

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

* * *

COMMENT

* * *

Pursuant to paragraph (E), the court is to inform all parties of the right to counsel if they appear at a hearing without counsel. If a party is without financial resources or otherwise unable to employ counsel, the court is to appoint counsel prior to the proceeding. Because of the nature of the proceedings, it is extremely important that every “guardian” has an attorney. Therefore, the court is to encourage the child’s guardian to obtain counsel. Pursuant to Rule 1120, a 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. See Pa.R.J.C.P. 1120.

Official Note:

* * *

Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1151 published with the Court’s Order at 41 Pa.B. - (-).

**CHAPTER 16
POST-DISPOSITIONAL PROCEDURES**

* * *

**PART B(1)
MODIFICATIONS**

1606. Modification of Dependent Child's Placement

**PART (B)(2)
PERMANENCY HEARING**

* * *

**PART (C)
TERMINATION & POST-DISPOSITIONAL PROCEDURES**

1613. Termination of Court Supervision

1616. Post-Dispositional Procedures; Appeals (RESERVED)

PART B(1)
MODIFICATIONS

1606. Modification of Dependent Child's Placement

RULE 1606. MODIFICATION OF DEPENDENT CHILD'S PLACEMENT

A. County agency's duties.

1) Emergencies.

- a) Only in an emergency when a judge cannot be reached, a child may be placed temporarily in a shelter care facility or other appropriate care.**
- b) The county agency immediately shall notify the court and all parties of any change made due to the emergency.**
- c) The county agency shall file a motion or stipulation for modification of the dispositional order by the next business day of the child's placement in a shelter care facility or other appropriate care.**

- 2) Non-emergent cases. In all other cases, the county agency shall seek approval of the court for a change in the child's placement prior to the removal of the child from the placement by the filing of a motion or a stipulation for modification of the dispositional order.**

B. Contents of the motion. The motion for modification of the dispositional order shall include:

- 1) the specific reasons for the necessity of change to the order;**
- 2) the proposed placement;**
- 3) the current location of the child;**
- 4) the manner in which any educational, health care, and disability needs of the child will be addressed;**
- 5) an averment as to whether each party concurs or objects to the proposal, including the child's wishes if ascertainable; and**
- 6) the signatures of all the parties.**

C. Objections. If a party objects to proposed modification of the dispositional order, the objections shall be filed no later than three days after the filing of the motion for modification of the child's placement.

D. Court's duties. Once the county agency has requested approval from the court to modify a child's placement or after an emergency change in placement has already taken place, the court may:

- 1) schedule a prompt hearing to determine whether there will be a modification of the child's placement;**
- 2) enter an appropriate order to modify the child's placement; or**
- 3) enter an order denying the motion.**

COMMENT

This rule is intended to address changes in the child's placement. Brief temporary removals for hospitalization, respite situations, visitations, or other matters when a child will be returned to the same placement are not covered under this rule.

Pursuant to paragraph (A)(1), if there must be a change in the placement of the child due to an emergent situation, the county agency may temporarily place a child in a shelter-care facility or other appropriate care pending the filing of a motion for modification of the dispositional order. The county agency immediately is to notify the court and all parties of the change made and file a motion or stipulation by the next business day.

Pursuant to paragraph (A)(2), in all other cases, the court is to make a decision prior to the child being removed from the placement. Stability for the child is critical. Multiple placements can add to a child's trauma. A child should not be shuffled from home to home out of convenience for a foster parent, relative, or other person caring for the child.

Official Note: Rule 1606 adopted April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1606 published with the Court's Order at 41 Pa.B. - (-).

RULE 1608. PERMANENCY HEARING

A. **Purpose and timing of hearing.** For every case, the court shall conduct a permanency hearing **at least every six months** for purposes of determining or reviewing:

- 1) the permanency plan of the child;
- 2) the date by which the goal of permanency for the child might be achieved; and
- 3) whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. **[Court's findings. At the permanency hearing, the court shall making findings consistent with 42 Pa.C.S. § 6351(f).**

C. **[Recording. The permanency hearing shall be recorded. [The recording shall be transcribed:**

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

[D]C. Evidence.

- 1) 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.
- 2) If a report was submitted pursuant to Rule 1604, the court shall review and consider the report as it would consider all other evidence.

D. Court's findings.

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

- a) the appropriateness of the placement;**
- b) the appropriateness, feasibility, and extent of compliance with the permanency plan developed for the child;**

- c) the appropriateness and feasibility of the current placement goal for the child;
- d) the likely date by which the placement goal for the child might be achieved;
- e) whether reasonable efforts were made to finalize the permanency plan in effect;
- f) whether the county agency has made services available to the guardian, and if not, why those services have not been made available;
- g) the continued appropriateness of the permanency plan and the concurrent plan;
- h) whether the child is safe;
- i) 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;
- j) the services needed to assist a child who is sixteen years of age or older to make the transition to independent living, including:
 - i) the specific independent living services or instructions that are currently being provided by the county agency or private provider;
 - ii) the areas of need in independent living instruction that have been identified by the independent living assessment completed pursuant to the Chafee Act, 42 U.S.C. § 671 et seq.;
 - iii) the independent living services that the child will receive prior to the next permanency review hearing;
 - iv) whether the child is in the least restrictive, most family-like setting that will enable him to develop independent living skills;
 - v) the efforts that have been made to develop and maintain connections with supportive adults regardless of placement type;
 - vi) whether the child is making adequate educational progress to graduate from high school or whether the child is

enrolled in another specified educational program that will assist the child in achieving self-sufficiency;

vii) the job readiness services that have been provided to the child and the employment/career goals that have been established;

viii) whether the child has physical health or behavioral health needs that will require continued services into adulthood; and

ix) the steps being taken to ensure that the youth will have stable housing or living arrangements when discharged from care; and

k) any educational, health care, and disability needs of the child and the plan to ensure those needs are met.

2) Additional findings for fifteen of last twenty-two months. If the child has been in placement for fifteen of the last twenty-two months, the court may direct the county agency to file a petition to terminate parental rights.

* * *

F. Family Service Plan or Permanency Plan. The county agency shall review the family service plan or permanency plan at least every six months. If the plan is modified, the county agency shall **follow the filing and service requirements pursuant to Rule 1345.** **The parties [provide all parties]** and when requested, the court, **shall be provided** with the modified plan at least fifteen days prior to the permanency hearing.

COMMENT

See 42 Pa.C.S. §§ 6341, 6351.

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

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

[Under paragraph (B), the court is to make a finding consistent with 42 Pa.C.S. § 6351(f), in that the court is to determine all of the following: 1) the continuing necessity for and appropriateness of the placement; 2) the appropriateness, feasibility, and extent of compliance with the permanency plan developed for the child; 3) the extent of progress made toward alleviating the circumstances which necessitated the original placement; 4) the appropriateness and feasibility of the current placement goal for the child; 5) the likely date by which the placement goal for the child might be achieved; 6) whether reasonable efforts were made to finalize the permanency plan in effect; 7) whether the child is safe; 8) if the child has been placed outside the Commonwealth, whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child; 9) the services needed to assist a child who is sixteen years of age or older to make the transition to independent living; and 10) if

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

Pursuant to paragraph (A), courts are to conduct a permanency hearing every six months. Courts are strongly encouraged to conduct more frequent permanency hearings, such as every three months, when possible.

The court may schedule a three-month hearing or conference. At the three-month hearing, the court should ensure that: 1) services ordered at the dispositional hearing pursuant to Rule 1512 are put into place by the county agency; 2) the guardian who is the subject of the petition is given access to the services ordered; 3) the guardian is cooperating with the court-ordered services; and 4) a concurrent plan is developed if the primary plan may not be achieved.

A three-month hearing or conference is considered best practice for dependency cases and is highly recommended. The court should not wait until six months has elapsed to determine if the case is progressing. Time to achieve permanency is critical in dependency cases. In order to seek reimbursement under Title IV-E of the Social Security Act, 42 U.S.C. § 601 et seq., a full permanency hearing is to be conducted every six months.

Every child should have a concurrent plan, which is a secondary plan to be pursued if the primary permanency plan for the child cannot be achieved. See Comment to Rule 1512. For example, the primary plan may be reunification with the guardian. If the guardian does not substantially comply with the requirements of the court-ordered services, subsidized legal guardianship may be utilized as the concurrent plan. Because of time requirements, the concurrent plan is to be in place so that permanency may be achieved in a timely manner.

