

## CHAPTER 14. ADJUDICATORY HEARING

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### **Rule 1401. Introduction to Chapter Fourteen.**

Under these rules and the Juvenile Act, 42 Pa.C.S. § 6301 et seq., a determination for each case requires separate and distinct findings. First, the court is to hold an adjudicatory hearing, governed by Rule 1406 or accept stipulations, governed by Rule 1405. Second, after hearing the evidence or accepting the stipulations, the court is to make specific findings on the petition as to each allegation pursuant to Rule 1408, stating with particularity the allegations proven by clear and convincing evidence. Third, after entering its findings, the court is to determine if the child is dependent, pursuant to Rule 1409. If aggravated circumstances are alleged, the court is to determine if aggravated circumstances exist, pursuant to Rule 1705. After the court has made these findings and if the court finds that the child is dependent, the court is to hold a dispositional hearing as provided for in Rule 1512 and is to enter a dispositional order under Rule 1515. Nothing in these rules precludes the court from making these determinations at the same proceeding as long as the requirements of each rule are followed.

**Official Note:** Rule 1401 adopted August 21, 2006, effective February 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1401 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

### **Rule 1404. Prompt Adjudicatory Hearing.**

A. *Child in custody.* If a child has been removed from the home, an adjudicatory hearing shall be held within ten days of the filing of the petition.

B. *Child not in custody.* If a child has not been removed from the home, the adjudicatory hearing shall be held as soon as practical but within forty-five days of the filing of the petition.

**Official Note:** Rule 1404 adopted August 21, 2006, effective February 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1404 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

**Rule 1405. Stipulations.**

A. *Agreements.* At any time after the filing of a petition, any party may present stipulations or agreements by all parties to the court in writing or orally on the record to any or all of the following:

- 1) Findings of fact to be deemed admitted by the parties;
- 2) A statement of the parties' agreement for placement;
- 3) A statement of the parties' agreement for visitation;
- 4) Time frame within which the stipulation shall be in effect;
- 5) Time frame within which court shall review compliance; or
- 6) Any other stipulation or agreement found to be appropriate by the court.

B. *Court action.* The court shall decide whether to accept the stipulations.

1) *Court accepts stipulations.*

a) *Stipulation to all allegations.* If the court accepts the stipulations to all the allegations, the court shall:

- i) take additional testimony as necessary to make an independent determination of dependency; and
- ii) enter its findings pursuant to Rule 1408 and an adjudication of dependency pursuant to Rule 1409.

b) *Stipulations to some allegations or agreements for disposition.* If the parties agree to some allegations or placement, visitation, or other disposition resolutions, the court shall hold an adjudicatory hearing as to the remaining contested allegations in the petition pursuant to Rule 1406, followed by its finding on the petition pursuant to Rule 1408 and an adjudication of dependency pursuant to Rule 1409.

2) *Court rejects stipulations.* If the court rejects the stipulations, the court shall proceed with an adjudicatory hearing pursuant to Rule 1406, followed by its findings on the petition pursuant to Rule 1408 and an adjudication of dependency pursuant to Rule 1409.

**Comment**

If all parties do not agree to all the allegations in the petition, the court is to hold an adjudicatory hearing as to the remaining allegations pursuant to Rule 1406.

Under paragraph (B)(2), the court may reject the stipulations and proceed to an adjudication of dependency pursuant to Rule 1406.

The court is to make an independent determination that a child is dependent. Before accepting the stipulation the judge is to be satisfied that the facts are credible and solidly based and not the product of speculation as to what the child may do in the future. *In re Mark T.*, 296 Pa. Super. 533, 442 A.2d 1179 (1982). Furthermore, to be accepted by the court, such stipulation is to be joined by all the parties. If accepted by the court, the stipulation has evidentiary value and may be considered alone or in conjunction with other evidence. The judge is to consider all of the evidence presented as well as the relevant law to arrive at a reasoned decision regarding dependency. *In re Michael Y.*, 365 Pa. Super. 488, 530 A.2d 115 (1987). See *In re A.S.*, 406 Pa. Super. 466, 594 A.2d 714 (1991) and 42 Pa.C.S. § 6341.

**Official Note:** Rule 1405 adopted August 21, 2006, effective February 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1405 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

**Rule 1406. Adjudicatory Hearing.**

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

1) *Notification.* Prior to commencing the proceedings, the court shall ascertain:

a) whether notice requirements pursuant to Rules 1360 and 1361 have been met; and

b) whether unrepresented parties have been informed of the right to counsel pursuant to 42 Pa.C.S. § 6337.

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

B. *Recording.* The adjudicatory hearing shall be recorded.

C. *Evidence.* Each party shall be given the opportunity to:

1) introduce evidence;

2) present testimony; and

3) to cross-examine any witness.

**Comment**

Due process requires that the litigants receive notice of the issues before the court and an opportunity to present their case in relation to those issues. *In re M.B.*, 356 Pa. Super. 257, 514 A.2d 599 (1986), *aff'd*, 517 Pa. 459, 538 A.2d 495 (1988).

Pursuant to paragraph (A)(2), it is expected that the parties be present. Only upon good cause shown should advanced communication technology be utilized.

A full record of the hearing is to be kept. *In re J.H.*, 788 A.2d 1006 (Pa. Super. Ct. 2001). *See also* 42 Pa.C.S. § 6336.

Under paragraph (B), notes of testimony should be provided to counsel for a party upon good cause shown. The court may place conditions of release on the notes of testimony. When an appeal is taken, the record is to be transcribed pursuant to Pa.R.A.P. 1922. *See* Pa.R.A.P. 1911 for request of transcript.

