

IN THE FAMILY COURT OF THE STATE OF DELAWARE

ORDER AMENDING RULES 200 to 222

OF THE FAMILY COURT RULES OF CIVIL PROCEDURE

This 28th day of January, 2015, **IT IS ORDERED THAT:**

1. Rule 200 to 222 shall be amended as follows:

XIV. CHILD DEPENDENCY, NEGLECT AND/OR ABUSE PROCEEDINGS.

A. RULES APPLICABLE TO ALL PROCEEDINGS INVOLVING DEPENDENT, NEGLECTED AND / OR ABUSED CHILDREN IN DSCYF CUSTODY.

Rule 200. Scope.

These rules govern the procedures of the Family Court regarding dependency, neglect, and abuse Petitions for Custody filed by the Department of Services for Children, Youth and their Families (“DSCYF”) pursuant to 13 Del. C., Ch. 25.

Rule 201. Construction and enforcement of rules.

These rules shall be liberally construed to accomplish the purpose of achieving safety, stability, and well-being 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 the 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 if possible and necessary. Mailed notice is not required when notice of the next hearing date is contained in an order of the Court or actual notice is given to the parties at the hearing.

Rule 204. Commencement of action.

(a) DSCYF custody proceedings shall be commenced by:

(1) DSCYF filing in this Court a written petition setting forth the facts verified by affidavit in accordance with 13 Del. C. , Ch. 25;

(2) A verbal request by DSCYF for an emergency *ex parte* Order for custody of a child verified by verbal affidavit in accordance with 13 Del. C. § 2512. DSCYF shall thereafter file a petition and verified affidavit with the Court by noon the following business day; or

(3) The Court, by written or verbal order, *sua sponte* grants custody of a child to DSCYF as a result of another proceeding in this Court. Upon the entry of the *sua sponte* order, DSCYF shall be notified of the Court's action and DSCYF shall thereafter file a petition and verified affidavit with the Court by noon the following business day.

(b) A copy of the petition shall be served upon the respondent(s) pursuant to Rule 4.

Rule 205. Notice to parents of right to counsel.

(a) At the time of service of process on a parent by personal service, the parent shall be notified in writing that if the parent is unable to afford counsel and wishes to have counsel represent him/her in this action, the parent shall complete an application for the appointment of counsel. Upon receipt of the parent's application, the Court shall determine if the parent qualifies for court appointed counsel.

(b) In the event that a parent cannot be personally served with a copy of the summons, complaint, and application for the appointment of counsel, then notice of the application for the appointment of counsel, in a form approved by the Court, shall be included in the notice used for publication to complete service of process on the parent.

Rule 206. Appointment of counsel for the parent.

(a) 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 at such other time as deemed appropriate by the Court.

(b) In considering the appointment of counsel, the Court shall consider: the degree to which the loss of parental rights are at stake; the risk of an erroneous deprivation of those rights through the dependency proceedings; and the interest of DSCYF as to the ultimate resolution.

(c) In the event a parent is entitled to appointment of counsel and declines court appointed counsel, such waiver shall be noted on the record or in the Court's Order.

Rule 207. Appointment of Guardian ad Litem, Court Appointed Special Advocate, or counsel for the child.

(a) The Court shall appoint an attorney authorized to practice law in this state or a Court Appointed Special Advocate ("CASA") to represent the best interests of the child.

(b) The Court may appoint an attorney authorized to practice law in this state to represent the wishes of the child.

Rule 208. Notice to foster caregivers.

Notice of any proceeding and of the opportunity to be heard at any proceeding shall be provided to current foster parent(s), pre-adoptive parent(s), or relative caregiver(s) of the child by DSCYF. This notice and the right to be heard shall not be construed to entitle the foster parent(s), pre-adoptive parent(s), or relative caregiver(s) to be a party to the action.

Rule 209. Contrary to the child’s welfare.

At the time of the entry of the first order which removes the child from the home, the Court shall make a written determination whether continuation in the home would be contrary to the welfare of the child or that placement would be in the best interests of the child.

Rule 210. Determination of reasonable efforts.

(a) The Court shall make a written determination within sixty (60) days from the date the child is removed from the home whether reasonable efforts were made to maintain the family unit and prevent the unnecessary removal of the child from his or her home.

