

## INTRODUCTION

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 1604 & 1608 with this Recommendation. The changes are effective immediately.

### EXPLANATORY REPORT OCTOBER 2009

#### **Rule 1604 - Submission of Reports**

The new Rule 1604 provides for the procedures when submitting a report pursuant to 42 Pa.C.S. § 6336.1(b).

Act 109 of 2008 amended § 6336.1(b) of the Juvenile Act by creating a right for a foster parent, preadoptive parent, or relative providing care for a child to submit a report concerning the child's adjustment, progress, and condition to the court. Paragraph (A) provides for this right and sets time limits for submitting the report to the court.

It is imperative that the court, attorneys, parties, and court-appointed special advocates have time to review this report prior to the proceeding. Therefore, pursuant to paragraph (A)(1), this report must be submitted to the court designee at least seven days prior to the hearing. In addition, pursuant to paragraph (D), the court designee has one business day to file the report with the clerk of courts and distribute copies to the court, attorneys, parties, and court-appointed special advocates.

Paragraph (B) provides that the President Judge must designate a person to receive these reports on behalf of the court. The rule also provides that this designee may not be a party to the proceeding. The Committee anticipated that a court may designate the county agency to perform this function.

The Committee concluded that there is an inherent conflict of interest for the county agency to receive these reports. Furthermore, the Committee felt that a party should not be the recipient of any document on the court's behalf. The legislature went even further by suggesting retaliatory action by the county agency could be a concern. See 42 Pa.C.S. § 6336.1.

Pursuant to paragraph (C), the county agency must inform the foster parent, preadoptive parent, or relative providing care for the child of: 1) the right to submit the report; 2) the name and address of the court designee who must receive the report; and 3) the requirement to submit the report at least seven days prior to the permanency hearing.

The Department of Public Welfare has designed a form to be used by the foster parent, preadoptive parent, or relative providing care for the child in submitting the report. The county agency must provide the form to the foster parent, preadoptive parent, or relative providing care for the child.

Pursuant to paragraph (E), the court must examine this report and consider its contents as it considers any other evidence for the permanency hearing. The Committee recognized that the court uses hearsay evidence at dispositional, review, and permanency hearings but weighs the evidence according to its source and reliability. The Rules of Evidence frequently do not apply in many types of hearings. See *Comment* to Pa.R.E. Rule 101.

### **Rule 1608- Permanency Hearing**

Pursuant to paragraph (D), the court must consider the evidence presented pursuant to the new proposed Rule 1604 as it would consider any other evidence. As previously stated, the court uses hearsay evidence but must weigh the evidence according to its source and reliability.