

**SUPREME COURT OF PENNSYLVANIA  
JUVENILE COURT PROCEDURAL RULES COMMITTEE**

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.J.C.P. 1300 &  
Rescission and Replacement of Pa.R.J.C.P. 1302**

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rule of Juvenile Court Procedure 1300 and the rescission and replacement of Pennsylvania Rule of Juvenile Court Procedure 1302 concerning venue and intercounty transfers of dependency matters for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **September 10, 2019**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Juvenile Court Procedural Rules Committee,

Judge Jennifer R. Sletvold, Chair

**SUPREME COURT OF PENNSYLVANIA  
JUVENILE COURT PROCEDURAL RULES COMMITTEE**

**REPORT**

**Proposed Amendment of Pa.R.J.C.P. 1300 &  
Rescission and Replacement of Pa.R.J.C.P. 1302**

The Juvenile Court Procedural Rules Committee proposes amendment of Pennsylvania Rules of Juvenile Court Procedure 1300 concerning venue in dependency proceedings together with rescission and replacement of Pennsylvania Rule of Juvenile Court Procedure 1302 concerning intercounty transfer of dependency cases.

In 2014, as part of a larger proposal, the Committee published proposed amendments to Rule 1302 to clarify the procedures for intercounty transfers. See 44 Pa. B. 3307 (June 7, 2014). After reviewing comments and further deliberations, this rulemaking proposal was discontinued. More recently, the Committee received a request that several facets of intercounty transfers be addressed in the Pennsylvania Rules of Juvenile Court Procedure.

In formulating the current proposal, the Committee considered several issues. First, whether the child's residence was the only determinate of an intercounty transfer. Second, whether the decision to transfer was in the sole discretion of the transferring court or whether it was a shared decision between the transferring and receiving courts. The following discussion of these issues is that of the Committee; it does not carry with it the imprimatur of the Supreme Court of Pennsylvania.

**Best Interest of the Child**

The statutory basis for a transfer is the child's residence either when the adjudication occurs in a non-residential county or if the child's residence changes after adjudication. See 42 Pa.C.S. § 6321(c)(1). The case law interpreting this statutory provision is scant. Distilled from *Interest of J.S.M.*, 514 A.2d 899 (Pa. Super. 1986) and *In re G.B.*, 530 A.2d 496 (Pa. Super. 1987), it appears that an intercounty transfer decision is not based entirely on residence; rather, it is a best interest determination concerning the child.

**Authority to Order Transfer**

Under the Uniform Child Custody Jurisdiction and Enforcement Act, the receiving court can decline jurisdiction if it finds that it is an inconvenient forum based on enumerated factors or when the person seeking to invoke the court's jurisdiction has engaged in unjustifiable conduct. See 23 Pa.C.S. §§ 5427, 5428. However, the Juvenile

Act does not provide a similar mechanism for a dependency court to refuse to accept a transfer. Notably, Section 6321(c)(1) uses “the court” in the singular when identifying the entity to transfer a proceeding. If construed strictly, then the transferring court where the transfer motion is made, as opposed to the receiving court, is statutorily authorized to unilaterally decide the transfer.

Yet, if the transferring court is the only authority deciding whether a transfer is in the child’s best interest, then there is nothing to prevent a case from “ping ponging” back to the transferring county once received in the receiving county. Comity informs that instances of refused transfers will be rare, but the Committee also recognizes that the receiving court should be part of the decision-making process given the compressed timeline set forth in the proposal. Further, mutual decision-making ensures that a case will be received with the attendant judicial oversight necessary to maintain the child’s best interest.

### **Proposed Amendments - Venue**

The Committee proposes to amend Rule 1300 (Venue) to indicate in paragraph (B) that the window for seeking a change in venue is prior to adjudicatory hearing. The basis for a change in venue is the convenience of the parties and witnesses with the option of venue being the county in which the child is present or where the child resides. This basis and option are contained in the existing venue rule.

As proposed, paragraph (C) contains a specific five-day deadline for the transfer of records. Further, the paragraph includes a communication loop to indicate that the records have been received, and a requirement for the receiving county agency to schedule the next court proceeding. These further revisions are intended to facilitate the location of records and ensure the case proceeds after the change of venue.

### **Proposed Amendments - Intercounty Transfer**

Given the scope of the revisions, the Committee proposes to rescind and replace Rule 1302 in its entirety. The procedural concept for intercounty transfers involves a two-step process. First, the transferring county is to conduct a hearing to determine whether it is in the child’s best interest for an intercounty transfer. Second, assuming the transferring court determines in the affirmative, the transferring court then communicates with the receiving court to ascertain whether jurisdiction will be accepted, if the decision will result in a transfer between judicial districts.

