

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the Rules of Juvenile Court Procedure – Dependency Matters be adopted and prescribed to govern dependency procedure and practice in this Commonwealth. The proposed rules will secure uniformity and simplicity in procedure throughout juvenile courts in this Commonwealth. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the history of the Committee, the process of rule-drafting, and the Committee's considerations in formulating this proposal. Please note that the Committee's *Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the explanatory *Reports*.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Christine Riscili, Esq.
Staff Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

no later than Thursday, October 13, 2005.

August 1, 2005 BY THE JUVENILE COURT PROCEDURAL RULES COMMITTEE:

Francis Barry McCarthy, Chair

A. Christine Riscili, Esq., Staff Counsel

RULES OF JUVENILE COURT PROCEDURE

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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).

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.

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.

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."

PART A
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- 1120. Definitions
- 1121. Local Rules
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RULE 1120. DEFINITIONS

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, 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, 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.

INTAKE STAFF is any responsible person taking custody of the child on behalf of the court, shelter care facility, or medical facility.

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.

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.

PLACEMENT FACILITY is any non-secure facility, privately or publicly owned and operated, that identifies itself either by charter, articles of incorporation or program description, to receive dependent children as a case disposition. Placement facilities include, but are not limited to, foster care, residential facilities, group homes, after-school programs, and day programs.

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.*

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.

COMMENT

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

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.

RULE 1121. LOCAL RULES

- A. For the purpose of this rule, the term, "local rule" shall include every rule, regulation, directive, policy, custom, usage, form, or order of general application, however labeled or promulgated, adopted or enforced by a court of common pleas to govern dependency practice and procedure, which requires a party or party's attorney to do or refrain from doing something.
- B. All local rules promulgated before the effective date of this rule are hereby vacated on the date this rule becomes effective.
- C. Local rules shall not be inconsistent with any rule of the Supreme Court or any Act of Assembly.
 - 1) Each judicial district may promulgate new local rules that do not conflict with the Rules of Juvenile Court Procedure.
 - 2) 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. A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:
 - 1) A local rule shall be in writing.
 - 2) Seven certified copies of the local rule shall be filed by the court promulgating the rule with the Administrative Office of Pennsylvania Courts.
 - 3) Two certified copies of the local rule shall be distributed by the court promulgating the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
 - 4) One certified copy of the local rule shall be filed by the court promulgating the rule with the Juvenile Court Procedural Rules Committee.
 - 5) The local rules shall be kept continuously available for public inspection and copying in the office of the clerk of courts. Upon request and payment of reasonable costs of reproduction and mailing, the clerk shall furnish to any person a copy of any local rule.
- E. A local rule shall become effective not less than thirty days after the date of publication of the rule in the *Pennsylvania Bulletin*.
- F. No case shall be dismissed nor request for relief granted or denied because of the failure to comply with a local rule. 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 attorney to comply with the local rule.

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

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) vacates all current local rules on the effective date of this rule. The local rules are to be repromulgated to comply with this rule. This includes rekeying pursuant to paragraph (C)(2) and meeting the appropriate filing requirements under paragraph (D).

To simplify the use of local rules, local dependency procedural rules are required to be given numbers that are keyed to the number of the general dependency procedural rules to which the local rules correspond. 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 dependency procedural rule.

The purpose of paragraph (D) is to emphasize that the adopting authority is to comply with all the provisions of paragraph (D) before any local rule, or any amendment to local rules, will be effective and enforceable.

Paragraph (D)(5) requires that a separate consolidated set of local rules be maintained in the clerk's office.

The Administrative Office of Pennsylvania Courts maintains a web-page containing the texts of local rules. That web-page is located at: <http://www.courts.state.pa.us/judicial-council/local-rules/index.htm>.

Although under paragraph (E) 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 purpose of paragraph (F) is to 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 (F) 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 (F), 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.

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.*, 505 A.2d 1014 (Pa. Super. Ct. 1986).

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 court may issue a bench warrant.

COMMENT

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.*, 603 A.2d 627 (Pa. Super. Ct. 1992), and *In re A.H.*, 763 A.2d 873 (Pa. Super. Ct. 2000) for production of documents necessary to prepare for a hearing.

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*, 519 A.2d 978 (Pa. Super. Ct. 1987) for punishment of contempt (children). See also *In re Griffin*, 690 A.2d 1192 (Pa. Super. Ct. 1997) (foster parents), *Janet D. v. Carros*, 362 A.2d 1060 (Pa. Super. Ct. 1976) (county agency), and *In re Rose*, 54 A.2d 297 (Pa. Super. Ct. 1947) (parents) for additional guidance on contempt for other parties.

RULE 1124. SUMMONS AND NOTICE

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. Summons or notice shall be served:

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

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

COMMENT

In paragraph (C), 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.

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.

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*, 387 A.2d 83 (Pa. 1978); *Commonwealth v. Shields*, 383 A.2d 844 (Pa. 1978). This rule is intended to provide a mechanism to ensure appropriate recording and transcribing of court proceedings. See Rule 1800 for suspension of §6336(c), only to the extent that the Act does not provide for recordings of all dependency proceedings, except shelter care hearings.

The rule is intended to apply to all dependency proceedings and to ensure all proceedings are recorded, including proceedings before masters.

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.

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. In no case shall an unrepresented party be excluded without counsel.

C. **Accompanying child to proceedings.** 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.

Under Paragraph (B)(2), no proceeding is to occur in the absence of counsel if a party is excluded from a proceeding, even if the party has waived the right to counsel. See Rule 1152 for waiver of counsel.

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

RULE 1129. OPEN PROCEEDINGS [RESERVED]

RULE 1130. PUBLIC DISCUSSION BY COURT PERSONNEL OF PENDING MATTERS

All court personnel including, among others, county agency caseworkers, court clerks, bailiffs, tipstuffs, 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.

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 allowing intervention if the grounds on which intervention are sought is sufficient. A motion may be denied if:

- 1) the interest of the movant is already adequately represented;
- 2) the motion for intervention was unduly delayed; or
- 3) the intervention will unduly delay or prejudice the adjudication of dependency or the rights of the parties.

