

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 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 they are appropriate. In many jurisdictions, the adjudication and disposition hearings are held jointly to expedite the process. While the combining of the hearings is acceptable, it should be noted that the 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, Section 4.2 Dependency Jurisdiction in General.) The agency petition is a Common Pleas Case Management System statewide form. The agency must checkmark in the petition the specific subsection of Section 6302 under which the child's situation is covered. The general categories are neglect, which includes failure to thrive and parental incapacity; abuse, which includes physical, sexual, and emotional abuse; or status offenses, which include truancy, incorrigibility, and ungovernability. There is also a subsection that applies to a parent who has had parental rights involuntarily 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.

Absent prejudice, the court has discretion to permit the amendment of the petition to include a different subsection, which changes the elements or matters of proof by a party. Pa.R.J.C.P. 1334(A)(2). The court may allow the petition to be amended if one of the parties makes this request or if the court deems an amendment is needed. Amendments to cure defects in form, the description of allegations or the description of any person or property, or the date alleged must be permitted by the court. Pa.R.J.C.P. 1334(A)(1). The court also has the discretion to grant a continuance to avoid prejudice based on the amended petition if the court deems it necessary. Pa.R.J.C.P. 1334(B).

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.*, 757 A.2d 849 (Pa. 2000).

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 hearing shall be held as soon as practical but within 45 days of the filing of the petition. 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. Even if a child has not been removed from the home, 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 has been removed from the home, 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. Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 181 (National Council of Juvenile and Family Court Judges 2016).

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. 42 Pa.C.S. § 6337. Parents have a right to counsel at adjudicatory hearings, even if obtaining counsel may cause a delay in the hearing. *In the Interest of S.N.W.*, 524 A.2d 514 (Pa. Super. 1987). Further, parents are entitled to effective assistance of counsel. *In re S.M.*, 614 A.2d 312 (Pa. Super. 1992). 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 the Interest of D.K.*, 922 A.2d 929 (Pa. Super. 2007).

The right to counsel has also been expressed as a right to effective assistance of counsel. Urging counsel to model their services around appropriate and effective legal representation is required. True legal representation designed to build relationships with clients before, after, and during court proceedings, and to prepare for hearings well in advance of the hearing date is essential to avoiding future claims that the right to counsel was denied due to the ineffectiveness of counsel.

7.3.3 Notification

The court must issue a summons compelling all parties to appear for the adjudication hearing. Pa.R.J.C.P. 1360. The court must give notice of the hearing to: (1) the agency solicitor; (2) the child's GAL and legal counsel; (3) the guardian's attorney; (4) parents, foster parents, pre-adoptive parents or relatives providing care for the child; (5) the county agency; (6) the Court Appointed Special Advocate, if assigned; and (7) any other persons as directed by the court. Pa.R.J.C.P. 1361.

The summons compelling the parties to appear must be served in person or by certified mail return receipt and first-class mail. Pa.R.J.C.P. 1363(A). Service of the summons must occur no less than seven (7) days prior to the adjudicatory hearing if the child is in custody and no less than fourteen (14) days prior to the hearing if the child is not in custody. Pa.R.J.C.P. 1363(B).

Chapter 6: Entering the Child Welfare System provides a best practice box discussing the importance of locating and notifying absent and putative fathers.

7.3.4 Subsequent Identification of Parent not Named in Original Petition

If a petition is filed and one of the parents is not known at the time of the hearing, the court has jurisdiction to assess and address the needs of the child in an adjudicatory hearing while also pursuing the identity of the unknown parent. If the unknown and unnamed parent is located after the child was determined to be dependent, then due process concerns require that the subsequently identified parent be provided notice and an opportunity to be heard in any future dependency proceedings. However, jurisdiction over the original dependency petition would be unaffected. *In the Interest of A.D.-G.*, 263 A.3d 21, 28 (Pa. Super. 2021).

