help dependent children have a sense of normalcy in their lives. These children should be able to participate in extracurricular, enrichment, cultural, and social activities without having to consult caseworkers and ask the court’s permission many days prior to the event. See *also* Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183), 42 U.S.C. §§ 675 and 675a (2014).

Pursuant to paragraph (D)(1)(r), the court is to determine 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 1205. Paragraph (D)(1)(r) is intended to implement the requirements of 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. See Rule 1205.

* * *

Official Note

Rule 1608 adopted August 21, 2006, effective February 1, 2007. Amended December 18, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended October 21, 2013, effective December 1, 2013. Amended July 13, 2015, effective October 1, 2015. Amended December 9, 2015, effective January 1, 2016. Amended June 14, 2016, effective August 1, 2016. **Amended _____, 2017, effective _____, 2017.**

Committee Explanatory Reports:

* * *

**Final Report explaining the amendments to Rule 1608 published with the
Court's Order at Pa.B. (, 2017).**

RULE 1609. PERMANENCY HEARING ORDERS

* * *

B. Determination [m]Made. The court's order shall reflect a determination made pursuant to Rule 1608(D).

C. Transfer of [c]Custody. If the court decides to transfer 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, including the type of custody granted; and
- 3) any temporary visitation rights of parents.

D. Orders on [f]Family [f]Finding.

- 1) The court order shall indicate whether family finding efforts made by the county agency were reasonable;
- 2) If the family finding efforts were not reasonable, the court shall order the county agency to engage in family finding prior to the next permanency hearing;

E. Orders [c]Concerning [e]Education.

- 1) The court's order shall address the stability and appropriateness of the child's education; and
- 2) When appropriate, the court shall appoint an educational decision maker pursuant to Rule 1147.

F. Orders [c]Concerning [h]Health [c]Care and [d]Disability.

- 1) The court's order shall identify, monitor, and address the child's needs concerning health care and disability; and
- 2) The court's orders shall authorize evaluations and treatment if parental consent cannot be obtained.

G. Guardians. The permanency order shall include any conditions, limitations, restrictions, and obligations imposed upon the guardian.

H. Indian Child. The permanency order shall include 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 1205.

COMMENT

* * *

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. 42 Pa.C.S. § 6339(b).

Pursuant to paragraph (H), **the court is to determine 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 1205. Paragraph (H) is intended to implement the requirements of 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. See Rule 1205.**

See Rule 1611 for permanency hearing orders for children over the age of eighteen.

Official Note

Rule 1609 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended October 21, 2013, effective December 1, 2013. Amended July 13, 2015, effective October 1, 2015. **Amended _____, 2017, effective _____, 2017.**

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1609 published with the Court's Order at Pa.B. _____ (_____, 2017).