

Chapter 7 – Adjudication Hearing

7.1 Overview

The adjudication hearing is the bench trial before a judge or hearing officer in which a determination is made as to whether the child is in fact “dependent” within the meaning of the Juvenile Act. This is the most formal of the hearings in a dependency case, with respect to both the admission of evidence and the child welfare agency’s burden of proof.

The adjudication acts as the official entry point of a child into the dependency system and provides the basis for court-ordered agency services and interventions. A prompt and fully developed adjudication hearing can be instrumental in setting the stage for planning for the child’s needs and achieving permanency. Judicial diligence, oversight and concern are key components if the court proceedings are to meet these goals while safeguarding the constitutional and due process rights of the parties.

If the court sustains the allegations of dependency, the child is officially adjudicated dependent. At this point the case goes to the disposition hearing, which determines the services to be provided to the child and family and whether or not they are appropriate. In many jurisdictions the adjudication and disposition hearings are held jointly as a means to expedite the process. While the combining of the hearings is acceptable, it should be noted that burden of proof differs between the two hearings and findings for each hearing must be announced in open court, recorded and committed to the order. (See Chapter 10: Disposition).

7.2 Dependency

In view of the focus at the adjudication hearing on whether or not there is dependency, the judge or hearing officer must be familiar with the statutory definition of “dependent child” found at 42 Pa.C.S. § 6302. (For a listing of the categories of dependency, see Chapter 4: Jurisdiction). The agency must check mark in its petition (a CPCMS statewide form) the specific subsection of Section 6302 under which the child’s situation is covered, which generally are in the categories of neglect (including failure to thrive, parental incapacity), abuse (physical, sexual, emotional) or status offenses (truancy, incorrigibility, ungovernability). There is also a subsection that applies to a parent who has had parental rights terminated as to another child within the past three years, and is currently engaging in conduct that poses a risk to the well-being of the child.

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 (Pa.R.J.C.P. 1409, comment).

7.3 Pre-Hearing Requirements and Considerations

7.3.1 Timing

The adjudication hearing must be promptly held, no later than ten days after the petition is filed for a child who has been removed from the home (Pa.R.J.C.P. 1404(A)). If the child is still in the home, the matter may not be as urgent, and the hearing may be held any time within 45 days of the filing date (Pa.R.J.C.P. 1404(B)).

It should be noted, however, that delay may impede efforts to reunify the family, or in the alternative to find a permanent placement (*Mission and Guiding Principles for Pennsylvania's Dependency System*, 2009, p. 13). Even if a child is not in shelter care, it is important that the adjudicatory hearing be held in a timely manner so that services can be initiated quickly if the allegations of dependency are proven, or the petition can be dismissed if they are not. A prompt hearing may also facilitate the use of practices such as Family Group Decision Making (FGDM), Mediation, Facilitation and Family Finding.

It is highly recommended that when a child is in shelter care, the established timeline for the adjudicatory hearing should not be continued even if the parties agree, except where there is newly discovered evidence, unavoidable delay in the notification of parties, an unavailable witness or unforeseen personal emergencies or illness (*Enhanced Resource Guidelines*, NCJFCJ, 2016, p. 181).

Utilization of an emergency response protocol/procedure by the agency should occur pre-placement, if possible, and certainly prior to the adjudication hearing. Further, family finding actions by the agency should be commenced prior to the adjudication hearing.

7.3.2 Appointment of Counsel

All parties should have the opportunity to receive competent legal representation prior to the adjudication hearing. In some cases, the issue of representation has already been settled at the shelter care hearing, but often, due to the emergency nature of that hearing and the short timeframe in which it must occur; counsel may not have been provided to all parties. It is the duty of the court to ensure that all parties are provided the opportunity to retain counsel and, if a party cannot afford counsel, that a system is in place to have counsel appointed.

