THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES

[210 PA. CODE CHS. 37 AND 69]

Amendments to Rules of Appellate Procedure and Internal Operating Procedures

The Commonwealth Court approved on June 16, 2015, changes to Chapter 37 of the Rules of Appellate Procedure and its Internal Operating Procedure § 414, found in 210 Pa. Code.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE III. MISCELLANEOUS PROVISIONS

CHAPTER 37. BUSINESS OF THE COMMONWEALTH COURT

BRIEFING AND LISTING OF CASES FOR ARGUMENT

Rule 3714. Listing of Cases and Briefing Schedules.

(a) *Matters heard solely on certified record.* An appeal from a court of common pleas and each other matter which under the applicable law is required to be determined by the court upon the record before the government unit below shall be eligible for listing for argument after the record has been filed. When all briefs and reproduced records have been filed, the Chief Clerk shall list the case for oral argument on a specified date and shall give at least ten days written notice by first class mail to all parties of the date scheduled for the argument. The Court may direct any matter to be submitted on briefs without oral argument.

(b) *Original jurisdiction matters.* A matter commenced in whole or in part within the original jurisdiction of the court including matters under Pa.R.A.P. 1571 (determinations of the Board of Finance and Revenue) when at issue for argument on preliminary matters or after the record has been made shall be listed for oral argument after the court establishes a briefing schedule.

(c) *Extensions of Time to File Briefs or Reproduced Record.* A party may submit a written request for an extension of time to file briefs or the reproduced record, which the chief clerk may grant, if the requested extension is: (1) for thirty days or less; (2) the first one sought; and (3) unopposed by all other parties. If any of the three enumerated criteria do not exist, the party must submit its extension request by formal application. The prothonotary, chief clerk or deputy prothonotary may act on the formal application.

***Official Note*:** Under Rule 105 the court may reduce or enlarge any of the time periods specified in the rule. Preliminary matters referred to in Subdivision (b) include preliminary objections, motions for judgment on the pleadings, motions for summary judgment and motions to quash.

***See* Pa.R.A.P. 123 regarding the form of an application for relief, which is necessary if the three requirements in Pa.R.A.P. 3714(c) cannot be met.**

(*Editor's Note*: The following rule is new and printed in regular type to enhance readability.)

Rule 3716. Citing Judicial Opinions in Filings.

(a) A reported opinion of the Commonwealth Court *en banc* or three-judge panel may be cited as binding precedent.

(b) An unreported panel decision of this Court issued after January 15, 2008, may be cited for its persuasive value, but not as binding precedent.

(c) Any unreported opinion of this Court may be cited and relied upon when it is relevant under the doctrine of law of the case, res judicata or collateral estoppel.

(d) A reported single judge opinion in an election law matter filed after October 1, 2013, may be cited as binding precedent only in an election law matter.

(e) All other single judge opinions of this Court, even if reported, shall be cited only for persuasive value and not as binding precedent.

***Official Note*:** A special election panel is one designated by the president judge to hear election law matters on an expedited basis. Decisions by such panels are made by only the members of the panel without the participation of judges who are not part of the panel. *See* Internal Operating Procedure § 112(b) (Courts *En Banc* and Panels; Composition), § 258 (Decision; Election Law Appeals), § 416 (Reporting of Unreported Opinions).

[COSTS] POST DECISION

(*Editor's Note*: The following rule is new and printed in regular type to enhance readability.)

Rule 3740. Request to Report Unreported Opinion.

Within 30 days after an opinion has been filed as unreported, any person may file an application to report the opinion. Except as noted in the next sentence, grant of the application requires an affirmative majority vote of the commissioned judges. Grant of an application to report an opinion of a single judge or an opinion of a special election panel requires an affirmative two-thirds vote of the commissioned judges.

***Official Note*:** A decision may be reported when it:

(1) establishes a new rule of law;

(2) applies an existing rule of law to facts significantly different than those stated in prior decisions;

(3) modifies or criticizes an existing rule of law;

(4) resolves an apparent conflict of authority;

(5) involves a legal issue of continuing public interest; or

(6) constitutes a significant, non-duplicative contribution to law because it contains:

(i) an historical review of the law,

(ii) a review of legislative history,

(iii) a review of conflicting decisions among the courts of other jurisdictions.

See also IOP § 412.

ENFORCEMENT **[PROCEEDINGS]** OF AGENCY ORDER

Rule 3761. Enforcement Proceedings.

* * * * *

PART II. INTERNAL OPERATING PROCEDURES

CHAPTER 69. INTERNAL OPERATING PROCEDURES OF THE COMMONWEALTH COURT OF PENNSYLVANIA

DECISIONS

§ 69.414. Citing Judicial Opinions **in Filings**.

* * * * *

[Pa.B. Doc. No. 15-1363. Filed for public inspection July 24, 2015, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Order Adopting New Rules 220.1 and 220.2, Renumbering and Amending Current Rule 220.1 as 220.3, and Amending Rule 223.1 of the Rules of Civil Procedure; No. 628 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 7th day of July, 2015, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 42 Pa.B. 377 (January 21, 2012):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

(1) New Rules 220.1 and 220.2 of the Pennsylvania Rules of Civil Procedure are adopted;

(2) Current Rule 220.1 of the Pennsylvania Rules of Civil Procedure is renumbered as Rule 220.3 and amended; and

(3) Rule 223.1 of the Pennsylvania Rules of Civil Procedure is amended,

in the following form. This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective October 1, 2015.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

(*Editor's Note*: Rules 220.1 and 220.2 are new and printed in regular type to enhance readability.)

Rule 220.1. Preliminary Instructions to Prospective and Selected Jurors.

(a) For purposes of this rule, "prospective jurors" means those persons who have been chosen to be part of the panel from which the trial jurors and alternate jurors will be selected. "Selected jurors" means those members of the panel who have been selected to serve as trial jurors or alternate jurors. "Jury service" means service as (1) members of the jury array, (2) prospective jurors, and (3) selected jurors.

(b) Persons reporting for jury service, upon their arrival for this service, shall be instructed in their duties.

(c) At a minimum, the persons reporting for jury service shall be instructed that until their service as prospective or selected jurors is concluded, they shall not:

(1) discuss any case in which they have been chosen as prospective jurors or selected jurors with others, including other jurors, except as otherwise authorized by the court;

(2) read or listen to any news reports about any such case;

(3) use a computer, cellular telephone, or other electronic device with communication capabilities while in attendance at trial or during deliberation. These devices may be used during breaks or recesses but may not be used to obtain or disclose information prohibited in subdivision (c)(4);

(4) use a computer, cellular telephone, or other electronic device with communication capabilities, or any other method, to obtain or disclose information about any case in which they have been chosen as prospective or selected jurors. Information about the case includes, but is not limited to, the following:

(i) information about a party, witness, attorney, judge, or court officer;

(ii) news reports of the case;

(iii) information collected through juror research using such devices about the facts of the case;

(iv) information collected through juror research using such devices on any topics raised or testimony offered by any witness;

(v) information collected through juror research using such devices on any other topic the juror might think would be helpful in deciding the case.

(d) These instructions shall be repeated:

(1) to the prospective jurors at the beginning of voir dire;

(2) to the selected jurors at the commencement of the trial;

(3) to the selected jurors prior to deliberations; and

(4) to the selected jurors during trial as the trial judge deems appropriate.

(e) Jurors shall be instructed that it is their obligation immediately to inform the court of any violation of this rule.

***Official Note*:** For comprehensive jury instructions on the use of electronic devices by jurors in civil cases, see Section 1.180 of the Pennsylvania Suggested Civil Jury Instructions, Pa. SSJI (Civ), § 1.180.

For guidance regarding the use of electronic devices in the courtroom by persons other than jurors, see Rule of Judicial Administration 1910.

Rule 220.2. Sanctions for Violation of Rule 220.1.

Any individual who violates the provisions of Rule 220.1 regarding the use of electronic devices by jurors or who violates any limitation imposed by local rule or by

the trial judge regarding the prohibited use of electronic devices during court proceedings:

(a) may be found in contempt of court and sanctioned in accordance with 42 Pa.C.S. § 4132 et seq., and

(b) may be subject to sanctions deemed appropriate by the trial judge, including, but not limited to, the confiscation of the electronic device that is used in violation of this rule.

Rule **[220.1] 220.3**. Voir Dire.

(a) Upon completion of the oath, the judge shall instruct the prospective jurors upon their duties and restrictions while serving as jurors, and of any sanctions for violation of those duties and restrictions, including those in Rules 220.1 and 220.2.

(b) Voir dire shall be conducted to provide the opportunity to obtain at a minimum a full description of the following information, where relevant, concerning the prospective jurors and their households:

(1) Name;

(2) Date and place of birth;

(3) Residential neighborhood and zip code (not street address);

(4) Marital status;

(5) Nature and extent of education;

(6) Number and ages of children;

(7) Name, age and relationship of members of prospective juror's household;

(8) Occupation and employment history of the prospective juror, the juror's spouse and children and members of the juror's household;

(9) Involvement as a party or a witness in a civil lawsuit or a criminal case;

(10) Relationship, friendship or association with a law enforcement officer, a lawyer or any person affiliated with the courts of any judicial district;

(11) Relationship of the prospective juror or any member of the prospective juror's immediate family to the insurance industry, including employee, claims adjustor, investigator, agent, or stockholder in an insurance company;

(12) Motor vehicle operation and licensure;

(13) Physical or mental condition affecting ability to serve on a jury;

(14) Reasons the prospective juror believes he or she cannot or should not serve as a juror;

(15) Relationship, friendship or association with the parties, the attorneys and prospective witnesses of the particular case to be heard;

(16) Ability to refrain from using a computer, cellular telephone or other electronic device with communication capabilities in violation of the provisions of Rule 220.1; and

[(16)] (17) Such other pertinent information as may be appropriate to the particular case to achieve a competent, fair and impartial jury.

***Official Note*:** For example, under presently prevailing law as established by the Superior Court, *voir dire* should have been allowed with respect to the effect of pre-trial publicity on prospective jurors' "attitudes regarding medical malpractice and tort reform." *Capoferri v. Children's Hosp. of Phila.*, 893 A.2d 133 (Pa. Super. 2006) (en banc).

[(b)] (c) The court may provide for voir dire to include the use of a written questionnaire. However, the use of a written questionnaire without the opportunity for oral examination by the court or counsel is not a sufficient voir dire.

***Official Note*:** The parties or their attorneys may conduct the examination of the prospective jurors unless the court itself conducts the examination or otherwise directs that the examination be conducted by a court employee. Any dispute shall be resolved by the court.

A written questionnaire may be used to facilitate and expedite the voir dire examination by providing the trial judge and attorneys with basic background information about the jurors, thereby eliminating the need for many commonly asked questions.

[(c)] (d) The court may permit all or part of the examination of a juror out of the presence of other jurors.

Rule 223.1. Conduct of the Trial. Trial by Jury.

(a) Before the taking of evidence, the trial judge shall instruct the jurors as provided in Rule 220.1.

[(a)] (b) In conducting a trial by jury, the court may use one or more of the procedures provided in subdivisions **[(b) and]** (c) **and (d)** as may be appropriate in the particular case.

***Official Note*:** This rule catalogs certain procedures which may be utilized in the conduct of a jury trial. Since the court has broad power and discretion in the manner in which it conducts a jury trial, it is not intended that this rule be construed as enlarging, restricting or in any way affecting that power and discretion.

See Rule 223.2 for juror note taking in civil cases.

[(b)] (c) The court may permit jurors to view a premises or a thing in or on a premises.

***Official Note*:** See Rule 219 governing view of premises.

[(c)] (d) The court may

(1) permit specified testimony to be read back to the jury upon the jury's request,

(2) charge the jury at any time during the trial,

***Official Note*:** The court is not limited to charging the jury after the closing argument by the attorneys.

(3) make exhibits available to the jury during its deliberations, and

(4) make a written copy of the charge or instructions, or a portion thereof, available to the jury following the oral charge or instructions at the conclusion of evidence for use during its deliberations.

EXPLANATORY COMMENT

The Supreme Court of Pennsylvania has adopted new Rules 220.1 and 220.2 and the amendment of current Rules 220.1 and 223.1. The changes are intended to provide guidance to the bench and bar regarding the use of electronic devices by jurors in civil cases.

