

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modifications of Rules 1151, 1512, 1515, 1608, 1609, and 1613 and new Rules 136 and 1136, 1603, and 1606 be adopted and prescribed. The amendments concern *ex parte* communications and permanency planning for a child. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the intent of the Rules. 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
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
P.O. Box 62635
Harrisburg, PA 17106-2635

no later than Friday, May 28, 2010 .

April 20, 2010

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Cynthia K. Stoltz, Chair

A. Christine Riscili, Esq.
Staff Counsel

EXPLANATORY REPORT

Rules 136 and 1136 - Ex Parte Communication

Instead of prohibiting *ex parte* communication in several rules, such as Rule 1512, the Committee is recommending one rule for each set of proceedings, delinquency and dependency, that will govern *ex parte* communication for all hearings.

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 proposed *Comment* enforces the need for the court to inform all parties of the right to counsel.

Rule 1512 & 1515 - Dispositional Hearing & Dispositional Order

The duties of the court were added to paragraph (C) of Rule 1512. The Court's findings in Rule 1515 were moved to Rule 1512(D). Additional findings were also added in Rule 1512(D) to provide a checklist of items that should be covered by the court at the dispositional hearing.

It is important to note the addition that the permanency plan must be addressed at the dispositional hearing. The permanency plan should consist of two plans or goals. The primary plan is the plan that the county agency is striving to achieve. However, if the primary plan is not achieved, services for the secondary plan must already be set forth and be able to be obtained by the strict timelines in achieving permanency. This is called concurrent planning, which is essential to ensure permanency is achieved for the child.

In several instances, reunification will be the primary goal. However, if reunification cannot be obtained, the county agency must have the back-up plan, such as subsidized legal guardianship or adoption.

Rule 1603 - Motion for Modification of Dependent Child's Placement

This new rule is being proposed because judges are not being notified about a change in a dependent child's placement until weeks, even months after a move. 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 1603 outlines the procedure for seeking approval of a change in a child's placement. The court must be notified **prior to** the child being moved.

Only 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. However, the county agency immediately must alert the judge of the change made during the emergency. This can be accomplished by leaving a message on the judges' phone. Then, the county agency must file a motion for the change within twenty-four hours of the move of the child.

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 your request for a concurrence or objection, simply aver 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 1606 - Goal Change Motion

This new rule sets forth when a goal change motion should be filed. It also allows the President Judge of each judicial district to assign a dependency court judge to conduct Orphans' Court proceedings involving a dependency child.

It is best practice to have one judge hear all the issues involved in a case from start to finish. This includes combining hearings on goal changes and involuntary termination of parental rights.

Rule 1608 - Permanency Hearing

The proposed additions to this rule require a permanency hearing at least every six months. The *Comment* to this Rule proposes a three-month hearing as 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)(k) sets forth the required findings for transitioning a child into independently living.

The *Comment* discusses concurrent planning and combining hearings. A permanency plan should encompass two plans or goals. See the discussion under Rules 1512 & 1515 for concurrent planning.

Combining hearings are also cost-effective and expeditious to the permanency plan. Several judicial districts have judges hear a goal change motion and an involuntary termination of parental rights together. 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 1609 - Permanency Hearing Orders

The "determinations made" paragraph is being eliminated because those determinations should be made at the permanency hearing, as reflected by the new proposed court's findings section in Rule 1608.

Rule 1613 - Termination of Court Supervision

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 so there is a smooth transition.

Under the new proposed 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.

RULE 136. EX PARTE COMMUNICATION

A) No person shall communicate with the court in any way regarding matters pending before the court unless all parties:

- 1) are present or have been copied if the communication is written or in electronic form; or**
- 2) have waived their presence or right to receive the communication.**

B) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.

COMMENT

No *ex parte* communications with the court are to occur. Communications should include all parties, such as the filing of a motion, or conducting a conference or a hearing.

Attorneys are bound by the Rules of Professional Conduct. See Rules of Professional Conduct Rule 3.5. Judges are bound by the Code of Judicial Conduct. See Code of Judicial Conduct Canon 3 (A)(4).

Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented.

Scheduling and other administrative matters are not considered *ex parte* communications.

RULE 1136. EX PARTE COMMUNICATION

A) No person shall communicate with the court in any way regarding matters pending before the court unless all parties:

- 1) are present or have been copied if the communication is written or in electronic form; or**
- 2) have waived their presence or right to receive the communication.**

B) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.