COMMENT

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*, 555 A.2d 793 (Pa. 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.*, 691 A.2d 520 (Pa. Super. Ct. 1997). See 23 Pa. C.S. § 5313 for grandparent intervention. See also *R.M. v. Baxter*, 777 A.2d 446 (Pa. 2001) (grandparent standing); *Mitch v. Bucks Co. Children and Youth Social Service Agency*, 556 A.2d 419 (Pa. Super. Ct. 1989) (prospective adoptive parent standing); *In re M.K.*, 636 A.2d 198 (Pa. Super. Ct. 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.*, 505 A.2d 1014 (Pa. Super. Ct. 1986).

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

See Rule 1344 for motions and Rule 1345 for service.

RULE 1134. PROCEEDING *IN CAMERA*

All *in camera* proceedings are to be recorded and each party's attorney shall be present.

COMMENT

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

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

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.

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.

PART B(2)
COUNSEL

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

RULE 1150. ATTORNEYS – APPEARANCES AND WITHDRAWALS

A. Appearances.

- 1) Counsel, including guardians *ad litem*, for each party 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.

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

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 *also* Rule 1613 for termination of court supervision.

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

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)(2); 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)(2).

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.** Except as provided by paragraph (B)(1), 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.** Except as provided by paragraph (B)(1), 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.

If the legal interests and the best interests of the child are in conflict, the guardian *ad litem* for the child may petition the court for assignment of legal counsel. 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.

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, these errors may be lost permanently.

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 petition the court for appointment of separate legal counsel. See Rules 1151 and 1800. See also Pa.R.P.C. 1.7 and 1.8.

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.

**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) The Administrative Office of Pennsylvania Courts;
- 5) The judges, officers and professional staff of courts of other jurisdictions when necessary for the discharge of their official duties; and
- 6) 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 (6). See 23 Pa.C.S. § 6340.

This rule is meant to include the contents of the juvenile court file as described in Rule 1166.

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.

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.

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 court administrator.

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; or
- 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.

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
- 1192. Challenge to Master's Recommendation

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.

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) adjudicatory hearings where aggravated circumstances are alleged;
 - d) dispositional hearings where removal from the home is contested; and
 - e) permanency or dispositional review hearings where a goal change is contested by any party;
- 2) enter orders for emergency or protective custody pursuant to Rules 1200 and 1210;
- 3) issue warrants; and
- 4) hear requests for writs of *habeas corpus*.

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)(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.

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*.

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 one business day 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. **Judicial Action.** The judge shall by order:
- 1) accept the recommendation;
 - 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) schedule a rehearing under Rule 1192 within seven days.

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 finding 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*, 459 A.2d 789 (Pa. Super. Ct. 1983). Nothing in this rule prohibits the court from modifying conclusions of law made by the master.

RULE 1192. CHALLENGE TO MASTER'S RECOMMENDATION

- A. **Time limitation.** 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.
- B. **Rehearing.** The judge shall act on the challenge within seven days of the date of the motion. The status of the child shall remain the same pending the rehearing unless otherwise ordered by the judge.

COMMENT

Under paragraph (A), the petition for a rehearing may be oral or written. For a re-hearing, there must be cause shown. See 42 Pa.C.S. § 6305.

Under paragraph (B), the judge does not have to grant a rehearing. A judge may deny the request based on the motion. If the judge does grant a hearing, it should be held within seven days of the date of the challenge.

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
EMERGENCY CUSTODY HEARING

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

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 has exceeded thirty days, dependency proceedings are to be commenced by the filing of a petition on the thirty-first 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 § 3130.56 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.

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. 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 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 where 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.*, 631 A.2d 1019 (Pa. Super. Ct. 1993) and 23 Pa.C.S. § 6315.

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, the court shall issue an order for protective custody to provide temporary emergency supervision of a child pending a hearing pursuant to Rule 1242.

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 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) 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.

C. Placement. A child shall be placed in an appropriate shelter care facility or receive other appropriate care approved by the county agency 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 to supervise 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. A police officer may take custody of the child. See Rule 1800 for suspension of 42 Pa.C.S. § 6324, which provides law enforcement may take a child into custody.

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 approved by the county agency 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 where 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.

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 of the child.
- 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 statement that reasonable efforts were made to prevent placement of the child; and
 - 7) a statement of the reasons for keeping the child in shelter care and that remaining in the home is contrary to the welfare 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).

PART C
EMERGENCY CUSTODY HEARING

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

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 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 scheduled within seventy-two hours of taking the child into protective custody. See Rule 1242(D).

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.*, 757 A.2d 849 (Pa. 2000).

The hearing may go forward if a guardian is not present. However, if a guardian has not been notified, a re-hearing 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.

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) reasonable efforts were made by the county agency to prevent the child's placement; or
b) 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) 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, narrow the issues, get evidence to be used at future hearings. 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.

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.

**CHAPTER 13
PRE-ADJUDICATORY PROCEDURES**

**PART A
VENUE**

- 1300. Venue
- 1302. Inter-County Transfer

**PART B
APPLICATION FOR PRIVATE PETITION**

- 1320. Application to File a Private Petition
- 1321. Preliminary Hearing on Application for Private Petition

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- 1330. Petition: Filing, Contents, Function, Aggravated Circumstances
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**PART D
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- 1340. Discovery and Inspection
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- 1360. Adjudicatory Summons
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- 1380. Preservation of Testimony After Commencement of Proceedings
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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.

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.

PART B
APPLICATION FOR PRIVATE PETITION

1320. Application to File a Private Petition

1321. Preliminary 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;
- 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. **Service.** If a person presents an application for a petition under this rule, the person shall serve the application on the court and all parties to the proceeding.

C. **Preliminary Objections.** A party may enter preliminary objections to the application for the petition of dependency by the filing of a motion pursuant to Rule 1344. The court shall rule on the objections at the preliminary hearing pursuant to Rule 1321.

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 preliminary hearing on application and finding that a petition is to be filed by the county agency.

RULE 1321. PRELIMINARY HEARING ON APPLICATION FOR PRIVATE PETITION

A. **Preliminary 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 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 preliminary hearing, the court is to determine if: 1) there are sufficient facts 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 preliminary hearing under paragraph (A) may be combined with the shelter care hearing pursuant to Rule 1242.

**PART C
PETITION**

- 1330. Petition: Filing, Contents, Function, Aggravated Circumstances
- 1331. Service of Petition
- 1333. Separate Petitions and Motion to Consolidate 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.

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)(3) could be electronic transmission, facsimile, county agency inter-office mail, and other similar methods.

