

Trial Court Rule VI

Uniform Rules for Permanency Hearings

Rule 1. Purpose

The Uniform Rules for Permanency Hearings provide a consistent procedure for hearings conducted pursuant to G.L. c. 119, § 29B. This procedure is intended to encourage meaningful participation by the parties. Permanency hearings provide the child or young adult an important opportunity to have individual needs addressed by the court to ensure that the child or young adult is receiving the necessary supports to timely reach a permanent, safe, and healthy home and a successful adulthood.

Rule 2. Scope of Rules and Definitions

(a) **Scope.** These rules govern the procedure for hearings conducted pursuant to G.L. c. 119, § 29B in the Juvenile, District, and Probate and Family Court Departments. Procedures not addressed by these rules shall be governed by the rules of procedure applicable to the court in which the matter is heard.

(b) **Definitions.** The following definitions apply in this Rule:

- (1) **"APPLA"** -- another permanent planned living arrangement or an alternative planned permanent living arrangement in which the Department maintains care and custody or responsibility of a child age 16 or older or of a young adult and arranges a stable living situation for that child or young adult when it continues not to be in the best interest of the child or young adult to pursue another permanency option.
- (2) **"Child"** -- a person under the age of eighteen.
- (3) **"Clerk's Office"** -- the office of the Clerk-Magistrate or Register of Probate of the court where the permanency hearing is scheduled.
- (4) **"Department"** -- the Department of Children and Families, or its successor agency.

- (5) **"Indian Child"** -- an unmarried child who either is a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and a biological child of a member pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1903.
- (6) **"Kin"** -- any person to whom a child and/or the child's parent(s) and family members ascribe a "family" relationship. Such individual may be related by blood, marriage or adoption or a person to whom the child and/or parent(s) ascribe the role of family based on cultural and affectional ties or individual family values.
- (7) **"Parent"** -- a child's biological, adoptive, or legal mother or father.
- (8) **"Party"** -- a person who is a party in the underlying case, except the parent of a young adult or a parent whose parental rights have been terminated under G.L. c. 119, § 26 or G.L. c. 210, § 3 or who has signed a voluntary surrender under G.L. c. 119, § 23(a)(2) or G.L. c. 210, § 2.
- (9) **"Permanency Hearing"** -- a hearing conducted pursuant to G.L. c. 119, § 29B and as described in these Rules.
- (10) **"Permanency Plan"** -- a plan for the child as determined by the court pursuant to G.L. c. 119, § 29B and Rule 9, that addresses whether, and if applicable when, the child or young adult will be: (i) returned to the parent; (ii) placed for adoption and the steps the Department will take to free the child for adoption; (iii) referred for legal guardianship; (iv) placed in permanent care with kin; or (v) placed in APPLA.
- (11) **"Permanency Report"** -- a written document prepared by the Department and reviewed by the court at the permanency hearing regarding a child in the care or custody or under the responsibility of the Department or a young adult, which sets forth the Department's proposed permanency plan and the efforts it has made and will make to implement the permanency plan in a timely manner as detailed in Rule 4.
- (12) **"Transition Plan"** -- a plan which includes the components listed in Rule 4(c), approved by the court pursuant to G.L. c. 119, § 29B(c) for a child who is age 17 years and 9 months or older or for a young adult who will be leaving care within the next 90 days.
- (13) **"Young Adult"** -- a person between the ages of 18 and 22 under the responsibility of the Department pursuant to G.L. c. 119, § 23(f).

Commentary

Rule 2(b)(1) APPLA. Federal law uses the term another planned permanent living arrangement. 42 U.S.C. § 675a. State law uses the term another permanent planned living arrangement. G.L. c. 119, § 29(a)(v). The Department of Children and Families (DCF) uses the term alternative planned permanent living arrangement. DCF *Permanency Planning Policy* #2013-01 (July 1, 2013) at 22, 51. For purposes of this Rule, the terms are interchangeable and expressed as APPLA.

Rule 2(b)(12) Transition Plan. Federal law also describes the components of a transition plan. See 42 U.S.C. § 675(5)(H).