Any unrepresented parties must be advised of their right to legal counsel. Parents have a right to counsel at adjudicatory hearings, even if obtaining counsel may cause a delay in the hearing (*In Interest of S.N.W.*, 524 A.2d 514 (Pa. Super. 1987)). Further, parents are entitled to effective assistance of counsel (*In re: N.B.*, 817 A.2d 530 (Pa. Super. 2003)). A caregiver afforded standing as a party is

likewise entitled to representation by legal counsel at all stages of the proceedings under the Juvenile Act (*In re: D.K.*, 922 A.2d 929 (Pa. Super. 2007)).

7.3.3 Notification

All parties and some specific persons not necessarily having status as a party to the adjudication hearing shall receive formal notification. In general, those receiving notice include the agency solicitor, the child's GAL and legal counsel, parents, foster parents, pre-adoptive parents or relatives providing care for the child, the county agency, the Court Appointed Special Advocate if any and any other persons as directed by the court (Pa.R.J.C.P. 1361).

The importance of locating and notifying absent and putative fathers is discussed in Chapter 6: Entering the Child Welfare System.

7.3.4 Continuances

Continuances may be necessary in any court setting, but their use should be strictly limited in dependency cases and, if granted, the hearing should be immediately rescheduled and heard as soon as possible. Under the Pennsylvania Rules of Juvenile Court Procedure, "continuances should not be granted when they could be deleterious to the safety or well-being of a party" (Pa.R.J.C.P. 1122, comments). In a dependency proceeding, any continuance will serve to extend the child's stay in care and the family's involvement in the system, potentially harming both.

Practices that may cut down on the number of continuances include:

- Proper and timely notification to all parties in advance of a hearing, such as to allow them time to make the necessary preparations to attend and participate.
- Early identification of family members, including fathers.
- Regularly scheduled hearing dates, determined in advance.
- The use of pre-trial conferences and other ADR processes.
- Development of judge/attorney teams.

If the continuance is granted after the parties arrived for the hearing, start the proceedings then continue the hearing. This provides an opportunity to productively utilize the court's time and address emergent issues. Taking testimony from expert witnesses or others who may not be available on a rescheduled date helps to expedite the next proceeding.

7.3.5 Discovery

A comprehensive set of rules (Pa.R.J.C.P. 1340) govern discovery and inspection for all phases of dependency proceedings, beginning with the period preceding the adjudication hearing. The agency is required to make disclosure of certain information under Pa.R.J.C.P. 1340(B), including the names and addresses of witnesses and any police report or other record or report intended to be used as evidence. As the comment to Rule 1340 notes, however, the purpose of the discovery rules is to encourage an informal discovery process. Only when the informal process fails and a dispute arises does court intervention become necessary.

If they are to be used as evidence, the agency may be required to disclose reports whose confidentiality would otherwise be protected under the Child Protective Services Laws (23 Pa.C.S. 6301 *et seq.*). However, the disclosure is required only as to reports that will be submitted as evidence, and the names of confidential sources who have reported possible abuse are not to be disclosed.

7.3.6 Pre-Adjudicatory Conference

Pa.R.J.C.P. 1342 authorizes the court to order pre-adjudicatory conferences, which can be extremely useful in working out preliminary matters, focusing issues and eliminating potential causes of delay. If the court's calendar is too full to permit the judge to preside, the conference may be held before a hearing officer appointed for the purpose. Moreover, nothing in the rule precludes the court from ordering the parties to conference outside of the presence of a judge or hearing officer. Again, it may be useful to explore the use of techniques such as mediation, facilitation or FGDM during the pre-adjudication phase. (See Chapter 6: Entering the Child Welfare System, for a discussion of best practices related to pre-trial voluntary agreements for services.)