RULE 1333. SEPARATE PETITIONS AND MOTION TO CONSOLIDATE 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. A motion to consolidate the adjudicatory hearing for separate petitions of siblings may be made by any party.

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.

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.

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.

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 that 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 adjudicatory hearing;
 - g) any tangible objects, including documents, photographs, or other tangible evidence;
 - 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 that 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 general 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.*, 603 A.2d 627 (Pa. Super. Ct. 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 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.

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.

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 the motion shall sign a written 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.

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.

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 non-custodial guardians 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 1128 for presence at proceedings. See Rule 1124 for the general summons and notice procedures.

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, relative providing care for the child, and non-custodial guardians of the child that are not parties to the proceedings; and
- 5) the county agency.

COMMENT

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

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. Proof 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, relative providing care for the child, and non-custodial guardians of the child that are not parties to the proceedings 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).

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 court may issue a bench warrant.

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 cannot 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.

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.

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.

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.

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) Timeframe within which the stipulation shall be in effect;
- 5) Timeframe 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.*, 442 A.2d 1179 (Pa. Super. Ct. 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.*, 530 A.2d 115, 119 (Pa. Super. Ct. 1987). See *In re A.S.*, 594 A.2d 714 (Pa. Super. Ct. 1991) and 42 Pa.C.S. § 6341.

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 Rule 1360 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.*, 514 A.2d 599 (Pa. Super. Ct. 1986) *aff'd* 538 A.2d 495 (Pa. 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 judges' findings should be supported by a full discussion of the evidence. See *In Re Clouse*, 368 A.2d 780 (Pa. Super. Ct. 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.

RULE 1408. FINDINGS ON PETITION

- A. **Specific findings.** 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 and that the child is without proper parental care and control.
- B. **Clear and Convincing Evidence.** If the court finds allegations in the petition to be supported by clear and convincing evidence and the child is without proper parental care and control, the court shall make and file its findings and proceed to the adjudication of dependency pursuant to Rule 1409.
- C. **No Clear and Convincing Evidence.** If the court does not find allegations in the petition to be supported by clear and convincing evidence or the child to be without proper parental care and control, the court shall:
- 1) dismiss the petition;
 - 2) order the child to be discharged from custody and any restrictions ordered in the proceedings;
 - 3) 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.

COMMENT

Before the court can find a child to be dependent, there must be clear and convincing evidence in support of the petition and the child is without proper parental care and control. 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*, 366 A.2d 1271 (Pa. Super. Ct. 1976). See also *In re Frank W.D., Jr.*, 462 A.2d 708 (Pa. Super. Ct. 1983) *In re Clouse*, 368 A.2d 780 (Pa. Super. Ct. 1976). The evidence must support that the child is without proper parental care and control. *In the Matter of DeSavage*, 360 A.2d 237 (Pa. Super. Ct. 1976). The court is not free to apply the best interest of the child standard but the requirements of the Juvenile Act, 42 Pa.C.S. § 6341(c), clear and convincing evidence that the child is dependent is the proper standard. *In re Haynes*, 473 A.2d 1365 (Pa. Super. Ct. 1983). A child, whose non-custodial parent is ready, willing, and able to provide adequate care for the child, cannot be found dependent. *In re M.L.*, 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.*, 543 A.2d 1192 (Pa. Super. Ct. 1988).

The court is to specify which allegations in the petition are the bases for the finding of dependency under paragraph (A). 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.*, 790 A.2d 300 (Pa. 2002).

See also 42 Pa.C.S. §§ 6341 and 6302.

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 and control, the court shall dismiss the petition and order the child to be discharged from custody and any restrictions ordered in the proceedings.

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 entering 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;
 - d) finding the child to be without proper parental care and control; 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

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.

**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 or its designee shall issue a summons compelling the parties 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 and notice 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.

RULE 1501. DISPOSITIONAL NOTICE

The court or its designee shall give notice of the dispositional 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, relative providing care for the child, and non-custodial guardians of the child that are not parties to the proceedings; and
- 5) the court appointed special advocate, if assigned.

COMMENT

All parties, including custodial guardians, are to receive a summons pursuant to Rule 1500.

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.** If the county agency has completed a family service 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*, 430 A.2d 308 (Pa. Super. Ct. 1981).

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

Because of time constraints, a family service plan may 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.

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).

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 an amended petition.

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 non-custodial guardians 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.

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 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, a finding under paragraphs (A)(2)(a) through (c) is not necessary.

COMMENT

See 42 Pa.C.S. § 6351(b).

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, 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 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.

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.

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.

**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]

RULE 1600. SUMMONS FOR THE PERMANENCY HEARING

- A. **Summons.** The court or its designee shall issue a summons compelling the parties to appear for the permanency hearing at least fifteen days prior to the 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 and notice 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.

RULE 1601. PERMANENCY HEARING NOTICE

The court or its designee shall give notice of the permanency hearing at least fifteen days prior to the 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, relative providing care for the child, and non-custodial guardians of the child that are not parties to the proceedings; and
- 5) the court appointed special advocate, if assigned.

COMMENT

All parties, including custodial guardians, are to receive a summons pursuant to Rule 1600.

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 petition 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).

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 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 dispositional review 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.** The county agency shall review the family service plan at least every six months. If the family service plan is modified, the county agency shall provide all parties and when requested, the court, with the modified family service plan at least fifteen days prior to the permanency hearing.

COMMENT

See 42 Pa.C.S. § 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 unite the family in a reasonable time, and failing in this, to free the child for adoption. *In re M.B.*, 674 A.2d 702 (Pa. Super. Ct. 1996) quoting *In re Quick*, 559 A.2d 42 (Pa. Super. Ct. 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 petition 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 petition 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.

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 return of the child 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.; 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.

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) a) the family has completed the terms of the family service plan; and
b) the child is returned to the guardian;
 - 2) a ready, willing, and able parent has come forward;
 - 3) the child has been adopted;
 - 4) the court has transferred jurisdiction to another court;
 - 5) the child is eighteen years old; or
 - 6) the court has found other reasons for termination of court supervision.
- 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)(2) 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 docketed as a decision entered pursuant to Pa.R.C.P.
- C. **Objection.** Any party may object to a motion under paragraphs (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. See *also*, 42 Pa.C.S. § 6351.

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.*, 543 A.2d 1192 (Pa. Super. Ct. 1988).

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.

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).

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).

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 Rule 1124, which requires 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 requires 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 provide 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.

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.

