

PROCEDURAL ISSUES

NOTE The adjudicatory and dispositional hearings may be held on the same day, if all parties were served with all of the documents required for the dispositional hearing prior to adjudication. [R.C. 2151.35(B)(1)] The adjudication and disposition **MUST** be separate hearings. Juv.R. 34(A) also requires that all parties consent to the dispositional hearing being held immediately after the adjudicatory hearing.

- Unless waived by all parties or unless the due date is extended by the court, the guardian ad litem final report shall be filed with the court and made available to the parties for inspection no less than 7 days before the dispositional hearing. [Sup.R. 48(F)(1)(c)]
- The adjudication date **MUST** occur within 30 days of the filing of the complaint, but may be extended after the filing of the complaint, for good cause shown, for 10 days to obtain counsel or for 30 days to obtain service or any necessary evaluation. [R.C. 2151.28(A)(2)]; [Juv.R. 29(A)]

R A strict continuance policy is recommended to ensure court control and compliance with timelines. [Juv.R. 23]; [Sup.R. 41]

- The children services agency must file a case plan. Determine whether the case plan was filed prior to adjudication, within 30 days of the filing of the complaint, or within 30 days from the date the child was first placed in shelter care, whichever was sooner. [R.C. 2151.412(C)]; [Juv.R. 34(F)]
- If there is clear and convincing evidence to support a determination that the child is abused, neglected, and/or dependent, the case may be dismissed if the court finds the dismissal is in the best interest of the child and the community. [Juv.R. 29(F)]
- If there is **not** clear and convincing evidence to support a determination that the child is abused, neglected and/or dependent, the **case must be dismissed**. [Juv.R. 29(F)(1)]

NOTICE

- Ensure that all parties to the action and the guardian ad litem receive reasonable notice of the date, time, place and purpose of this hearing. [R.C. 2151.35(C)]; [Juv.R. 2(Y) and 29(B)(1)]
- Determine whether the foster parent, adoptive parent, or other person with custody of the child was notified of this hearing at which they have the opportunity to be heard. [R.C. 2151.424]

R Ensure grandparents and other relatives received notice within 30 days of removal. HB 279. [R.C. 2151.33(F)]

CHILD'S PARTICIPATION

NOTE A subject child is a party to the action, but that child's appearance may be excused. [R.C. 2151.35(A)(1)]; [Juv. R. 2(Y)]

R The American Bar Association recommends that the child attend hearings in order to facilitate the child's meaningful participation in the hearings, which has been shown to improve case outcomes. (See Standard D-5 and accompanying commentary, Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases.)

SERVICE

- Ensure that service of the complaint and the summons was made upon parents, guardian or custodian, and any other person who appears to be a proper or necessary party. [R.C. 2151.28(C)]; [Juv.R. 15]
- The summons must comply with Juv.R. 15 and contain:
 - a summary statement of the complaint;
 - an order to the person to appear at a stated time and place with a warning that the person may lose valuable rights or be subject to court sanction if the person fails to appear at the time and place stated in the summons;

- a statement informing parents, guardian or custodian that a case plan may be prepared, the general requirements of case plans and the possible consequences of noncompliance with a journalized case plan; [R.C. 2151.28(F)(2)]

AND

- a statement advising that any party is entitled to counsel and that the court will appoint counsel if the party is indigent; [R.C. 2151.28(F)(1)]; [Juv.R. 15(B)(3)]

AND

- the name and telephone number of the court employee designated to arrange for the prompt appointment of counsel for indigent persons; [R.C. 2151.28(C)(1)]; [Juv.R. 15(B)(10)]

AND

- the following when appropriate:
 - **(when temporary custody is requested)** an explanation that an adjudication of abuse, neglect or dependency of the child may result in an order of temporary custody that will cause the removal of the child from the parents' legal custody until the court terminates the order or permanently divests parental rights; [R.C. 2151.28(D)]; [R.C. 2151.353(B)]; [Juv.R. 15(B)(7)]

OR

- **(when permanent custody is requested)** an explanation that an order granting permanent custody divests the parents of their parental rights and privileges; [R.C. 2151.28(D)]; [R.C. 2151.353(B)]; [Juv.R. 15(B)(6)]