COMMENT

No *ex parte* communications with the court are to occur. Communications should include all parties, such as the filing of a motion, or conducting a conference or a hearing.

Attorneys are bound by the Rules of Professional Conduct. See Rules of Professional Conduct Rule 3.5. Judges are bound by the Code of Judicial Conduct. See Code of Judicial Conduct Canon 3 (A)(4).

Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented.

Scheduling and other administrative matters are not considered *ex parte* communications.

RULE 1151. ASSIGNMENT OF GUARDIAN AD LITEM & COUNSEL

A. **Guardian *ad litem* for child.** The court shall assign a guardian *ad litem* to represent the legal interests and the best interests of the child if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:

- 1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the physical, mental or emotional health, or morals;
- 2) has been placed for care or adoption in violation of law;
- 3) has been abandoned by parents, guardian, or other custodian;
- 4) is without a parent, guardian or legal custodian; or
- 5) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety, or welfare of the child.

B. **Counsel for child.** The court shall appoint legal counsel for a child:

- 1) if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:
 - a) while subject to compulsory school attendance is habitually and without justification truant from school;
 - b) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of the child's guardian and who is ungovernable and found to be in need of care, treatment, or supervision;
 - c) is under the age of ten years and has committed a delinquent act;
 - d) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (B)(1)(b); or
 - e) has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (B)(1)(b); or
- 2) upon order of the court.

C. **Counsel and Guardian *ad litem* for child.** If a child has legal counsel and a guardian *ad litem*, counsel shall represent the legal interests of the child and the guardian *ad litem* shall represent the best interests of the child.

D. **Time of appointment.**

- 1) **Child in custody.** The court shall appoint a guardian *ad litem* or legal counsel immediately after a child is taken into protective custody and prior to any proceeding.
- 2) **Child not in custody.** If the child is not in custody, the court shall appoint a guardian *ad litem* or legal counsel for the child when a dependency petition is filed.

E. **Counsel for other parties.** If counsel does not enter an appearance for a party, the court shall inform the party of the right to counsel prior to any proceeding. If counsel is requested by a party in any case, the court shall assign counsel for the party if the party is without financial resources or otherwise unable to employ counsel. Counsel shall be appointed prior to the first court proceeding.

COMMENT

See 42 Pa.C.S. §§ 6302, 6311, and 6337.

The guardian *ad litem* for the child may move the court for appointment as legal counsel and assignment of a separate guardian *ad litem* when, for example, the information that the guardian *ad litem* possesses gives rise to the conflict and can be used to the detriment of the child. To the extent 42 Pa.C.S. § 6311(b)(9) is inconsistent with this rule, it is suspended. *See* Rule 1800. *See also* Pa.R.P.C. 1.7 and 1.8. Under paragraph (C), legal counsel represents the legal interests of the child and the guardian *ad litem* represents the best interests of the child.

Nothing in these rules anticipates that a guardian *ad litem* for an adult is to be appointed by these rules. For appointment of a guardian of the person, see 20 Pa.C.S. § 5501 *et seq.* and Pa.O.C. Rules 14.2 - 14.5.

Pursuant to paragraph (E), the court is to inform all parties of the right to counsel if they appear at a hearing without counsel. If a party is without financial resources or otherwise unable to employ counsel, the court is to appoint counsel prior to the proceeding. Because of the nature of the proceedings, it is extremely important that every “guardian” has an attorney. Therefore, the court is to encourage the child’s guardian to obtain counsel. Pursuant to Rule 1120, a guardian is any parent, custodian, or other person who has legal custody of a child, or person designated by the court to be a temporary guardian for purposes of a proceeding. See Pa.R.J.C.P. 1120.

Official Note: Rule 1151 adopted August, 21, 2006, effective February 1, 2007. Amended February 20, 2007, effective immediately. Amended May 12, 2008, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1151 published with the Court’s Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to this rule published with the Court’s Order at 37 Pa.B. 1123 (March 10, 2007). Final Report explaining the amendments to Rule 1151 published with the Court’s Order at 38 Pa.B. 2360 (May 12, 2008).

RULE 1512. DISPOSITIONAL HEARING

A. **Manner of hearing.** The court shall conduct the dispositional hearing in an informal but orderly manner.

- 1) **Evidence.** The court shall receive any oral or written evidence which is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.
- 2) **Opportunity to be heard.** Before deciding disposition, the court shall give the parent, child's foster parent, preadoptive parent, relative providing care for the child and court appointed special advocate, if assigned, an opportunity to make a statement.