COMMITTEE'S RECOMMENDATION

The Juvenile Court Procedural Rules Committee (hereinafter "Committee") is recommending to the Supreme Court that the following rules of Juvenile Court Procedure, dealing with the dependency jurisdiction of the juvenile court, be adopted and promulgated.

In preparing this recommendation, the Committee surveyed local practices across this Commonwealth by speaking with county agency directors, supervisors, and caseworkers, attorneys for the county agencies, local police departments, and parent advocate attorneys in every judicial district. The Committee also examined case law, the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.*, the Pennsylvania Rules of Juvenile Court Procedure - delinquency matters, case law, and many other sources.

After examining these sources and local practices, the Committee debated and discussed every issue with great detail and thought. As a result of our discussions, the Committee has established a set of procedural rules that: 1) simplifies practice and procedure, 2) provides uniformity, and 3) reflects current practices of the majority of the judicial districts. These uniform rules will enable the statewide practice of law and create fairness in administration and efficiency in the management of dependency cases.

The Committee has also incorporated several provisions of the Juvenile Act that cover procedural areas to unify the procedural process in one area, the Rules of Juvenile Court Procedure. This will simplify procedure in each courtroom across this Commonwealth.

HISTORY OF THE COMMITTEE

The amendments to the Juvenile Act, 42 Pa.C.S § 6301, *et seq.*, passed during the 1995 Special Session on Crime and subsequent legislation changed the purpose of the juvenile court. There was an imperative need for the creation and ongoing review of statewide rules of delinquency procedure to establish uniformity throughout the Commonwealth.

In response to these statutory changes and specifically the resulting need for procedural rules, the Supreme Court initiated the Juvenile Court Procedural Rules Project (hereinafter "Project") in 1998 to undertake a close analysis of national standards, statutory and case law, and local practice for delinquents.

On the basis of the work completed by the Project and the need to begin the detailed and specialized work of drafting the necessary procedural rules in the juvenile

court for delinquency matters, the Supreme Court of Pennsylvania established the Juvenile Court Procedural Rules Committee on January 22, 2001.

In March of 2003, the Committee published its Rules on delinquency matters for public comment. The Committee then met in June of 2003 to consider and discuss the public comments received. The Committee then made some modifications to the Rules based on public comments and committee discussion. Then in September of 2003, the Committee sent a final recommendation to the Court on delinquency matters. After making some modifications at the Court's direction, the Court adopted the Rules of Juvenile Court Procedure on April 1, 2005. The Rules are effective October 1, 2005, with the exception of the masters' rules, which are effective April 1, 2006.

In October of 2003, the Committee met with several leaders in the dependency field to begin discussions on Rules for dependency matters of the juvenile court. After this initial meeting, it was determined that procedural rules in the juvenile court for dependency matters were imperative. The Committee began surveying judicial districts on all aspects of the dependency court. The Committee has held many meetings over the past two years and thoroughly discussed the local practices, statutory and case law, the Rules of Juvenile Court Procedures - delinquency matters, and other sources. The Committee has drafted rules of procedure for dependency matters and is now publishing the recommended dependency rules for your comment.

THE RULES GENERALLY

The Committee has presented the rules in an order that tracks the dependency system from beginning to end. The Committee used its delinquency rules as a starting point in tracking the dependency system. Chapter Eleven sets forth the general provisions and the provisions related to the business of the courts that apply throughout the juvenile court process. Chapter Twelve deals with the commencement of proceedings, orders for protective custody, and the procedures after a child is taken into protective custody, including the shelter care hearing. Chapter Thirteen provides for the procedures on venue & transfer, the filing of a petition, discovery, motions, summons and notice, and preservation of testimony and evidence. Chapter Fourteen sets forth the adjudicatory hearing procedures. Chapter Fifteen provides for the procedures for the dispositional hearing. Chapter Sixteen provides for the post-dispositional procedures, including permanency hearings. Chapter Seventeen provides for aggravated circumstances procedures. Finally, Chapter Eighteen, provides for suspensions of Acts of Assembly.

The new rules also will create uniformity in terminology, which will additionally facilitate the statewide practice of law. For example, we have used the term "emergency custody application" to describe the document that is completed by a person asking the court to review the case and to place a child into protective custody.

Throughout the rules, the term “application” will be used to describe a document that is submitted to court prior to any formal court action. Once proceedings have been commenced, a motion is the appropriate course of action for further requests.

The Committee begins the dependency rules in Chapter Eleven. Chapters One through Ten pertain to delinquency matters. In many instances, the dependency rule corresponds to a delinquency rule by adding a 1000 to the delinquency rule. For example, Rule 1100 corresponds to Rule 100, and Rule 1401 corresponds to Rule 401, with respect to the same subject matter.

The Committee used the corresponding delinquency rule as a beginning point for discussion when applicable. In many instances, the rules are similar in text.

CHAPTER ELEVEN

The general provisions are Rules 1100 – 1102. Business of courts is covered in Part A, Rules 1120 – 1135. Part B(1) addresses examination and treatment of a child in Rule 1145. Part B(2) addresses counsel, Rules 1150 – 1158. Records are covered in Part C, Rules 1160 – 1167. Part D addresses masters in Rules 1185 - 1192.

GENERAL PROVISIONS

RULE 1100 - SCOPE OF RULES

Rules in Chapters Eleven through Twenty (Rules 1100 - 2099) govern dependency matters.

RULE 1101 - PURPOSE AND CONSTRUCTION

The Committee wanted to emphasize that the rules are to secure uniformity and simplicity in procedure, fairness in administration, just determination and to be construed to effectuate the purposes of the Juvenile Act.

RULE 1102 - CITING THE JUVENILE COURT PROCEDURAL RULES

The citation, Pa.R.J.C.P. was the citation chosen by the Committee for delinquency matters. Dependency matters will have the same citation but as stated in the scope of rules, dependency matters are covered in Chapters Eleven through Twenty; whereas, delinquency matters are in Chapters One through Ten.

PART A – BUSINESS OF COURTS

RULE 1120 - DEFINITIONS

This rule clarifies terminology used throughout the Rules of Juvenile Court Procedure.

RULE 1121 – LOCAL RULES

This rule is very similar in text to the Pa.R.J.C.P. - Delinquency Matters, Rule 121, Pa.R.Crim.P. 105 and the Pa.R.C.P. 239. The Committee decided to follow the same procedures as these other rules to help the practitioner.

