

INTRODUCTION

The Supreme Court of Pennsylvania has adopted the Rules of Juvenile Court Procedure -- Dependency Matters. The Rules will secure uniformity and simplicity in dependency procedure throughout juvenile courts in this Commonwealth.

The following explanatory *Report* highlights the history of the Committee, the process of rule-drafting, and the Committee's considerations in formulating the Rules of Juvenile Court Procedure. 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 *Report*.

EXPLANATORY REPORT

HISTORY OF THE COMMITTEE

The Supreme Court of Pennsylvania established the Juvenile Court Procedural Rules Committee on January 22, 2001. After working on delinquency matters for over two years and one half years, the Committee shifted its focus to dependency matters.

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 held many meetings and thoroughly discussed the local practices, statutory and case law, the Rules of Juvenile Court Procedure - Delinquency Matters, and other sources. The Committee drafted rules of procedure for dependency matters and published those rules on August 13, 2005. After receiving many comments, the Committee met in November of 2005 to discuss the public comment and made necessary modifications to its recommendation. In January of 2006, the Committee sent its final recommendation to the Court on dependency matters. The Court adopted the Rules of Juvenile Court Procedure - Dependency Matters on August 21, 2006. The Rules will become effective February 1, 2007.

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, the Rules use the term

“emergency custody application” to describe the document, which is used to place a child into protective custody, and which is completed by a person asking the court to review the case informally. Throughout the rules, the term “application” is 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 dependency 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 - 1191.

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.

The term “child” describes a dependent child. A person may remain in a course of treatment after the age of twenty one; however, this person, although engaged in treatment, is no longer dependent or governed by the dependency rules.

The term “police officer” is defined to include other persons who possess the power of arrest when acting within the scope of employment, such as a probation officer.

The Committee has used the term “petition” throughout the rules to describe the formal document by which a child is alleged to be dependent. Any other document traditionally labeled “a petition” has been changed to either a motion or an application to prevent confusion. A motion is brought once there is formal court action, which would be after a petition is filed. The Motions Rule 1344 requires filing and service pursuant to Rule 1345. This ensures every party is aware of the request by being served with a copy. An application is filed upon the court when there is no docket number, which would be prior to the filing of a petition.

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 that 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 the status of 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 are 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.

RULE 1124 - SUMMONS AND NOTICE

The Committee wanted to ensure that the summons and notice was 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 1123 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 are not 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 in 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 there are insufficient grounds for the intervention, 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 – ATTORNEYS – 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 GUARDIAN *AD LITEM* & 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) of 42 Pa.C.S. 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 under the circumstances of each case. 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 particular case.

The *Comment* to this rule provides that the Guardian *ad litem* may move for appointment as legal counsel and an appointment of a new guardian *ad litem*. The Committee felt that in most situations, the reasons for the conflict could be used to the child's detriment so the Guardian *ad litem* should not use this

information against the child. The Guardian *ad litem* then takes the role as legal counsel and the new guardian *ad litem* is not privy to this sensitive information. See ABA Standards on counsel.

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 COURT 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 other 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 its 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 does not allow the agency to act and perform the duties of the clerk of courts because they are a party to the proceeding. See *Comment* to Rule 1120.

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.

All court orders are to be issued by the court; however, the court may choose another designee to serve the orders or notices on its behalf.

PART D – PROCEEDINGS IN CASES BEFORE MASTER

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 the Committee learned from its 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 and receiving public comment, the Committee decided to recommend that masters should not hear termination of parental rights, adoptions, and any hearings in which any party seeks to establish a permanency goal of adoption or change the permanency goal to adoption.

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(i), 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.

The Committee also felt that if a party was going to seek adoption as a permanency goal, a judge needed to make that important decision. Once an adoption has been approved by a judge, a master can hear subsequent hearings.

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. If a party chooses to exercise this right, the matter shall be heard by the judge. This provision is taken from the Juvenile Act. See 42 Pa.C.S. § 6305(b).