(b) The Court shall make a written determination at the Preliminary Protective Hearing, and at such other times as the Court deems appropriate, whether DSCYF has used reasonable efforts to place siblings together, unless DSCYF documents that such joint placement would be contrary to the safety or well-being of any of the siblings;

(c) The Court shall make a written determination at regularly scheduled hearings, whether DSCYF has used reasonable efforts to effect the safe reunification of the child and family and to provide for frequent visitation or other ongoing interaction between siblings, unless DSCYF documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

(d) The Court shall make a written determination whether DSCYF has used reasonable efforts to make and finalize the permanency plan in effect no later than twelve (12) months from the time the child “enters foster care”, unless there has been a judicial determination that DSCYF is not required to offer reunification services to the parent(s). A similar determination shall be made every twelve (12) months thereafter. For the purposes of these rules, the date a child has “entered foster care” shall mean the earlier of:

- (1) A judicial finding in an adjudicatory order that the child is dependent, neglected or abused; or
- (2) Sixty (60) days after DSCYF is granted custody and the court orders physical or constructive removal of the child from his or her parent or relative.

Rule 211. Notification to Relatives.

The Court shall determine at a hearing whether DSCYF used due diligence within thirty (30) days of the removal of the child from the home to identify and to provide notice to all grandparents, and adult relatives of the child (including any other adult relatives suggested by a parent), subject to exceptions due to family or domestic violence.

Rule 212. Emergency removal of a child.

(a) When emergency removal of a child from the home is sought by DSCYF during court operating hours, after considering the petition and affidavit, a Judge shall order physical or constructive removal of the child from the parent or specified relative and emergency temporary custody to DSCYF, pursuant to 13 Del. C. § 2512.

(b) When emergency removal of a child from the home is sought by DSCYF outside court operating hours, DSCYF shall contact the designated on-call Judge and a Judge shall verbally order physical or constructive removal of the child from the parent or

specified relative and emergency temporary custody to DSCYF, pursuant to 13 Del. C. § 2512. The Court shall thereafter issue a written Order as soon as practical.

(c) When emergency removal of a child from the home is requested, DSCYF shall file a petition and affidavit with the Court no later than noon of the following business day. The Court shall schedule the DSCYF petition as determined appropriate for either a Preliminary Protective Hearing within ten (10) days of the filing, or an Adjudicatory Hearing within thirty (30) days of the filing.

Rule 213. Motion to change legal custody or permanency plan; aggravated circumstances; motions in general.

(a) Whenever a party seeks a change in legal custody pursuant to 13 Del. C. § 2513, the party shall file a motion notifying the Court and all parties at least fifteen (15) days prior to the next scheduled hearing, except where good cause is shown why such notice could not be timely filed. The motion shall state the basis for such change in legal custody.

(b) Whenever a party seeks a change in the permanency plan established under Rule 216, the party shall file a motion notifying the Court and all parties at least fifteen (15) days prior to the next scheduled hearing, except where good cause is shown why such notice could not be timely filed. The motion shall state the basis for such change in the permanency plan.

(c) Whenever a party seeks a permanency plan other than reunification with a parent due to aggravating circumstances as set forth in 13 Del. C. § 1103(d), the party shall file a motion notifying the Court and all parties at least fifteen (15) days prior to the next scheduled hearing, except where good cause is shown why such notice could not be timely filed. The motion shall state the applicable aggravating circumstance and shall request that DSCYF be relieved of any obligation to pursue a permanency plan of reunification with a parent. When considering this motion, the burden of proof shall be clear and convincing evidence.

(d) All other motions shall be filed at least fifteen (15) days prior to the next scheduled court hearing, unless good cause is shown.

Rule 214. Preliminary protective hearing. (10 day hearing*).

(a) A Preliminary Protective Hearing shall be held before a Judge within ten (10) days of the entry of the ex parte order; or if an ex parte order of custody is not granted but the Court finds that priority scheduling is warranted, a Preliminary Protective Hearing shall be scheduled within ten (10) days of the filing of the petition.

(b) At the Preliminary Protective Hearing, the Court shall determine, in writing, whether the evidence establishes that probable cause exists to believe that,:

(1) As to each parent, the child is dependent, neglected, or abused, or there is a substantial imminent risk thereof, and

(2) It is in the best interests of the child to be in the custody of DSCYF.

(c) If the Court finds that probable cause is established as specified in (b), the Court shall continue the custody order in effect, if an ex parte order has been entered granting custody to DSCYF, or, if no *ex parte* order has been entered, enter an order which grants custody to DSCYF, orders physical or constructive removal of the child from his or her parent or relative, and complies with Rule 209 pending an Adjudicatory Hearing.

(d) If the Court finds probable cause as specified in subsection (b), has not been established with respect to each parent, the petition shall be dismissed and the child returned to a custodial arrangement in a time and manner determined by the Court to be reasonable and in the best interests of the child.

