

XIV. CHILD DEPENDENCY, NEGLECT AND ABUSE PROCEEDINGS [INTERIM ARTICLE].

Rule 200. Scope.

These rules govern the procedures of the Family Court regarding dependency, neglect and abuse petitions for custody, and petitions for guardianship.

Rule 201. Construction and enforcement of rules.

These rules shall be liberally construed to accomplish the purpose of achieving stable and secure homes for dependent, neglected or abused children.

Rule 202. Extension of time and continuances.

Extensions of time and continuances beyond the times specified in this section of rules shall be granted only for good cause shown.

Rule 203. Scheduling of subsequent proceedings.

At or before the conclusion of each hearing a subsequent hearing date shall be set. Mailed notice is not required when notice of the next hearing date is contained in a prior order of the Court or actual notice is given to the parties at the hearing.

Rule 204. Procedure for appointment of guardians ad litem.

A guardian ad litem may be appointed upon motion by any party to the action, the Office of the Child Advocate, Court Appointed Special Advocate, or upon the Court's own initiative.

A. RULES APPLICABLE TO ALL PROCEEDINGS INVOLVING DEPENDENT, NEGLECTED, OR ABUSED CHILDREN IN THE CUSTODY OF THE DEPARTMENT OF SERVICES FOR CHILDREN YOUTH AND THEIR FAMILIES (HEREINAFTER "THE DEPARTMENT").

Rule 205. Commencement of action.

(a) Child dependency, neglect and abuse proceedings shall be commenced by filing in this Court a written petition setting forth the facts verified by affidavit in accordance with 10 Del. C. { 1003.

(b) The petition may be filed by the Department of Services for Children Youth and their Families or any other agency or person.

(c) A copy of the petition shall be served upon the Respondent pursuant to Rule 4.

Rule 206. Notice to parents of right to counsel.

(a) The Court shall notify parents in writing that they may be represented by counsel. The Court shall also notify parents in writing of the appointment of counsel in cases of indigency.

(b) A parent seeking the appointment of counsel on the basis of indigency shall complete and submit a motion and affidavit.

Rule 207. Appointment of counsel.

A parent determined by the Court to be indigent may have counsel appointed by the Court during the parent's initial appearance on a petition, or such other time as deemed appropriate by the Court. In considering the appointment of counsel, the Court shall:

(a) Inquire whether the respondent parent is represented by counsel;

(b) Inquire whether an unrepresented respondent parent is unable to afford counsel;

(c) Arrange for appointment of counsel if the respondent parent is eligible for Court appointed services and wishes to be represented;

(d) Make findings regarding the knowledge and voluntariness of a waiver of representation of counsel or indicate that such findings were previously made.

Rule 208. Notice to foster caregivers.

Notice of all post-adjudicatory hearings, and notice of the right to be heard at such hearings, shall be provided to current foster parent(s), pre-adoptive parents and relative caregivers of the child(ren) by the Department of Services for Children, Youth and their Families.

Rule 209. Determination of reasonable efforts.

(a) The Court shall make a finding at the time of the first order, which removes a child from the home, whether 1- probable cause exists to believe that a child continues to be in actual physical, mental or emotional danger or there is a substantial imminent risk thereof and 2- continuation in the home is contrary to the welfare of the child considering on a case by case basis including but not limited to reference to the facts of a report to the Court, a sustained petition, or detailed facts.

(b) Within 40 days of the child's actual removal from the home, the Court shall make a determination as to whether the Department was required to exercise reasonable efforts prior to the removal of the child from the home and, if so, determine if the agency made reasonable efforts to prevent the child's removal from the home.

(c) The Court shall make a determination at each review hearing where the department was previously ordered to offer reunification services to the parent or parents whether the Department is required to make reasonable efforts and if so, if the department has made reasonable efforts since the last hearing to offer such services.

(d) The Court shall make a determination no later than 12 months from the time the child has "entered foster care" or within thirty (30) days of a judicial determination that reasonable efforts to offer reunification services to the parents are not required whether the Department has made reasonable efforts to finalize a permanency plan for a child. For the purposes of these rules, the date a child has "entered foster care" shall mean the earlier of: 1) a judicial finding at an adjudicatory hearing that the child has been subjected to abuse or neglect; or 2) sixty (60) days after the child is removed from the home).