OR

- **(when planned permanent living arrangement is requested)** an explanation that the granting of such an order will cause the removal of the child from the legal custody of the parents. [R.C. 2151.28(D)]; [R.C. 2151.353(B)]; [Juv.R. 15(B)(6)]

AND

- Notice to caregiver that order is permanent in nature and will provide stable environment until emancipation or court releases from custody. HB 213. [R.C. 2151.353(B)(2)]

APPOINTMENTS

Advise any unrepresented party of their right to counsel, including court-appointed counsel. [R.C. 2151.352]; [Juv.R. 4]



Failure to pay \$25 fee for appointment of counsel is NOT grounds for denial of appointment. [R.C. 120.36(B)] However, the court shall direct the person to pay the application fee at the time the person files an affidavit of indigency or a financial disclosure form with the court or within 7 days of that date. If the person does not pay the application fee within that 7-day period, the court shall assess the application fee at sentencing or at the final disposition of the case. [R.C. 120.36(A)]

- Ensure that a guardian ad litem has been appointed for the child. [R.C. 2151.281(B)(1-3) and (G) and (K)]; [Juv.R. 4(B)]; [Sup.R. 48]; HB 213.
- Ensure that a guardian ad litem has been appointed for a minor parent or a parent who appears mentally incompetent. [R.C. 2151.281(C)]; [Juv.R. 4(B)(3)]; [Sup.R. 48]
- Appoint counsel for the child when abuse is alleged. [Juv.R. 4(A)]
- Appoint counsel for the child, if appropriate, when dependency and/or neglect are alleged. [R.C. 2151.281] and [Juv.R. 4]

NOTE

The guardian ad litem may also serve as counsel for the child providing no conflict exists between those roles. [Juv.R. 4]



If a conflict exists between the roles and responsibilities of attorney and guardian ad litem, then the court shall appoint another person to serve as guardian ad litem for the ward and the attorney shall remain on the case as attorney. [Juv.R. 4(C)(1) and (2)]; [In re Williams, 101 Ohio St.3d 398, 2004-Ohio-1500]

INDIAN CHILD WELFARE ACT (ICWA) CONSIDERATIONS

- Inquire as to whether the child or parents may be of Native American heritage. [25 U.S.C. 1903, 1912 and 1922] If such heritage is a possibility, until such a determination is made, proceed as if ICWA applies.



ICWA issues should be identified early in the case to avoid delays in caseflow time frames. Refer to the Indian Child Welfare Act Checklists and Native American Resource Directory for Juvenile and Family Court Judges, published by the National Council of Juvenile and Family Court Judges.

HEARING PROCEDURE

- Rules of Evidence: Strict compliance. [Evid.R. 101]; [Baby Girl Baxter, 17 Ohio St.3d 229, 479 N.E.2d 257 (1985)]
- Standard of Proof: Clear and convincing evidence to prove allegations of abuse, neglect or dependency. [R.C. 2151.35(A)(1)]; [Juv.R. 29(E)(4)]
- The burden of proof rests with the agency to establish that reasonable efforts were made to prevent removal, to eliminate continued removal and to reunify the child in his or her home. [R.C. 2151.419(A)(1)]
- At the beginning of the hearing, the court shall inform the parties of the substance of the complaint, the purpose of the hearing and the possible consequences of the hearing. [Juv.R. 29(B)(2)]
- Record the proceeding. [R.C. 2151.35(A)(2)]; [Juv.R. 37(A)]



The court may excuse the attendance of the child at a hearing in neglect, dependency or abuse cases. [R.C. 2151.35(A)(1)]; [Juv.R. 27(A)]



The American Bar Association recommends that the child attend hearings in order to facilitate the child's meaningful participation in the hearings, which has been shown to improve case outcomes. (See Standard D-5 and accompanying commentary, Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases.)

Prior to the child testifying, the court shall assess the competency of the child witness in accordance with Juv.R. 27(B)(2). In a proceeding where a child

is alleged to be an abused child, the court may order that the testimony of the child be taken by deposition in the presence of the court, if the court determines there is reasonable cause to believe that if the child were to testify in person at the hearing, the child would experience emotional trauma as a result of the child's participation at the hearing in accordance with Juv.R. 27(B)(3).

