

## **Rule 1241. Notification of Shelter Care Hearing.**

**[A.](a) Generally.** The applicant for the shelter care hearing shall notify the following persons of the date, time, and place of the shelter care hearing:

- (1) the child;
- (2) the guardian(s) of the child;
- (3) the attorney for the child;
- (4) the attorney(s) for the guardian(s);
- (5) the attorney for the county agency;
- (6) the county agency; **[and]**

**(7) the potential kinship care resource, if the child is removed from home or removal has been requested; and**

**[(7)](8)** any other appropriate person.

**[B.](b) Counsel.** The guardian of the child shall be notified of the right to counsel immediately after a child is taken into protective custody and before a shelter care hearing.

**Comment:** Notice should be as timely as possible. Because there is a **[seventy-two] 72-hour** time restriction, notice may be oral. Every possible attempt to notify all parties is to be made. It is not sufficient to notify only one guardian. All guardians are to be notified. See *In re M.L.*, **[562 Pa. 646,]** 757 A.2d 849 (**Pa.** 2000).

The hearing may go forward if a guardian is not present. However, if a guardian has not been notified, a rehearing is to be ordered under Rule 1243 upon submission of an affidavit by the guardian.

The court is to direct the county agency to provide the child's foster parent, preadoptive parent, **[or]** relative providing care for the child, **or a potential kinship care resource** with timely notice of the hearing. See 42 Pa.C.S. § 6336.1.

**Regarding subdivision (a)(7), see 42 Pa.C.S. § 6302 for the definition of "potential kinship care resource." Once a potential kinship care resource has addressed the court as to the individual's qualifications, the court is to decide whether the potential kinship care resource may receive notice of, or participate in, future hearings. See Pa.R.J.C.P. 1242(c)(7). If the court decides that the potential kinship care resource is not to receive notice of future hearings, notice to that individual is no longer required.**

If a court appointed special advocate is involved in the case, the court appointed special advocate is to be notified as any other appropriate person pursuant to **[paragraph (A)(7)] subdivision (a)(8)**.

**[Official Note: Rule 1241 adopted August 21, 2006, effective February 1, 2007.]**

***Committee Explanatory Reports:***

**Final Report explaining the provisions of Rule 1241 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).]**

## **Rule 1242. Shelter Care Hearing.**

- (a) **Informing of Rights.** Upon commencement of the hearing, the court shall ensure that:
  - (1) a copy of the shelter care application is provided to the parties; and
  - (2) all parties are informed of the right to counsel.
- (b) **Manner of Hearing.**
  - (1) **Conduct.** The hearing shall be conducted in an informal but orderly manner.
  - (2) **Recording.** If requested, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.
  - (3) **Testimony and Evidence.** All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The child's attorney, the guardian, if unrepresented, and the attorney for the guardian shall be afforded an opportunity to examine and controvert written reports so received.
  - (4) **Advanced Communication Technology.** Upon good cause shown, a court may utilize advanced communication technology pursuant to Rule 1129.
- (c) **Findings.** The court shall determine whether:
  - (1) there are sufficient facts in support of the shelter care application;
  - (2) the county agency has reasonably engaged in family finding;
  - (3) custody of the child is warranted after consideration of the following factors:
    - (i) remaining in the home would be contrary to the welfare and best interests of the child;

- (ii) reasonable efforts were made by the county agency to prevent the child's placement;
  - (iii) the child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there are no less restrictive alternatives available; and
  - (iv) the lack of efforts was reasonable in the case of an emergency placement where services were not offered;
- (4) a person, other than the county agency, submitting a shelter care application, is a party to the proceedings;
- (5) there are any special needs of the child that have been identified and that the court deems necessary to address while the child is in shelter care; **[and]**
- (6) the county agency has made efforts to determine whether the child is an Indian child and whether any participant has reason to know the child is an Indian child pursuant to Rule 1203[.]**[and];**
- (7) the potential kinship care resource may receive notice of, or participate in, future hearings, if custody of the child is warranted and the potential kinship care resource has addressed the court as to the individual's qualifications.**
- (d) **Prompt Hearing.** The court shall conduct a hearing within 72 hours of taking the child into protective custody. The parties shall not be permitted to waive the shelter care hearing.
- (e) **Court Order.** At the conclusion of the shelter care hearing, the court shall enter a written order setting forth:
  - (1) its findings pursuant to subdivision (c);
  - (2) any conditions placed upon any party;
  - (3) any orders regarding family finding pursuant to Rule 1149;
  - (4) any orders for placement or temporary care of the child;
  - (5) any findings or orders necessary to ensure the stability and appropriateness of the child's education, and when appropriate, the

court shall appoint an educational decision maker pursuant to Rule 1147;