B. **Recording.** The dispositional hearing shall be recorded. [**The recording shall be transcribed:**

- 1) pursuant to a court order; or
- 2) when there is an appeal.

C. ***Ex parte* Communication.**

- 1) Except as provided by these rules, no person shall communicate with the court in any way.
- 2) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.]

C. Duties of the court. The court shall determine on the record that the parties have been advised of the following:

- 1) **the right to file an appeal;**
- 2) **the time limits for an appeal; and**
- 3) **the right to counsel to prepare the appeal.**

D. Court's Findings. On the record, the court shall state:

- 1) **its disposition;**
- 2) **the reasons for its disposition;**
- 3) **the terms, conditions, and limitations of the disposition;**

- 4) the name of any person or the name, type, category, or class of agency, licensed organization, or institution that shall provide care, shelter, and supervision of the child;
- 5) a finding, if the child is placed, that:
 - a) remaining in the home would be contrary to the welfare, safety, or health of the child;
 - b) reasonable efforts were made by the county agency to prevent the child's placement;
 - c) the child's placement is the least restrictive placement that meets the needs of the child, stating the reasons why there are no less restrictive alternatives available; and
 - d) if preventive services were not offered due to the necessity of an emergency placement, whether such lack of services was reasonable under the circumstances; and
- 6) whether any evaluations, tests, counseling, or treatments are necessary;
- 7) the permanency plan for the child;
- 8) the services necessary to achieve the permanency plan;
- 9) any educational, health care, and disability needs of the child; and
- 10) a visitation schedule, including any limitations.

COMMENT

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a child should preside over the dispositional hearing for the same child.

Paragraph (A)(2) does not infringe on the right to call witnesses to testify, in addition to those specified individuals. *See* Rule 1123 for subpoenaing a witness.

[For transcription of the record under paragraph (B), see also Rule 1127.

Under paragraph (C), no *ex parte* communications with the court are to occur. Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented. Normal methods of practice and procedure such as motions, scheduling, communications with court personnel, are not considered *ex parte* communications.]

Pursuant to paragraph (D)(7), the court is to determine the permanency plan for the child. A permanency plan should include two plans or goals: the primary plan and the secondary or concurrent plan.

The primary plan is the comprehensive plan developed to achieve the permanency goal. The secondary or concurrent plan is developed and initiated so that if the primary plan is not fulfilled, timely permanency for the child may still be achieved. These two plans are to be simultaneously addressed by county agency.

Rule 1608 mandates permanency hearings at least every six months. It is best practice to have three-month hearings to ensure permanency is achieved in a timely fashion and the court is informed of the progress of the case. See Comment to Rule 1608.

See Rule 1136 regarding *ex parte* communications.

Official Note: Rule 1512 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1512 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1515. DISPOSITIONAL ORDER

A. **Generally.** When the court enters a disposition, the court shall issue a written order, which provides that the disposition is best suited to the safety, protection, and physical, mental, and moral welfare of the child. The order shall include:

- 1) **any findings pursuant to Rule 1512 (C);**
[the terms, conditions, and limitations of the disposition;
- 2) **the name of any person or the name, type, category, or class of agency, licensed organization, or institution that is to provide care, shelter, and supervision of the child;**
- 3) **any findings pursuant to Rule 1514 if a child is being removed from the home;**
- 4) **any ordered evaluations, tests, counseling, or treatments;**
- 5) **any ordered family service plan or permanency plan if not already prepared;**
- 6) **any visitations, including any limitations;**
- 7) the date of the order; and
- 8) the signature and printed name of the judge entering the order.

B. **Transfer of legal custody.** If the court decides to transfer legal custody of the child to a person or agency found to be qualified to provide care, shelter, and supervision of the child, the dispositional order shall include:

- 1) the name and address of such person or agency, unless the court determines disclosure is inappropriate;
- 2) the limitations of the order; and
- 3) any visitation rights.

C. **Orders concerning guardian.** The court shall include any conditions, limitations, restrictions, and obligations in its dispositional order imposed upon the guardian.

COMMENT

See 42 Pa.C.S. §§ 6310, 6351.

45 CFR § 1356.21 provides a specific foster care provider may not be placed in a court order to be compliance with and receive funding through the Federal Financial Participation.