7.3.7 Stipulations

After the petition is filed, the agency and parents may arrive at an agreement to be incorporated as a stipulation and presented for the court's review (Pa.R.J.C.P. 1405). These agreements can be family-based if derived from a FGDM conference arranged by the agency. They may also result from a pre-adjudicatory conference. Of course, the use of mediation or facilitation is also likely to result in a stipulated finding and plan that meets the needs of the child (*Mission and Guiding Principles for Pennsylvania's Dependency System*, 2009, p. 13). All of these possibilities obviously lessen the need for extensive court hearings. Despite stipulations it is up to the court to make an independent determination that the child is dependent; thus, any stipulation is subject to rejection if the judge is not convinced that the facts are credible and solidly based. **Parties cannot stipulate to the adjudication of dependency only to facts which the court may then determine**



are a sufficient basis for a finding of dependency. If facts stipulated to are insufficient to support a finding of dependency, a full adjudicatory hearing is conducted (See Pa.R.J.C.P. 1405(B) and comment to the rule).

When adjudications are uncontested, in the form of an admission by the parents or an agreement or stipulation among the parties, the *Enhanced Resource Guidelines* recommend that the court's findings accurately record the reasons for the agency's intervention and avoid "negotiated" findings that do not accurately describe the abuse or neglect. Adjudicatory findings are the basis for the case plan, are important to the case review and are ultimately the benchmark against which progress is measured (NCJFCJ, 2016, pp. 181-182).

7.3.8 Reports and *Ex Parte* Communication

The judge or hearing officer can more ably conduct an adjudication hearing by reviewing some background information about the child before taking the bench. A starting point is the dependency petition, which will indicate the type of alleged dependency, the location of the child, the participants and whether aggravated circumstances (see Chapter 20: General Issues, Section 20.2: Aggravated Circumstances) may be present.

In some counties, a more comprehensive "solicitor's report" or "caseworker's report" is prepared by the agency and distributed to counsel for all parties, as well as to the court. Because it contains background information, as well as the agency's recommendations in the form of a proposed order, this report can be of great use in preparing for the hearing. Of course, the report is not evidence; thus, the judge or hearing officer cannot base the ultimate decision on any matters in the report that are not established by properly accepted evidence at the hearing itself.

Ex parte communications by anyone with the judge or hearing officer are improper and prohibited by the Code of Judicial Conduct (Pa.R.J.C.P. 1136 and 207 Pa.Code § 33(2.9)(A)). All parties must be informed of any *ex parte* communications that a judge or hearing officer may receive. Correspondence can be returned to the sender unread, but if it is reviewed the contents must be revealed to all of the parties. (See also Chapter 20: General Issues, Section 20.6.1: Talking to Children in Court).

7.3.9 Standing

In the event the legal standing of a party who is not a biological parent is contested in a dependency proceeding, the court should not unduly postpone or delay the adjudicatory hearing to consider the issue. Often, a standing issue cannot be readily decided, especially in view of the various statutes and extensive case law that must be considered. It may require a separate hearing.

In general, as noted in *In re: L.C. II*, 900 A.2d 378, 381 (Pa. Super. 2006), “Although the Juvenile Act does not define “party”, case law from this Court has conferred the status of party to a dependency proceeding upon three classes of persons: (1) the parents...(2) the legal custodian or...(3) the person whose care and control of the juvenile is in question.” One who stood *in loco parentis* to a child at the time of removal and whose care and control of the child is in question at the adjudication hearing qualifies as a party to the dependency proceedings. (*In re: D.K.*, 922 A.2d, 929 (Pa. Super. 2007)).

Standing should not be confused with the right to be heard. The Juvenile Act affords any relative providing care for the child the right to be heard at any dependency hearing (42 Pa.C.S. § 6336.1). This right to be heard has also been extended to a foster parent and a pre-adoptive parent.

7.4 Conducting the Hearing

The judge or hearing officer should, at the outset, convey to all in the courtroom the nature of the proceeding: “This is a hearing to determine whether the child is in fact dependent as asserted by the agency.”

All counsel should then be recognized to state their name and who they represent. The GAL and/or the child’s counsel must also be identified.