To enable the Supreme Court and the Committee to regulate and monitor local rules and to ensure the local rules are in compliance with the Pennsylvania Rules of Juvenile Court Procedure, and to ensure that local practices do not inhibit the statewide practice of law, this rule requires all local rules be vacated at the time these rules become effective. This does not mean all local rules have to be redrafted in their entirety. After reviewing their local rules for consistency and conformity with the new statewide rules, each judicial district may only need to repromulgate their rules after rekeying the rule numbers.

RULE 1122 – CONTINUANCES

The Committee felt that a general rule on continuances was necessary. The court must look at all the circumstances when determining if a continuance is appropriate.

The Committee also discussed what happens with a summons when a case is continued, and concluded the summons does not have to be reissued if the party is notified of the date, place, and time of the rescheduled hearing. This will save time and expense for each judicial district.

RULE 1123 - SUBPOENAS

The Committee wanted to ensure that subpoenas were uniform throughout the Commonwealth. This rule addresses the minimal contents of a subpoena, service, duration, and the allowance of bench warrants.

A subpoena must remain in force until the end of the proceedings; therefore, there only needs to be one subpoena for a three-day hearing. The person is considered subpoenaed until the proceedings have concluded.

See Rule 1124 for clarification of what individuals are to receive subpoenas.

RULE 1124 - SUMMONS AND NOTICE

The Committee wanted to ensure that summons and notice were uniform throughout the Commonwealth. This rule addresses the requirements of the summons, method of service, and the allowance of bench warrants.

Summonses are issued to bring parties to the proceedings. Notices go to all other persons who need to be present, such as, attorneys, caseworkers, foster parents and other interested individuals. Subpoenas governed by Rule 1124 are issued to bring all witnesses and individuals who will be testifying.

RULE 1126 - DEFECTS IN FORM, CONTENT, OR PROCEDURE

The Committee wanted to ensure that cases were not being dismissed because of a typographical error or non-prejudicial error.

RULE 1127 - RECORDING AND TRANSCRIBING JUVENILE COURT PROCEEDINGS

The Committee debated which hearings should be recorded. After extensive discussions, the Committee strongly believed that all hearings, except shelter care hearings, should be recorded for proper review, including appellate review.

Some form of record or transcript is necessary to permit meaningful consideration of claims of error and effective appellate review. *See, e.g., Pa.R.A.P. 1922, 1923, 1924: Commonwealth v. Fields, 387 A.2d 83 (Pa. 1978); Commonwealth v. Shields, 383 A.2d 844 (Pa. 1978).*

RULE 1128 – PRESENCE AT PROCEEDINGS

All parties are to be present at any proceeding; however, the court may proceed in the absence of a party if good cause is shown or the court has excluded a party for good cause. If a party is absent or excluded, counsel must be present. In no case may the court proceed without the child's attorney.

There are several instances when the court has good cause to proceed without a party. For example, if the child is one year old and could not offer any testimony or assist his or her attorney, or when a party has received notice and

willfully fails to attend, and many other reasons deemed appropriate by the court for good cause.

RULE 1130 - PUBLIC DISCUSSION BY COURT PERSONNEL OF PENDING MATTERS

The Committee felt it was important to include prohibitions on divulgence of information concerning a child on matters that are closed proceedings, held in chambers, or otherwise outside of the presence of the public.

RULE 1133 – MOTION TO INTERVENE

This rule provides an avenue for non-parties to move the court for intervention. A person must show a substantial, direct, and immediate interest in the case.

A motion may be denied if 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.

PART B(1) – EXAMINATION AND TREATMENT OF CHILD

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

This rule provides a mechanism for asking the court for examination and treatment of a child. Paragraph (A) is meant to address emergency situations when a dependency petition has not been filed yet. Paragraph (B) provides for a motion for examination and treatment after the filing of a dependency petition. When filing the motion, all parties must be served and be apprised of the request. For motion procedures, see Rule 1344.

The legal custodian of the child, including the county agency, has statutory authority to treat a child for routine medical care and no motions are necessary. See 42 Pa.C.S. § 6357. For non-routine treatment, the county agency must comply with the provisions of 55 PA CODE §§ 3130.91 and 3680.52.

PART B(2) - COUNSEL

RULE 1150 – ATTORNEY – APPEARANCES AND WITHDRAWALS

The Committee discussed at length the issue of duration of counsel's representation. The Committee decided to follow its recommendation in the

delinquency rules (Rule 150) in that counsel must stay in the case until the closing of the case, including direct appeals and permanency reviews. The Committee noted that it was important that the child have one attorney, whenever possible, through the process of the dependency system for stability and security.

If counsel has good cause for withdrawing from the case, this rule allows withdrawals in those cases. The court should look at all the circumstances when allowing withdrawal, especially if a party will be prejudiced or the proceedings will be delayed.

RULE 1151 – ASSIGNMENT OF COUNSEL

This rule provides when a child must receive a guardian *ad litem* and when a child must receive legal counsel. In some instances, a child may need both a guardian *ad litem* and legal counsel when there is a conflict of interest. Section 6311(b)(9) was suspended to the extent that the attorney decides if there is a conflict of interest after evaluating his or her interpretation of the Rules of Professional Conduct with each case and its circumstances. The attorney may petition the court for another attorney. The attorney is subject to the Rules of Professional Conduct and discipline by the Disciplinary Board of the Supreme Court of Pennsylvania; so it is crucial that the attorney evaluate each case separately.

RULE 1152 – WAIVER OF COUNSEL

The Committee agreed, as in the delinquency rules, that a child may waive legal counsel. The waiver must be knowingly, intelligently, and voluntarily made and the court must be assured that the child understands the benefits of counsel. If the court finds that the child has made an intelligent and voluntary choice, the court may appoint stand-by counsel to assist the child. It is understood that some children are too young to make this decision but the court is in the best position to consider all the factors of each case.

The Committee has also decided to recommend that a child may not waive the right to a guardian *ad litem*. The Committee felt in all these cases that there was a need for someone to represent the child's best interest.

PART C – RECORDS

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

RULE 1160 - INSPECTION OF JUVENILE FILE/RECORDS

The provisions of this rule are taken from the Juvenile Act. Because this is a procedural area, the Committee believed it was necessary to include this

provision in the rules. Certain sections of the Juvenile Act were not incorporated into the dependency rules because they deal strictly with delinquent juveniles.