ADMISSION OR DENIAL

The court shall affirmatively inquire whether each party denies or admits the allegations. Failure to deny or admit is deemed a denial of the allegations. The court may not accept an admission without personally addressing each party, and determining both of the following:

1. The party is making the admission voluntarily and understands the nature of the allegations and the consequences of the admission; and
2. The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing. [Juv.R. 29]

If the allegations are denied, proceed to trial. [Juv.R. 29(E)]

ADJUDICATORY FINDINGS

- Determine whether there is **clear and convincing evidence** to support a determination that the child is abused, neglected and/or dependent. [R.C. 2151.03]; [R.C. 2151.031]; [R.C. 2151.04]; [R.C. 2151.35(A)(1)]; [Juv.R. 29(E)(4)]
- If the child is adjudicated dependent, the court's written findings of fact and conclusions of law shall specify the existence of any danger to the child and any underlying family problems that form the basis of the court's determination. [R.C. 2151.28(L)]

Determine whether the child should remain or be placed in shelter care until the dispositional hearing. Inquire whether the agency made diligent efforts to locate grandparents or adult relatives.

[R.C. 2151.28(B)]; [Juv.R. 7(F)(3) and 29(F)(4)]; [42 U.S.C. 675]

- If a shelter care determination is made, determine whether there is an appropriate relative to take temporary custody of the child, and, if so, whether he/she has been appointed.
- If the court finds that the relative placement is **NOT** appropriate, set forth the reasons **for that determination in writing**.
- If a shelter care determination is made, issue **written findings of fact** that sustain the relative placement conclusion.

NOTE

The court's consideration of a relative for appointment as temporary custodian does not make that relative a party to the proceedings. [R.C. 2151.28(B)(1)]

REASONABLE EFFORTS FINDING

Determine whether:

- the agency made or failed to make reasonable efforts to prevent the removal, to eliminate the continued removal of the child from the home, or to make it possible for the child to return home safely, with a brief description of the services and why those services did not prevent removal or enable the child to return home. If removal occurred under emergency circumstances and the agency had no prior contact, the court is not prohibited from finding the agency made reasonable efforts. [R.C. 2151.31(E)(2)]; [R.C. 2151.419(A)(1)]; [Juv.R. 27(B)(1)]; [42 U.S.C. 672]

OR

- the agency is not required to make reasonable efforts to prevent the removal, to eliminate the continued removal of the child from the home, or to make it possible for the child to return home safely as the facts fall within one of the factors contained in R.C. 2151.419(A)(2). [R.C. 2151.31(E)(2)]; [Juv.R. 27(B)(1)]; [42 U.S.C. 672]

BEST INTEREST FINDING

To issue an order granting temporary custody of a child to the public children services agency, the court must find that it would be contrary to the welfare and best interest of the child to continue in the home. [R.C. 2151.33(E)]; [42 U.S.C. 672]

The above findings **MUST** be stated in the order if temporary custody is granted to the agency. [R.C. 2151.33(E)]; [42 U.S.C. 672]

CASEFLOW TIME FRAMES

- If the dispositional hearing is held immediately after the adjudicatory hearing, determine whether all parties have been served with all documents required for the dispositional hearing, including the case plan. [R.C. 2151.35(B)(1)]; [Juv.R. 29(F)(2)(a)]
- The dispositional hearing for an adjudicated abused, neglected, or dependent child **MAY** be held immediately after the adjudicatory hearing **ONLY** if all parties were served with all of the documents required for the dispositional hearing prior to the adjudication. [R.C. 2151.35(B)(1)]
- If the dispositional hearing is not held immediately following the adjudicatory hearing, a date must be set for the dispositional hearing that is not more than 30 days after the adjudicatory hearing and within 90 days of the filing of the complaint. [R.C. 2151.35(B)(1) and 2151.28(B)(3)]; [Juv.R. 29(F)(2)(a) and 34(A)]
- Disposition **MUST** occur within 90 days of the filing of the complaint. [R.C. 2151.35(B)(1)]; [Juv.R. 34(A)]
- Journalize the entry within 7 days. [R.C. 2151.35(B)(3)]; [Civ.R. 58(A)]; [Sup.R. 7]



The order should be distributed to all parties prior to the adjournment of the adjudicatory hearing.



Identify a plan for including the attendance of age-appropriate children at the dispositional hearing.