Rule 3. Scheduling the Permanency Hearing

(a) **Scheduling.** The committing court shall schedule the first permanency hearing at the original commitment, grant of care or custody, or transfer of responsibility of a child or young adult to the Department by order of a court of competent jurisdiction, and at each permanency hearing, the court shall schedule the next permanency hearing. Except, however, if the underlying case is a child requiring assistance petition, the court shall schedule a permanency hearing at the first dispositional review hearing. Nothing in this rule shall be read to prevent the parties from requesting, or the court from scheduling, a permanency hearing more frequently than required.

(1) The court shall conduct the first permanency hearing within twelve (12) months of the date the child or young adult first entered the care, custody, or responsibility of the Department. Subsequent permanency hearings shall be held no less frequently than every twelve (12) months thereafter, while the child or young adult remains in the care or custody or under the responsibility of the Department.

(2) If the court has determined that reasonable efforts to preserve and reunify the family are not required pursuant to G.L. c. 119, § 29C, a permanency hearing shall be held within thirty (30) days of the court's determination that no reasonable efforts are required.

(b) **Announcement.** The court shall announce the date on which the permanency report is due and the date of the permanency hearing in open court at each court event until the permanency hearing is held. Failure of the court to announce the date of the permanency hearing shall not preclude the court from proceeding with the permanency hearing.

(c) **Hearing on the Permanency Report and the Transition Plan.** Upon the request of any party, the court shall schedule and/or hold a hearing on the Department's permanency report, particularly the proposed transition plan, for a child in the care and custody or under the responsibility of the Department who has attained the age of 17 years 9 months or for a young adult who plans to leave the responsibility of the Department in the next 90 days.

Commentary

Rule 3(a). In order to encourage the participation of a child or a young adult in his or her permanency hearing, the parties may request and the court shall make every effort to schedule a hearing day and time that accommodates the schedule of the child or young adult and that is within the prescribed timeframes.

Rule 3(a)(1). For a child or young adult who has experienced interruptions in care or custody, responsibility, or placement with the Department, a permanency hearing may still be required. See 45 C.F.R. § 1356.21(e) (describing a trial home visit). For example, if a child in the care or custody or under the responsibility of the Department or a young adult has been placed at home for less than six months, a permanency hearing is still required for that child or young adult. U.S. Department of Health and Human Services Administration for Children and Families, Children's Bureau, *Child Welfare Policy Manual* Tit. IV-E 8.3C.5, available at https://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy (last accessed May 24, 2016).

Rule 4. Permanency Reports

(a) **Permanency Reports for All Children and Young Adults.** Permanency reports for all children and young adults shall be in writing and shall include the following:

- (1) identifying information about the child or young adult and biological family including siblings as well as the Department's efforts to identify whether the child is an Indian Child and the result of those efforts;
- (2) a brief history of the legal and clinical case, including placement history;
- (3) the efforts the Department has made to engage and include the family in the development of the permanency plan, including the child, as appropriate, or young adult.
- (4) the proposed permanent plan for the child or young adult, including:
 - i. when the plan will be accomplished,
 - ii. what steps the Department has taken and will take to implement the permanency plan for the child or young adult, and
 - iii. if the plan is APPLA, the compelling reason for proposing that plan, and why it continues to not be in the best interests of the child to return home; be placed

for adoption; be placed with a legal guardian; or be placed with fit and willing kin.

- (5) services and other assistance provided, currently and in the past, to safely reunify the child with his or her parent or guardian, or, if the court has previously determined a plan other than reunification, to further that permanency plan, and the engagement of all parties with those services. The report shall include any services and needed assistance provided to accommodate a parent, child, or young adult's disability, and how the services and assistance provided are specifically tailored to meet the parent, child, or young adult's cultural background and language needs;
- (6) information about the current placement including: how it meets the child's or young adult's current needs and furthers the permanency plan; if the child is not placed in family foster care, the reasons the Department determined the child is in need of special care, treatment or education, and if the child is placed in foster care outside the state in which the child's parents' home is located, why the out-of-state placement continues to be appropriate and in the child's best interests;
- (7) medical information about the child or young adult, including ongoing treatment and medications being provided to the child or young adult, and, if the child or young adult is medically needy, a description of his or her individualized health care plan;
- (8) the plan for visits and/or contact with parents and among siblings;
- (9) results of any internal reviews by the foster care review unit;
- (10) a description of the child's or the young adult's educational history, needs, and current status, including efforts made to maintain school stability;
- (11) information about the regular, ongoing opportunities the child or young adult has had to engage in age and developmentally appropriate activities; and
- (12) if the proposed permanency plan for the child or young adult is APPLA:
 - i. the intensive, ongoing, and, as of the date of the report, unsuccessful efforts made by the Department to return the child or young adult home or secure a placement for the child or young adult with kin, a legal guardian, or an adoptive parent, including efforts that utilize search technology to find biological family members, and
 - ii. what steps the Department has taken to ensure that the foster care provider of the child or young adult is following the reasonable and prudent parent standard.