Dispositional orders should comport in substantial form and content to the Juvenile Court Judges' Commission model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social

Security Act. For model orders, see <http://www.jcjc.state.pa.us> or <http://www.dpw.state.pa.us> or request a copy on diskette directly from the Juvenile Court Judges' Commission, Room 401, Finance Building, Harrisburg, PA 17120.

See In re Tameka M., 525 Pa. 348, 580 A.2d 750 (1990).

Official Note: Rule 1515 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1515 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

CHAPTER 16
POST-DISPOSITIONAL PROCEDURES

PART A
SUMMONS AND NOTICE

- 1600. Summons for the Permanency Hearing
- 1601. Permanency Hearing Notice

PART B(1)
MODIFICATIONS

1603. Modification of Dependent Child's Placement

PART (B)(2)
PERMANENCY HEARING

- 1607. Regular Scheduling of Permanency Hearing
- 1608. Permanency Hearing
- 1609. Court Order of Permanency Hearing Determinations

PART (C)
TERMINATION & POST-DISPOSITIONAL PROCEDURES

- 1613. Termination of Court Supervision
- 1616. Post-Dispositional Procedures; Appeals [RESERVED]

PART B
MODIFICATIONS

1603. Modification of Dependent Child's Placement

RULE 1603. MODIFICATION OF DEPENDENT CHILD'S PLACEMENT

A. County agency's duties.

1) Emergencies.

- a) Only in an emergency when a judge cannot be reached, a child may be placed temporarily in a shelter care facility or other appropriate care.**
- b) The county agency immediately shall alert the court of any change made due to the emergency.**
- c) The county agency shall file a motion or stipulation for modification of the dispositional order within twenty-four hours of the child's placement in a shelter care facility or other appropriate care.**

- 2) Non-emergent cases. In all other cases, the county agency shall seek approval of the court for a change in the child's placement prior to the removal of the child from the placement by the filing of a motion or a stipulation for modification of the dispositional order.**

B. Contents of the motion. The motion for modification of the dispositional order shall include:

- 1) the specific reasons for the necessity of change to the order;**
- 2) the proposed placement;**
- 3) the current location of the child;**
- 4) the manner in which any educational, health care, and disability needs of the child will be addressed;**
- 5) an averment as to whether each party concurs or objects to the proposal; and**
- 6) the signatures of all the parties.**

C. Objections. If a party objects to proposed modification of the dispositional order, the objections shall be filed no later than three days after the filing of the motion for modification of the child's placement.

D. Court's duties. Once the county agency has requested approval from the court to modify a child's placement or after an emergency change in placement has already taken place, the court may:

- 1) schedule a prompt hearing to determine whether there will be a modification of the child's placement;**
- 2) enter an appropriate order to modify the child's placement; or**
- 3) enter an order denying the motion.**

COMMENT

If there must be a change in the placement of the child due to an emergent situation, the county agency may temporarily place a child in a shelter-care facility or other appropriate care pending the filing of a motion for modification of the dispositional order.

In all other cases, the court is to make a decision prior to the child being removed from the placement. Stability for the child is critical. Multiple placements can add to a child's trauma. A child should not be shuffled from home to home out of convenience for a foster parent, relative, or other person caring for the child.

Pursuant to paragraph (D), the court is to conduct a hearing, modify the dispositional order, or deny the motion sending the child back to the original placement specified in the dispositional order.

PART (B)(2)
PERMANENCY HEARING

RULE 1606. GOAL CHANGE MOTION

A. Goal Change Motion.

1) The county agency may file a goal change motion if:

- a) the child has been in placement for fifteen of the last twenty-two months;**
- b) the court finds that there is not substantial compliance with the reunification order and the return of the child is not best suited to the safety, protection, and physical, mental, and moral welfare of the child; or**
- c) 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.**

2) A goal change is not necessary if:

- 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.**

B. Contents of motion. The motion shall contain:

1) the specific reasons averring why there has not been substantial compliance with the reunification order;

2) the goal change requested, which includes placing the child:

- a) for adoption and the county agency will file for termination of parental rights pursuant to Pa.O.C.R., Rule 15.4;**
- b) with a legal custodian;**

c) with a fit and willing relative; or

d) in another living arrangement intended to be permanent in nature which is approved by the court and where the county agency has documented a compelling reason explaining why options under (a) through (c) are not feasible; and

3) the plans to achieve the goal requested.