7.3.5 Continuances

When granting a continuance, it is important to remember if a child has been removed from the home, an adjudicatory hearing shall be held within ten days of the filing of the petition. If a child has not been removed from the home, the adjudicatory hearing shall be held as soon as practical but within forty-five (45) days of the filing of the petition. Pa.R.J.C.P. 1404(b).

The remedy for failure to hold the dependency hearing in a timely manner is that an objecting party can petition for “the automatic activation of the right of the child and its parents to the immediate release of the child from the state's custody.” *In the Interest of M.Y.C.*, 230 A.3d 500, 509 n.11 (Pa.Super. 2020).

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.” Comment to Pa.R.J.C.P. 1122. 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 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 arrive for the hearing, start the proceedings and 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.

7.3.6 Discovery

A comprehensive rule governs discovery and inspection for all phases of dependency proceedings beginning with the period preceding the adjudication hearing. Pa.R.J.C.P. 1340. 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, the purpose of the Rule 1340(A) 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.* Pa.R.J.C.P. 1340(B)(1)(e). However, the disclosure is required only to reports that will be submitted as evidence, and the names of confidential sources who have reported possible abuse are not to be disclosed. Comment to Rule 1340.

7.3.7 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 that 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. Chapter 6: Entering the Child Welfare System provides a best practice box discussing the best practices related to pre-trial voluntary agreements for services.

7.3.8 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. 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. They may only stipulate to facts which the court may then determine provide a sufficient basis for a finding



of dependency. If the facts stipulated 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, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 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, important to the case review, and ultimately, the benchmark against which progress is measured. Gatowski, *supra*, at 181-182.

7.3.9 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 may be present. (See Chapter 20: General Issues, Section 20.2: Aggravated Circumstances.)

Data has been added to the Common Pleas Case Management System (CPCMS) about whether a parent or child is either diagnosed or self-reported with Autism under Special Considerations. This information, if available to the court ahead of time, will allow the court to make appropriate accommodations for the child or parent with Autism. Multiple CPCMS reports display special considerations. These reports include: **1058 – Special AOPC Autism Special Considerations Report, 3905 – Dependency Daily List, and 5000 – Interactive Daily List.**

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 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 Rules of Juvenile Court Procedure and the Code of Judicial Conduct. Pa.R.J.C.P. 1136 and 207 Pa.Code 33 Canon 2 Rule 2.9. 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 and Tips for Talking to Children Benchcard.)

7.3.10 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 the Interest of L.C., II*, 900, “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.” 900 A.2d 378, 381 (Pa.Super. 2006). 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 the Interest of 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(a). This right to be heard has also been extended to a foster parent, a pre-adoptive parent, and a potential kinship care resource as to their qualifications to provide kinship care. *Id.* Unless a foster parent, pre-adoptive parent, relative providing care for a child, or potential kinship care resource has been awarded legal custody, the foster parent, pre-adoptive parent, relative providing care for the child, or potential kinship care resource has no legal standing. *Id.*

7.3.11 Autism Spectrum Disorder (ASD) Consideration

Adjudication hearings are often the first proceeding that a child or parent attends. These hearings can be extremely stressful for all participants, especially those living with Autism Spectrum Disorder (ASD). Recognizing this concern, the Pennsylvania State Roundtable commissioned the Autism and the Dependency Courts Taskforce in September 2021. The Taskforce’s primary goal was to identify strategies to provide the most positive dependency court experience for children and families with ASD as possible. The Taskforce was also charged with increasing ASD awareness and responsiveness within the dependency system, believing it is incumbent upon the courts to ensure all individuals, including those with ASD, receive access to fair and equitable justice.

The Taskforce identified a variety of strategies that could achieve the goals noted above. Many of these strategies are being implemented under the leadership of dependency judges across the Commonwealth. These strategies include creating safe spaces within courthouses for persons with ASD and identifying individuals with ASD prior to their attendance at a hearing to make accommodations, if possible. The newly created Courthouse spaces have been an effective addition in many jurisdictions.

In addition, the identification of individuals with ASD is providing local jurisdictions the opportunity to ease the stress of court proceedings. Collection of ASD data is facilitated through the Common Pleas Case Management System (CPCMS). Children and parents who voluntarily share their diagnosis or self-report ASD are included in the data point. From this data, CPCMS reports can be generated. Two such reports are the CPCMS Form 1058 (Special Considerations Report) and the CPCMS Form 3905 (Daily List Report). These reports are intended to alert judges and hearing officers enabling them to make special supportive accommodations, when possible. For additional strategies refer to the Autism Benchcard.

*** Best Practice — A Trip to the Courthouse Social Story***

In 2022, the Centers for Disease Control and Prevention (CDC) found that 1 in 36 children had been identified with a diagnosis of Autism Spectrum Disorder (ASD). ASD is a neurological and developmental disorder that affects how people interact with others, communicate, learn, and behave, as defined by the National Institute of Mental Health.

Those with ASD often experience additional stress and anxiety when facing new or unknown situations. To help reduce anxiety when attending a dependency hearing, a template social story entitled “A Trip to the Courthouse” was created and provided to counties. The template provides space for county-specific pictures depicting a trip to the courthouse. This story can be shared with children and parents prior to the court hearing to help them prepare and reduce the stress of the unknown.

While this social story was written specifically for children and parents with ASD, it is helpful to everyone.

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, the judge or hearing officer’s tone at the outset should establish its importance. The hearing 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 should begin with due process considerations of notice to all parties. An opportunity for all parties to present testimony and other evidence in accordance with the usual rules of evidence will be provided. All witnesses are subject to cross-examination, even by a *Pro Se* party who has waived counsel Pa.R.J.C.P. 1406(C). Based on the circumstances of each case, the judge or hearing officer should ensure that sufficient time is set aside for the hearing.

As part of an adjudication of dependency, a court may find a parent to be the perpetrator of child abuse, as defined by the Child Protective Services Law (CPSL). *In the Interest of S.L.*, 202 A.3d 723, 728 (Pa. Super. 2019). The CPSL defines child abuse, in relevant part, as “intentionally, knowingly or recklessly ... [c]ausing bodily injury to a child through any recent act or failure to act.” 23 Pa.C.S.A. § 6303(b.1)(1). The abuse must be established by clear and convincing evidence, but pursuant to section 6381(d) of the CPSL, the identity of the abuser need only be established through *prima facie* evidence.

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), Pa.R.J.C.P. 1409(A)(1) and comment to the rule. **Clear and convincing evidence is defined as testimony that is “so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.”** *In re R.I.S. & A.I.S.*, 36 A.3d 567, 572 (Pa. 2011). The court is not free to apply a best interest of the child standard. *In re the Interest of Haynes*, 473 A.2d 1365, 1368 (Pa. Super. 1983).

The court can find a child to be dependent only “when he is presently without proper parental care and when such care is not immediately available.” *In the Interest of A.B.*, 63 A.3d 345, 349 (Pa. Super. 1983). Proper parental care is defined as “that care which (1) is geared to the particularized needs of the child and (2), at a minimum, is likely to prevent serious injury to the child.” *Id.* (See also definition of dependent child at 42 Pa.C.S. § 6302.)

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.*, 757 A.2d 849 (Pa. 2000). In cases where there exists a prior custody order, a juvenile court can issue an order modifying a family's prior custody arrangement under Pa.R.J.C.P. 1409(A)(2). The order should note that if the non-custodial parent did not come forward to care for the child, the child would have met the statutory definition of dependency. This will preserve the record in the event the child has future dependency court involvement. If the juvenile court finds a child not to be dependent or the court finds a parent ready, willing, and able to provide proper parental care or control, Pa.R.J.C.P. 1409(A)(2) requires the juvenile court to (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 legal and physical custody of the child until such order court is modified by further order of the court.

Finally, truancy can serve as a basis for adjudicating a child dependent. To adjudicate a child dependent based on truancy, the burden is on the petitioner to present clear and convincing evidence that the child, while subject to compulsory school attendance, is habitually and without justification truant from school. 42 Pa.C.S. § 6302. The compulsory school age in Pennsylvania is from the time the child's parents elect to have the child enter school and no later than six years of age until the child reaches eighteen years of age. 24 P.S. § 13-1326. Habitually truant is defined as six or more school days of unexcused absences during the current school year. *Id.* The lack of an excuse or a determination that a proffered excuse is facially invalid or insufficient creates a rebuttable inference that an absence was without justification.

7.6 Findings and Orders

Under Pa.R.J.C.P. 1408(1), the court must enter findings within seven days of hearing the evidence on the petition or accepting stipulated facts by the parties that specify which, if any, of the allegations in the petition have been proven by clear and convincing evidence.

Further, the court must make a finding as to whether the agency has reasonably engaged in family finding as required by Pa.R.J.C.P. 1149. Pa.R.J.C.P. 1408(2). 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 regarding family finding. Pa.R.J.C.P. 1409 comments. If the requirements of Pa.R.J.C.P. 1149 regarding family finding have not been met, the court is to make necessary orders to ensure compliance by enforcing this legislative mandate. *Id.*

The findings may be announced orally at the conclusion of the hearing and later set forth in a written order. If the child is removed from the home, 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. If the child is in the home and a decision is not made, the court must hold a status conference every thirty (30) days until a decision is issued. 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) Pursuant to Rule 1409(A): (a) a statement as to whether the court finds the child to be dependent from clear and convincing evidence, (b) the specific factual findings that form the basis of the court's decision, (c) any legal determinations made;
- (2) any orders directing the removal of a child from the home or changes in the child's current residential status, including orders as to (a) placement, (b) visitation, or (c) changes in custody; and

- (3) any orders as to any aids in disposition that may assist in the preparation of 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, Section 6.1.1 Reasonable Efforts Determination.)

In Pennsylvania, dependency findings and orders for adjudication hearings are contained within the Common Pleas Case Management Dependency Module (CPCMS). These court forms contain the needed information to assist the court in asking the necessary questions, managing the case, 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.

(Page intentionally left blank)

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)

Foster Parent

Pre-Adoptive Parent

Relative providing care for child

County Agency

CASA

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:

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

WHO MAY BE NEEDED:

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 the county agency to evaluate relatives and friends 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 the county agency to address what services can be given to the parents prior to disposition.
- Offer the family the opportunity to have an FGDM conference.
- Order services appropriate to the family that will allow the 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 the parties are in agreement with it (the 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 the least restrictive and provide for the most natural interaction. Supervised visits should result from 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 an educational decision-maker needs to be appointed.

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 the county agency to detail efforts made to avoid protective placement of the 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 the need for removal was reasonable due to the following emergency circumstances:

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

7. OTHER REQUIRED FINDINGS:

___ The 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 the Act's notification requirements.

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.

(Page intentionally left blank)



ADJUDICATION HEARING BENCHCARD



Relevant Statutes	<p>42 Pa.C.S. §§ 6302-6341</p> <p>Pa.R.J.C.P. 1240 - 1243, 1340 - 1342, 1406 (discovery)</p>
Purpose of Hearing	<p>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.</p>
Time Frame	<p>Hearing within <u>10 days</u> of the petition if the child is in custody.</p> <p>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)).</p> <p>If the child is not in custody, the hearing should be within <u>45 days</u> (Pa.R.J.C.P. 1404).</p>
Rules of Evidence	<p>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).</p>
Standard of Proof	<p>Clear and Convincing Evidence: 42 Pa.C.S. § 6341(c)</p> <p>Stipulations and agreements cannot substitute for the presentation of evidence from the parties and/or disinterested parties. The court must make an effort to ensure the presentation of evidence.</p>
Next Hearing	<p><u>Child in Custody:</u> A 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).</p> <p>The majority of jurisdictions in Pennsylvania hold the adjudicatory and disposition hearings consecutively for the purposes of timeliness and convenience.</p>



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 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).