(b) Permanency Reports for Children Age 14 or Older and Young Adults. For a child age 14 or older or a young adult, the permanency report shall include the information required under Rule 4(a) as well as information about any additional or specialized services provided to the child or young adult to assist with the transition to successful adulthood. Such services include those designed to help the child or young adult:

- (1) build relationships with other caring adults, particularly with life-long connections;
- (2) make an education plan;
- (3) find vocational, employment, and career counseling and placement;
- (4) secure stable housing;
- (5) develop expertise in daily living skills;
- (6) maintain physical and mental health care and health insurance;
- (7) learn how to access community resources and public benefits and services;
- (8) connect with other state agencies; and
- (9) develop financial skills including receiving, understanding, and correcting, if applicable, his/her consumer credit report.

(c) Permanency Reports for Children who are Age 17 Years and 9 Months or Older and for Young Adults. For a child in the care or custody or under the responsibility of the Department who is age 17 years and 9 months or older or for a young adult, the permanency report shall include the information required under Rule 4(a) and Rule 4(b) as well as a proposed transition plan. Proposed transition plans shall be personalized at the direction of the child or young adult, be as detailed as the child or young adult shall elect, and include specific options on:

- (1) stable housing;
- (2) health insurance;
- (3) physical and mental health care including the designation of a health care proxy;
- (4) educational services;
- (5) long-term connections with mentors and caring adults;
- (6) continuing support services including state agencies;
- (7) workforce supports and employment services; and
- (8) maintaining contact with siblings still in DCF custody or care.

Commentary

Rule 4(a)(3). Permanency plan options include: reunification, adoption, guardianship, permanent care with kin, and APPLA. See 42 U.S.C. § 675(5)(C)(i); G.L. c. 119, § 29(a)(v); DCF *Permanency Planning Policy* #2013-01 (July 1, 2013) at 22, 29-51.

Rule 4(a)(5) Information about the placement may include: (i) the type and level of placement; (ii) whether the child is placed with kin and, if not, the reasons why not; (iii) whether the child is placed with siblings and, if not, the reasons why the department determined placement with siblings is not in the child's best interests; (iv) if the child is not placed in family foster care, the reasons why the child requires a more restrictive setting; (v) if an Indian child is placed in a non-preferred placement as described in Rule 9(c)(3), why the department determined there was "good cause" to not follow the placement preferences required by 25 U.S.C. § 1915(b)

Rule 4(a)(11)(ii). See 42 U.S.C. § 675(10)(A) (definition of the reasonable and prudent parent standard). The reasonable and prudent parent standard means the standard a caregiver shall use to ensure that children are participating in age and developmentally appropriate extracurricular, enrichment, cultural, and social activities.

Rule 4(b). For a child who is age 14 or older or for a young adult, the Department may already have developed a Youth Readiness Assessment Tool, which identifies and prioritizes the skill development needed to prepare the child or young adult for the transition to adulthood.

Rule 4(b)(5). Examples of daily living skills include driving, navigating public transportation, maintaining healthy relationships, opening a bank account, and budgeting. The child or young adult may need, and the Department is required to provide, certain personal documents in order to develop these skills, such as a birth certificate, social security card, other identification, a credit report (annually), and a document that describes the right of the child or young adult to education, health care, visitation, and court participation.