Rule 210. Emergency removal of a child.

(a) When emergency removal of a child from the home or other emergency relief is sought by the Department during Court operating hours, a Judicial Officer of the Court shall promptly read the petition and grant custody of the child to the Department or relative of the child upon the establishment that probable cause exists to believe that a child continues to be in actual physical, mental or emotional danger or there is a substantial imminent risk thereof and continuation of the child in the home is contrary to the welfare of the child.

(b) When emergency removal of a child from the home or other emergency relief is sought by the Department during other than Court operating hours, the department shall contact a designated on-call judicial officer and orally establish for the court probable cause to believe that continuation of the child in the home is contrary to the welfare of the child. If probable cause is established, the Department shall file a petition and form of order with the Court no later than noon of the following business day.

Rule 211. Change of Goal or legal custody.

(a) Whenever a party seeks a change in legal custody or in the goal of the case plan, other than at the permanency hearing, said party shall file a motion so notifying the Court and all parties fifteen days prior to the next regularly scheduled dispositional or review hearing except where good cause is shown why such notice could not be made. The motion shall state the basis

for such change in goal or legal custody for said child. At each review hearing, the Department shall inform the Court of changes in the child's placement.

(b) The Court Appointed Special Advocate or guardian ad litem, whichever is applicable, shall receive reasonable notice from the Department of changes in placement or school.

Rule 212. Preliminary protective hearing. (10 day hearing*).

(a) If an ex parte order is granted, a preliminary protective hearing shall be scheduled before a judge within 10 days of the entry of the ex parte order; or if an ex parte order of custody is not entered but the Court finds that priority scheduling is warranted, a preliminary protective hearing shall be scheduled within 10 days of the filing of the petition. The Court shall determine whether the evidence demonstrates that probable cause exists to believe that a child continues to be in actual physical, mental or emotional danger or there is a substantial imminent risk thereof. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(b) Upon a finding by the Court that probable cause exists to believe that a child continues to be in actual physical, mental or emotional danger or there is a substantial imminent risk thereof or that a child has been abused or neglected, or continues to be dependent, the Court shall continue the custody order in effect if an ex parte order has been entered granting custody to the Department, or if no ex parte order has been entered, enter a temporary order of custody to the Department pending an adjudicatory hearing in accordance with 10 Del. C. { 1009. If the Court does not find probable cause to believe that the child is in actual physical, mental or emotional danger or that there is a substantial imminent risk thereof or that a child has been abused or neglected, or continues to be dependent, then the petition shall be dismissed and the child returned to the custody or guardianship of the parents or other care giver who had the legal guardianship or custody.

(c) At or before the conclusion of the hearing a subsequent hearing date shall be set. Mailed notice is not required when notice of the next hearing date is contained in a prior order of the Court or actual notice is given to the parties at the hearing.

(d) The Court should make a determination pursuant to Rule 209b.

Rule 213. Adjudicatory hearing. (40 days*).

(a) Unless a respondent waives his or her right to an adjudicatory hearing and agrees to continued custody of the child with the Department of Services for Children youth and their Families, an adjudicatory hearing shall be scheduled within 30 days of the entry of the preliminary protective order.

(b) If the Court finds by a preponderance of the evidence that a child is dependent, neglected or abused and it is in the child's best interests, an order in accordance with 10 Del. C. { 1009(b) shall be entered together with such other terms and conditions that may be set forth by the Court.

(c) If the Court fails to find by a preponderance of the evidence that a child is dependent, neglected or abused the petition shall be dismissed without prejudice and the child returned to the care and control of the respondent(s) at such time as determined reasonable by the Court.

(d) At or before the conclusion of the hearing a subsequent hearing date shall be set.

Mailed notice is not required when notice of the next hearing date is contained in a prior order of the Court or actual notice is given to the parties at the hearing.

(e) If no determination has been entered pursuant to Rule 209(b), the Court shall enter such determination at the adjudicatory hearing.