(e) If the Court finds that probable cause has been established as specified in (b) with respect to only one parent, the Court may rescind custody to the fit parent in a custodial arrangement and in a time and manner as determined by the Court to be in the best interests of the child.

(f) The finding of probable cause may be based in whole or in part on hearsay evidence.

(g) The Court may enter a visitation and/or contact order as provided by Title 13, Chapter 25 of the Delaware Code.

Rule 215. Adjudicatory hearing. (30 days*).

(a) An Adjudicatory Hearing shall be held within thirty (30) days of the conclusion of the Preliminary Protective Hearing.

(b) The parties may agree to continued custody of the child with DSCYF so long as all parties knowingly and voluntarily enter into the agreement, and consent to the findings required by 13 Del. C. § 2512(b). The ground(s) for these findings shall be stated on the record and documented in the Court's written Order.

(c) If the Court finds the elements of 13 Del. C. § 2512(b) are established, the Court shall enter an order which grants or continues custody of the child to DSCYF, and complies with Rule 210.

(d) If the Court finds that the elements of 13 Del. C. §2512(b) are not established, the petition shall be dismissed and the child returned to a custodial arrangement in a time and manner determined by the Court to be reasonable and in the best interests of the child.

(e) If the Court finds that the elements of 13 Del. C. §2512(b) have been established with respect to only one parent, the Court may rescind custody to the fit parent in a custodial arrangement and in a time and manner as determined by the Court to be reasonable and in the best interest of the child.

(f) If the Court finds that the elements of 13 Del. C. § 2512(b) have been established, the Court shall establish or modify the nature and extent, if any, of visitation, contact, or sharing of information between the parent and the child in accordance with 13 Del. C. 2512(c) .

(g) If the Court continues custody with DSCYF and a parent desires reunification with the child, the Court shall order DSCYF to prepare a case plan for the child and the parent. The case plan shall be presented at the Dispositional Hearing and shall contain a statement of the proposed permanency plan for the child.

Rule 216. Dispositional hearings. (70 days*).

(a) A Dispositional Hearing shall be held within seventy (70) days of the physical or constructive removal of the child from the home.

(b) With the consent of the parties, a Dispositional Hearing may be conducted immediately following the Adjudicatory Hearing.

(c) At the Dispositional Hearing, the Court shall establish a permanency plan for the child. Concurrent permanency plans may also be implemented when appropriate. The permanency plans available to the child are:

(1) reunification with a parent

(2) adoption

(3) guardianship

(4) permanent guardianship

(5) placement in Another Planned Permanent Living Arrangement (“APPLA”) where DSCYF has documented to the Court a compelling reason why every other permanency goal is not in the child’s best interest.

(d) If the proposed permanency plan is reunification with a parent, a case plan shall be developed by DSCYF, in consultation with all parties. The case plan shall be submitted to the Court and the parties five (5) days prior to the Dispositional Hearing.

(e) If the proposed permanency plan is not reunification with a parent, a motion shall be filed pursuant to Rule 213.

Rule 217. Review hearings. (90 days*).

(a) A Review Hearing shall be held within ninety (90) days of the Dispositional Hearing. Subsequent Review Hearings shall be held at the Court’s discretion until a Permanency Hearing is held.

(b) At the Review Hearing, the Court shall evaluate and subsequently issue a written order, regarding:

(1) the safety of the child;

(2) the necessity for and appropriateness of the child’s placement;

(3) the delivery of services to the child and whether the needs of the child, including but not limited to educational, medical and mental health, are being met;

(4) where the permanency plan is reunification with a parent, the extent of compliance with the case plan by the parent and DSCYF;

(5) the extent of progress made toward alleviating or mitigating the causes necessitating the placement of the child into care;

(6) the projected date of the safe return of the child to the parent or placement for adoption, guardianship or permanent guardianship; and

(7) whether independent living services are appropriate and are being provided pursuant to Rule 222 and 29 Del. C. § 9003(14).

Rule 218. Permanency hearing. (twelve months *).

(a) A Permanency Hearing may be held upon motion by any party or scheduled by the Court, but in no event shall be later than twelve (12) months from the time the child has “entered foster care,” as defined by Rule 210 (d), or within thirty (30) days of a judicial determination that DSCYF is not obligated to provide a permanency plan of reunification with a parent under Rule 213, unless the requirements of the Permanency Hearing are fulfilled at the hearing in which the Court determines reasonable efforts to reunify the child and family are not required.