Rule 5. Notice

The Department shall provide notice of the scheduled permanency hearing date to the foster parent, pre-adoptive parent or relative providing care for the child who is the subject of the petition pursuant to G.L. c. 119, § 29D. The Department shall provide notice of the scheduled permanency hearing date to the Department of Youth Services if the child or young adult is committed to the care or custody of the Department of Youth Services. Failure of the Department to comply with this section shall not preclude the court from proceeding with the permanency hearing.

Rule 6. Submission of Report and Response or Objections

(a) **Filing of the Permanency Report.** For a child in the care or custody or under the responsibility of the Department or for a young adult, no less than thirty (30) days prior to the

scheduled permanency hearing date the Department shall file the permanency report with the clerk's office and shall send copies to all parties or, if the parties are represented by counsel, to the counsel of record.

(b) Filing of the Permanency Report for an Expedited Permanency Hearing. If the court has determined that reasonable efforts to reunify the family are not required pursuant to G.L. c. 119, § 29C, the Department shall file the permanency report and send copies as provided above within ten (10) days of entry of the “no reasonable efforts required” order.

(c) Filing of Response or Objection to the Permanency Report. Any party may file a response or objection to the permanency report no less than ten (10) days prior to the scheduled permanency hearing date.

Rule 7. Counsel

(a) Right to Counsel. All parties have the right to be represented by counsel at the permanency hearing.

(b) Attendance of Counsel. All counsel of record shall attend the permanency hearing. Failure of counsel to attend, without good cause, shall not require that the hearing be postponed unless the interests of justice so require.

Rule 8. The Permanency Hearing

(a) Purpose of the Permanency Hearing. The purpose of the Permanency Hearing shall be to:

- (1) determine the permanency plan for the child or young adult and when the plan will be implemented;
- (2) aid in the timely implementation of such plan; and
- (3) determine whether the Department has made reasonable efforts to safely reunify the child or young adult with his or her parent or guardian, or if the court has previously determined under Rule 9(c) a plan other than reunification, to implement the previously determined plan.

(b) Parties and Non-Parties.

- (1) Any child or young adult who is a party has a right to attend the permanency hearing. There shall be a presumption that the child who is age 14 or older or the young adult will attend the permanency hearing. If the child age 14 or older or the young adult

is not present at the hearing, the court will inquire of counsel for the child or young adult as to the reason his or her client is not present.

- (2) Pursuant to G.L. c. 119, § 29D, foster parents, pre-adoptive parents or relatives providing care for the child have the right to attend the permanency hearing and be heard. Nothing in this provision shall be construed to provide that such foster parent, pre-adoptive parent or relative shall be made a party to the proceeding by exercising his/her right to attend and be heard.
- (3) Failure of one or more parties or non-parties to appear shall not preclude the court from proceeding with the permanency hearing.

(c) The Hearing.

- (1) The permanency hearing, including the hearing as described in Rule 3(c), shall be conducted in the same manner as any other hearing unless otherwise stated in these Rules. At the hearing, the judge will review the permanency report, any objections and responses, and make the determinations required by these Rules.
- (2) The author of the Department's permanency report shall be available for cross-examination by each of the parties.
- (3) The judge who entered the adjudication, or if there has not been an adjudication, who entered the original order of commitment, grant of custody, or transfer of responsibility of a child or young adult to the Department shall conduct the hearing unless impractical or would cause undue delay.
- (4) The court shall consult with the child or young adult in an age-appropriate manner about the permanency report and the permanency plan. Counsel for the child or young adult shall be prepared to provide the court with the child's position regarding the permanency report and the permanency plan.
- (5) The permanency hearing, including the hearing as described in Rule 3(c), may be held simultaneously with a trial, review and redetermination, other hearing, or other proceeding in the matter, but no later than the scheduling requirements contained in Rule 3(a)(1).

Rule 9. Orders

(a) **Permanency Plan.** The court shall determine the permanency plan for the child or young adult going forward and when that plan will be implemented.