In paragraph (A), the child’s best interest for an intercounty transfer is set forth. The Committee believes that the receiving county agency, as the provider of services and the party to receive legal custody, has an interest in the transfer. Therefore, in paragraph (B), that county agency is given notice of the transfer hearing in the transferring county

and granted standing to participate. Further, in paragraph (C), the receiving county agency is permitted to appear via advance communications technology.

Paragraph (D) requires the subsequent communication with the court in the receiving judicial district. The manner of communication and requirements of a record are intentionally non-specific. Judges, at their preference, may opt to communicate via email or telephonically. A “record of the communication” can be memorialization of communications or a transcript. Thereafter, the parties may file written responses with the transferring court regarding the decision to accept jurisdiction. While the Committee did not anticipate intercounty transfers to often be contested, this provision for written responses is intended to provide due process in contested transfers. Paragraph (F) permits the courts to discuss administrative matters without informing the parties or making a record. Paragraphs (D) and (F) are based, in part, on the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S. § 5410.

Paragraph (E) requires that an order approving a transfer contain a date certain and at least a ten-day window before the actual transfer. This window is to provide for the transmission of the record and coordination of services between the county agencies as set forth in paragraphs (H) and (I). Prior to the transfer order’s effective date, the receiving court is required to enter an order accepting jurisdiction, as well as appointing a guardian ad litem and counsel, as needed, directing a home visit and safety assessment, and scheduling a review hearing.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

## **RULE 1300. VENUE**

A. **Generally.** A dependency proceeding shall be commenced in:

- 1) the county in which the child is present; or
- 2) the child's county of residence.

B. **Change of [v]Venue.** At any time prior to the adjudicatory hearing, [F]for the convenience of parties and witnesses, the court, upon its own motion or motion of any party, may transfer an action to the appropriate court of any county where the action could originally have been brought or could be brought at the time of filing the motion to change venue.

C. **Transmission of [a]All [r]Records.** If there is a change of venue ordered pursuant to paragraph (B), within five days:

1) the transferring county's clerk of courts shall inform the receiving county's clerk of courts of the manner in which certified copies of all documents, reports, and summaries in the child's official court record will be transferred;

[1]2) the [transferring court] transferring county's clerk of courts shall transfer certified copies of all documents, reports, and summaries in the child's official court record to the [receiving court] receiving county's clerk of court; [and]

[2]3) [T]the transferring county agency [of the transferring court] shall transfer all its records to the receiving county agency [where venue has been transferred.];

4) the receiving county's clerk of courts shall notify its county agency and the transferring county's clerk of courts of its receipt of the official court records; and

5) the receiving county agency shall schedule the next court proceeding in accordance with the time requirements of these Rules.

### **Comment**

See 42 Pa.C.S. § 6321**(b)**.

For procedures regarding motions and answers, see Rule 1344. In addition to the procedures for service of orders under Rule 1167, an order changing venue is to be served upon the new county agency and the receiving court so they may begin proceedings in the receiving county.

**Pursuant to paragraph (C), all records are to be transferred within five days of the order for change in venue. Nothing in this rule prohibits the use of electronic means when transferring and receiving records, but the manner in which records are transmitted must be communicated. If there is an electronic transfer, the receiving county is to send an electronic confirmation of receipt of the records as the return receipt. The transferring county's clerk of courts is to docket the confirmation of receipt of records by the receiving county and may close the case once the confirmation has been received.**

**For transfer of agency records, see 55 Pa. Code § 3490.401.**

**To ensure there is no interruption in services, the transferring county agency is to continue services until the case has been transferred officially, which is the receiving county's clerk of court's notification of receipt of the official court record as provided in paragraph (C)(4).**

**Official Note:** Rule 1300 adopted August 21, 2006, effective February 1, 2007. Amended December 24, 2009, effective immediately. **Amended \_\_\_\_\_, 2019, effective \_\_\_\_\_, 2019.**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1300 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1300 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). **Final Report explaining the amendments to Rule 1300 published with the Court's Order at Pa.B. (\_\_\_\_\_, 2019).**

**RULE 1302. INTER[-]COUNTY TRANSFER**

**[A. Transfer. A court may transfer a case to another county at any time.**

**B. Transmission of official court record. If the case is transferred pursuant to paragraph (A):**

- 1) the transferring court shall transfer certified copies of all documents, reports, and summaries in the child's official court record to the receiving court; and**
- 2) the county agency of the transferring court shall transfer all its records to the county agency where jurisdiction has been transferred.**