The new rules and amendments provide for jurors to be instructed that the use of electronic devices is restricted during their tenure as a prospective juror, *i.e.* a member of the jury pool, and as a selected juror. The new

provisions require the trial court to instruct jurors that they may not conduct independent research on the Internet about the case, communicate about the case electronically, *e.g.* "tweet" or "blog," or use such devices during juror service. A trial court is required to instruct jurors at the earliest opportunity of interaction between the juror and the trial court, and then repeat those instructions as often as practicable. The new rules and amendments provide for sanctions against any person who violates the provisions of these rules. It should also be noted that a note to new Rule 220.1 cross-references Section 1.180 of the Pennsylvania Suggested Civil Jury Instructions, Pa. SSJI (Civ), § 1.180. These instructions specifically address the use of electronic devices by jurors.

While the proposal focuses on the use of electronic devices by jurors, it remains silent as to their use in the courtroom by the public and media. Rule of Judicial Administration 1910 outlines the responsibility of a trial court regarding the broadcasting, televising, or taking of photographs in the courtroom in civil proceedings.

By the Civil Procedural Rules Committee

PETER J. HOFFMAN,
Chair

[Pa.B. Doc. No. 15-1364. Filed for public inspection July 24, 2015, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 4 AND 7]

Proposed Amendments of Pa.Rs.Crim.P. 490 and 790

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rules 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) and 790 (Procedure For Obtaining Expungement In Court Cases; Expungement Order) 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; deletions to the text are bolded and bracketed.

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

Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
fax: (717) 231-9521
e-mail: criminalrules@pacourts.us

All communications in reference to the proposal should be received by no later than Friday, September 4, 2015. 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 Criminal Procedural Rules Committee

PAUL M. YATRON,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART H. Summary Case Expungement Procedures

Rule 490. Procedure for Obtaining Expungement in Summary Cases; Expungement Order.

(A) *Petition for Expungement*

(1) Except as provided in Rule 320, an individual who satisfies the requirements of 18 Pa.C.S. § 9122 for expungement of a summary case may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, **and** date of birth**[, and social security number]**;

* * * * *

(B) *Objections; Hearing*

* * * * *

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) **[The] Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the** order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

(C) *Order*

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, **and** date of birth**[, and social security number]**;

* * * * *

Comment

This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in summary cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under Rule 790.

See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal record to the petition.

[A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.]

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: http://www.pacourts.us/forms/for-the-public.

"Petition," as used in this rule, is a "motion" for purposes of Rules 575, 576, and 577.

* * * * *

***Official Note*:** Adopted September 22, 2010 effective in 90 days**; amended , 2015, effective , 2015**.

Committee Explanatory Reports:

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Report explaining the proposed amendment regarding the stay on expungement when the Commonwealth has consented and petition and order forms published for comment at 45 Pa.B. 3979 (July 25, 2015).

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART C. Court Case Expungement Procedures

Rule 790. Procedure for Obtaining Expungement in Court Cases; Expungement Order.

(A) *Petition for Expungement*

(1) Except as provided in Rule 320 and 35 P. S. § 780-119, an individual who satisfies the requirements for expungement may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, **and** date of birth**[, and social security number]**;

* * * * *

(B) *Objections; Hearing*

* * * * *

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) **[The] Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the** order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

(C) *Order*

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, **and** date of birth**[, and social security number]**;

* * * * *

Comment

* * * * *

An order for expungement under The Controlled Substance, Drug, Device, and Cosmetic Act, 35 P. S. § 780-119, also must include the information in paragraph (C).

[A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.]

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: http://www.pacourts.us/forms/for-the-public.

"Petition" as used in this rule is a "motion" for purposes of Rules 575, 576, and 577.

* * * * *

***Official Note*:** Adopted September 22, 2010 effective in 90 days**; amended , 2015, effective , 2015**.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed amendment regarding the stay on expungement when the Commonwealth has consented and petition and order forms published for comment at 45 Pa.B. 3979 (July 25, 2015).

REPORT

Proposed amendment of Pa.Rs.Crim.P. 490 and 790

Contents of Expungement Petitions and Orders

Recently, the Committee had considered suggested amendments to the procedures contained in Rules 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) and 790 (Procedure For Obtaining Expungement In Court Cases; Expungement Order). Some of these suggestions related to complaints that it was taking lengthy amounts of time for the Pennsylvania State Police (PSP) to expunge records and to provide criminal history reports required for the expungement petition. As a result, Committee members met with representatives of the PSP to discuss these problems and possible rule changes that might help alleviate the problems. From these discussions, it appeared that most of the problems were of an administrative nature not amenable to correction by rule amendment. However, the PSP representatives suggested two possible changes that might assist their processing of expungement requests.

One of the things that was claimed to contribute to delay was that each county used a different type of expungement order. The PSP suggested that requiring a standard expungement order would help with this problem. The Committee considered this suggestion and noted that the AOPC has developed form petitions and orders for expungements under Rules 490 and 790 that are publically available on the UJS website. Additionally, the Committee noted that this problem has not been reported from other agencies that process large numbers of expungement orders including the AOPC.

The Committee ultimately rejected the idea of requiring one particular form. There was a concern that a petition could be rejected solely on the basis of not being the approved form while still containing the other information necessary for an expungement. The Comments to Rule 490 and 790 already mention the AOPC forms. The Committee concluded that adding a cross-reference to the webpage where the AOPC forms for expungement petitions and orders are found would be helpful to encourage use of the standard forms.

The PSP representatives also suggested removing the requirement of including the defendant's social security number in the expungement order due to identity theft concerns. Prior to the adoption of the current expungement rules, the Committee had considered removing this requirement and had, in 2008, recommended to the Court that the requirement for the defendant's social security number be removed. However, the Committee withdrew that recommendation as a result of communications from the State Police stating that the social security number was needed to ensure the defendant whose record was to be expunged was properly identified. This was particularly so for summary case expungements, because there were fewer defendant- and case-identifiers in such cases. Since that time, it appears that better processes for identifying particular defendants have been put in place and the social security number now is not needed. Therefore, this requirement would be removed from both expungement rules. Since the social security number would no longer be required for the order, similar amendments would remove the requirement to include the social security number in the expungement petition.

Another suggestion received by the Committee was to eliminate, in those cases in which the Commonwealth has filed a consent to the expungement, the 30-day stay on the expungement order provided in Rules 490(B)(4)(b) and 790(B)(4)(b) during which time the Commonwealth may appeal. The consent provisions in Rule 490(B)(1) and 790(B)(1) recognize that the Commonwealth may join in the desire to expedite an expungement. Some of the members believed that it is logical that the stay provision be curtailed where the Commonwealth has consented. On the other hand, some members were concerned about the rare case where the Commonwealth discovers reasons for appeal after having given consent and the stay period is the last chance for the Commonwealth to correct such a mistake before a record is eliminated. The Committee ultimately concluded that the Commonwealth has a responsibility to thoroughly investigate the defendant's circumstances before consenting to expungement in the first place and agreed to add a provision precluding the stay in cases in which the Commonwealth has consented to the expungement.

[Pa.B. Doc. No. 15-1365. Filed for public inspection July 24, 2015, 9:00 a.m.]

[234 PA. CODE CH. 6]

Order Adopting New Rules 626 and 627, Amending Rules 631, 632 and 647, Approving the Revision of the Comment to Rule 646, and Renumbering Rule 630 as Rule 625 of the Rules of Criminal Procedure; No. 464 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 7th day of July, 2015, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 42 Pa.B. 380 (January 21, 2012), and in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 34), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that new Pennsylvania Rules of Criminal Procedure 626 and 627 and the amendments to Pennsylvania Rules of Criminal Procedure 631, 632, and 647 are adopted, the revision to the Comment to Pennsylvania Rule of Criminal Procedure 646 is approved, and Pennsylvania Rule of Criminal Procedure 630 is renumbered to Pennsylvania Rule of Criminal Procedure 625 in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective October 1, 2015.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART C. Jury Procedures

Rule **[630] 625**. Juror Qualification Form, Lists of Trial Jurors, and Challenge to the Array.

* * * * *

Comment

The qualification, selection, and summoning of prospective jurors, as well as related matters, are generally dealt with in Chapter 45, Subchapters A-C, of the Judicial Code, 42 Pa.C.S. §§ 4501—4503, 4521—4526, 4531—4532. "Law" as used in paragraph (B)(2) of this rule is intended to include these Judicial Code provisions. However, paragraphs (B)(1) and (2) of this rule are intended to supersede the procedures set forth in Section 4526(a) of the Judicial Code and that provision is suspended as being inconsistent with this rule. *See* PA. CONST. art. V**[.]**, § 10; 42 Pa.C.S. § 4526(c). Sections 4526(b) and (d)—(f) of the Judicial Code are not affected by this rule.

Paragraph (A) was amended in 1998 to require that the counties use the juror qualification forms provided for in Section 4521 of the Judicial Code, 42 Pa.C.S. § 4521. It is intended that the attorneys in a case may inspect and copy or photograph the jury lists and the qualification forms for the prospective jurors summoned for their case. The information on the qualification forms is not to be disclosed except as provided by this rule or by statute. This rule is different from Rule 632, which requires that jurors complete the standard, confidential information questionnaire for use during *voir dire*.

***Official Note*:** Adopted January 24, 1968, effective August 1, 1968; Comment revised January 28, 1983, effective July 1, 1983; amended September 15, 1993, effective January 1, 1994; September 15, 1993 amendments suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order amending Rule 1104 is superseded by the September 18, 1998 Order, and Rule 1104 is amended September 18, 1998, effective July 1, 1999; amended May 14, 1999, effective July 1, 1999; renumbered Rule 630 March 1, 2001, effective April 1, 2001; amended March 28, 2000, effective July 1, 2000**; renumbered Rule 625 July 7, 2015, effective October 1, 2015**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the July 7, 2015 renumbering of Rule 630 to Rule 625 published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

(*Editor's Note*: Rules 626 and 627 are new and printed in regular type to enhance readability.)

Rule 626. Preliminary Instructions to Prospective and Selected Jurors.

(A) For purposes of this rule,

(1) the term "prospective jurors" means those persons who have been chosen to be part of the panel from which the trial jurors and alternate jurors will be selected;

(2) the term "selected jurors" means those members of the panel who have been selected to serve as trial jurors or alternate jurors; and

(3) the term "jury service" means service as (1) members of the jury array, (2) prospective jurors, and (3) selected jurors.

(B) Persons reporting for jury service, upon their arrival for this service, shall be instructed in their duties while serving as prospective jurors and selected jurors.

(C) At a minimum, the persons reporting for jury service shall be instructed that until their service as prospective or selected jurors is concluded, they shall not:

(1) discuss any case in which they have been chosen as prospective jurors or selected jurors with others, including other jurors, except as instructed by the court;

(2) read or listen to any news reports about any such case;

(3) use a computer, cellular phone, or other electronic device with communication capabilities while in attendance at trial or during deliberation. These devices may be used during breaks or recesses but never may be used to obtain or disclose information prohibited in paragraph (C)(4);

(4) use a computer, cellular phone, or other electronic device with communication capabilities, or any other method, to obtain or disclose any information about any case in which they have been chosen as prospective or selected jurors. Information about the case includes, but is not limited to, the following:

(i) information about a party, witness, attorney, judge, or court officer;

(ii) news reports of the case;

(iii) information collected through juror research using such devices about the facts of the case;

(iv) information collected through juror research using such devices on any topics raised or testimony offered by any witness;

(v) information collected through juror research using such devices on any other topic the juror might think would be helpful in deciding the case.

(D) These instructions shall be repeated:

(1) to the prospective jurors at the beginning of *voir dire*;

(2) to the selected jurors at the commencement of the trial;

(3) to the selected jurors prior to deliberations; and

(4) to the selected jurors during trial as the trial judge deems appropriate.

(E) Jurors shall be instructed that they are required to inform the court immediately of any violation of this rule.

Comment

This rule was adopted in 2015 in recognition of the fact that the proliferation of personal communications devices has provided individuals with an unprecedented level of access to information. This access has the potential for abuse by prospective jurors who might be tempted to perform research about a case for which they may be selected. Therefore, the rule requires that prospective jurors be instructed at the earliest possible stage as to their duty to rely solely on information presented in a case and to refrain from discussion about the case, either in person or electronically.

It is recommended that the juror summons also contain the language.

It also is recommended, as an additional means of ensuring adherence, that the judge explain to the prospective jurors the reason for these restrictions. This explanation should include a statement that, in order for the jury system to work as intended, absolute impartiality on the part of the jurors is necessary. Such impartiality is achieved by restricting the information upon which the jurors will base their decision to that which is presented in court.