C. Compliance with filing and service. The requirements of Rule 1345 shall be followed.

D. Hearing. Before the goal can be changed, the court shall conduct a hearing within twenty-one days of the filing of the motion.

E. Assignment of Judges' Role. The President Judge of each judicial district may assign a dependency court judge to conduct orphans' court proceedings involving a dependent child.

COMMENT

Pursuant to paragraph (B), the motion should aver the specific reasons why reunification is no longer the goal for the child. The averments are to be supported by evidence that there has not been substantial compliance with the court order. Also, the motion is to state the goal change requested and the plans to achieve that goal.

Pursuant to paragraph (C), the guardian of the child is to be notified of the goal change. In most instances, the guardian is the parent of the child.

Pursuant to paragraph (D), the court is to conduct a hearing no later than twenty-one days from the filing of the motion.

It is best practice and more efficient to combine a goal change, which is part of the permanency hearing, with an involuntary termination of parental rights hearing. A President Judge may allow Common Pleas Judges to wear multiple hats during a proceeding by conducting a combined hearing on Dependency and Orphans' Court matters. See Pa. C.S. § 6351(i). See also *In Re Adoption of S.E.G.*, 587 Pa. 568, 901 A.2d 1017 (2006) where an involuntary termination occurred prior to the goal change by the county agency. See *Comments to Rules 1512 and 1608* for further discussion of "concurrent planning."

There may be reasons why the county agency would want to file a goal change motion prior to involuntary termination in Orphans' Court, such as, the need for discontinuation of services.

RULE 1608. PERMANENCY HEARING

A. **Purpose and timing of hearing.** For every case, the court shall conduct a permanency hearing **at least every six months** 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 making 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]C. 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.
- 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.

D. Court's findings.

1) Findings at all six-month hearings. At the permanency hearing, the court shall make the following findings:

- a) **the appropriateness of the placement;**
- b) **the appropriateness, feasibility, and extent of compliance with the permanency plan developed for the child;**
- c) **the appropriateness and feasibility of the current placement goal for the child;**

- d) the likely date by which the placement goal for the child might be achieved;**
- e) whether reasonable efforts were made to finalize the permanency plan in effect;**
- f) whether the county agency has made services available to the guardian, and if not, why those services have not been made available;**
- g) the continued appropriateness of the permanency plan and the concurrent plan;**
- h) whether the child is safe;**
- i) 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;**
- j) the services needed to assist a child who is sixteen years of age or older to make the transition to independent living, including:**
 - i) the specific independent living services or instructions that are currently being provided by the county child welfare agency or private provider;**
 - ii) the areas of need in independent living instruction that have been identified by the independent living assessment completed pursuant to the Chafee Act;**
 - iii) the independent living services that the child will receive prior to the next permanency review hearing;**
 - iv) whether the child is in the least restrictive, most family-like setting that will enable him to develop independent living skills;**
 - v) the efforts that have been made to develop and maintain connections with supportive adults regardless of placement type;**
 - vi) whether the child is making adequate educational progress to graduate from high school or whether the child is enrolled in another specified educational**

program that will assist the child in achieving self-sufficiency;

vii) the job readiness services that have been provided to the child and the employment/career goals that have been established;

viii) whether the child has physical health or behavioral health needs that will require continued services into adulthood; and

ix) the steps being taken to ensure that the youth will have stable housing or living arrangements when discharged from care; and

k) any educational, health care, and disability needs of the child and the plan to ensure those needs are met.

2) Additional findings for fifteen of last twenty-two months. If the child has been in placement for fifteen of the last twenty-two months, the court may direct the county agency to file a “petition to terminate parental rights.”

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 **follow the filing and service requirements pursuant to Rule 1345. The parties** [provide all parties] and when requested, the court, **shall be provided** 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] **who** 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.]

Pursuant to paragraph (A), courts are to conduct a permanency hearing no later than every six months. Courts are strongly encouraged to conduct more frequent permanency hearings, such as every three months, when possible.

The court may schedule a three-month hearing or conference. At the three-month hearing, the court should ensure that: 1) services ordered at the dispositional hearing pursuant to Rule 1512 are put into place by the county agency; 2) the guardian who is the subject of the petition is given access to the services ordered; 3) the guardian is cooperating with the county agency; and 4) a concurrent plan is developed if the primary plan may not be achieved.