PART (C)(2) - MAINTAINING RECORDS

RULE 1165 - DESIGN OF FORMS

This rule provides for the designing and publishing of forms that may be helpful in implementing these rules.

RULE 1166 - MAINTAINING RECORDS IN THE CLERK OF COURTS

In our surveys, the Committee found problems in record maintenance by the clerk of courts. This rule establishes how entries are to be made, the content of docket entries, and the custody of record. This will enable a proper record for appellate review.

It was also noted in the surveys that the county agency acts as the clerk of courts in some counties. Rule 1120 allows the agency or other designated person to act and perform the duties of the clerk of courts if this is an established local practice.

RULE 1167 – FILINGS AND SERVICE OF COURT ORDERS AND NOTICES

This rule provides for the filings and service of court orders and notices. The Committee tried to anticipate the advances in technology by providing, as methods of service, service by facsimile transmission or other electronic means, if requested.

PART D – MASTERS

RULE 1185 – APPOINTMENT TO CASES

The Committee expressed concern about allowing masters to practice in the same judicial district where they preside, noting the practice creates a conflict of interest; therefore, this was made a prohibited practice. This prohibition is consistent with what we learned from our surveys; in the majority of the judicial districts, masters are not practicing in juvenile courts.

RULE 1187 – AUTHORITY OF MASTER

A major issue for the Committee concerned whether masters should be limited in the types of cases they should hear. After several discussions, the Committee tentatively felt that masters should hear the less serious cases. The Committee thought that a judge should always hear termination of parental

rights, adoptions, adjudicatory hearings where aggravated circumstances are alleged, dispositional hearing where removal of the home is contested, and permanency or dispositional review hearings where a goal change is contested by any party. It is understood that in most instances, termination of parental rights and adoptions are heard in Orphans' Court; however, under 42 Pa.C.S. § 6351(g), a judge may switch hats and serve as the judge to decide those issues. The Committee wanted to ensure that the judge did not assign these important decisions to a master.

This rule also provides that at every hearing before the master, the parties should be informed of the right to a hearing before the judge. This provision is taken from the Juvenile Act.

The Committee wanted to stress the importance of dependency cases and their serious consequences, quite often, removal of child from his or her parent for some specified time, or termination of parental rights. Because of the seriousness of these cases, the Committee is tentatively recommending that judges should be hearing the evidence and making the difficult decisions. The Committee is very desirous to hear comments from all individuals on the proper scope of the master's authority.

RULE 1190 - STIPULATIONS BEFORE MASTER

This rule allows masters to hear any stipulation in any classes of cases that they are permitted to hear under Rule 1187.

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

This rule requires the master to submit a recommendation to the juvenile court judge within one business day, which reflects the local practices across the Commonwealth. Masters' decisions are subject to approval of the judge. The one-day requirement will expedite judicial action to resolve a matter as soon as possible.

The *Comment* to this rule provides that the court may promulgate a form for the master to utilize. The form may take the form of a court order.

RULE 1192 - CHALLENGE TO MASTER'S RECOMMENDATION

A master's recommendation is subject to the approval of the judge. Parties may object to the recommendation and ask for a rehearing under the Juvenile Act. This rule sets forth the procedures on how to challenge a recommendation.

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 must 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*, 459 A.2d 789 (Pa. Super. Ct. 1983).

CHAPTER TWELVE

Part A, Rule 1200 - 1202 provides for commencement of proceedings, procedures for protective medical custody, and protective custody by police and the county agency. Part B, Rule 1210 provides for the court order for protective custody. Part C provides for the shelter care application and hearing in Rules 1240 – 1243.

PART A – COMMENCING PROCEEDINGS

RULE 1200 – COMMENCING PROCEEDINGS

This rule provides the methods of commencing proceedings in a dependency case. In addition to the filing of a dependency petition, proceedings are commenced if a child is taken into protective custody, unless the child is promptly returned home, and an emergency custody application is submitted. The Committee chose the emergency custody application procedure to ensure notice is given to the proper parties, a petition is filed, a child receives the necessary support from the county agency, and several other procedures occur.

RULE 1201 - PROCEDURES FOR PROTECTIVE MEDICAL CUSTODY

This rule ensures that a child is not held in protective custody by a hospital or other medical institution for more than twenty-four hours. The county agency must be notified to obtain a court order for the child to be held for longer than twenty-four hours.

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

This rule provides for whether a court order is necessary when a child is taken into protective custody. If a child is taken into custody without a court order, a court order must be obtained within twenty-four hours. Additionally, the guardian must be notified of such custody, the reasons for the custody, and the whereabouts of the child, unless the court has prohibited disclosure of the child's whereabouts for the protection and safety of the child.

PART B – EMERGENCY CUSTODY

RULE 1210 - ORDER FOR PROTECTIVE CUSTODY

This rule provides for oral applications for protective custody; however, the request must be reduced to writing within twenty-four hours. This allows for requests and orders after normal business hours that may be reduced to writing by the next day within twenty-four hours.

PART C – EMERGENCY CUSTODY HEARING

RULE 1240 – SHELTER CARE APPLICATION

A shelter care application must be filed within twenty-four hours of taking a child into protective custody. A dependency petition may be filed in lieu of the shelter care application.

RULE 1241 - NOTICE OF SHELTER CARE HEARING

Notice of the shelter care hearing, including date, time, place, and purpose, is provided for by this rule.

RULE 1242 – GENERAL CONDUCT OF SHELTER CARE HEARING

This rule provides for the requirements at the shelter care hearing, including informing parties of their rights, the manner of the hearing, the findings of the court, the prompt hearing requirement, and the contents of the court order.

RULE 1243 – SHELTER CARE REHEARINGS

The Juvenile Act provides for rehearings if a guardian was not notified of the hearing. The Committee has built into this rule the requirement that a guardian submit an affidavit alleging he or she was not notified of the hearing and would like the opportunity to be heard. This requirement is designed to limit the number of rehearings by the court but allow the guardian to be heard if requested. There may be instances in which the guardian agrees with the decision of the hearing although the guardian was not present, and no rehearing is necessary.