(b) At the Permanency Hearing or through separate interview under 13 Del. C. § 724, the Court shall consult with the child regarding the permanency plan, in an age

appropriate manner, which may include as the Court deems necessary and appropriate consultation with and representations of the child's GAL or CASA.

(c) At the Permanency Hearing, the Court shall determine, and enter a written Order finding, whether DSCYF has made reasonable efforts to finalize the permanency plan in effect for the child. In determining whether DSCYF has exercised reasonable efforts, the Court shall consider:

(1) whether the current permanency plan should continue, a new plan should be adopted, or a concurrent plan should be pursued or established;

(2) the safety of the child;

(3) the appropriateness of the child's placement;

(4) the child's educational, medical, and mental health needs;

(5) where the permanency plan is reunification with a parent, the extent of compliance with the case plan by the parent and the provision of services by DSCYF;

(6) the extent of progress made toward alleviating or mitigating the causes necessitating placement in foster care;

(7) if DSCYF concludes, after considering reunification, adoption, guardianship, or permanent guardianship, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, DSCYF must document to the Court the compelling reason for the alternate plan;

(8) the projected date of safe return of the child to the parent or placement for adoption, guardianship or permanent guardianship; and

(9) whether independent living services should and are being provided pursuant to Rule 222 and 29 Del. C. § 9003(14).

(d) At the Permanency Hearing, the Court shall consider any motion filed pursuant to Rule 213 to change the permanency plan in effect. The permanency plans available to the child are set forth in Rule 216(c).

(e) In any case where the Permanency Hearing continues the permanency plan of reunification with a parent, the Court shall schedule a review hearing within ninety (90) days.

Rule 219. Permanency review hearings.

(a) Permanency Review Hearings shall be held at least every six (6) months after the Permanency Hearing, while the child remains in DSCYF custody.

(b) The Court shall determine at each Permanency Review Hearing the appropriateness of the child's permanency plan established under Rule 216 (c) and reviewed under Rule 218, and shall consider any motions to change the permanency plan filed pursuant to Rule 213.

(c) The Court's written Order shall address the same findings as Rule 218.

Rule 220. Post termination placement orders.

(a) Within sixty (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 ten (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; and

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

Rule 221. 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 or DSCYF files an affidavit alleging that personal service cannot be accomplished on the respondent in this state for the reasons set forth in the affidavit, DSCYF shall then cause to be published notice of the action informing the respondent they shall have twenty (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 jurisdiction has been obtained. DSCYF shall make continuing, diligent efforts to locate and notify the parents who have not been personally served.

Rule 222. Independent Living Services.

(a) When independent living services are provided to a child by DSCYF directly or through a contracted agency, the Court shall evaluate the child's independent living services, and make findings, where applicable, regarding:

(1) financial stability;

(2) housing;

(3) medical benefits, including access to health care and other public benefits;

(4) employment and training;

(5) education; and

(6) community and individual connections to help support the youth.

(b) For any child at least 16 years of age, the Court shall ensure that DSCYF provides the child with a copy of his or her credit report annually and the child receives assistance in interpreting and resolving any inaccuracies in the report.

(c) At least 90 days prior to the child's 18th birthday, the Court shall ensure the parties have assisted the child in developing a transition plan that is personalized and includes housing, health insurance, education, mentors, continuing support services, work force supports and employment, health care decisions and option to execute a health care power of attorney.

(d) Prior to the child's 18th birthday, the Court shall ensure the child has been provided with a copy of his or her health and education records.

(e) Prior to the child's 18th birthday, the Court shall inquire as to whether the child is entitled to the expungement of any criminal charges and whether a Petition for expungement has been filed on behalf of the child.

* Denotes time guidelines reflective of the Adoption and Safe Families Act, which can be adjusted as deemed necessary by the Court.

2. This amendment shall be effective after 30 days notice to members of the Bar.

BY THE COURT:

Chandlee Johnson Kuhn
Chief Judge

Jay H. Conner
Judge

William N. Nicholas
Judge

Mark D. Buckworth
Judge

Aida Waserstein
Judge

Peter B. Jones
Judge

Kenneth M. Millman
Judge

William J. Walls, Jr.
Judge

William L. Chapman, Jr.
Judge

Barbara D. Crowell
Judge

Mardi F. Pyott
Judge

Robert B. Coonin
Judge

Arlene Minus Coppadge
Judge

Michael K. Newell
Judge

Alan N. Cooper
Judge

Joelle P. Hitch
Judge

Paula T. Ryan
Judge