A three-month hearing or conference is considered best practice for dependency cases and is highly recommended. The court should not wait until six months to find out if the case is progressing because time to achieve permanency is critical in dependency cases.

Every child should have a concurrent plan, which is a secondary plan developed if the primary permanency plan for the child cannot be achieved. See Comment to Rule 1512. For example, the primary plan may be reunification with the guardian. If the guardian does not substantially comply with the requirements of the court-ordered services, the county agency may look at subsidized legal guardianship as the concurrent plan. Because of time requirements, the concurrent plan is to be in place so that permanency may be achieved in a timely manner.

Pursuant to paragraph (D)(2), a "petition to terminate parental rights" is a term of art used to describe the motion terminating parental rights. This does not refer to the "petition" as defined in Pa.R.J.C.P. 1120. The county agency is to file a goal change motion under Rule 1606 and move for termination of parental rights. Pursuant to Rule 1606 (A)(2), a goal change motion is discretionary if: 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.

The court is to move expeditiously towards permanency. A goal change motion, pursuant to Rule 1606, may be filed at any time.

In addition to the permanency hearing contemplated by this rule, courts may also conduct additional and/or more frequent intermittent review hearings or status conferences, which address specific issues based on the circumstances of the case, and which assist the court in ensuring timely permanency.

See Comment to Rule 1606 for combining the permanency hearing with a termination of parental rights hearing.

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

See 42 U.S.C.A. § 675 (5)(A)-(H) for development of a transition plan pursuant to paragraph (D)(1)(j).

See Rule 1136 regarding ex parte communications.

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).

**RULE 1609. [COURT ORDER OF] PERMANENCY HEARING ORDERS
[DETERMINATIONS]**

A. **Findings.** After every permanency hearing, the court shall issue a written order, which provides:

1) whether the permanency plan is best suited to the safety, protection, and physical, mental, and moral welfare of the child, **and**

2) findings made pursuant to Rule 1608(D).

B. **[Determination made. The court's order shall reflect a determination made consistent with 42 Pa.C.S. § 6351(f.1).**

C.] **Transfer of legal custody.** If the court decides to transfer permanent legal custody of the child to a person found to be qualified to provide care, shelter, and supervision of the child, the permanency order shall include:

1) the name and address of such person unless disclosure is prohibited by court order;

2) the limitations of the order; and

3) any temporary visitation rights of parents.

[D]C. **Orders concerning guardian.** The court shall include any conditions, limitations, restrictions, and obligations in its permanency order imposed upon the guardian.

[COMMENT

Under paragraph (B), the court's order is to reflect whether: 1) If the court finds that return of the child is best suited to the safety, protection, and physical, mental, and moral welfare of the child, the court shall specify: a) the conditions of the return of the child; and b) the projected date of the return of the child; or 2) If the court finds that the return of the child is not best suited to the safety, protection, and physical, mental, and moral welfare of the child, the court shall determine if and when the child will be placed: a) for adoption and the county agency will file for termination of parental rights pursuant to Pa.O.C.R., Rule 15.4; b) with a legal custodian; c) with a fit and willing relative; or d) in another living arrangement intended to be permanent in nature which is approved by the court and where the county agency has documented a compelling reason explaining why options under (a) through (c) are not feasible.]

Official Note: Rule 1609 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1609 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

RULE 1613. TERMINATION OF COURT SUPERVISION

A. **Concluding Supervision.** Any party, or the court on its own motion, may move for the termination of supervision when court-ordered services from the county agency are no longer needed and:

- 1) the child has remained with the guardian and the circumstances which necessitated the dependency adjudication have been alleviated;
- 2) the child has been reunified with the guardian and the circumstances which necessitated the dependency adjudication and placement have been alleviated;
- 3) the child has been placed with a ready, willing, and able parent who was not previously identified by the county agency;
- 4) the child has been adopted and services from the county agency are no longer needed;
- 5) the child has been placed in the custody of a permanent legal custodian and services from the county agency are no longer needed;
- 6) the child has been placed in the custody of a fit and willing relative and services from the county agency are no longer needed;
- 7) the child has been placed in another living arrangement intended to be permanent and services from the county agency are no longer needed;
- 8) the child has been adjudicated delinquent and services from the county agency are no longer needed;
- 9) the child has been emancipated by the court;
- 10) the child is eighteen years old and refusing further services from the county agency **after a hearing pursuant to paragraph (E)**;
- 11) the child has died;
- 12) a court in another county of this Commonwealth has accepted jurisdiction; or
- 13) a court in another state has accepted jurisdiction.