Rule 214. Dispositional hearing. (70 days*).

(a) A dispositional hearing shall be scheduled within 30 days of the adjudicatory hearing unless the adjudicatory hearing has been waived by respondent. In that event, the dispositional hearing shall be held within 30 days of the entry of the preliminary protective order.

(b) A dispositional hearing may be conducted immediately following an adjudicatory hearing with the consent of all parties. If a dispositional hearing is conducted and a dispositional order is entered immediately following an adjudication of custody to the Department of Services for Children, Youth and Their Families, a separate dispositional hearing shall not be required.

(c) A case plan setting forth the services to be provided to the respondent(s) and the child by the Department of Services for Children, Youth and Their Families shall be presented at this hearing. The Court shall determine if the services provided in the case plan constitute reasonable efforts toward reunification of the child and respondent(s), if that is the Department's plan for permanency for the child. The Court may determine that the Department is not required to provide reasonable efforts for reunification if the facts of the case so warrant.

(d) At or before the conclusion of this hearing the Court shall establish a date for review of the case plan, if said review is warranted.

Rule 215. Review hearings. (150 days*).

(a) A hearing to review the case status shall be held no later than 90 days after the dispositional hearing.

(b) At this hearing the Court shall evaluate (i) the safety of the child; (ii) the need for and appropriateness of the child's placement; (iii) the extent of compliance with the case plan by the parent(s) and the Department; (iv) the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care; (v) the projected date of safe return of the child to the parent(s), or placement for adoption or legal guardianship; and long-term case goals and change any goals that are no longer appropriate.

(c) At or before the conclusion of this hearing the Court shall establish a date for the next hearing.

(d) After the first review hearing and until a permanency hearing is held, subsequent review hearings shall be held within 90 days of the preceding review hearing.

Rule 216. Permanency hearing. (360-420 days*).

(a) A hearing, which may be held upon motion by the Department or be regularly scheduled by the Court, regarding the permanent placement of the child shall be held not later than 12 months from the time the child has "entered foster care" as defined by rule 209(d), or within thirty (30) days of a judicial determination that reasonable efforts are not required unless the permanency hearing requirements to finalize a permanency plan have been fulfilled at a prior hearing where the Court has determined reasonable efforts to offer reunification services to the parent or parents are not required. At such hearing, the Court shall conduct an age appropriate consultation with the child(ren).

(b) At this hearing the Court shall determine and an order shall be entered as to: 1-whether the Department has made reasonable efforts to finalize the permanency plan that is in effect; 2-whether, and if applicable when, that plan is to return the child to the home or to proceed to the filing of a petition for termination of parental rights and subsequent adoption or to refer the child for legal guardianship or to place the child permanently with a fit and willing relative, or, where the Department after considering the aforementioned permanency options, at its option, presents in its case plan a compelling reason(s), to place the child in another acceptable alternative permanent living arrangement on a case by case basis.

(c) For the purposes of this rule, such compelling reasons may include appropriate reasons documented by the Department in its case plan or the following other reasons which are provided for illustrative purposes: (A) the child has a significant bond to a parent who is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him to the age of maturity and to facilitate visitation with the disabled parent, (B) an older teen requests emancipation or independent living as his/her permanency plan, (C) or any reason permitted under the federal Adoption and Safe Families Act and its accompanying regulations.

(d) If presentation by the Department in its case plan of compelling reasons to place a child in another acceptable alternative permanent living arrangement is made and ordered, no such compelling reason(s) presentation need be made or ordered at subsequent permanency hearings.

(e) In the event that any party seeks to change the goal of the case plan then in effect, said party shall file a motion at least 30 days prior to the permanency hearing, unless otherwise for good cause shown. Said motion shall notify all parties and the Court of a proposed change of goal for the case plan. The motion shall set forth the grounds for the proposed modification and shall state the proposed goal for permanency for the child.

(f) At or before the conclusion of this hearing the Court shall establish a date for the next hearing, if necessary. If another hearing is necessary, it shall be held within 90 days unless continued for good cause shown. When reunification is the plan presented at the permanency hearing, a review hearing shall be set within 90 days.

Rule 217. Post-permanency hearing reviews.

(a) Within 12 months after the court enters its permanency order, the Court shall conduct a hearing and enter an order to determine if the agency has used reasonable efforts in the past 12 months to finalize a permanency plan for the child if that child is still in the custody of the Department. A subsequent annual review shall be held for the same purpose until the Department no longer has custody of said child.

(b) A report shall be filed by the Department with the Court and all parties 10 days prior to the hearing. The report shall set forth information on the health, education, placement and care the child is receiving in the custody of the Department.

Rule 218. Missing and out-of-state parents.

Personal service of process shall be done in accordance with Civil Rule 4(d)(1) through (5) and 4(e) of this Court. In the event that personal service cannot be accomplished on the respondent(s) or the Department of Services for Children Youth and their Families files an affidavit alleging that personal service cannot be accomplished on the respondent(s) in this state for the reasons set forth in the affidavit, the Department shall then cause to be published for one time notice of this action to the respondent(s) informing him/her that he/she shall have 20 days to file an answer, move or otherwise plead in the action. This notice shall be published in a newspaper in the locality in which the respondent is or was believed to last be located. Failure to obtain service of process over one party by the time any hearing occurs shall not prevent the Court from proceeding to a hearing as to any other party over whom home jurisdiction has been obtained. The Department shall make continuing, diligent efforts to locate and notify the parents who are not personally served.

Rule 219. Stipulated adjudications and uncontested petitions.

(a) The parties shall provide the Court with a statement of the dependency, abuse, or neglect to be addressed at disposition in connection with any stipulation or uncontested adjudication.

(b) The parties shall file with the Court a case plan setting forth the cause or causes which required the removal of the child from the home and which shall be addressed in the services to be provided by the Department to the respondent(s) and child as set forth in the case plan. The case plan shall be presented to the Court within 30 days of an uncontested preliminary protective hearing where the respondent or respondents agree to the child remaining in the custody of the Department and the respondent(s) who were present for the hearing, waive their right to an adjudicatory hearing. If a consent to continued custody of the child is agreed to by the respondent or respondents present at the adjudicatory hearing, the case plan, as described above, may be submitted, if completed at this time, but no later than 20 days from the date of that hearing.

(c) Before accepting a stipulation or uncontested adjudication the Court shall determine that the parties understand the content and consequences of the admission or stipulation and that they voluntarily consent. Written copies of the case plan shall be provided to the parties and their counsel.

Rule 220. Contents of case plans.

(a) The Department of Services for Children Youth and their Families shall prepare a written case plan developed jointly with the parent or guardian of the child when appropriate, and which shall include but need not be limited to the following:

(1) A statement of the basis for the dependency, abuse, or neglect and a description of the services to be provided by the Department of Services for Children youth and their Families that are intended to correct the conditions which necessitated state intervention, with timetables for providing these services; and

(2) A description of duties and responsibilities that shall be taken by the parent to correct the identified problems and to achieve desired outcomes when the case plan goal is reunification or when such duties or responsibilities are needed for the safety and welfare of the child.

(b) When the agency's recommendation includes placement of the child away from home, the case plan shall include:

(1) An explanation why the child cannot be protected from the identified problems in the home even with the provision of services;

(2) Identification of relatives who have been contacted about providing a safe and appropriate placement for the child;

(3) A description of how the recommended placement or type of placement is designed to achieve a safe and appropriate environment, including its distance from the child's home, whether or not it is the least restrictive (most family-like) one available, whether it requires a change of school or daycare, and how the placement is consistent with the best interests and special needs of the child;

(4) A visitation plan including an explanation of any conditions to be placed on the visits;

(5) A statement of the child's special needs, including educational, mental and physical health needs, and the ways they should be met while in placement;

(6) The location of any siblings and, if siblings are separated, a statement of the reasons for the separation and the steps required to unite them as quickly as possible if appropriate and to maintain regular contact during the separation if appropriate;

(7) The ability of the parents to contribute financially to the placement;

(8) The current addresses and telephone numbers of the parties or a statement why such information is not provided; and

(9) When the child has attained the age of 16, a description of programs and services which will prepare the child for independent living if appropriate.

