

INTRODUCTION

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 1151, 1608, 1613 and adoption of new Rule 1606 with this Recommendation. The changes are effective July 1, 2011.

EXPLANATORY REPORT APRIL 2011

These rule changes stems from a request from the Pennsylvania Children's Roundtable Dependency Benchbook Committee. The Benchbook Committee asked for guidance and clarification of specific issues that are addressed in these rule changes.

Rule 1151 - Assignment of Guardian *Ad Litem* & Counsel

It was brought to the Committee's attention that in some judicial districts, "guardians" were appearing at hearings without an attorney. Rule 1120 defines guardian as any parent, custodian, or other person designated by the court to be a temporary guardian for purposes of a proceeding. The modified *Comment* enforces that the court must inform all parties of the right to counsel.

Rule 1606 - Motion for Modification of Dependent Child's Placement

This new rule was added because judges are not being notified about a change in a dependent child's placement until weeks, even months after a move of the child's placement. Many times, the judge is notified of a change at the permanency hearing. Although the child is placed in the custody of the county agency, the judge authorizes placement of a child by court order.

Rule 1606 outlines the procedure for seeking approval of a change in a child's placement. As a general rule, the court must be notified **prior to** the child being moved by motion or stipulation. However, in an emergency when a judge cannot be reached, the county agency may temporarily place a child in a shelter care facility or other appropriate care. In this situation, the county agency immediately must notify the judge of the change made during the emergency. This can be accomplished by leaving a message for the judge. In addition, the county agency must file a motion for a modification of the court order by the next business day.

The motion is to include an averment stating whether each party concurs or objects to the proposed modification. This will allow the judge to decide whether a hearing is necessary. Because there is a twenty-four hour requirement, if a party does

not respond to the request for a concurrence or objection, the averment should state the party was unable to be reached.

If a party objects to the proposed modification, objections shall be filed within three days of the filing of the motion for modification of the child's placement.

Rule 1608 - Permanency Hearing

The additions to this rule require a permanency hearing at least every six months pursuant to the federal Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89) and as implemented through Title IV - E funding of the Social Security Act. The *Comment* to this rule stresses that a three-month hearing is best practice. This ensures that services are in place and that the guardian has had time to comply prior to the required six-month hearing.

Additionally, the rule provides a checklist for the court's findings in paragraph (D). Paragraph (D)(1)(j) sets forth the required findings for transitioning a child into independent living.

The *Comment* discusses concurrent planning and combining hearings. Several judicial districts have judges address a goal change motion and a petition for involuntary termination of parental rights in one matter. The Juvenile Act allows a dependency court judge to be assigned to Orphans' Court to hear matters involving dependent children. See Pa.C.S. § 6351(i).

Rule 1613 - Termination of Court Supervision

The proposed changes in paragraph (A)(6) - (10) provide further clarification of the rule's intent.

Under the new additions in paragraph (E), specific issues must be addressed in the transition plan before the court can terminate court supervision for a child eighteen years of age or older. These are federal law requirements. See 42 U.S.C. § 675(5)(A)-(H).

The *Comment* adds that the court should not discontinue services for a dependent child because the court has found the child delinquent. The county agency and the juvenile probation office should work together to provide solutions for the child. In addition, services are to be ready when a dependent child is released from a delinquency placement to ensure that there is a smooth transition.