- (6) any findings or orders necessary to identify, monitor, and address the child's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed;
- (7) any orders of visitation; and
- (8) whether there is reason to know the child is an Indian child pursuant to Rule 1203.

**Comment:** Pursuant to subdivision (b)(4), it is expected that the parties be present. Only upon good cause shown should advanced communication technology be utilized.

Pursuant to subdivision (c), the court is to make a determination that the evidence presented with the shelter care application under Rule 1240 is supported by sufficient facts. After this determination, the court is to determine whether the custody of the child is warranted by requiring a finding that: 1) remaining in the home would be contrary to the health and welfare of the child; 2) reasonable efforts were made by the county agency to prevent the placement of the child; 3) the child was placed in the least restrictive placement available; and 4) if the child was taken into emergency placement without services being offered, the lack of efforts by the county agency was reasonable. Additionally, the court is to state the reasons why there are no less restrictive alternatives available.

Family finding is to be initiated prior to the shelter care hearing. **[See]** See Comment to Rule 1149 as to level of reasonableness.

Pursuant to subdivision (c)(2), the court is to make a determination whether the county agency has reasonably engaged or is to engage in family finding in the case. The county agency will be required to report its diligent family finding efforts at subsequent hearings. See Rule 1149 for requirements of family finding. See also Rules 1408(b), 1512(D)(1)(h), 1514(a)(4), 1608(d)(1)(viii), and 1610(D) and their Comments for the court's findings as to the county agency's satisfaction of the family finding requirements and Rules 1210(d), 1409(c) and 1609(D) and Comments to Rules 1408, 1409, 1512, 1514, 1515, and 1608-1611 on the court's orders.

Pursuant to subdivision (c)(4), the court is to determine whether a person is a proper party to the proceedings. Regardless of the court's findings on the party status, the court is to determine if the application is supported by sufficient evidence.

The court is required to inquire and determine whether any participants have reason to know whether the child is an Indian child. The court is also required to advise the participants of their obligation to report to the court if they subsequently receive information that provides a reason to know the child is an Indian child. See Pa.R.J.C.P. 1203.

**Regarding subdivision (c)(7), see 67 Pa.C.S. § 7507(c) for the Kinship Care Program.**

Under subdivision (d), the court is to ensure a timely hearing. Nothing in subdivision (d) is intended to preclude the use of stipulations or agreements among the parties, subject to court review and acceptance at the shelter care hearing.

See 42 Pa.C.S. § 6332 (Informal Hearing).

Pursuant to subdivision (e), the court is to enter a written order. It is important that the court address any special needs of the child while the child is in shelter care. The child's attorney or the county agency is to present any educational, health care, and disability needs to the court, if known at the time of the hearing. These needs may include a child's educational stability, needs concerning early intervention, remedial services, health care, and disability. If the court determines a child is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 1147.

The court's order should address the child's educational stability, including the right to an educational decision maker. The order should address the child's right to: 1) educational stability, including the right to: a) remain in the same school regardless of a change in placement when it is in the child's best interest; b) immediate enrollment when a school change is in the child's best interest; and c) have school proximity considered in all placement changes, 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*; 2) an educational decision maker pursuant to Rule 1147, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 24 P.S. §§ 13-1371 and 13-1372, 55 Pa. Code § 3130.87, and 20 U.S.C. §§ 1400 *et seq.*; 4) the educational services necessary to support the child's transition to successful adulthood pursuant to 42 Pa.C.S. § 6351 if the child is 14 or older; and 5) a transition plan that addresses the child's educational needs pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within 90 days.

When addressing the child's health and disability needs, the court's order should address the right of: 1) a child to receive timely and medically appropriate screenings and health care services, 55 Pa. Code § 3800.32 and 42 U.S.C. § 1396d(r); and 2) a child with disabilities to receive necessary accommodations, 42 U.S.C. § 12132, 28 C.F.R.