Although Pa.R.J.C.P. 1406 refers to the court conducting the hearing in an informal manner, its importance should be established by the judge or hearing officer’s tone at the outset. It is similar to a bench trial, although opening statements by counsel are normally very brief if made at all. At all stages of the hearing, the judge or hearing officer should explain, whenever necessary, how the hearing will proceed.

The hearing proceeds with due process considerations of notice of the contentions and an opportunity of all parties to present testimony and other evidence, in accordance with the usual rules of evidence. All witnesses are subject to cross-examination, even by a *Pro Se* party who has waived counsel (Pa.R.J.C.P. 1406(C)). It is recommended that, at minimum, 30 minutes be scheduled for the adjudicatory hearing (NCJFCJ, *Resource Guidelines*, 1995, pg. 51).

7.5 Burden of Proof

The burden of proof imposed by law upon the agency is to establish by “clear and convincing evidence” that the child is dependent. (42 Pa.C.S. § 6341(c)). The court is not free to apply a best interest of the child standard (*In re: Haynes*, 473 A.2d 1365 (Pa. Super. 1983)); (Pa.R.J.C.P. 1409 (A)(1) and comment to the rule).

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 (Pa.R.J.C.P. 1409 Comment).

7.6 Findings and Orders

Under Pa.R.J.C.P. 1408, the court must enter a finding that specifies which of the allegations in the petition have been sustained and are the basis for the finding of dependency. Further, the court must make a finding as to whether the agency has reasonably engaged in family finding as required by Rule 1149. The findings may be announced orally at the conclusion of the hearing and later set forth in a written order. A deadline of seven days is imposed by the rules for the court to enter a finding of what allegations, if any, were proved by clear and convincing evidence (Pa.R.J.C.P. 1408 and 1409(B)).

Under Pa.R.J.C.P. 1409(C), the court's order must contain the following:

- (1) A statement as to whether the court finds the child to be dependent from clear and convincing evidence.
- (2) The specific factual findings that form the bases of the court's decision.
- (3) Any legal determinations made.
- (4) Any orders directing the removal of a child from the home or changes in the child's current residential status, including orders as to placement, visitation or changes in custody.
- (5) Any orders as to services, investigations, evaluations, studies, treatment plans, reports or other steps that may assist in the preparation for the disposition hearing, including orders regarding family finding.

Also, as required under federal law, the court's order must contain:

A finding whether the child is a child subject to the Indian Child Welfare Act and, if so, whether the agency has complied with notification requirements of the Act.

The court's written findings should provide enough detailed information to justify agency and court choices for treatment and services (without going into the details of the abuse or neglect). In addition, if this is the first judicial order authorizing the child's removal from the home, the court must specify whether continuation in the home would be contrary to the child's welfare, whether the agency made reasonable efforts to prevent or eliminate the need for placement or whether the agency's lack of efforts was reasonable due to emergency

circumstances. (See Chapter 6: Entering the Child Welfare System, for a fuller discussion of reasonable efforts requirements.)

In Pennsylvania, dependency findings and orders for adjudication hearings are contained within the CPCMS Dependency Module. These court forms contain the needed information to assist the court in asking the necessary questions, in managing the case, in meeting federal requirements and in capturing statewide data. The forms also allow for the entering of detailed text, which can outline the specific directives of the court.

ADJUDICATION HEARING CHECKLIST

1. TIMELY HEARING:

___ **Date** child removed: _____
___ **Date** of Adjudicatory Hearing: _____

(Note: The Adjudicatory Hearing must be held within 10 days of the filing of the petition if the child is in custody and 45 days if a child is not in custody.)