CHAPTER THIRTEEN

Chapter Thirteen addresses the pre-adjudicatory procedures. Part A encompasses venue and inter-county transfer in Rules 1300 – 1302. Part B addresses an application for a private petition and a preliminary hearing in Rules 1320 – 1321. The filing of a petition and pertinent procedures surrounding the petition are included in Part C, Rules 1330 – 1336. For procedures following the filing of a petition, see Part D, Rules 1340 – 1364, including discovery, motions, service, summons, and notice. Part E, Rules 1380 – 1381 includes provisions on preservation of testimony and evidence.

PART A – VENUE

RULE 1300 - VENUE

A proceeding may be commenced in the county in which the child is present or the child's county of residence. The Committee thought of several scenarios when a transfer to another county may be beneficial so added a procedure that allows a motion for change of venue for convenience of the parties and witnesses.

RULE 1302 - INTER-COUNTY TRANSFER

Several counties transfer cases before, during, and at the conclusion of the case. This rule provides for transmission of the juvenile court file, including all pertinent information, to the court accepting the case or disposition.

PART B – APPLICATION FOR PRIVATE PETITION

RULE 1320 - APPLICATION TO FILE A PRIVATE PETITION

Any person, other than the county agency, must present an application to file a private petition to the court. In addition to the petition requirements, the person must explain the relationship to the child and to other parties. Preliminary objections may be made by any party.

RULE 1321 - PRELIMINARY HEARING ON APPLICATION FOR PRIVATE PETITION

This rule requires the court to conduct a preliminary hearing within fourteen days of the presentation of an application for a private petition. If the court finds that there are sufficient facts to support a dependency petition, and the court determines that the applicant is a proper party to the proceeding, the court is to authorize the filing of a dependency petition pursuant to Rule 1330.

PART C – PETITION

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

Section 6334 of the Juvenile Act was suspended to the extent that any person, other than the county agency, must first file an application pursuant to Rule 1320 to file a petition. This allows the court to screen those cases in which dependency is not the motivation for the filing, the private person is not the proper person to bring the petition, or there is insufficient evidence to proceed with the case.

RULE 1331 - SERVICE OF PETITION

The requirements for service of the petition are set forth in this rule.

RULE 1333 - SEPARATE PETITIONS AND MOTION TO CONSOLIDATE HEARING

This rule provides that separate petitions must be filed for every child. If there are siblings, a reference must be made in each petition, and adjudicatory hearings for siblings may be consolidated into one hearing when beneficial to the court.

RULE 1334 - AMENDMENT OF PETITION

This rule allows for amendments of the petition when there is a defect. It is in the court's discretion, if an amendment is for different sets of events or allegations. It also allows the court to continue the case because of an amendment.

RULE 1335 - WITHDRAWAL OF PETITION

All withdrawals of petitions by the county agency must be filed with the clerk of courts.

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

This rule provides for re-filings of petitions and motions for dismissal of the petition.

PART D – PROCEDURES FOLLOWING FILING OF PETITION

RULE 1340 –DISCOVERY AND INSPECTION

This rule emphasizes that the discovery process should be informal. Each party should disclose the necessary information, when requested, to the other parties without the need of filing a formal motion. Only when there is a general dispute as to discovery, should a motion to compel discovery be made. The uncontested matters should be disclosed informally even when a motion to compel has been filed.

The Committee had extensive debates over which items were to be mandatory or discretionary. The Committee concluded that a party should have all the necessary information to obtain a fair hearing and to create the best presentation of all the evidence to the court so the court could decide the issue of

dependency. Taking a child from a parent is one of the most invasive roles of the court and the court must carefully consider all the evidence.

This rule provides for discovery from the county agency and reciprocal discovery from other parties. All parties are to provide witness lists, witness statements, tangible objects or evidence that a party intends to use at a hearing, expert witness information and opinion to be offered at a hearing, or any other evidence a party intends to use at the hearing. In addition, if the county agency is going to use the following during a hearing, the county agency has a further obligation to provide: scientific reports or test, police reports, records of prior county agency involvement, records of current or prior reports involving the CPSL, and physical or mental examinations if any physical or mental condition of a party is in controversy.

Rule 1800 suspends § 6339 of the Child Protective Services Law only to the extent that if the reports are going to be introduced as evidence at a hearing, they must be disclosed.

It is important to note that in the Committee's surveys, the Committee found that approximately one-third of the judicial districts do not separate their files as to dependency cases or cases under the Child Protective Services Law. It may be important for discovery purposes that these files be maintained separately but the Committee decided to leave this decision to the judicial district.

RULE 1341 - PRE-ADJUDICATORY CONFERENCE

This rule allows the court to order pre-adjudicatory conferences.

RULES 1344 – MOTIONS AND ANSWERS

This rule provides for motions and answers to be made either orally or in writing. Because of the time constraints in juvenile court, several motions may be oral. However, if time allows, written motions are preferable.

RULE 1345 - FILING AND SERVICE

This rule provides for a uniform procedure on filing and serving.

PART D(2) - ADJUDICATORY SUMMONS AND NOTICE

RULE 1360 - ADJUDICATORY SUMMONS

This rule provides for the requirements of a summons for the adjudicatory hearing and that all parties are to receive a summons.

RULE 1361 - ADJUDICATORY NOTICE

This rule provides for the persons who are to receive notice of the adjudicatory hearing.

RULE 1363 - SERVICE OF SUMMONS

This rule provides the method, time, and proof of service for the summons.

RULE 1364 - FAILURE TO APPEAR ON THE SUMMONS

This rule provides for bench warrants when a summoned person fails to appear for the hearing.

PART E – PRESERVATION OF TESTIMONY AND EVIDENCE

RULE 1380 – PRESERVATION OF TESTIMONY AFTER COMMENCEMENT OF PROCEEDINGS

This rule provides for the preserving of testimony by court order or agreement between the parties.

RULE 1381 - PRESERVATION OF TESTIMONY BY VIDEO RECORDING

This rule provides for further requirements of preserving of testimony if the testimony is taken by video recording.

CHAPTER FOURTEEN

Chapter Fourteen addresses the procedures related to the adjudicatory hearing.

RULE 1401 - INTRODUCTION TO CHAPTER FOURTEEN

This is an explanatory rule that describes how cases are to proceed. The Committee wanted to ensure these procedures were followed and that proceedings could be combined so this explanatory clause was made into a rule that could be referenced in a court proceeding.

RULE 1404 – PROMPT ADJUDICATORY HEARING

The Committee discussed whether there should be a time limitation for having a hearing for children who have not been removed from their homes. The Committee believes an outstanding dependency petition is highly important and should be resolved as soon as practical but no later than forty-five days after the filing of a petition.