Pursuant to paragraph (D)(2), a "petition to terminate parental rights" is a term of art used pursuant to 23 Pa.C.S. § 2511 and Pa.R.O.C. Rule 15.4 to describe the motion terminating parental rights. This does not refer to the "petition" as defined in Pa.R.J.C.P. 1120.

The court is to move expeditiously towards permanency. A goal change motion may be filed at any time.

In addition to the permanency hearing contemplated by this rule, courts may also conduct additional and/or more frequent intermittent review hearings or status conferences, which address specific issues based on the circumstances of the case, and which assist the court in ensuring timely permanency.

A President Judge may allow Common Pleas Judges to "wear multiple hats" during a proceeding by conducting a combined hearing on dependency and Orphans' Court matters. See 42 Pa.C.S. § 6351(i); see also *In re Adoption of S.E.G.*, 587 Pa. 568, 901 A.2d 1017 (2006), where involuntary termination occurred prior to a goal change by the county agency.

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

See 42 U.S.C. § 675 (5)(A)-(H) for development of a transition plan pursuant to paragraph (D)(1)(i).

See Rule 1136 regarding *ex parte* communications.

Official Note:

* * *

Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1608 published with the Court's Order at 41 Pa.B.
- (-).

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:

* * *

- 6) the child has been placed in the **physical and legal** custody of a fit and willing relative and services from the county agency are no longer needed;
- 7) the child has been placed in another living arrangement intended to be permanent and services from the county agency are no longer needed **and a hearing has been held pursuant to paragraph (E) for a child who is age eighteen or older;**
- 8) the child has been adjudicated delinquent and services from the county agency are no longer needed **because all dependency issues have been resolved;**
- 9) the child has been emancipated by the court;
- 10) the child is eighteen years **[old] of age or older [and refusing further services from the county agency] and a hearing has been held pursuant to paragraph (E);**

* * *

E. **Children eighteen years of age or older.**

- 1) Before the court can terminate its supervision of a child who is eighteen years of age or older, a hearing shall be held at least ninety days prior to termination.**
- 2) Prior to the hearing, the child shall have the opportunity to make decisions about the transition plan and confer with the county agency about the details of the plan. The transition plan shall, at a minimum, include:**
 - a) the specific plans for housing;**
 - b) a description of the child's source of income;**
 - c) the specific plans for pursuing educational or vocational training goals;**
 - d) the child's employment goals and whether the child is employed;**

- e) a description of the health insurance plan that the child is expected to obtain and any continued health or behavioral health needs of the child;
- f) a description of any available programs that would provide mentors or assistance in establishing positive adult connections;
- g) verification that all vital identification documents and records have been provided to the child; and
- h) a description of any other needed support services.

3) At the hearing, the court shall review the transition plan for the child. If the court is not satisfied that the requirements of paragraph (E)(2) have been met, a subsequent hearing shall be scheduled.

4) The court shall not terminate its supervision of the child without approving an appropriate transition plan, unless the child, after an appropriate transition plan has been offered, is unwilling to consent to the supervision and the court determines termination is warranted.

F. Cessation of services. When all of the above listed requirements have been met, the court may discharge the child from its supervision and close the case.

COMMENT

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

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

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

If dependency issues have not been resolved, the case should be kept open and services ordered. The court should ensure that services are not discontinued solely because the child was adjudicated delinquent. The county agency and the juvenile probation are to collaborate on the case and resolve all outstanding issues. If a child is in a delinquency placement, the court is to ensure that the county agency and the juvenile probation office have collaborated to ensure appropriate services are in place.

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

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

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

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

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

Pursuant to paragraph (E)(2), the county agency is to assist the child and provide all the support necessary in developing a transition plan. See 42 U.S.C. § 675 (5)(A)-(H).

Pursuant to paragraph (E)(3), the court is to approve a transition plan that is suitable for the child and that has been personalized at the direction of the child.

Official Note:

* * *

Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

* * *

Final Report explaining the amendments to Rule 1613 published with the Court's Order at 41 Pa.B. - (-).