2. NOTICE OF HEARING:

___ Determine if written notice of time, place and purpose of the adjudicatory hearing was issued to child and child's:
 ___ Mother and attorney ___ Father and attorney
 ___ Guardians/custodians and attorney ___ GAL and/or attorney
 ___ Tribe (If ICWA applies)
___ If a party is not present and not properly served, reset adjudicatory hearing as to the absent party.
___ Proceed with adjudicatory hearing as to parent/party who had proper notice.
___ Determine whether efforts are being made by county agency to locate/notify absent parent(s).

3. WHO SHOULD ALWAYS BE PRESENT:

WHO MAY BE NEEDED:

___ Judge
___ Mother
___ Father
___ Guardians/Custodians
___ Child(ren)
___ Spouse of Child, if any
___ Parents' Attorneys
___ Guardian *ad Litem*
___ Child's Attorney
___ Agency Solicitor
___ Caseworker
___ CASA
___ Court Reporter
___ Security Personnel

___ Extended Family Members
___ Friends of the Family
___ Foster/Preadoptive Parents
___ Other Witnesses
___ Service Providers
___ Law Enforcement
___ Probation Officer

4. PROCEDURE:

___ Explain the purpose of the proceeding and give advisements of rights.
___ Provide opportunity to admit or deny allegations.

- ___ If parent(s) *admits*:
 - ___ Determine competency.
 - ___ Determine which allegation(s) of the Petition will be admitted.
 - ___ Receive factual basis under oath on the record.
- ___ If parent(s) *deny*:
 - ___ Allow opening statements.
 - ___ Take oath of witnesses.
 - ___ Receive evidence.
 - ___ Determine which allegations of the Petition have been proven.

5. CHILD'S WELL-BEING & FAMILY SERVICES: (if disposition hearing is not immediately following)

Placement:

- ___ Determine the child's placement prior to disposition.
- ___ Ask county agency to evaluate relatives and friend of the family as possible caregivers.

Services:

- ___ Ensure family finding efforts are sufficient and order additional if not found to be sufficient.
- ___ If disposition is to be set at a later time, ask county agency to address what services can be given to the parents prior to disposition.
- ___ Offer family the opportunity to have a FGDM conference.
- ___ Order services appropriate to the family that will allow child to remain/reunify with the family.
- ___ Address whether the child needs any physical/mental examinations prior to disposition.

Visitation:

- ___ Determine if the visitation plan is in the best interest of the child and if parties are in agreement with the plan (plan should include visitation with parents **and** siblings, if siblings are in different placement settings).
- ___ Advise parent(s) that visitation is expected and to contact the county agency if unable to make a visit.
- ___ Ensure that frequency and duration are appropriate based on the age and needs of the child.
- ___ Ensure that oversight and location of visits are least restrictive and provide for the most natural interaction to occur. Supervised visits should be the result of an identifiable safety threat.

Educational Needs:

- ___ Explore whether the child is remaining in the same school.
- ___ Determine whether the child is appropriately placed in school,

- attending school regularly and making adequate progress.
- ___ Determine whether the parent or guardian is adequately involved in the child's education, or whether it is necessary to appoint an educational decision maker.

6. CONTRARY TO THE WELFARE AND REASONABLE EFFORTS FINDINGS:

(Note: Contrary to the welfare and reasonable efforts findings must be detailed and child specific.)

- ___ Ask county agency to detail efforts made to avoid protective placement of child.
- ___ Determine whether continuation in the home would be contrary to the child's welfare. (Note: This finding must be made at the first court hearing authorizing the child's removal).

Reasonable Efforts Findings (Choose one of the following three options):

- ___ County agency made reasonable efforts to prevent or eliminate the need for placement, including: _____
- ___ The lack of efforts to prevent/eliminate need for removal was reasonable due to the following emergency circumstances:

- ___ County agency has NOT made reasonable efforts to prevent or eliminate the need or placement because:

7. OTHER REQUIRED FINDINGS:

- ___ County agency has or has not reasonably engaged in family finding.
- ___ Whether the child is a child subject to the Indian Child Welfare Act and, if so, whether the agency has complied with notification requirements of the Act..