§§ 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. §§ 84.1 *et seq.*

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a child and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. See 42 Pa.C.S. § 6339(b).

Nothing in this rule prohibits informal conferences, narrowing of issues, if necessary, and the court making appropriate orders to expedite the case. The shelter care hearing may be used as a vehicle to discuss the matters needed and narrow the issues. The court is to ensure a timely adjudicatory hearing is held.

**[See 42 Pa.C.S. § 6339 for orders of physical and mental examinations and treatment.]**

See Rule 1330(a) for filing of a petition.

## **Rule 1501. Dispositional Notice.**

The court or its designee shall give notice of the dispositional hearing to:

- [(1)](a)** all parties;
- [(2)](b)** the attorney for the county agency;
- [(3)](c)** the child's attorney
- [(4)](d)** the guardian's attorney;
- [(5)](e)** the parents, child's foster parent, preadoptive parent, or relative providing care for the child;
- [(6)](f)** the court appointed special advocate, if assigned;
- [(7)](g)** the educational decision maker, if applicable; **[and]**
- [(8)](h)** **the potential kinship care resource, if the child is removed from home or removal has been requested; and**
  - (i)** any other persons as directed by the court.

**Comment: Regarding subdivision (h), see 42 Pa.C.S. § 6302 for the definition of "potential kinship care resource." Once a potential kinship care resource has addressed the court as to the individual's qualifications, the court is to decide whether the potential kinship care resource may receive notice of, or participate in, future hearings. See Pa.R.J.C.P. 1514(a)(7). If the court decides that the potential kinship care resource is not to receive notice of future hearings, notice to that individual is no longer required.**

**[Official Note: Rule 1501 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011.]**

### ***Committee Explanatory Reports:***

**Final Report explaining the provisions of Rule 1501 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1501 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).]**

**Rule 1514. Dispositional Finding Before Removal from Home.**

- (a) **Required Findings.** Prior to entering a dispositional order removing a child from the home, the court shall state on the record in open court the following specific findings:
- (1) Continuation of the child in the home would be contrary to the welfare, safety, or health of the child;
  - (2) The child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there is no less restrictive alternative available;
  - (3) If the child has a sibling who is subject to removal from the home, whether reasonable efforts were made prior to the placement of the child to place the siblings together or whether such joint placement is contrary to the safety or well-being of the child or sibling;
  - (4) The county agency has reasonably satisfied the requirements of Rule 1149 regarding family finding;
  - (5) One of the following:
    - (i) Reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from the home, if the child has remained in the home pending such disposition; or
    - (ii) If preventive services were not offered due to the necessity for emergency placement, whether such lack of services was reasonable under the circumstances; or
    - (iii) If the court previously determined that reasonable efforts were not made to prevent the initial removal of the child from the home, whether reasonable efforts are under way to make it possible for the child to return home; and
  - (6) The county agency has provided a permanency plan and services pursuant to 67 Pa.C.S. § 7504[.]; **and**
  - (7) **If a potential kinship care resource has addressed the court as to the individual's qualifications, then whether the potential kinship care resource may receive notice of, or participate in, future hearings.**
- (b) **Aggravated Circumstances.** If the court has previously found aggravated circumstances to exist and that reasonable efforts to remove the child from the home or to preserve and reunify the family are not required, a finding pursuant to subdivision (a)(5)(i)—(a)(5)(iii) is unnecessary.

**Comment:** See 42 Pa.C.S. § 6351(b).

Pursuant to subdivision (a)(3), the court is to utilize reasonable efforts in placing siblings together unless it is contrary to the safety or well-being of a child or sibling. See 42 U.S.C. § 675 (Fostering Connections).

Pursuant to subdivision (a)(4), the court is to determine whether the county agency has reasonably satisfied the requirements of Rule 1149 regarding family finding. If the county agency has failed to meet the diligent family finding efforts requirements of Rule 1149, the court is to utilize its powers to enforce this legislative mandate. See 67 Pa.C.S. §§ 7501 *et seq.* See also Pa.R.J.C.P. 1210(D)(8), 1242(E)(3), 1409(C), 1609(D), and 1611(C), and *Comments* to Pa.R.J.C.P. 1242, 1408, 1409, 1512, 1515, and 1608—1611.