***Official Note*:** Adopted July 7, 2015, effective October 1, 2015.

Committee Explanatory Reports:

Final Report explaining the July 7, 2015 adoption of new Rule 626 regarding instructions to prospective jurors published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

Rule 627. Sanctions for Use of Prohibited Electronic Devices.

Any individual who violates the provisions of Rule 112(A) prohibiting recording or broadcasting during a judicial proceeding or who violates the Court's instructions required by Rule 626 regarding the use of electronic devices by jurors or who violates any limitation imposed by a local rule or by the trial judge regarding the prohibited use of electronic devices during court proceedings:

(1) may be found in contempt of court and sanctioned in accordance with 42 Pa.C.S. § 4132 *et seq.*; and

(2) may be subject to sanctions deemed appropriate by the trial judge, including, but not limited to, the confiscation of the electronic device that is used in violation of these rules.

Comment

This rule was adopted in 2015 to make clear that in addition to the penalties for contempt that may be imposed upon an individual who violates these rules or a court-imposed restriction on the use of electronic devices during court proceedings, such devices may be temporarily or permanently confiscated by the court.

***Official Note*:** Adopted July 7, 2015, effective October 1, 2015.

Committee Explanatory Reports:

Final Report explaining the July 7, 2015 adoption of new Rule 627 regarding sanctions for use of prohibited communications devices published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

PART C(1). Impaneling Jury

Rule 631. Examination and Challenges of Trial Jurors.

(A) *Voir dire* of prospective trial jurors and prospective alternate jurors shall be conducted, and the jurors shall be selected, in the presence of a judge, unless the judge's presence is waived by the attorney for the Commonwealth, the defense attorney, and the defendant, with the judge's consent.

(B) This oath shall be administered individually or collectively to the prospective jurors:

"You do solemnly swear by Almighty God (or do declare and affirm) that you will answer truthfully all questions that may be put to you concerning your qualifications for service as a juror."

(C) Upon completion of the oath, the judge shall instruct the prospective jurors upon their duties and restrictions while serving as jurors, and of any sanctions for violation of those duties and restrictions, including those provided in Rule 626(C) and Rule 627.

[(C)] (D) *Voir dire*, including the judge's ruling on all proposed questions, shall be recorded in full unless the recording is waived. The record will be transcribed only upon written request of either party or order of the judge.

[(D)] (E) Prior to *voir dire*, each prospective juror shall complete the standard, confidential juror information questionnaire as provided in Rule 632. The judge may require the parties to submit in writing a list of proposed questions to be asked of the jurors regarding their qualifications. The judge may permit the defense and the prosecution to conduct the examination of prospective jurors or the judge may conduct the examination. In the latter event, the judge shall permit the defense and the prosecution to supplement the examination by such further inquiry as the judge deems proper.

[(E)] (F) In capital cases, the individual *voir dire* method must be used, unless the defendant waives that alternative. In non-capital cases, the trial judge shall select one of the following alternative methods of *voir dire*, which shall apply to the selection of both jurors and alternates:

(1) INDIVIDUAL *VOIR DIRE* AND CHALLENGE SYSTEM.

(a) *Voir dire* of prospective jurors shall be conducted individually and may be conducted beyond the hearing and presence of other jurors.

(b) Challenges, both peremptory and for cause, shall be exercised alternately, beginning with the attorney for the Commonwealth, until all jurors are chosen. Challenges shall be exercised immediately after the prospective juror is examined. Once accepted by all parties, a prospective juror shall not be removed by peremptory challenge. Without declaring a mistrial, a judge may allow a challenge for cause at any time before the jury begins to deliberate, provided sufficient alternates have been selected, or the defendant consents to be tried by a jury of fewer than 12, pursuant to Rule 641.

(2) LIST SYSTEM OF CHALLENGES.

(a) A list of prospective jurors shall be prepared. The list shall contain a sufficient number of prospective jurors to total at least 12, plus the number of alternates to be selected, plus the total number of peremptory challenges (including alternates).

(b) Prospective jurors may be examined collectively or individually regarding their qualifications. If the jurors are examined individually, the examination may be conducted beyond the hearing and presence of other jurors.

(c) Challenges for cause shall be exercised orally as soon as the cause is determined.

(d) When a challenge for cause has been sustained, which brings the total number on the list below the number of 12 plus alternates, plus peremptory challenges (including alternates), additional prospective jurors shall be added to the list.

(e) Each prospective juror subsequently added to the list may be examined as set forth in paragraph **[(E)(2)(b)] (F)(2)(b)**.

(f) When the examination has been completed and all challenges for cause have been exercised, peremptory challenges shall then be exercised by passing the list between prosecution and defense, with the prosecution first striking the name of a prospective juror, followed by the defense, and alternating thereafter until all peremptory challenges have been exhausted. If either party fails to exhaust all peremptory challenges, the jurors last listed shall be stricken. The remaining jurors and alternates shall be seated. No one shall disclose which party peremptorily struck any juror.

Comment

This rule applies to all cases, regardless of potential sentence. Formerly there were separate rules for capital and non-capital cases.

If Alternative **[(E)(1)] (F)(1)** is used, examination continues until all peremptory challenges are exhausted or until 12 jurors and 2 alternates are accepted. Challenges must be exercised immediately after the prospective juror is questioned. In capital cases, only Alternative **[(E)(1)] (F)(1)** may be used unless affirmatively waived by all defendants and the Commonwealth, with the approval of the trial judge.

If Alternative **[(E)(2)] (F)(2)** is used, sufficient jurors are assembled to total 12, plus the number of alternates, plus at least the permitted number of peremptory challenges (including alternates). It may be advisable to assemble additional jurors to encompass challenges for cause. Prospective jurors may be questioned individually, out of the presence of other prospective jurors, as in Alternative **[(E)(1)] (F)(1)**; or prospective jurors may be questioned in the presence of each other. Jurors may be challenged only for cause, as the cause arises. If the challenges for cause reduce the number of prospective

jurors below 12, plus alternates, plus peremptory challenges (including alternates), new prospective jurors are called and they are similarly examined. When the examination is completed, the list is reduced, leaving only 12 jurors to be selected, plus the number of peremptories to be exercised; and sufficient additional names to total the number of alternates, plus the peremptories to be exercised in selecting alternates. The parties then exercise the peremptory challenges by passing the list back and forth and by striking names from the list alternately, beginning with counsel for the prosecution. Under this system, all peremptory challenges must be utilized. Alternates are selected from the remaining names in the same manner. Jurors are not advised by whom each peremptory challenge was exercised. Also, under Alternative **[(E)(2)] (F)(2)**, prospective jurors will not know whether they have been chosen until the challenging process is complete and the roll is called.

This rule requires that prospective jurors be sworn before questioning under either Alternative.

The words in parentheses in the oath shall be inserted when any of the prospective jurors chooses to affirm rather than swear to the oath.

Unless the judge's presence during *voir dire* and the jury selection process is waived pursuant to paragraph (A), the judge must be present in the jury selection room during *voir dire* and the jury selection process.

Pursuant to paragraph **[(D)] (E)**, which was amended in 1998, and Rule 632, prospective jurors are required to complete the standard, confidential juror information questionnaire prior to *voir dire*. This questionnaire, which facilitates and expedites *voir dire*, provides the judge and attorneys with basic background information about the jurors, and is intended to be used as an aid in the oral examination of the jurors.

The point in time prior to *voir dire* that the questionnaires are to be completed is left to the discretion of the local officials. Nothing in this rule is intended to require that the information questionnaires be mailed to jurors before they appear in court pursuant to a jury summons.

See Rule 103 for definitions of "capital case" and "*voir dire*."

***Official Note*:** Adopted January 24, 1968, effective August 1, 1968; amended May 1, 1970, effective May 4, 1970; amended June 30, 1975, effective September 28, 1975. The 1975 amendment combined former Rules 1106 and 1107. Comment revised January 28, 1983, effective July 1, 1983; amended September 15, 1993, effective January 1, 1994. The September 15, 1993 amendments suspended December 17, 1993 until further Order of the Court; amended February 27, 1995, effective July 1, 1995; the September 15, 1993 Order amending Rule 1106 is superseded by the September 18, 1998 Order, and Rule 1106 is amended September 18, 1998, effective July 1, 1999; renumbered Rule 631 and amended March 1, 2000, effective April 1, 2001**; amended July 7, 2015, effective October 1, 2015**.

Committee Explanatory Reports:

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Final Report explaining the July 7, 2015 amendment regarding instructions to the prospective jurors published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

Rule 632. Juror Information Questionnaire.

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(D) Juror information questionnaires shall be used in conjunction with the examination of the prospective jurors conducted by the judge or counsel pursuant to Rule **[631(D)] 631(E)**.

* * * * *

Comment

This rule requires that, prior to *voir dire* in any criminal case, the prospective jurors, including prospective alternate jurors, must complete the standard, confidential juror information questionnaire required in paragraph (H), and that the trial judge and attorneys must automatically be given copies of the completed questionnaires in time to examine them before *voir dire* begins. *Compare* Rule **[630] 625**, which provides that attorneys must request copies of juror qualification forms for the jurors summoned in their case.

Under paragraph (A)(2), it is intended that the president judge of each judicial district may designate procedures for submitting the questionnaire to the jurors and maintaining them upon completion. For example, some districts may choose to mail them along with their jury qualification form, while others may desire to have the questionnaire completed by the panel of prospective jurors when they report for jury service. This rule, however, mandates that the questionnaires be completed by each prospective juror to a criminal case.

Each judicial district must provide the jurors with instructions for completing the form, and inform them of the procedures for maintaining confidentiality of the questionnaires. It is expected that each judicial district will inform the jurors that the questionnaires will only be used for jury selection.

Pursuant to paragraph (C), the juror information questionnaire is not a public record and therefore may not be combined in one form with the qualification questionnaire required by Rule **[630] 625**. However, nothing in this rule would prohibit the distribution of both questionnaires in the same mailing.

Under paragraph (B), the information provided by the jurors is confidential and may be used only for the purpose of jury selection. Except for disclosures made during *voir dire*, the information in the completed questionnaires may not be disclosed to anyone except the trial judge, the attorneys and any persons assisting the attorneys in jury selection, such as a member of the trial team or a consultant hired to assist in jury selection, the defendant, and any court personnel designated by the judge. Even once disclosed to such persons, however, the information in the questionnaires remains confidential.

Although the defendant may participate in *voir dire* and have access to information from the questionnaire, nothing in this rule is intended to allow a defendant to have a copy of the questionnaire.

Paragraph (D) makes it clear that juror information questionnaires are to be used in conjunction with the oral examination of the prospective jurors, and are not to be used as a substitute for the oral examination. Juror information questionnaires facilitate and expedite the *voir dire* examination by providing the trial judge and attorneys with basic background information about the jurors, thereby eliminating the need for many commonly asked questions. Although nothing in this rule is intended to

preclude oral questioning during *voir dire*, the scope of *voir dire* is within the discretion of the trial judge. *See, e.g., Commonwealth v. McGrew*, 100 A.2d 467 (Pa. 1953) and Rule **[631(D)] 631(E)**.

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***Official Note*:** Former Rule 1107 rescinded September 28, 1975. Present Rule 1107 adopted September 15, 1993, effective January 1, 1994; suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order is superseded by the September 18, 1998 Order, and present Rule 1107 adopted September 18, 1998, effective July 1, 1999; renumbered Rule 632 and amended March 1, 2000, effective April 1, 2001; amended May 1, 2005, effective August 1, 2005**; amended July 7, 2015, effective October 1, 2015**.

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. **[1477] 1478** (March 18, 2000).

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Final Report explaining the July 7, 2015 amendments correcting cross-references to Rules 625 and 631 published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

Rule 646. Material Permitted in Possession of the Jury.

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Comment

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See Rule **[647(A)] 647(B)** (Request for Instructions, Charge to the Jury, and Preliminary Instructions) concerning the content of the charge and written requests for instructions to the jury.

The 1996 amendment adding "or otherwise recorded" in paragraph (C)(2) is not intended to enlarge or modify what constitutes a confession under this rule. Rather, the amendment is only intended to recognize that a confession can be recorded in a variety of ways. *See Commonwealth v. Foster*, 425 Pa.Super. 61, 624 A.2d 144 (1993).