B. **Ready, willing, and able parent.** When services from the county agency are no longer necessary because the court has determined that the child is not dependent pursuant to paragraph (A)(3) because a non-custodial parent has been found by the court to be able and available, the court shall enter an order awarding custody to that

parent and the court order shall have the effect and be docketed as a decision entered pursuant to Pa.R.C.P.

- C. **Objection.** Any party may object to a motion under paragraph (A) and request a hearing.
- D. **Hearing.** If objections have been made under paragraph (C), the court shall hold a hearing and give each party an opportunity to be heard before the court enters its final order.
- E. **Children eighteen years of age or older.**

1) Before the court can terminate its supervision of a child who is eighteen years of age or older, a hearing shall be held within ninety days of the child's eighteenth birthday.

2) The child shall have the opportunity to make decisions about the transition plan and confer with the county agency about the details of the plan. The transition plan shall, at a minimum, include:

a) the specific plans for housing;

b) a description of the child's source of income;

c) the specific plans for pursuing educational or vocational training goals;

d) the child's employment goals and whether the child is employed;

e) a description of the health insurance plan that the child is expected to obtain and any continued health or behavioral health needs of the child;

f) a description of any available programs that would provide mentors or assistance in establishing positive adult connections;

g) verification that all vital identification documents and records have been provided to the child; and

h) any other needed support services.

3) At the hearing, the court shall approve a transition plan for the child.

- F. Cessation of services.** When all of the above listed requirements have been met, the court may discharge the child from its supervision and close the case.

COMMENT

For procedures on motions, see Rule 1344. For procedures on the dispositional order, see Rule 1515.

For guidelines under paragraph (A), see 42 Pa.C.S. §§ 6301(b) & 6351(f.1).

Pursuant to paragraph (A)(8), if a child has been adjudicated delinquent, the court may terminate court supervision unless dependency is necessary for placement. *In re Deanna S.*, 422 Pa.Super. 439, 619 A.2d 758 (1993). The court may also decide to retain dependency jurisdiction regardless of the delinquency adjudication because the child still needs dependency services.

If dependency issues have not been resolved, the case should be kept open and services ordered. The court should ensure that services are not discontinued because the child was adjudicated delinquent. The county agency and the juvenile probation are to collaborate on the case and resolve all outstanding issues. If a child is in a delinquency placement, the county agency is to ensure services are in place when the child is released.

For procedures on emancipation pursuant to paragraph (A)(9), see *Berks County Children and Youth Services v. Rowan*, 428 Pa.Super. 448, 631 A.2d 615 (1993). See also, 22 Pa.Code § 11.11, 55 Pa.Code § 145.62.

Pursuant to paragraph (A)(10), a child who was adjudicated dependent prior to reaching the age of eighteen and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, may remain in the course of instruction or treatment until the age of twenty-one. 42 Pa.C.S. § 6302. See also, 55 Pa.Code §§ 3130.5 & 3130.87; *In re S.J.*, 906 A.2d 547 (Pa. Super. Ct. 2006).

The court may not terminate jurisdiction solely because the dependent child is a runaway. *In re Deanna S.*, 422 Pa.Super. 439, 619 A.2d 758 (1993).

A child whose non-custodial parent is ready, willing, and able to provide adequate care for the child may not be found dependent. *In re M.L.*, 562 Pa. 646, 757 A.2d 849 (2000). See paragraph (B).

Pursuant to 42 Pa.C.S. § 6351(a)(2.1), a court may transfer permanent legal custody to a person found by the court to be qualified to receive and care for the child. 42 Pa.C.S. § 6351(a)(2.1). See also *Justin S.*, 375 Pa.Super. 88, 543 A.2d 1192 (1988).

Pursuant to paragraph (E)(2), the county agency is to assist the child and provide all the support necessary in developing a transition plan. See 42 U.S.C.A. § 675 (5)(A)-(H).

Pursuant to paragraph (E)(3), the court is to approve a transition plan that is suitable for the child and that has been personalized at the direction of the child.

Official Note: Rule 1613 adopted August 21, 2006, effective February 1, 2007. Amended July 29, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1613 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1613 published with the Court's Order at 39 Pa.B. 4887 (August 15, 2009).