Under paragraph (C), the court is to receive evidence from all interested parties and from objective, disinterested witnesses. The judge's findings should be supported by a full discussion of the evidence. *See In Re Clouse*, 244 Pa. Super. 396, 368 A.2d 780 (1976).

For application of the Rules of Evidence, see Pa.R.E. 101.

*See* Rule 1136 for *ex parte* communications.

**Official Note:** Rule 1406 adopted August 21, 2006, effective February 1, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1406 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1406 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

Final Report explaining the amendments to Rule 1406 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

**Source**

The provisions of this Rule 1406 amended April 21, 2011, effective July 1, 2011, 41 Pa.B. 2319; amended April 29, 2011, effective July 1, 2011, 41 Pa.B. 2413. Immediately preceding text appears at serial pages (356717) to (356718).

**Rule 1408. Findings on Petition.**

The court shall enter findings, within seven days of hearing the evidence on the petition or accepting stipulated facts by the parties:

- 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:*

Final Report explaining the provisions of Rule 1408 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

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

**Source**

The provisions of this Rule 1408 amended July 13, 2015, effective October 1, 2015, 45 Pa.B. 3987. Immediately preceding text appears at serial page (357352).

**Rule 1409. Adjudication of Dependency and Court Order.**

A. *Adjudicating the child dependent.* Once the court has made its findings under Rule 1408, the court shall enter an order whether the child is dependent.

- 1) *Dependency.* If the court finds from clear and convincing evidence that the child is dependent, the court shall proceed to a dispositional hearing under Rule 1512.

2) *No dependency.* If the court finds the child not to be dependent or the court finds a parent ready, willing, and able to provide proper parental care or control, the court shall:

- a) dismiss the petition;
- b) order the child to be discharged from custody and any restrictions ordered in the proceedings; and
- c) enter an order identifying individual(s) who will have the legal and physical custody until such order is modified by further order of the court.

**B. *Timing.***

1) *Child in custody.* If a child is removed from the home, the court shall enter an adjudication of dependency within seven days of the adjudicatory hearing and enter its findings pursuant to Rule 1408.

2) *Child not in custody.* If a child is not removed from the home and if the court fails to enter an order of dependency, the court shall hold a status hearing every thirty days.

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

- 1) A statement pursuant to paragraph (A):
  - a) as to whether the court finds the child to be dependent from clear and convincing evidence;
  - b) including the specific factual findings that form the bases of the court's decision;
  - c) including any legal determinations made; and
- 2) Any orders directing the removal of a child from the home or change in the current residential status, including:
  - a) orders as to placement; or
  - b) visitation; or
  - c) change in custody; and
- 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:**

Before the court can find a child to be dependent, there must be clear and convincing evidence in support of the petition. The burden of proof is on the petitioner. The court's inquiry is to be comprehensive and its findings are to be supported by specific findings of fact and a full discussion of the evidence. *In re LaRue*, 244 Pa. Super. 218, 366 A.2d 1271 (1976). See also *In re Frank W.D., Jr.*, 315 Pa. Super. 510, 462 A.2d 708 (1983); *In re Clouse*, 244 Pa. Super. 396, 368 A.2d 780 (1976). The evidence must support that the child is dependent. *In the Matter of DeSavage*, 241 Pa. Super. 174, 360 A.2d 237 (1976). The court is not free to apply the best interest of the child standard as the requirements of the Juvenile Act, 42 Pa.C.S. § 6341(c), require clear and convincing evidence that the child is dependent is the proper standard. *In re Haynes*, 326 Pa. Super. 311, 473 A.2d 1365 (1983). A child, whose non-custodial parent is ready, willing, and able to provide adequate care for the child, cannot be found dependent on the basis of lacking proper parental care and control. *In re M.L.*, 562 Pa. 646, 757 A.2d 849 (2000). A trial court has the authority to transfer custody or modify custody to the child's non-custodial parent without a finding of dependency if sufficient evidence of dependency would have existed but for the availability of the non-custodial parent. *In re Justin S.*, 375 Pa. Super. 88, 543 A.2d 1192 (1988).

The court is to specify which allegations in the petition are the bases for the finding of dependency pursuant to Rule 1408. The court is to make an adjudication of dependency based upon the allegations in the petition, not on alternative grounds. Due process and fundamental fairness require adequate notice of the allegations to afford a reasonable opportunity to prepare a defense. *In re R.M.*, 567 Pa. 646, 790 A.2d 300 (2002).

Under paragraph (B), if a child is removed from the home, a finding of dependency is to be made within seven days.

Under paragraph (C)(3), aids in disposition may include, but are not limited to, any services, investigations, evaluations, studies, treatment plans, and any other appropriate reports that may aid the court in making its determination at the dispositional hearing. See 42 Pa.C.S. § 6339 for orders of a social study or physical and mental examinations and treatment.

*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* 67 Pa.C.S. §§ 7501 *et seq.* *See also* Pa.R.J.C.P. 1242(E)(3) and 1609(D), and *Comments* to Pa.R.J.C.P. 1242, 1408, 1512, 1514, 1515, and 1608—1611.

#### Source

The provisions of this Rule 1409 amended July 13, 2015, effective October 1, 2015, 45 Pa.B. 3987; amended November 30, 2021, effective January 1, 2022, 51 Pa.B. 7632; amended March 22, 2023, effective October 1, 2023, 53 Pa.B. 1791. Immediately preceding text appears at serial pages (377982) and (407951) to (407952).

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