Nothing in this rule is intended to preclude jurors from taking notes during testimony related to a defendant's confession and such notes may be in the jurors' possession during deliberations.

Paragraph (D) was added in 2005 to make it clear that the notes the jurors take pursuant to Rule 644 may be used during deliberations.

***Official Note*:** Rule 1114 adopted January 24, 1968, effective August 1, 1968; amended June 28, 1974, effective September 1, 1974; Comment revised August 12, 1993, effective September 1, 1993; amended January 16, 1996, effective July 1, 1996; amended November 18, 1999, effective January 1, 2000; renumbered Rule 646 March 1, 2000, effective April 1, 2001; amended June 30, 2005, effective August 1, 2005; amended August 7, 2008, effective immediately; amended October 16, 2009, effective February 1, 2010; amended June 21, 2012, effective in 180 days**; Comment revised July 7, 2015, effective October 1, 2105**.

Committee Explanatory Reports:

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Final Report explaining the July 7, 2015 Comment revision correcting a cross-reference to Rule 647 published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

Rule 647. Request for Instructions, Charge to the Jury, and Preliminary Instructions.

(A) Before the taking of evidence, the trial judge shall give instructions to the jurors as provided in Rule 626.

[(A)] (B) Any party may submit to the trial judge written requests for instructions to the jury. Such requests shall be submitted within a reasonable time before the closing arguments, and at the same time copies thereof shall be furnished to the other parties. Before closing arguments, the trial judge shall inform the parties on the record of the judge's rulings on all written requests and which instructions shall be submitted to the jury in writing. The trial judge shall charge the jury after the arguments are completed.

[(B)] (C) No portions of the charge nor omissions from the charge may be assigned as error, unless specific objections are made thereto before the jury retires to deliberate. All such objections shall be made beyond the hearing of the jury.

[(C)] (D) After the jury has retired to consider its verdict, additional or correctional instructions may be given by the trial judge in the presence of all parties, except that the defendant's absence without cause shall not preclude proceeding, as provided in Rule 602.

[(D)] (E) The trial judge may give **any other** instructions to the jury before the taking of evidence or at anytime during the trial as the judge deems necessary and appropriate for the jury's guidance in hearing the case.

Comment

Paragraph **[(A)] (B)**, amended in 1985, parallels the procedures in many other jurisdictions which require that the trial judge rule on the parties' written requests for instructions before closing arguments, that the rulings are on the record, and that the judge charge the jury after the closing arguments. *See*, *e.g.*, Fed.R.Crim.P. 30; ABA Standards on Trial by Jury, Standard **[15-3.6(a)] 15-3.6**; Uniform Rule of Criminal Procedure 523(b).

Pursuant to Rule 646 (Material Permitted in Possession of the Jury), the judge must determine whether to provide the members of the jury with written copies of the portion of the judge's charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been instructed for use during deliberations.

Paragraph (A) was added in 2015 to require trial judges to instruct jurors that they are prohibited from using computers or cell phones at trial or during deliberation, and are prohibited from using a computer or other electronic device or any other method to obtain or disclose information about the case when they are not in the courtroom. The amendment prohibits jurors from reading about or listening to news reports about the case and prohibits discussion among jurors until deliberation.

Paragraph **[(D)] (E)**, added in 1985, recognizes the value of jury instructions to juror comprehension of the trial process. It is intended that the trial judge determine on a case by case basis whether instructions before the

taking of evidence or at anytime during trial are appropriate or necessary to assist the jury in hearing the case. The judge should determine what instructions to give based on the particular case, but at a minimum the preliminary instructions should orient the jurors to the trial procedures and to their duties and function as jurors. In addition, it is suggested that the instructions may include such points as note taking, the elements of the crime charged, presumption of innocence, burden of proof, and credibility. Furthermore, if a specific defense is raised by evidence presented during trial, the judge may want to instruct on the elements of the defense immediately after it is presented to enable the jury to properly evaluate the specific defense. *See also* Pennsylvania Suggested Standard Criminal Jury Instructions, Chapter II.

***Official Note*:** Rule 1119 adopted January 24, 1968, effective August 1, 1968; amended April 23, 1985, effective July 1, 1985; renumbered Rule 647 and amended March 1, 2000, effective April 1, 2001; Comment revised June 30, 2005, effective August 1, 2005; amended October 16, 2009, effective February 1, 2010**; amended July 7, 2015, effective October 1, 2015**.

Committee Explanatory Reports:

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Final Report explaining the July 7, 2015 amendment regarding the use of personal communications devices and computers by the jurors published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

FINAL REPORT[1]

New Pa.Rs.Crim.P. 626 and 627, Amendments to Pa.Rs.Crim.P. 631, 632, and 647, Revision to the Comment to Pa.R.Crim.P. 646, and Renumbering of Pa.R.Crim.P. 630

Personal Electronic Devices in the Courtroom by Jurors

On July 7, 2015, effective October 1, 2015, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rules of Criminal Procedure 626 (Preliminary Instructions to Prospective Jurors) and 627 (Sanctions for Use of Prohibited Electronic Devices), amended Rules 631 (Examination and Challenges of Trial Jurors), 632 (Juror Information Questionnaire) and 647 (Request for Instructions, Charge to the Jury, and Preliminary Instructions), revised the Comment to Rule 646 (Material Permitted in Possession of the Jury), and renumbered Rule 630 (Juror Qualification Form, Lists of Trial Jurors, and Challenge to the Array) to Rule 625 to provide for instructions to prospective and selected jurors concerning the use of personal communications devices during their service. These rule changes had been proposed in conjunction with a similar package of rule changes proposed by the Civil Procedural Rule Committee.[2]

The increased use of personal electronic devices, often with Internet access, such as the iPhone and iPad, has raised new issues regarding their use in the courtroom. In 2010, the Court wrote to the chairs of the Civil Procedural Rules Committee and the Criminal Procedural Rules Committee alerting the Committees to a number of complaints about problems arising from jurors' inappropriate use of electronic devices during their service as jurors. The Court directed both Committees to consider whether any rule changes were warranted to address these problems. As a result, a Joint Subcommittee of the Civil and Criminal Rules Committees was formed to examine the issues that have arisen and determine if any procedural rules changes are needed to address these issues.[3] A major part of the Joint Subcommittee examination of these issues was the use of this technology by jurors. Both Committees approved the recommendations of the Joint Subcommittee for publication, which was accomplished on January 21, 2012.[4]

The problems that arise with juror use of these devices are two-fold. The first danger is that a juror will use the device to conduct independent research during a trial. The second problem is the use of these devices to communicate with parties outside the courtroom, either by revealing the nature of the deliberations or other information that a juror should not divulge. The Committees concluded that the best way to approach this problem is through specially tailored jury instructions.

Originally, the Criminal Procedural Rules Committee considered a simple elaboration in the juror instruction rules. However, given the ease of access to information that these devices provide, waiting until a juror is actually seated may be too late in the process. This conclusion was coupled with anecdotal reports that some jurors found to have misused these devices, when confronted, expressed surprise that a ban on outside information included "looking things up on the Internet."

The Committee concluded that intervention, in the form of clear instructions, should be at the earliest stage possible. Therefore, the rule changes provide that prospective jurors be advised upon their first interaction with the courts with frequent repetition concerning the prohibited activity. This includes initial instructions when they first arrive as prospective jurors together with instructions on the juror summons itself. These instructions will be reiterated when they are selected as part of a jury "pool" and finally when they are impaneled jurors. There is also encouragement to the trial judge to issue warnings at recesses to reinforce the restrictions.

The restrictions on jurors prohibit the use of communications devices during court proceedings and in the deliberation room and would also prohibit conducting independent research and discussion of the case outside the deliberation room generally. The jurors are also to receive specific instructions against the use of the Internet by means of cell phone or other electronic device for these prohibited activities.

The Committee concluded that the most logical placement for new criminal rules would be in Chapter 6, Part C, Jury Procedures. In order to provide for sufficient room for the new rules, existing Rule 630 has been renumbered as Rule 625 and the new rules placed after it. The major substantive provisions of these changes are included in a new criminal rule, Rule 626, that describes the type of initial instructions to be given upon a prospective juror's first interaction with the courts and at various stages in the proceedings thereafter. Correlative amendments to Criminal Rule 631 require that these warnings be re-

[1] The Committee's Final 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 Committee's explanatory Final Reports.

[2] The changes to the Rules of Civil Procedures that the Court has adopted contemporaneously with these changes created new Civil Rules 220.1 and 220.2, amended and renumbered current Civil Rule 220.1, and amended current Civil Rule 223.1.

[3] The Joint Subcommittee was comprised of representatives from both Committees and included a common pleas judge, two prosecutors, and several private practitioners. In addition to juror use of these devices, the Joint Subcommittee also examined the misuse of these devices in the courtroom by others, such as spectators. The Committees concluded that the question of controlling juror usage of these devices involves very different concerns as well as remedies than that of usage by others and therefore, the question has not been addressed in the present rule changes.

[4] *See* 42 Pa.B. 380 (January 21, 2012).

peated at the beginning of *voir dire* and amendments to Criminal Rule 647 require the warnings to be repeated at the start of trial.[5]

Another area that the Committee considered was what types of sanctions would be available against jurors who violate this rule. The Committee concluded that the most likely enforcement mechanism would be the contempt of court process with the associated sanctions. However, the Committee wanted to make it clear that the judge has power to confiscate a device that was used to violate the restrictions. Accordingly, new Criminal Rule 627 authorizes the judge to hold someone in contempt for violation of the rules and to confiscate a device that is used to violate the rules.[6]

Finally, Rule 632 was amended to correct cross-references to Rule 631 and the Comment to Rule 647 was revised to correct the cross-reference to now-Rule 625.

[Pa.B. Doc. No. 15-1366. Filed for public inspection July 24, 2015, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1 AND 11]

Order Amending Rules 182 and 1182 of the Rules of Juvenile Court Procedure; No. 668 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 13th day of July, 2015, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 182 and 1182 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective August 1, 2017.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART D. MASTERS

Rule 182. Qualifications of Master.

A. *Education, Experience, and Training.* To **[be eligible to be appointed as a master to]** preside **as a master** over cases governed by the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.,* an individual shall:

* * * * *

B. *Continuing Education.* **[A] Upon meeting the requirements of paragraph (A)(3), a** master shall **thereafter** complete six hours of instruction from a course(s) designed by the Juvenile Court Judges' Commission, in juvenile delinquency law, policy, or related social science research every two years **[from the initial appointment as master]**.

C. *Compliance.*

1) A master shall sign an affidavit attesting that he or she has met the requirements of this rule.

2) Prior to **[appointment] presiding** as a master, the **attorney shall send the** affidavit **[shall be sent]** to the President Judge or his or her designee of each judicial district where the attorney is seeking **[appointment] to preside** as a master.

3) After submission of the initial affidavit pursuant to paragraph (C)(2), masters shall submit a new affidavit every two years attesting that the continuing education requirements of paragraph (B) have been met.

Comment

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Pursuant to paragraph (C), a master is to certify to the court that the requirements of this rule have been met prior to **[the appointment] presiding** as **a** master, and submit new affidavits every two years thereafter.

***Official Note*:** Rule 182 adopted September 11, 2014, **amended July 13, 2015,** effective **[October 1, 2016] August 1, 2017**.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 182 published with the Court's Order at 45 Pa.B. 3986 (July 25, 2015).

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART D. MASTERS

Rule 1182. Qualifications of Master.

A. *Education, Experience, and Training.* To **[be eligible to be appointed as a master to]** preside **as a master** over cases governed by the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.,* an individual shall:

* * * * *

B. *Continuing Education.* **[A] Upon meeting the requirements of paragraph (A)(3), a** master shall **thereafter** complete six hours of instruction from a course(s) designed by the Office of Children and Families in the Courts, in juvenile dependency law, policy, or related social science research every two years **[from the initial appointment as master]**.

C. *Compliance.*

1) A master shall sign an affidavit attesting that he or she has met the requirements of this rule.

2) Prior to **[appointment] presiding** as a master, the **attorney shall send the** affidavit **[shall be sent]** to the President Judge or his or her designee of each judicial district where the attorney is seeking **[appointment] to preside** as a master.

[5] The changes to the Rules of Civil Procedure require similar instructions to be provided civil jurors and mirror the proposed Criminal Rules.