Pursuant to subdivision (a)(6), specific requirements for a permanency plan and services exist when the court orders the temporary transfer of a child's legal custody pursuant to 42 Pa.C.S. § 6351(a)(2). See 67 Pa.C.S. § 7504.

**Regarding subdivision (a)(7), see 67 Pa.C.S. § 7507(c) for the Kinship Care Program.**

## **Rule 1601. Permanency Hearing Notice.**

**[A.](a)** At least **[fifteen] 15** days prior to the hearing, the court or its designee shall give notice of the permanency hearing to:

- (1) all parties;
- (2) the attorney for the county agency;
- (3) the child's attorney;
- (4) the guardian's attorney;
- (5) the parents, child's foster parent, preadoptive parent, or relative providing care for the child;
- (6) the court appointed special advocate, if assigned;
- (7) the educational decision maker, if applicable; **[and]**
- (8) the potential kinship care resource, if the child is removed from home or removal has been requested; and**

**[(8)](9)** any other persons as directed by the court.

**[B.](b)** If a party intends to request a goal change from reunification, then either the notice shall state this purpose or the party shall give separate notice of the intended goal change in accordance with **[paragraph (A)] subdivision (a)**.

**Comment: Regarding subdivision (a)(8), see 42 Pa.C.S. § 6302 for the definition of “potential kinship care resource.” Once a potential kinship care resource has addressed the court as to the individual’s qualifications, the court is to decide whether the potential kinship care resource may receive notice of, or participate in, future hearings. See Pa.R.J.C.P. 1608(d)(1)(xviii). If the court decides that the potential kinship care resource is not to receive notice of future hearings, notice to that individual is no longer required.**

Given the significance of discontinuing the goal of reunification, the requirement of **[paragraph (B)] subdivision (b)** is to ensure that parties, counsel, and interested persons have notice of the purpose of the hearing and are able to prepare for and attend the hearing.

**[Official Note: Rule 1601 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended May 17, 2018, effective October 1, 2018.**

***Committee Explanatory Reports:***

**Final Report explaining the provisions of Rule 1601 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1601 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the amendments to Rule 1601 published with the Court's Order at 48 Pa.B. 3321 (June 2, 2018).]**

## Rule 1608. Permanency Hearing.

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### (d) Court's Findings.

- (1) **Findings at all Six-Month Hearings.** At each 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:

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- (xvi) whether sufficient steps have been taken by the county agency to ensure the child has been provided regular, ongoing opportunities to engage in age-appropriate or developmentally-appropriate activities, including:

(A) consulting the child in an age-appropriate or developmentally-appropriate manner about the opportunities to participate in activities; and

(B) identifying and addressing any barriers to participation;  
**[and]**

- (xvii) whether the visitation schedule for the child with the child's guardian is adequate, unless a finding is made that visitation is contrary to the safety or well-being of the child~~[.]~~; **and**

**(xviii) if a potential kinship care resource has addressed the court as to the individual's qualifications, then whether the potential kinship care resource may receive notice of, or participate in, future hearings.**

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**Comment:** See 42 Pa.C.S. §§ 6341, 6351.

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Pursuant to subdivision (d)(1)(xv), the county agency is to testify and enter evidence into the record on how it took sufficient steps to ensure the caregiver is exercising the reasonable and prudent parent standard. For the definition of "caregiver"

and the “reasonable and prudent parent standard,” see Rule 1120. Pursuant to subdivision (d)(1)(xvi), when documenting its steps taken, the county agency is to include how it consulted with the child in an age-appropriate or developmentally-appropriate manner about the opportunities of the child to participate in activities. For the definition of “age-appropriate or developmentally-appropriate,” see Rule 1120. These additions have been made to help dependent children have a sense of normalcy in their lives. These children should be able to participate in extracurricular, enrichment, cultural, and social activities without having to consult caseworkers and ask the court’s permission many days prior to the event. See *also* Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183), 42 U.S.C. §§ 675 and 675a (2014).

**Regarding subdivision (d)(1)(xviii), see 67 Pa.C.S. § 7507(c) for the Kinship Care Program.**

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