**Comment**

**See 42 Pa.C.S. § 6321.]**

**[The text of this rule is entirely new.]**

- A. **Best Interest of the Child.** Any time after the adjudicatory hearing, upon motion of a party or court, a court may consider the transfer of a case to another county if the transfer is best suited to the safety, protection, and physical, mental, and moral welfare of the child.
- B. **Notice.** The court shall serve notice of a hearing upon the parties. The county agency in the proposed receiving county shall receive notice of the hearing and be granted standing to participate in the hearing.
- C. **Hearing.** The hearing should be conducted in the transferring county no more than 20 days from the date of the notice in paragraph (B). The county agency in the proposed receiving county shall be permitted to appear at the hearing utilizing advance communications technology.
- D. **Acceptance of Jurisdiction.** If the court in the transferring county finds that a proposed transfer would be in the child's best interest and would result in a transfer between judicial districts:
- 1) the court shall communicate with the president judge or designee of the receiving judicial district to ascertain whether jurisdiction will be accepted;
  - 2) a record of the communication shall be made and served promptly by the court on the parties; and
  - 3) upon service of the record, the parties shall have five days to file written responses with the court regarding the decision to accept jurisdiction.
- E. **Order.**
- 1) An order approving a transfer shall specify an effective date for the transfer no less than ten days from date of the order to allow for the coordination of services and preparation of the official court record for transmission.
  - 2) The court shall direct the clerk of courts to serve the order upon the parties, the receiving county agency, and the president judge or designee of the receiving court, if applicable.
- F. **Matters of Cooperation between Courts.** Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.



G. **Receiving Court.** On or before the effective date of the order established in paragraph (E)(1), the receiving court shall enter an order:

- 1) accepting jurisdiction of the case as of the effective date;
- 2) appointing a guardian ad litem and counsel, if necessary;
- 3) directing the clerk of courts to serve the order upon the transferring court, if necessary, the county agencies, the parties, and the transferring county's clerk of courts;
- 4) directing the receiving county agency to conduct a home visit and safety assessment consistent with the requirements of 55 Pa. Code § 3490.401; and
- 5) scheduling a review hearing to occur within 30 days.

H. **Transmission of Official Court Record.**

- 1) The transferring county's clerk of courts shall inform the clerk of the receiving court of the manner in which certified copies of all documents, reports, and summaries in the child's official court record will be transferred.
- 2) On the effective date of the transfer, the transferring county's clerk of courts shall transmit certified copies of all documents, reports, and summaries in the child's official court record to the clerk of the court of the receiving county.
- 3) The receiving county's clerk of the courts shall notify its county agency and the transferring court of its receipt of the official court records.

I. **County Agencies.** The transferring county agency shall continue services until the effective date of the transfer.

### **Comment**

If proceedings are commenced in a county other than the county of the child's residence, then a change of venue should be sought pursuant to Rule 1300 prior to adjudication.

The child's best interest concerning an intercounty transfer includes, but is not limited to, the child's current or anticipated county of residence, the resources of the receiving county, and needs of the child and family. A proposed transfer between judicial districts is not in the child's best interest unless the court of the receiving judicial district accepts jurisdiction.

Service of the acceptance order on the transferring court pursuant to paragraph (G)(3) is unnecessary if the transfer occurs within the same judicial district.

The period between the order approving the transfer and the effective date of the transfer is intended to prepare for the case transfer. The county agencies are expected to communicate prior to the actual transfer of a case to another county so that efforts can be coordinated and services transitioned without interruption. Coordination includes the inter-agency transfer of records maintained by the county agency that are not otherwise included in the official court record. See 55 Pa. Code § 3490.401. This period also allows the clerk to prepare the official court record for transmission to the receiving county on the effective date of the transfer.

Nothing in this rule prohibits the use of electronic means when transferring and receiving records. However, if there is an electronic transfer, the receiving county is to send an electronic confirmation of receipt of the records as the return receipt. The transferring county's clerk of courts is to docket the confirmation of receipt of records by the receiving county and may close the case once the confirmation has been received.

Upon receiving the order accepting the case, the transferring court may order the termination of court supervision pursuant to Rule 1631(A)(12).

**Official Note:** Rule 1302 adopted August 21, 2006, effective February 1, 2007. Amended December 24, 2009, effective immediately. Rescinded and replaced \_\_\_\_, 2019, effective \_\_\_\_, 2019.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1302 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1302 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Final Report explaining the rescission and replacement of Rule 1302 published with the Court's Order at \_\_ Pa.B. \_\_ (\_\_\_\_, 2019).