[6] New Criminal Rule 627 also applies to those found in violation of current Rule 112(A) that prohibits recording or broadcasting during a judicial proceeding. As contained in the companion changes to the Rules of Civil Procedures, new Civil Rule 220.2 provides that any person who violates Rule 220.1 may be found in contempt of court and sanctioned in accordance with Section 4132 of the Judicial Code. In addition, the trial judge may also sanction a violator as appropriate including confiscation of the electronic device.

3) After submission of the initial affidavit pursuant to paragraph (C)(2), masters shall submit a new affidavit every two years attesting that the continuing education requirements of paragraph (B) have been met.

Comment

* * * * *

Pursuant to paragraph (C), a master is to certify to the court that the requirements of this rule have been met prior to **[the appointment] presiding** as **a** master, and submit new affidavits every two years thereafter.

Official Note**:** Rule 1182 adopted September 11, 2014**, amended July 13, 2015,** effective **[October 1, 2016] August 1, 2017**.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1182 published with the Court's Order at 45 Pa.B. 3986 (July 25, 2015).

EXPLANATORY REPORT

Modifications have been made to clarify that new Rules 182 and 1182 were not intended to be drafted as a prospective requirement but a requirement applying to *all* masters, including current masters. To accommodate any confusion caused by these rules, the new rules are now effective August 1, 2017.

[Pa.B. Doc. No. 15-1367. Filed for public inspection July 24, 2015, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 11—16]

Order Amending Rules 1120, 1210, 1240, 1242, 1330, 1408, 1409, 1512, 1514, 1515, 1608, 1609, 1610, 1611 and 1635 and Adopting New Rule 1149 of the Rules of Juvenile Court Procedure; No. 669 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 13th day of July, 2015, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 43 Pa.B. 6492 (November 2, 2013), in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 77, No. 3, December 6, 2013), and on the Supreme Court's web-page, and an Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 1120, 1210, 1240, 1242, 1330, 1408, 1409, 1512, 1514, 1515, 1608, 1609, 1610, 1611, and 1635 and the adoption of new Rule 1149 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective October 1, 2015.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 1120. Definitions.

* * * * *

COURT is the Court of Common Pleas, a court of record, which is assigned to hear dependency matters. Court shall include masters when they are permitted to hear cases under these rules. Juvenile court shall have the same meaning as court.

DILIGENT EFFORTS are the comprehensive and ongoing efforts made to identify and locate adult relatives and kin for a child until the permanency goal is achieved.

EDUCATIONAL DECISION MAKER is a responsible adult appointed by the court to make decisions regarding a child's education when the child has no guardian or the court has limited the guardian's right to make such decisions for the child. The educational decision maker acts as the child's representative concerning all matters regarding education unless the court specifically limits the authority of the educational decision maker.

FAMILY FINDING is the ongoing diligent efforts of the county agency, or its contracted providers, to search for and identify adult relatives and kin, and engage them in the county agency's social service planning and delivery of services, including gaining commitment from relatives and kin to support a child or guardian receiving county agency services.

FAMILY SERVICE PLAN is the document in which the county agency sets forth the service objectives for a family and services to be provided to a family by the county agency.

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.

HEALTH CARE is care related to any medical need including physical, mental, and dental health. This term is used in the broadest sense to include any type of health need.

JUDGE is a judge of the Court of Common Pleas.

JUVENILE PROBATION OFFICER is a person who has been appointed by the court or employed by a county's juvenile probation office, and who has been properly commissioned by being sworn in as an officer of the court to exercise the powers and duties set forth in Rule 195, the Juvenile Act, and the Child Protective Services Law.

KIN is a relative of the child through blood or marriage, godparent of the child as recognized through an organized church, a member of the child's tribe or clan, or someone who has a significant positive relationship with the child or the child's family.

KINSHIP CARE is the full-time nurturing and protection of a child who is separated from the child's guardian and placed in the home of a

caregiver who has an existing relationship with the child and/or the child's family.

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

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Comment

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An "educational decision maker" is to be appointed by court order. The scope of the appointment is limited to decisions regarding the child's education. The educational decision maker acts as the child's spokesperson on all matters regarding education unless the court specifically limits the authority of the educational decision maker. The educational decision maker holds educational and privacy rights as the child's guardian for purposes of 20 U.S.C. § 1232g and 34 C.F.R. § 99.3. *See also* Rule 1147(C) for the duties and responsibilities of an educational decision maker.

The definition of "family finding" is derived from 62 P. S. § 1302.

Diligence is to include utilizing reasonable resources available when engaging in family finding, never ceasing efforts until multiple relatives and kin are identified, and going beyond basic searching tools by exploring alternative tools and methodologies. "Diligent efforts" is to include, but not limited to, interviews with immediate and extended family and kin, genograms, eco-mapping, case mining, cold calls, and specialized computer searches.

It is insufficient to complete only a basic computer search or attempt to contact known relatives at a last-known address or phone number.

For multiple resources efforts that may be utilized, see Commonwealth of Pennsylvania, Department of Public Welfare, Office of Children, Youth and Families Bulletin, No. 3130-12-03, issued May 11, 2012, effective July 1, 2013; Seneca Family Finding, which may be found at www.familyfinding.org, or Legal Services Initiative, diligent search packet, Statewide Adoption and Permanency Network, which may be found at www.diakon-swan.org.

Supporting a child under the definition of "family finding" means any type of aid, including but not limited to emotional, financial, physical, or psychological aid.

***See also* 62 P. S. § 1301 *et seq.* and 42 U.S.C. § 675 (Fostering Connections) to comply with state and federal regulations.**

For the family service plan, see 55 Pa. Code § 3130.61.

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***Official Note*:** Rule 1120 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009. Amended December 24, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 20, 2011, effective July 1, 2011. Amended June 24, 2013, effective January 1, 2014. Amended October 21, 2013, effective December 1, 2013. Amended July 28, 2014, effective September 29, 2014. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1120 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

PART B(1). EDUCATION **[AND],** HEALTH**, AND WELFARE** OF CHILD

(*Editor's Note*: The following rule is new and printed in regular type to enhance readability.)

Rule 1149. Family Finding.

A. *Court's inquiry and determination.*

1) The court shall inquire as to the efforts made by the county agency to comply with the family finding requirements pursuant to 62 P. S. § 1301 *et seq.*

2) The court shall place its determinations on the record as to whether the county agency has reasonably engaged in family finding.

B. *Discontinued family finding.* Family finding may be discontinued only if, after a hearing, the court has made a specific determination that:

1) continued family finding no longer serves the best interests of the child;

2) continued family finding is a threat to the child's safety; or

3) the child is in a preadoptive placement and the court proceedings to adopt the child have been commenced pursuant to 23 Pa.C.S. Part III (relating to adoption).

C. *Resuming family finding.* The county agency shall resume family finding when the court determines that resuming family finding:

1) is best suited to the safety, protection and physical, mental, and moral welfare of the child; and

2) does not pose a threat to the child's safety.

Comment

Pursuant to paragraph (A), efforts by the county agency may include, but are not limited to whether the county agency is or will be: a) searching for and locating adult relatives and kin; b) identifying and building positive connections between the child and the child's relatives and kin; c) when appropriate: i) supporting the engagement of relatives and kin in social service planning and delivery of services; and ii) creating a network of extended family support to assist in remedying the concerns that led to the child becoming involved with the county agency; d) when possible, maintaining family connections; and e) when in the best interests of the child and when possible, keeping siblings together in care.

The extent to which the county agency is involved in the case when a child is still in the home is dependent on several variables and specific to each case. In some instances, the county agency is more involved and actively engaged in family finding because the child needs support services or could be removed from the home. The search in these instances is used to find resources to help keep the child in the home by preventing removal, or to find resources if removal becomes necessary.

See 62 P. S. § 1301 for legislative intent regarding family finding and promotion of kinship care.

Family finding is required for every child when a child is accepted for services by the county agency. *See* 62 P. S. § 1302. It is best practice to find as many kin as possible for each child. These kin may help with care or support for the child. The county agency should ask the guardian,

the child, and siblings about relatives or other adults in the child's life, including key supporters of the child or guardians.

Specific evidence should be provided indicating the steps taken to locate and engage relatives and kin. *See* Comment to Rule 1120 regarding diligent efforts considerations for locating relatives and kin. When considering the method by which relatives and kin are engaged in service planning and delivery, courts and the parties are encouraged to be creative. Strategies of engagement could include, but are not limited to, inviting relatives and kin to: 1) be involved in a family group decision making conference, family team conferencing, or other family meetings aimed at developing or supporting the family service plan; 2) assist with visitation; 3) assist with transportation; 4) provide respite or child care services; or 5) provide actual kinship care.

Pursuant to paragraph (A)(2), the court is to place its determinations on the record as to whether the county has reasonably engaged in family finding. The level of reasonableness is to be determined by the length of the case and time the county agency has had to begin or continue the process. For example, at the shelter care hearing, the county agency should at least ask the question whether there is family or kin available as a resource. The initial removal of the child is the most critical time in the case. Potential trauma should be considered and ameliorated by family finding efforts as much as possible. Phone calls at this time are reasonable. However, at the dispositional or permanency hearings, the county agency has had more time to engage in a more thorough diligent search as discussed *infra*. *See also* Rule 1120 and its Comment.

The court's inquiry and determination regarding family finding should be made at each stage of the case, including, but not limited to the entry of an order for protective custody, shelter care hearing, adjudicatory hearing, dispositional hearing, and permanency hearing. *See* Rules 1210, 1242, 1408, 1409, 1512, 1514, 1515, 1608, 1609, 1610, and 1611, and their Comments.

Paragraph (B)(3) is meant to include notice of intent to adopt, petition to adopt, or voluntary relinquishment of parental rights, or consent to adopt.

***Official Note*:** Rule 1149 adopted July 13, 2015, effective October 1, 2015.

Committee Explanatory Reports:

Final Report explaining the provisions to Rule 1149 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

CHAPTER 12. COMMENCEMENT OF PROCEEDINGS, EMERGENCY CUSTODY, AND PRE-ADJUDICATORY PLACEMENT

PART B. EMERGENCY CUSTODY

Rule 1210. Order for Protective Custody.

A. *Application of order.* The application for a court order of protective custody may be orally made; however, the request shall be reduced to writing within twenty-four hours. The request shall set forth reasons for the need of protective custody.

B. *Finding of court.*

1) A child may be taken into protective custody by court order when the court determines that removal of the child is necessary for the welfare and best interests of the child.

2) At the time the court issues a protective custody order, the court shall inquire as to whether family finding efforts pursuant to Rule 1149 have been initiated by the county agency.

3) The order may initially be oral, provided that it is reduced to writing within twenty-four hours or the next court business day.

C. *Law enforcement.* The court may authorize a search of the premises by law enforcement or the county agency so that the premises may be entered into without authorization of the owner for the purpose of taking a child into protective custody.

[D. *Execution of order*. The court shall specify:

1) the limitations of the order;

2) the manner in which the order is to be executed; and

3) who shall execute the order.

E.] **D.** *Contents of order.* The court order shall include:

1) the name of the child sought to be protected;

2) the date of birth of the child, if known;

3) the whereabouts of the child, if known;

4) the names and addresses of the guardians;

5) the reasons for taking the child into protective custody;

6) a finding whether reasonable efforts were made to prevent placement of the child; **[and]**

7) a finding whether the reasons for keeping the child in shelter care and that remaining in the home is contrary to the welfare and best interests of the child**[.]; and**

8) findings and orders related to the requirements of Rule 1149 regarding family finding.

E. *Execution of order*. The court shall specify:

1) the limitations of the order;

2) the manner in which the order is to be executed; and

3) who shall execute the order.

Comment

See 42 Pa.C.S. § 6324 for statutory provisions concerning taking into custody.

For a discussion of the due process requirements for taking a child into emergency custody, see *Patterson v. Armstrong County Children and Youth Services*, 141 F. Supp. 2d 512 (W.D. Pa. 2001).

The court is to determine whether reasonable efforts**, including services and family finding efforts,** were made to prevent placement or in the case of an emergency placement where services were not offered and could not have prevented the necessity of placement, whether this level of effort was reasonable due to the emergency nature of the situation, safety considerations and circumstances of the family. 42 Pa.C.S. § 6332.

See also In re Petition to Compel Cooperation with Child Abuse Investigation, 875 A.2d 365 (Pa. Super. Ct. 2005).

Pursuant to paragraph (D)(8), the county agency should be looking for family and kin as a resource to aid and assist the family to prevent removal of the child from the home. When removal of the child

is necessary, placement with family and kin will help reduce the potential trauma of the removal from the home. *See* Rule 1149 regarding family finding requirements.