- (1) Permanency plan options include: reunification, adoption, guardianship, permanent care with kin, and APPLA.
- (2) In determining the permanency plan, the health and safety of the child or young adult shall be of paramount, but not exclusive, concern.
- (3) If the child is an Indian child, the court shall determine and document in writing whether the placement preferences required by 25 U.S.C. § 1915 have been applied in any foster care, pre-adoptive, or adoptive placement, unless it determines that good cause exists to not apply those placement preferences.
- (4) If the court determines the permanency plan for a child or young adult to be APPLA, the court shall make findings regarding why APPLA is the best permanency plan for the child or young adult and the compelling reasons why it continues to not be in the best interests of the child or young adult to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative.

(b) **Reasonable Efforts pursuant to G.L. c. 119, §§ 29B, 29C.** The court shall determine whether the Department has made reasonable efforts to safely reunify the child or young adult with his or her parent or guardian, or, if the court has previously determined under Rule 9(c) a permanency plan other than reunification, to implement the previously determined permanency plan. The court is not required to make a reasonable efforts determination at an expedited permanency hearing as described in Rule 3(a)(2). A determination by the court that the Department has not made reasonable efforts does not preclude the court from entering any appropriate order as may be in the child or young adult's best interests.

(c) **Services Needed for Children age 14 or Older or Young Adults.** For a child age 14 or older and for a young adult, the court shall determine whether the services the child or young adult needs are in place to assist him or her to make a transition from foster care to a successful adulthood.

(d) **Satisfactory Transition Plan.** After a hearing conducted pursuant to Rule 3(c), the court shall determine whether the proposed transition plan is satisfactory and shall retain jurisdiction of the matter until it finds that a satisfactory transition plan has been provided for the child or young adult.

(e) Orders in the Best Interest of the Child or Young Adult. At a permanency hearing, including at a hearing conducted pursuant to Rule 3(c), the court may make any appropriate order in the child's or young adult's best interest, including but not limited to orders with respect to the child's or young adult's care or custody or that will aid in the implementation of the permanency plan.

(f) Findings. The court need not enter findings absent an appeal from its order with the exception of those findings required by law or this Rule.

Commentary

Rule 9(a)(3). "Good cause" is defined pursuant to 25 C.F.R. § 23.132 (effective December 12, 2016). There are two sets of placement preferences. In adoptive placements, where the Indian child's tribe has not established a different order of preference, placement preferences for the child must descend as follows: 1) a member of the Indian child's extended family; 2) other members of the Indian child's Tribe; or 3) other Indian families. 25 C.F.R. § 23.130(a). If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply. 25 C.F.R. § 23.130(b). The court must, where appropriate, also consider the placement preference of the Indian child or Indian child's parent. 25 C.F.R. § 23.130(c)(effective December 12, 2016). In any foster care or pre-adoptive placement, including changes in foster-care or pre-adoptive placement, the child must be placed in the least restrictive setting that most approximates a family, taking into consideration sibling attachment; that allows the Indian child's special needs (if any) to be met; and is in reasonable proximity to the Indian child's home, extended family, or siblings. In any foster care or pre-adoptive placement, including changes in foster care or pre-adoptive placement, where the Indian child's Tribe has not specified a different order, placement preferences for the child must descend as follows: 1) a member of the Indian child's extended family; 2) a foster home licensed, approved or specified by the Tribe; 3) an Indian foster home licensed or approved by an authorized, non-Indian licensing authority; and 4) an Indian institution. The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent. See Indian Child Welfare Act 25 U.S.C. §1915; 25 C.F.R. §§ 23.130-134 (effective December 12, 2016).

Rule 9(e). See G.L. c. 119, § 29B(c) ("the court shall retain jurisdiction until it finds, after a hearing at which the person is present unless the person chooses otherwise, that a satisfactory transition plan has been provided for the person").

Rule 10. Appeals

- a) Timing.** Any party may appeal the court's determination(s) and/or order(s) to the Appeals Court by filing a notice of appeal in the clerk's office no later than thirty (30) days following the entry of such determination(s) and/or order(s) on the court's docket.

- b) **Notice to the Judge.** The clerk's office shall inform the judge within five (5) days from the filing of the notice of appeal that the determination(s) and/or order(s) have been appealed.
- c) **Findings.** The judge shall file written findings within sixty (60) days from the filing of the notice of appeal.