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 two business days. Masters' decisions are subject to approval of the judge. A judge must approve the findings and recommendation. The master may NOT use orders that have been pre-stamped with the judge's signature. The two-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 structure of a court order for the court to sign and adopt after careful review.

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, an emergency custody application is submitted, the court accepts jurisdiction of a resident child from another state, or the court accepts supervision of a child pursuant to another state's order. 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 – SHELTER CARE

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 - NOTIFICATION 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 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 in 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.

Persons who have a legitimate dependency petition will be granted permission to file a petition. This rule is designed to stop parties from litigating domestic relations custody matters in juvenile court.

RULE 1321 - HEARING ON APPLICATION FOR PRIVATE PETITION

This rule requires the court to conduct a 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 to file a petition pursuant to Rule 1320. 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 CONSOLIDATED 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 the adjudicatory hearing for siblings is consolidated into one hearing unless otherwise directed by the court.

RULE 1334 - AMENDMENT OF PETITION

This rule allows for amendments of the petition when there is a defect. If an amendment is for different sets of events or allegations, it is allowed at the court's discretion. This rule 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 genuine 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 Child Protective Services Law, and physical or mental examinations if any physical or mental condition of a party is in controversy.

It is also provided throughout the discovery rules that certain items do not have to be disclosed if disclosure of those items is prohibited by law. For example, medical and mental health records and examinations are prohibited from being disclosed unless a party intends to use them at a hearing. If a document is used at a hearing, the confidentiality of the record or document is deemed waived and therefore discoverable.

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. Confidentiality of these records is deemed waived once they are used at a hearing.

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 1342 - 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 PROCEDURES

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. Under paragraph (A), the court shall issue the summons. The court may designate another person to distribute the summons once it has been ordered.

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 does 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.

RULE 1409 - ADJUDICATION OF DEPENDENCY & 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 in conjunction with the other hearings.

Under paragraph (A), the court shall enter an order as to whether the child is dependent or no dependency is found. This order shall be based on the court's findings on the allegations in the petition pursuant to Rule 1408. When entering the order, 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).

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 - 1501. Rules 1509 – 1516 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. Under paragraph (A), the court may issue the summons compelling any party to appear. The court may designate another person to distribute the summons once it has been ordered.

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 1509 – 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 of the expert's testimony. In addition, if a family service plan or permanency plan has been completed, the parties are to receive a copy.

RULE 1510 - 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 when scheduling the dispositional hearing but this rule does not specify a time requirement for the hearing.

RULE 1511 - 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 1512 – 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 1514 - DISPOSITIONAL FINDING BEFORE REMOVAL FROM HOME

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

RULE 1515 – 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. The *Comment* notes that in order to receive funding through the Federal Financial Participation, a specific foster care provider may not be placed in the court order. There may be reasons why a court would list a specific foster care provider in its order but funding would not be received in those cases.

Additionally, the court may transfer legal custody of the child. See *Comment* to Rule 1409 for transferring of custody without an adjudication of dependency.

RULE 1516 - SERVICE OF THE DISPOSITIONAL ORDER

This rule provides for 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 permanency hearing summons and notice. Part B provides for the scheduling and conduct of the permanency hearing, the court's permanency order, and termination of court supervision.

PART A - SUMMONS AND NOTICE

RULE 1600 - SUMMONS FOR THE PERMANENCY HEARING

This rule provides that the court may issue a summons compelling any party to appear for the permanency hearing. Under paragraph (A), the court may issue the summons compelling any party to appear for the permanency hearing. The court may designate another person to distribute the summons once it has been ordered.

RULE 1601 - PERMANENCY HEARING NOTICE

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

PART B – PERMANENCY HEARING

RULE 1607 - REGULAR SCHEDULING OF PERMANENCY HEARINGS

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 1608 – PERMANENCY HEARING

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

RULE 1609 - COURT ORDER OF PERMANENCY HEARING DETERMINATIONS

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

RULE 1613 – 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 separate 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.