***Official Note*:** Rule 1210 adopted August 21, 2006, effective February 1, 2007. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1210 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

PART C. SHELTER CARE

Rule 1240. Shelter Care Application.

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B. *Application contents.* Every shelter care application shall set forth:

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6) a statement detailing **family finding efforts and**:

* * * * *

Comment

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Pursuant to paragraph (B)(6), the application is to contain a statement detailing the reasonable efforts made to prevent placement and the specific reasons why there are no less restrictive alternatives available. This statement may include information such as: 1) the circumstances of the case; 2) **family finding efforts made by the county agency; 3)** contact with family members or other kin; **[3)] 4)** the child's educational, health care, and disability needs; and **[4)] 5)** any need for emergency actions.

***See* Rule 1149 regarding family finding requirements.**

***Official Note*:** Rule 1240 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1240 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

Rule 1242. Shelter Care Hearing.

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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;

[2)] 3) custody of the child is warranted after consideration of the following factors:

a) remaining in the home would be contrary to the welfare and best interests 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, supported by reasons why there are no less restrictive alternatives available; and

d) the lack of efforts was reasonable in the case of an emergency placement where services were not offered;

[3)] 4) a person, other than the county agency, submitting a shelter care application, is a party to the proceedings; and

[4)] 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.

D. *Prompt hearing.* The court shall conduct a hearing within seventy-two hours of taking the child into protective custody.

E. *Court order.* At the conclusion of the shelter care hearing, the court shall enter a written order **[set] setting** forth:

1) its findings pursuant to paragraph (C);

2) any conditions placed upon any party;

3) any orders regarding family finding pursuant to Rule 1149;

[3)] 4) any orders for placement or temporary care of the child;

[4)] 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;

[5)] 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; and

[6)] 7) any orders of visitation.

Comment

Pursuant to paragraph (B)(4), it is expected that the parties be present. Only upon good cause shown should advanced communication technology be utilized.

Pursuant to paragraph (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* Comment to Rule 1149 as to level of reasonableness.

Pursuant to paragraph (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(2), 1512(D)(1)(h), 1514(A)(4), 1608(D)(1)(h), 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, 1608, 1609, 1610, and 1611 on the court's orders.

Pursuant to paragraph **[(C)(3)]** **(C)(4)**, the court is to determine whether or not 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.

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***Official Note*:** Rule 1242 adopted August 21, 2006, effective February 1, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1242 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

CHAPTER 13. PRE-ADJUDICATORY PROCEDURES

PART C. PETITION

Rule 1330. Petition: Filing, Contents, Function, Aggravated Circumstances.

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B. *Petition contents.* Every petition shall set forth plainly:

1) the name of the petitioner;

2) the name, date of birth, and address of the child, if known;

3) the name and address of the child's guardian, or if unknown, the name and address of the nearest adult relative;

4) if a child is Native American, the child's Native American history or affiliation with a tribe;

5) a statement that:

a) it is in the best interest of the child and the public that the proceedings be brought;

b) the child is or is not currently under the supervision of the county agency;

6) a statement detailing family finding efforts and, if the county agency is seeking placement:

a) the reasonable efforts made to prevent placement; and

b) why there are no less restrictive alternatives available;

[6)] **7)** a concise statement of facts in support of the allegations for which the petition has been filed;

a) facts for each allegation shall be set forth separately;

b) the relevant statute or code section shall be set forth specifically for each allegation;

[7)] **8)** a verification by the petitioner that the facts set forth in the petition are true and correct to the petitioner's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;

[8)] **9)** the signature of the petitioner and the date of the execution of the petition; and

[9)] **10)** the whereabouts of the child unless disclosure is prohibited by court order and if taken into custody, the date and time thereof.

C. *Aggravated circumstances.* A motion for finding of aggravated circumstances may be brought in the petition pursuant to Rule 1701(A).

Comment

Petitions should be filed without unreasonable delay.

Under paragraph (A)(2), a petition is to be filed twenty-four hours after the shelter care hearing if the requirements of (A)(2)(a) and (b) are met. Rule 1800 suspends 42 Pa.C.S. § 6331 only as to the time requirement of when a petition is to be filed.

Additionally, paragraph (A)(2) requires that the county agency file a petition. Any other person, other than the county agency, is to file an application to file a petition under Rule 1320. Rule 1800 suspends 42 Pa.C.S. § 6334, which provides any person may file a petition.

For the safety or welfare of a child or a guardian, the court may order that the addresses of the child or a guardian not be disclosed to specified individuals.

Pursuant to paragraph (B)(6), when the county agency is seeking placement, the petition is to include the reasonable efforts made to prevent placement, including efforts for family finding, and why there are no less restrictive alternatives available. *See* Rule 1149 for family finding requirements. *See also* Rule 1242(C)(2) & (3)(b) & (c) and Comments to Rules 1242, 1409, 1515, 1608, 1609, 1610, and 1611 for reasonable efforts determinations.

If a petition is filed after the county agency has discontinued family finding for non-court cases, the county agency is to aver reasons for the discontinuance in the petition. *See* 62 P. S. § 1302.2(a).

A motion for finding of aggravated circumstances may be brought in a dependency petition. *See* Rule 1701(A). If aggravated circumstances are determined to exist after the filing of a petition, a written motion is to be filed pursuant to Rules 1701 and 1344.

The aggravated circumstances, as defined by 42 Pa.C.S. § 6302, are to be specifically identified in the motion for finding of aggravated circumstances.

***Official Note*:** Rule 1330 adopted August 21, 2006, effective February 1, 2007. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1330 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

CHAPTER 14. ADJUDICATORY HEARING

Rule 1408. Findings on Petition.

[After] **The court shall enter findings, within seven days of** hearing the evidence on the petition or

accepting stipulated facts by the parties **[but no later than seven days, the court shall enter a finding]**:

1) by specifying which, if any, allegations in the petition were proved by clear and convincing evidence**[.]**; **and**

2) its findings as to whether the county agency has reasonably engaged in family finding as required pursuant to Rule 1149.

Comment

The court is to specify which allegations in the petition are the bases for the finding of dependency.

Pursuant to paragraph (2), the court is to make a determination whether the county agency has reasonably engaged 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 1210(D)(8), 1242(E)(3), 1512(D)(1)(h), 1514(A)(4), 1608(D)(1)(h), 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 1242(E)(3), 1409(C), 1609(D), and 1611(C) and Comments to Rules 1242, 1409, 1512, 1514, 1515, 1608, 1609, 1610, and 1611 on the court's orders.

***Official Note*:** Rule 1408 adopted August 21, 2006, effective February 1, 2007. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1408 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

Rule 1409. Adjudication of Dependency and Court Order.

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C. *Court order.* The court shall include the following in its court order:

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3) Any orders as to any aids in disposition that may assist in the preparation of the dispositional hearing**, including orders regarding family finding**.

Comment

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See also 42 Pa.C.S. §§ 6341 & 6302.

Pursuant to paragraph (C)(3), when making its determination for reasonable efforts made by the county agency, the court is to consider the extent to which the county agency has fulfilled its obligation pursuant to Rule 1149 regarding family finding. *See also* Rules 1242(C)(2) & (3)(b) & (c) and 1330(B)(6) and Comments to Rules 1242, 1330, 1515, 1608, 1609, 1610, and 1611 for reasonable efforts determinations.

If the requirements of Rule 1149 regarding family finding have not been met, the court is to make necessary orders to ensure compliance by enforcing this legislative mandate. *See* 62 P. S. § 1301 *et seq.* *See also* Rules 1242(E)(3) and 1609(D) and Comments to Rules 1242, 1408, 1512, 1514, 1515, 1608, 1609, 1610, and 1611.

***Official Note*:** Rule 1409 adopted August 21, 2006, effective February 1, 2007. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1409 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

CHAPTER 15. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 1512. Dispositional Hearing.

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C. *Duties of the court.* The court shall determine on the record **[that] whether** 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.* The court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 1515.

1) On the record in open court, the court shall state:

a) its disposition;

b) the reasons for its disposition;

c) the terms, conditions, and limitations of the disposition;

d) 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;

e) whether any evaluations, tests, counseling, or treatments are necessary;

f) the permanency plan for the child;

g) the services necessary to achieve the permanency plan;

h) whether the county agency has reasonably satisfied the requirement of Rule 1149 regarding family finding, and if not, the findings and conclusions of the court on why the requirements have not been met by the county agency;

[h)] i) any findings 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;

[i)] j) any findings 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; and

[j)] k) a visitation schedule, including any limitations.

2) The court shall state on the record in open court or enter into the record through the dispositional order, **[a finding] findings pursuant to Rule 1514**, 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, supported by 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, that such lack of services was reasonable under the circumstances.]

Comment

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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.

Pursuant to paragraph (D)(1)(h), 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* 62 P. S. § 1301 *et seq. See also* Rules 1210(D)(8), 1242(E)(3), 1409(C), 1609(D), and 1611(C) and Comments to Rules 1242, 1408, 1409, 1514, 1515, 1608, 1609, 1610, and 1611.

Pursuant to paragraph **[(D)(1)(h)] (D)(1)(i)**, the court is to address the child's educational stability, including the right to an educational decision maker, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519. The court's findings 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 independent living pursuant to 42 Pa.C.S. § 6351 if the child is sixteen 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 ninety days.

Pursuant to paragraph **[(D)(1)(i)] (D)(1)(j)**, the court is to address the child's needs concerning health care and disability. The court's findings should address the right of: 1) a child to receive timely and medically appropriate screenings and health care services pursuant to 55 Pa. Code §§ 3700.51 and 3800.32, and 42 U.S.C. § 1396d(r); 2) a child to a transition plan that addresses the child's health care needs, and includes specific options for how the child can obtain health insurance after leaving care pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within 90 days; and 3) a child with disabilities to receive necessary accommodations pursuant to 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*. In addition, the court is to ensure progress and compliance with the child's case plan for the ongoing oversight and coordination of health care services under 42 U.S.C. § 622(b)(15).

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. 42 Pa.C.S. § 6339(b).

Pursuant to paragraph **[(D)(1)(j)] (D)(1)(k)**, the court is to include siblings in its visitation schedule. *See* 42 U.S.C. § 671(a)(31), which requires reasonable efforts be made to place siblings together unless it is contrary to the safety or well-being of either sibling and that frequent visitation be assured if joint placement cannot be made.

See Rule 1127 for recording and transcribing of proceedings.

See Rule 1136 for *ex parte* communications.

***Official Note*:** Rule 1512 adopted August 21, 2006, effective February 1, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1512 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

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; **[and]**

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; and

[3)] 5) One of the following:

a) 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

b) If preventive services were not offered due to the necessity for emergency placement, whether such lack of services was reasonable under the circumstances; or

c) 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.

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 under paragraphs **[(A)(3)(a)] (A)(5)(a)** through (c) is not necessary.

Comment

See 42 Pa.C.S. § 6351(b).

Pursuant to paragraph (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. 42 U.S.C. § 675 (Fostering Connections).

Pursuant to paragraph (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* 62 P. S. § 1301 *et seq.* *See also* Rules 1210(D)(8), 1242(E)(3), 1409(C), 1609(D), and 1611(C) and Comments to Rules 1242, 1408, 1409, 1512, 1515, 1608, 1609, 1610, and 1611.

***Official Note*:** Rule 1514 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1514 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

Rule 1515. Dispositional Order.

* * * * *

Comment

See 42 Pa.C.S. §§ 6310, 6351.

When issuing a dispositional order, the court should issue an order that is "best suited to the safety, protection, and physical, mental, and moral welfare of the child." 42 Pa.C.S. § 6351(a). *See In re S.J.*, 906 A.2d 547, 551 (Pa. Super. Ct. 2006) (citing *In re Tameka M.*, 525 Pa. 348, 580 A.2d 750 (1990)), for issues addressing a child's mental and moral welfare.

When making its determination for reasonable efforts made by the county agency, the court is to consider the extent to which the county agency has fulfilled its obligation pursuant to Rule 1149 regarding family finding. *See also* Rules 1240(B)(6), 1242(C)(2) & (3)(b) & (c), and 1330(B)(6) and Comments to Rules 1242, 1330, 1409, 1608, 1609, 1610, and 1611 for reasonable efforts determinations.

If the requirements of Rule 1149 regarding family finding have not been met, the court is to make necessary orders to ensure compliance by enforcing this legislative mandate. *See* 62 P. S. § 1301 *et seq.* *See also* Rules 1210(D)(8), 1242(E)(3), 1409(C), 1609(D), and 1611(C) and Comments to Rules 1242, 1408, 1409, 1512, 1514, 1608, 1609, 1610, and 1611. 45 C.F.R. § 1356.21 provides a specific foster care provider may not be placed in a court order to be **in** 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] 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] http://www.pacourts.us/forms/dependency-forms**.

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. Amended April 29, 2011, effective July 1, 2011. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1515 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART B(2). PERMANENCY HEARING

Rule 1608. Permanency Hearing.

* * * * *

D. *Court's findings.*

1) *Findings at all six-month hearings.* At the 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:

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 county agency has satisfied the requirements of Rule 1149 regarding family finding, and if not, the findings and conclusions of the court on why the requirements have not been met by the county agency;

[h)] i) whether the child is safe;

[i)] j) 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)] k) 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 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, 42 U.S.C. § 671 *et seq.*;

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)] l) any educational, health care, and disability needs of the child and the plan to ensure those needs are met**[.];**

m) if a sibling of a child has been removed from the home and is in a different setting than the child, whether reasonable efforts have been made to place the child and sibling of the child together or whether such joint placement is contrary to the safety or well-being of the child or sibling; and

n) if the child has a sibling, whether visitation of the child with that sibling is occurring no less than twice a month, unless a finding is made that visitation is contrary to the safety or well-being of the child or sibling.

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. *Advanced communication technology.* Upon good cause shown, a court may utilize advanced communication technology pursuant to Rule 1129.

F. *Family Service Plan or Permanency Plan.*

1) The county agency shall review the family service plan or permanency plan at least every six months**, including all family finding efforts pursuant to Rule 1149**.

2) The family service plan or permanency plan shall identify which relatives and kin were included in its development and the method of that inclusion.

3) If the plan is modified, the county agency shall follow the filing and service requirements pursuant to Rule 1345.

4) The parties and when requested, the court, shall be provided with the modified plan at least fifteen days prior to the permanency hearing.

Comment

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Every child should have a concurrent plan, which is a secondary plan to be pursued 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, subsidized legal guardianship may be utilized 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)(1)(h), the court is to determine whether the county agency has reasonably satisfied the requirements of Rule 1149 regarding family finding, including the location and engagement of relatives and kin at least every six months, prior to each permanency hearing. 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* 62 P. S. § 1301 *et seq. See also* Rules 1210(D)(8), 1242(E)(3), 1409(C), 1609(D), and 1611(C) and Comments to Rules 1242, 1408, 1409, 1512, 1514, 1515, 1609, and 1611.

When making its determination for reasonable efforts made by the county agency, the court is to consider family finding. *See also* Rules 1240(B)(6), 1242(C)(2) & (3)(b) & (c) and 1330(B)(6) and Comments to Rules 1242, 1330, 1409, 1515, 1609, and 1611 for reasonable efforts determinations.

Pursuant to paragraph (D)(2), a "petition to terminate parental rights" is a term of art used pursuant to 23 Pa.C.S. § 2511 and Pa.R.O.C. Rule 15.4 to describe the motion terminating parental rights. This does not refer to the "petition" as defined in Pa.R.J.C.P. 1120.

* * * * *

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

* * * * *

***Official Note*:** Rule 1608 adopted August 21, 2006, effective February 1, 2007. Amended December 18, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended October 21, 2013, effective December 1, 2013. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1608 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

Rule 1609. Permanency Hearing Orders.

* * * * *

D. ***Orders on family finding.***

1) The court order shall indicate whether family finding efforts made by the county agency were reasonable;

2) If the family finding efforts were not reasonable, the court shall order the county agency to engage in family finding prior to the next permanency hearing;

[D.] E. *Orders concerning education.*

1) The court's order shall address the stability and appropriateness of the child's education; and

2) When appropriate, the court shall appoint an educational decision maker pursuant to Rule 1147.

[E.] F. *Orders concerning health care and disability.*

1) The court's order shall identify, monitor, and address the child's needs concerning health care and disability; and

2) The court's orders shall authorize evaluations and treatment if parental consent cannot be obtained.

[F.] G. *Guardians.* The permanency order shall include any conditions, limitations, restrictions, and obligations imposed upon the guardian.

Comment

When issuing a permanency order, the court should issue an order that is "best suited to the safety, protection, and physical, mental, and moral welfare of the child." 42 Pa.C.S. § 6351(a). *See In re S.J.*, 906 A.2d 547, 551 (Pa. Super. Ct. 2006) (citing *In re Tameka M.*, 525 Pa. 348, 580 A.2d 750 (1990)), for issues addressing a child's mental and moral welfare.

Pursuant to paragraph (D), when making its determination for reasonable efforts made by the county agency, the court is to consider the extent to which the county agency has fulfilled its obligation pursuant to Rule 1149 regarding family finding. *See also* Rules 1240(B)(6), 1242(C)(2) & (3)(b) & (c), and 1330(B)(6) and Comments to Rules 1242, 1330, 1409, 1515, 1608, 1610, and 1611 for reasonable efforts determinations.

If the requirements of Rule 1149 regarding family finding have not been met, the court is to make necessary orders to ensure compliance by enforcing this legislative mandate. *See* 62 P. S. § 1301 *et seq.* *See also* Rules 1210(D)(8), 1242(E)(3), and 1409(C) and Comments to Rules 1242, 1408, 1409, 1512, 1514, 1515, 1608, 1610, and 1611.

Pursuant to paragraph **[(D)] (E)**, the court's order is to 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 independent living pursuant to 42 Pa.C.S. § 6351 if the child is sixteen 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 ninety days.

Pursuant to paragraph **[(E)] (F)**, the court's order is to address the child's needs concerning health care and disability. The order should address the right of: 1) a child to receive timely and medically appropriate screenings and health care services pursuant to 55 Pa. Code §§ 3700.51 and 3800.32 and 42 U.S.C. § 1396d(r); 2) a child to a transition plan that addresses the child's health care needs, and includes specific options for how the child can obtain health insurance after leaving care pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within ninety days; and 3) a child with disabilities to receive necessary accommodations pursuant to 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.* In addition, the court is to ensure progress and compliance with the child's case plan for the ongoing oversight and coordination of health care services under 42 U.S.C. § 622(b)(15).

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. 42 Pa.C.S. § 6339(b).

See Rule 1611 for permanency hearing orders for children over the age of eighteen.

***Official Note*:** Rule 1609 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended October 21, 2013, effective December 1, 2013. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1609 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

Rule 1610. Permanency Hearing for Children over Eighteen.

A. *Purpose and timing of hearing.* For every case for children over the age of eighteen, the court shall conduct a permanency hearing at least every six months for purposes of determining:

* * * * *

2) whether the transition plan of the child is consistent with Rule **[1631 (E)(2)] 1631(E)(2)**;

* * * * *

D. *Court's findings.* At the permanency hearing, the court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 1611. **The court shall make a determination whether the county agency has satisfied the requirements of Rule 1149 regarding family finding, and if not, the**

findings and conclusions of the court on why the requirements have not been met by the county agency.

Comment

* * * * *

See Rule 1128 regarding presence at proceedings and Rule 1136 regarding *ex parte* communications.

Pursuant to paragraph (D), the court is to determine whether the county agency has reasonably satisfied the requirements of Rule 1149 regarding family finding, including the location and engagement of relatives and kin at least every six months, prior to each permanency hearing. 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* 62 P. S. § 1301 *et seq.* *See also* Rules 1210(D)(8), 1242(E)(3), 1409(C), 1609(D), and 1611(C) and Comments to Rules 1242, 1408, 1409, 1512, 1514, 1515, 1608, 1609, and 1611.

When making its determination for reasonable efforts made by the county agency, the court is to consider family finding. *See also* Rules 1240(B)(6), 1242(C)(2) & (3)(b) & (c) and 1330(B)(6) and Comments to Rules 1242, 1330, 1409, 1515, 1608, 1609, and 1611 for reasonable efforts determinations.

When the court has resumed jurisdiction pursuant to Rule 1635, the court is to schedule regular permanency hearings. The county agency is to develop a new transition plan for the child.

***Official Note*:** Adopted October 21, 2013, effective December 1, 2013. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1610 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

Rule 1611. Permanency Hearing Orders for Children over Eighteen.

A. *Court order.* After every permanency hearing for children over the age of eighteen, the court shall issue a written order, which provides whether the transition plan is best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. *Determinations made.* The court's order shall reflect the determinations made pursuant to Rule 1610(D).

C. *Orders on family finding.*

1) The court order shall indicate whether family finding efforts made by the county agency were reasonable;

2) If the family finding efforts were not reasonable, the court shall order the county agency to engage in family finding prior to the next permanency hearing;

[C.] D. *Orders concerning education.* The court's order shall address the stability and appropriateness of the child's education, if applicable, including whether an educational decision maker is appropriate.

[D.] E. *Orders concerning health care and disability.*

1) The court's order shall identify, monitor, and address the child's needs concerning health care and disability; and

2) The court's orders may authorize evaluations and treatment.

Comment

When issuing a permanency order, the court should issue an order that is "best suited to the safety, protection, and physical, mental, and moral welfare of the child." 42 Pa.C.S. § 6351(a). *See In re S.J.*, 906 A.2d 547, 551 (Pa. Super. Ct. 2006) (citing *In re Tameka M.*, 525 Pa. 348, 580 A.2d 750 (1990)), for issues addressing a child's mental and moral welfare.

Pursuant to paragraph (C), when making its determination for reasonable efforts made by the county agency, the court is to consider the extent to which the county agency has fulfilled its obligation pursuant to Rule 1149 regarding family finding. *See also* Rules 1240(B)(6), 1242(C)(2) & (3)(b) & (c), and 1330(B)(6) and Comments to Rules 1242, 1330, 1409, 1515, 1608, 1609, and 1610 for reasonable efforts determinations.

If the requirements of Rule 1149 regarding family finding have not been met, the court is to make necessary orders to ensure compliance by enforcing this legislative mandate. *See* 62 P. S. § 1301 *et seq.* *See also* Rules 1210(D)(8), 1242(E)(3), and 1409(C) and Comments to Rules 1242, 1408, 1409, 1512, 1514, 1515, 1608, 1609, and 1610.

Pursuant to paragraph **[(C)] (D)**, the court's order is to address the child's educational stability, including the right to an educational decision maker. The intent of this paragraph is to ensure that the inquiry regarding the appointment of an educational decision maker is considered. Federal and state law requires educational decision makers until the age of twenty-one if an educational decision maker is necessary. *See* Comment to Rule **[1609(D)] 1609(E)** and 34 C.F.R. § 300.320(c).

Pursuant to paragraph **[(D)] (E)**, the court's order is to address the child's needs concerning health care and disability. *See* Comment to Rule **[1609(E)] 1609(F)**.

***Official Note*:** Adopted October 21, 2013, effective December 1, 2013. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1611 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

PART D. CESSATION OR RESUMPTION OF COURT SUPERVISION OR JURISDICTION

Rule 1635. Hearing on Motion for Resumption of Jurisdiction.

* * * * *

Comment

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A master may conduct these hearings. *See* Rule 1187.

If the court resumes jurisdiction, the county agency is to engage in family finding unless presently or previously discontinued pursuant to Rule 1149(B). *See* Rules 1608(D)(1)(h) and 1610(D) (court findings at permanency hearing whether the

county agency has satisfied the requirements of Rule 1149 regarding family finding). If family finding was previously discontinued, the county agency may seek to resume family finding efforts pursuant to Rule 1149(C).

***Official Note*:** Adopted October 21, 2013, effective December 1, 2013. **Amended July 13, 2015, effective October 1, 2015.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1635 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

EXPLANATORY REPORT

With the enactment of Act 55 of 2013 (P. L. 169, No. 25), the county agency is required to perform family finding on an ongoing basis in every case. These rule modifications and additions reflect these requirements and ensure the court is inquiring about family finding at each proceeding and making necessary orders to ensure compliance.

Rule 1120

Diligent Efforts, Family Finding, Kin, and Kinship Care have been defined to aid the practitioner in understanding their usage throughout the Rules.

The definition of "Family Finding," is derived from 62 P. S. § 1302.

The Comment to the rule provides examples of resources that may be utilized when performing diligent family finding searches. Counties should be creative when performing searches. Basic computer searches and attempting to contact relatives at last known addresses are insufficient as diligent family finding searches.