8. SCHEDULE NEXT HEARING:

- ___ Disposition Hearing **Date:** _____
- (Note: The hearing must be held within twenty days of adjudication.)
- ___ Three-month review hearing **date:** _____
- ___ Six-month review hearing **date:** _____
- ___ Permanency hearing **date:** _____

A court should distribute the orders at the conclusion of the hearing, and explain the significance to the parties, if necessary.



ADJUDICATION HEARING BENCHCARD



Relevant Statutes	42 Pa.C.S. §§ 6302-6341 Pa.R.J.C.P. 1240 - 1243, 1340 - 1342, 1406 (discovery)
Purpose of Hearing	To determine by <u>clear and convincing evidence</u> whether a child is dependent pursuant to the definition of dependent child in 42 Pa.C.S. § 6302.
Time Frame	Hearing within <u>10 days</u> of petition if the child is in custody. The time frame may be extended for another 10 days if the court finds that despite due diligence, evidentiary material is not available and there is clear and convincing evidence that the life of the child is in danger if the child were released (42 Pa.C.S. § 6335(a)(1) & (2)). If the child is not in custody, the hearing should be within <u>45 days</u> (Pa.R.J.C.P. 1404).
Rules of Evidence	The Rules of Evidence apply to the adjudication hearing. Further, the statute also provides that a party has the right to present evidence and to cross-examine witnesses (42 Pa.C.S. § 6338).
Standard of Proof	Clear and Convincing Evidence: 42 Pa.C.S. § 6341(c) Stipulations and agreements cannot substitute for the presentation of evidence from the parties and/or disinterested parties. The court must make an effort to assure the presentation of evidence.
Next Hearing	<u>Child in Custody:</u> Disposition hearing must be held within 20 days of the findings of clear and convincing evidence of adjudication (Pa.R.J.C.P. 1408 & 1510). The majority of jurisdictions in Pennsylvania hold the adjudicatory and disposition hearings consecutively for the purposes of timeliness and convenience.



ADJUDICATION HEARING



SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- Which allegations of the petition have been proven by clear and convincing evidence or admitted, if any?
- Do the facts prove that the child was without proper parental care and control?
- Do the facts prove that immediate, proper parental care and control is unavailable to the child without state intervention?
- Are there aggravated circumstances?
- Is there a legal basis for continued court and agency intervention?
- Have reasonable efforts been made to prevent the need for placement or safely reunite the family?
- Has the father been identified? If not, what specific actions have been completed to locate him? Is the father an able and willing caretaker? If yes, is adjudication warranted?
- Has family finding been done to identify all possible family and kin?
- Has a determination been made as required by the Indian Child Welfare Act?
- Has the family been offered a Family Group Decision Making conference?
- Is the basis for dependency truancy alone? If so, have the underlying causes been investigated? Are there problems at home preventing the child from attending school? Is there a lack of proper parental care and control? Has the school done an attendance improvement plan? Are the parents and/or the child receiving interventions/services? Does the child have a learning issue that has not been identified? Is the child being bullied in school? Are there transportation and/or safety issues that can be resolved? (See <http://www.ocfcpacourts.us/>)

If the disposition hearing will not immediately follow the adjudication hearing:

- Where will the child live until the disposition hearing?
- Is there a need for further testing or evaluation of the child and/or parents in preparation for disposition?
- Is the agency taking steps to evaluate relatives as possible support for the child or parent?
- Is the agency continuing to try to notify noncustodial parents?
- If the child will be in foster care, what are the plans for parental visitation and sibling visitation?
- If siblings are not placed together, what reasonable efforts has the agency made to prevent or remedy this?
- If the child will be in foster care, will the parent or guardian be able to continue making educational decisions for the child or should an educational decision maker be appointed? Are there any other educational needs to address?

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the Adjudication Hearing Checklist provided in the *Resource Guidelines* (NCJFCJ, 1995, p. 52).