RULE 1405 - STIPULATIONS

This rule governs any agreements by the parties. The court must accept or reject the stipulations before proceeding with the case.

RULE 1406 – ADJUDICATORY HEARING

This rule governs the manner of the adjudicatory hearing, its recordings, evidence, and *ex parte* communications.

RULE 1408 - FINDINGS ON PETITION

Although in most cases the court will make its findings on the petition at the conclusion of the adjudicatory hearing, this rule provides that if the judge takes the matter under advisement, the court's decision must be made within seven days. The Committee was concerned with delays in cases when the court did not immediately make its findings on the petition. This restriction will alleviate this concern.

The burden of proof for finding of dependency is that the court finds the allegations in the petition to be supported by clear and convincing evidence.

When entering its findings on the record, the court may transfer 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. See *In re Justin S.*, 543 A.2d 1192 (Pa. Super. Ct. 1988).

RULE 1409 - ADJUDICATION OF DEPENDENCY AND COURT ORDER

The adjudication of dependency is usually made at either the adjudicatory or the dispositional hearing. The Committee wanted to ensure that the court makes a specific finding. Rule 1401 specifies that this finding may be made at the same time as other hearings.

This rule also provides for the contents of the court's order.

CHAPTER FIFTEEN

This chapter provides for the procedures of the dispositional proceedings in juvenile court, including the final order of the court. Part A provides for summons and notice in Rule 1500. Rules 1520 – 1526 are covered in Part B addressing the dispositional hearing and aids in the disposition.

PART A - SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING

RULE 1500 - SUMMONS FOR THE DISPOSITIONAL HEARING

This rule provides for the summons procedures for the dispositional hearing.

RULE 1501 - DISPOSITIONAL NOTICE

This rule provides for persons who are to receive notice of the dispositional hearing.

PART B – DISPOSITIONAL HEARING AND AIDS

RULE 1520 - PROMPT DISPOSITIONAL HEARING

This rule provides that the dispositional hearing should be held no later than twenty days from the findings on the petition when the child has been removed from the home. When the child has not been removed from the home, there are many factors that the court must take into consideration but those hearings have no specific time requirement.

RULE 1521 – AIDS IN DISPOSITION

The court may utilize examinations and experts at the dispositional hearing. This rule allows the court to authorize such examinations and order discovery on the expert's testimony. In addition, if a family service plan has been completed, the parties are to receive a copy.

RULE 1522 - PRE-DISPOSITIONAL STATEMENT

This rule provides that the petitioner must file a pre-dispositional statement with the court stating its recommendation. If a family service plan has been completed, the county agency may submit its recommendation in the family service plan.

RULE 1523 – DISPOSITIONAL HEARING

The “one judge - one family” philosophy that has swept our country was discussed by the Committee. The Committee agreed that this is the best-case scenario for all juvenile courts; however, on the practical side of this issue, we felt that this may not be feasible in all the judicial districts. In view of this, this rule's *Comment* points out that, if and when practicable, the same judge and master should hear all cases involving the same child or family.

This rule also provides for the procedures for the manner of the hearing, recording, and *ex parte* communication.

RULE 1524 - DISPOSITIONAL FINDING BEFORE REMOVAL FROM HOME

This rule lays out the requirements of 42 Pa.C.S. § 6351(b).

RULE 1525 – DISPOSITIONAL ORDER

This rule provides the minimal requirements of the dispositional order. It may be necessary to include additional information in the order depending on the type of case or if the court is to receive funding.

Additionally, the court may transfer legal custody of the child. See *Comment* to Rule 1408 for transferring of custody without an adjudication of dependency.

RULE 1526 - SERVICE OF THE DISPOSITIONAL ORDER

This rule provides those persons who are to receive a copy of the dispositional order.

CHAPTER SIXTEEN

This chapter provides for the post-dispositional procedures. Part A, Rules 1600 and 1601 provide for the dispositional summons and notice. Part B provides for permanency hearing, rights and duties of temporary custodians, and termination of court supervision.

PART A - SUMMONS AND NOTICE

RULE 1600 - SUMMONS FOR THE PERMANENCY HEARING

This rule provides that all parties are to receive a summons of the permanency hearings.

RULE 1601 - PERMANENCY HEARING NOTICE

This rule provides for which persons are to receive notice of the permanency hearing.

PART B – PERMANENCY HEARING

RULE 1621 - REGULAR SCHEDULING OF PERMANENCY HEARING

This rule sets forth the requirements of 42 Pa.C.S. § 6351(e)(3), which requires permanency hearings in thirty days or six months, depending on the case.

RULE 1622 – PERMANENCY HEARING

This rule provides for the purpose of the permanency hearing, the court's finding, recording, evidence, and the family service plan. Specific regulations concerning the family service plan can be found at 55 PA CODE §§ 3130.61 & 3130.63.

RULE 1624 - COURT ORDER OF PERMANENCY HEARING DETERMINATIONS

This rule provides for the finding and determination that the court must make following a permanency hearing.

RULE 1627 – TERMINATION OF COURT SUPERVISION

This rule provides for the requirements of termination of the court's supervision. If a party has an objection to the termination of supervision, the court must schedule and conduct a hearing. The court must give each party an opportunity to be heard.

CHAPTER SEVENTEEN

This chapter provides for aggravated circumstances in Rules 1701 - 1705.

RULE 1701 - MOTION FOR FINDING OF AGGRAVATED CIRCUMSTANCES

A motion for finding of aggravated circumstances may be included in the petition. If a petition has already been filed, a motion for a finding of aggravated circumstances must be filed. The motion procedures of Rule 1344 must be followed.

RULE 1702 - FILING OF MOTION FOR FINDING OF AGGRAVATED CIRCUMSTANCES

A county agency has twenty one days from the day the county agency determined aggravated circumstances exist to file a motion.

RULE 1705 - ADJUDICATION OF AGGRAVATED CIRCUMSTANCES

Before the court is able to find aggravated circumstances, the court must enter a finding of dependency pursuant to Rule 1409. If the court does find aggravated circumstances to exist, the court must determine if reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve the family shall be made or continue to be made.

CHAPTER EIGHTEEN

RULE 1800 - SUSPENSIONS OF ACTS OF ASSEMBLY

This rule provides for suspensions of Acts of Assembly to facilitate the recommended rules. The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution.