

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that new Rule 1604 be adopted and prescribed. New Rule 1604 provides the procedures for submission of reports pursuant to the 42 Pa.C.S. § 6336.1(b). This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the intent of the rule. 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,

A. 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 Monday, April 27, 2009.

March 30, 2009

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Cynthia K. Stoltz, Esq., Chair

A. Christine Riscili, Esq.
Staff Counsel

EXPLANATORY REPORT

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 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. This rule also provides that this designee may not be a party to the proceeding. The Committee anticipated that the court could 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.

In many instances, the report will not agree or suggest the same outcome as the recommendation of the county agency. The Committee felt that a party should not be the recipient of any document on the court's behalf. The legislature went even further than the Committee's conclusions 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 reports; 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 discussed 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.

**CHAPTER 16
POST-DISPOSITIONAL PROCEDURES**

**PART A
SUMMONS, [AND] NOTICE, AND REPORTS**

1600. Summons for the Permanency Hearing

1601. Permanency Hearing Notice

1604. Submission of Reports

**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 1604. SUBMISSION OF REPORTS

A. Generally.

1) A foster parent, preadoptive parent, or relative providing care for a child may submit a report regarding the child's adjustment, progress, and condition for review by the court.

2) The report shall be submitted to the court designee at least seven days prior to the permanency hearing.

B. Designation by President Judge. The President Judge of each judicial district shall designate a person, who is not a party to the proceeding, to receive these reports.

C. Duties of the County Agency. The county agency shall inform the foster parent, preadoptive parent, or relative providing care for a child of:

1) the right to submit a report;

**2) the name and address of the court designee who shall receive the reports;
and**

3) the requirement to submit the report at least seven days prior to the permanency hearing.

D. Duties of Designee. Within one business day of receiving the report, the court designee shall:

- 1) file a copy of the report with the clerk of courts; and**
- 2) distribute copies to the judge, attorneys, parties, and if appointed, the court-appointed special advocate.**

E. Examination of Report. Pursuant to Rule 1608(D), the court shall examine this report and consider its contents as it would consider any other evidence in the case.

COMMENT

Pursuant to paragraph (A)(1), a foster parent, preadoptive parent, or relative providing care for a child may submit a report regarding the child's adjustment, progress, and condition for review by the court. The Department of Public Welfare has designed a form to be used in submitting a report pursuant to this paragraph. See 42 Pa.C.S. § 6336.1 (b)(3).

Pursuant to paragraph (A)(2), the report is to be submitted at least seven days prior to the hearing to ensure timely notice and distribution of the report pursuant to paragraph (D).

Pursuant to paragraph (B), the President Judge of each judicial district is to designate a person to receive these reports. This person may not be a party to the proceeding, such as the guardian *ad litem* or a county agency representative.

Pursuant to paragraph (C), the county agency is to provide the form designed by the Department of Public Welfare to the foster parent, preadoptive parent, or relative providing care for the child. See 42 Pa.C.S. § 6336.1(b).

See also 42 Pa.C.S. § 6341(d).

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 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 make~~ing~~**[ing]** 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. 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; **and**

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.

E. 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 provide all parties and when requested, the court, 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 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.

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

Official Note: Rule 1608 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1608 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).