Rule 221. Post termination placement orders.

(a) Within 60 days after the entry of the final termination order or decree for both parents, the Court may convene a hearing to review the proposed placement plan of the agency responsible for placement of the child. The placement plan, and any amendment to it, shall be submitted to the Court and the parties 10 days prior to the hearing. The plan shall include the following:

(1) A description of the agency's progress toward arranging an adoptive placement for the child;

(2) Where adoptive parents have not already been selected, a schedule and description of steps to be taken to place the child for adoption;

(3) A description of any barriers preventing placement of the child for adoption and how they should be overcome; and

(b) The Court shall determine if the plan represents reasonable efforts by the department for permanency for the child.

(c) The Court may hold additional hearings thereafter to review the case plan and to determine if the agency is using reasonable efforts toward permanency for the child.

(d) When after a hearing on the Division's petition to terminate parental rights, the Court issues an order denying the Department's petition, the court shall include in such order the date for a permanency hearing in accordance with Rule 216.

B. RULES APPLICABLE TO ALL PROCEEDINGS IN WHICH THE DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES IS NOT THE PETITIONER.

Rule 223. Scope.

These rules govern the procedures of the Family Court regarding dependency, neglect and abuse petitions for custody, and petitions for guardianship where the department of Services for Children Youth and their Families is not the petitioner.

Rule 224. Commencement of action.

(a) Child dependency, neglect and abuse custody or a guardianship proceeding shall be commenced by filing in this Court a written petition setting forth the facts verified by affidavit in accordance with 10 Del. C. { 1003 and 13 Del. C. { 2322.

(b) The petition may be filed by any person having knowledge of the circumstances of child dependency, neglect or abuse. The petition shall be accompanied by a Custody Separate Statement.

(c) A copy of the petition shall be served upon the Respondent pursuant to Rule 4.

Rule 225. Emergency removal of a child.

When emergency removal of a child from the home or other emergency relief is sought during normal Court operating hours, relief may be awarded subject to the requirements of Family Court Civil Rule 65.2. In all cases in which a party other than the Department of Services for Children Youth and their Families seeks ex parte removal of a child, the Court shall examine the Delaware criminal history of the proposed caretaker prior to granting custody or guardianship.

Rule 226. Preliminary protective hearing.

(a) If an ex parte order is granted, a preliminary protective hearing shall be scheduled before a judge within 10 days of the entry of the ex parte order; or if an ex parte order of custody or guardianship is not entered but the Court finds that priority scheduling is warranted, a preliminary protective hearing shall be scheduled within 10 days of the filing of the petition. The Court shall determine whether the evidence demonstrates that probable cause exists to believe that immediate and irreparable harm will result. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(b) Upon a finding by the Court that probable cause exists to believe that immediate and irreparable harm will result, the Court shall continue the custody or guardianship order in effect if an ex parte order has been entered, or if no ex parte order has been entered, enter a temporary order of custody or guardianship to the petitioner pending an adjudicatory hearing in accordance with 10 Del. C. { 1009. If the Court does not find probable cause to believe continuation of the child in the home will result in immediate and irreparable harm, then the child shall be returned to the custody or guardianship of the parents or other caregiver who had the legal custody or guardianship authority by Court of competent jurisdiction and the matter shall be scheduled in the normal course of business.

Rule 227. Adjudicatory hearing.

(a) Unless a respondent(s) waives his or her right to an adjudicatory hearing and agrees to continued custody or guardianship of the child with the petitioner, an adjudicatory hearing shall be scheduled within 30 days of the entry of the preliminary protective order.

(b) If the Court finds by a preponderance of the evidence that a child is dependent, neglected or abused, an order in accordance with 10 Del. C. { 1009(b) shall be entered together with such other terms and conditions that may be set forth by the court.

(c) If the Court fails to find by a preponderance of the evidence that a child is dependent, neglected or abused, the petition shall be dismissed and the child returned to the care and control of the respondent at such time as determined reasonable by the court.