Rule 1149

This new rule sets forth the basic requirements of family finding. The court must inquire at each hearing whether the county agency has complied with the family finding requirements and whether it has been reasonably engaged in family finding. *See* paragraph (A).

Efforts made by the county agency should include whether it has or is currently searching for and locating adult relatives and kin; identifying and building positive connections between the child and the child's relatives and kin; when appropriate, supporting the engagement of relatives and kin in social service planning and delivery of services, and creating a network of extended family support to assist in remedying the concerns that led to the child becoming involved with the county agency; when possible, maintaining family connections; and when in the best interests of the child and when possible, keeping siblings together in care.

Paragraph (B) sets forth the requirements for discontinuing family finding and paragraph (C) provides when family finding should be resumed. *See* 62 P. S. § 1301 *et seq.*

Rule 1210

Prior to the initial removal of the child from the home, it is important to inquire whether the county agency has engaged in family finding. Reducing the initial trauma of removal from the home can be alleviated if there is an opportunity to place the child with family or kin when removal is necessary.

The county agency should be prepared to make a showing of its initial family findings efforts before the child is taken into protective custody.

The arrangement of the order of paragraphs (D) and (E) were changed. The contents of the order are now in paragraph (D) and the execution of the order is in paragraph (E).

Pursuant to paragraph (D), the court must place its findings and orders as to family finding in its court order for protective custody.

Rules 1240 & 1330

The shelter care application and the petition must include averments specifically detailing the efforts made by the county agency regarding family findings. Paragraphs (B)(6)(a) & (b) in both Rules 1240 and 1330 require averments addressing reasonable efforts made to prevent placement, including family finding efforts, and why there are no less restrictive alternatives available.

Rules 1242, 1408, 1409, 1512, 1514, 1515, 1608, 1609, 1610 & 1611

The county agency is required to report its diligent family findings efforts at each hearing. The court must make findings as to the county agency's reports to ensure family finding is occurring. A part of the reasonable efforts determination to prevent placement is that the county agency is engaging in family finding. If family finding efforts are not reasonable, the court must enter necessary orders to ensure compliance.

Rule 1512

When a child is placed outside of the home, the court is required to make specific findings. To prevent confusion of the duplicative requirements of Rule 1512(D)(2) and 1514(A), the requirements were deleted from 1512(D)(2) and replaced with a reference to Rule 1514(A), which lists the required finding of the court, including the new findings for Fostering Connections pursuant to paragraph (A)(3) and family findings under paragraph (A)(4).

Rule 1514 & 1608

With Act 115 of 2010 (P. L. 1140, No. 115), the court is required to make a determination that if a sibling of a child has been removed from the home and is in a different setting than the child, whether reasonable efforts have been made to place the child and the sibling of the child together or whether such joint placement is contrary to the safety and well-being of the child or sibling.

If the siblings are not placed together, the court is to order visitation no less than twice a month unless a finding is made that visitation is contrary to the safety or well-being of the child or sibling.

Rule 1611

The references in the Comment were changed to align with the arrangement of the paragraph order in Rule 1609.

Rule 1635

The county agency is to engage in family finding in resumption of jurisdiction cases unless the case was previously discontinued pursuant to Rule 1149(B). Family finding can be resumed if the requirements of Rule 1149(C) are met.

[Pa.B. Doc. No. 15-1368. Filed for public inspection July 24, 2015, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CH. 16]

Proposed Modification to Pa.R.J.C.P. 1608

The Juvenile Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the modification to Pa.R.J.C.P. 1608 governing considerations, requirements, and findings in Another Planned Permanent Living Arrangement (APPLA) cases for children sixteen years of age or older, 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; deletions to the text are bolded and bracketed.

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

Christine Riscili, Counsel
Juvenile Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9541
juvenilerules@pacourts.us

All communications in reference to the proposal should be received by September 4, 2015. 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

KERITH STRANO TAYLOR,
Vice Chair

(*Editor's Note*: See page 45 Pa.B. 3987 (July 25, 2015) for Supreme Court Order No. 669 amending Rule 1608.)

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart B. DEPENDENCY MATTERS

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART B(2). PERMANENCY HEARING

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. *Recording.* The permanency hearing shall be recorded.

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] 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:

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 county agency has satisfied the requirements of Rule 1149 regarding family finding, and if not, the findings and conclusions of the court on why the requirements have not been met by the county agency;

i) whether the child is safe;

j) 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;

k) 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 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, 42 U.S.C. § 671 *et seq.*;

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;

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

m) if a sibling of a child has been removed from the home and is in a different setting than the child, whether reasonable efforts have been made to place the child and sibling of the child together or whether such joint placement is contrary to the safety or well-being of the child or sibling; and

n) if the child has a sibling, whether visitation of the child with that sibling is occurring no less than twice a month, unless a finding is made that visitation is contrary to the safety or well-being of the child or sibling.

2) *Another Planned Permanent Living Arrangement (APPLA) for Children Sixteen Years of Age or Older.* At each permanency hearing for a child who is sixteen years or older and has a permanency goal of APPLA, the additional considerations, requirements, and findings shall be made by the court.

a) *Additional Considerations.* Before making its findings pursuant to paragraph (D)(2)(c), the court shall hear testimony or review evidence obtained as of the date of the hearing and entered into the record concerning the documented county agency's steps taken to ensure that:

i) there has been intensive, ongoing, and unsuccessful efforts made to return the child home or secure a placement for the child with a fit and willing relative, a legal guardian, or an adoptive parent;

ii) the foster family home or child-care institution is following the reasonable and prudent parent standard; and

iii) the child has had regular, ongoing opportunities to engage in age and developmentally appropriate activities.

b) *Additional Requirements.* Before making its findings pursuant to paragraph (D)(2)(c), the court shall ask the child about the child's desired permanency outcome;

c) *Additional Findings.* At each permanency hearing, based upon the considerations and requirements listed in paragraph (D)(2)(a) & (b) and any other evidence deemed appropriate by the court, the court shall state in open court on the record the following:

i) reasons why APPLA continues to be in the best permanency plan for the child; and

ii) compelling reasons why it continues to not be in the best interests of the child to return home; be placed for adoption; be placed with a legal guardian; or be placed with a fit and willing relative.

[2)] 3) *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. *Advanced communication technology.* Upon good cause shown, a court may utilize advanced communication technology pursuant to Rule 1129.

F. *Family Service Plan or Permanency Plan.*

1) The county agency shall review the family service plan or permanency plan at least every six months, including all family finding efforts pursuant to Rule 1149.

2) The family service plan or permanency plan shall identify which relatives and kin were included in its development and the method of that inclusion.

3) If the plan is modified, the county agency shall follow the filing and service requirements pursuant to Rule 1345.

4) The 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 (**Pa. Super. Ct.** 1996) *quoting In re Quick*, **[384 Pa. Super. 412,]** 559 A.2d 42 (**Pa.** 1989).

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

Pursuant to paragraph (A), courts are to conduct a permanency hearing 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 court-ordered services; 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 has elapsed to determine if the case is progressing. Time to achieve permanency is critical in dependency cases. In order to seek reimbursement under Title IV-E of the Social Security Act, 42 U.S.C. § 601 *et seq.*, a full permanency hearing is to be conducted every six months.

Every child should have a concurrent plan, which is a secondary plan to be pursued 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, subsidized legal guardianship may be utilized 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)(1)(h), the court is to determine whether the county agency has reasonably satisfied the requirements of Rule 1149 regarding family finding, including the location and engagement of relatives and kin at least every six months, prior to each permanency hearing. 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* 62 P. S. § 1301 *et seq. See also* Rules 1210(D)(8), 1242(E)(3), 1409(C), 1609(D), and 1611(C) and Comments to Rules 1242, 1408, 1409, 1512, 1514, 1515, 1609, and 1611.

When making its determination for reasonable efforts made by the county agency, the court is to consider family finding. *See also* Rules 1240(B)(6), 1242(C)(2) & (3)(b) & (c) and 1330(B)(6) and Comments to Rules 1242, 1330, 1409, 1515, 1609, and 1611 for reasonable efforts determinations.

Pursuant to paragraph (D)(2), additional considerations, requirements, and findings are to be made by the court when conducting a permanency hearing for a child who is sixteen years of age or older and has a permanency plan of APPLA. Under paragraph (D)(2)(a)(i), a fit and willing relative may include adult siblings. Diligent efforts to search for relatives, guardians, or adoptive parents are to be utilized. Pursuant to paragraph (D)(2)(A)(iii), when documenting its steps taken, the county agency is to include how it consulted with the child in an age appropriate manner about the opportunities of the child to participate in the activities. *See* Rule 1120 and Preventing Sex Trafficking and Strengthening Families Act (P. L. 113-183), 42 U.S.C. § 675 (2014).

Pursuant to paragraph **[(D)(2)] (D)(3)**, a "petition to terminate parental rights" is a term of art used pursuant to 23 Pa.C.S. § 2511 and Pa.R.O.C. Rule 15.4 to describe the motion terminating parental rights. This does not refer to the "petition" as defined in Pa.R.J.C.P. 1120.

The court is to move expeditiously towards permanency. A goal change motion 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.

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* 42 Pa.C.S. § 6351(i); *see also In re Adoption of S.E.G.*, **[587 Pa. 568,]** 901 A.2d 1017 (**Pa.** 2006), where involuntary termination occurred prior to a goal change by the county agency.

For family service plan requirements, see 55 Pa. Code §§ 3130.61 & 3130.63.

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

See Rule 1136 regarding *ex parte* communications.

See Rule 1610 for permanency hearing for children over the age of eighteen.

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EXPLANATORY REPORT

Unless Pennsylvania receives an extension on the implementation date of the new federal legislation, Preventing Sex Trafficking and Strengthening Families Act, P. L. 113-183, on September 29, 2015, several requirements in APPLA cases must be met for children sixteen years of age or older at each permanency hearing. It should be noted that children under the age of sixteen will no longer be permitted to have a permanency plan of APPLA. *See* 42 U.S.C. § 675.

The county agency and the court are required to document, consider, ask, or make certain findings at each permanency hearing. When the county agency documents its requirements pursuant to paragraph (D)(2)(a), the county agency may testify from its case notes or submit a report to the court, whichever the court prefers. If the court requires the county agency to submit a report, the report should be entered into the record and distributed to all parties. It would be advisable for counties to develop a discovery process for these reports. The parties must have the opportunity to cross-exam the caseworker when a report is submitted.

The county agency must document its intensive, ongoing, and unsuccessful efforts to return the child home or secure a placement for the child with a fit and willing relative, a legal guardian, or an adoptive parent. A "fit and willing relative" includes adult siblings. *See* 42 U.S.C. § 675.

Additionally, the county agency must document its steps taken to ensure the child's foster family home or child-care institution is following the reasonable and prudent parent standard. The "reasonable and prudent parent standard" is defined as the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of the child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the county agency to participate in extracurricular, enrichment, cultural, and social activities. *See* 42 U.S.C. § 675.

Next, the county agency must document that the child has had regular, ongoing opportunities to engage in age or developmentally appropriate activities. "Age and developmentally appropriate activities" is defined as the activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child. *See* 42 U.S.C. § 675.

The court must consider all the mandated documented steps taken by the county agency listed *supra*. In addition to considering the mandated documented steps placed upon the county agency, the court must ask the child

about the child's desired permanency outcome. Finally, the court shall state in open court on the record the reasons why APPLA continues to be the best permanency plan for the child and the compelling reasons why it continues to not be in the best interests of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative. *See* 42 U.S.C. § 675.

[Pa.B. Doc. No. 15-1369. Filed for public inspection July 24, 2015, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989; AO-10-10-2015

Order

And Now, this 8th day of July 2015, Dauphin County Local Rule of Criminal Procedure 114 is promulgated as follows:

Rule 114. Orders.

(a) All motions, petitions and answers or responses thereto shall be accompanied by a proposed order (or alternative orders).

(b) The proposed order(s) shall contain a distribution legend which shall include the name(s) and mailing address(es), telephone number(s), facsimile number(s) and e-mail address(es), if any, of all attorneys and/or self-represented parties to be served. The distribution legend shall also list Court Administration, the Sheriff's Office and any other entity that should receive a copy of the order.

These amendments shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

RICHARD A. LEWIS,
President Judge

[Pa.B. Doc. No. 15-1370. Filed for public inspection July 24, 2015, 9:00 a.m.]