

PROCEDURAL ISSUES

NOTE

The adjudication and dispositional hearings may be held on the same day, **ONLY** 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. Juvenile Rule also requires that all parties consent to the dispositional hearing being held immediately after the adjudication hearing.
Juv. R. 34(A)

- ☑ The adjudication date **MUST** occur within 30 days of the filing of the complaint, but may be extended up to 60 days after the filing of the complaint for good cause shown.
R.C. 2151.28(A)(2); Juv. R. 29(A)
- ☑ 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)

NOTE

Failure of the court to hold the adjudicatory hearing within these timeframes does not undermine the jurisdiction of the court. Juv. R. 29(A)

- ☑ A request for continuance may only be granted for good cause shown,

AND

- ☑ for 10 days beyond the 30-day deadline for any party to obtain counsel,

OR

- ☑ for a reasonable period of time (but not longer than 60 days after the complaint was filed) to:
 - ☑ complete service on all parties,

OR

- ☑ complete any necessary evaluations.
R.C. 2151.28; Juv. R. 29(A)



A strict continuance policy is recommended to ensure court control and compliance with timelines. Sup. R. 41

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)

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)

SERVICE

- ☑ Ensure that service of the complaint and the summons was made upon parents/guardian/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 contain:
 - ☑ **(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); 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); 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) and 2151.353(B); Juv. R. 15(B)(8)

AND

- ✓ a statement informing parents/guardian/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)
- ✓ 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)

APPOINTMENTS

- ✓ Advise any unrepresented party of their right to counsel, including court-appointed counsel. R.C. 2151.314(A); Juv. R. 7(F)(2)



Failure to pay \$25 fee for appointment of counsel is NOT grounds for denial of appointment. R.C. 120.36(B)

- ✓ 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 seven days of that date. If the person does not pay the application fee within that seven-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); Juv. R. 4(B)
- ✓ 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.



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



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* (2004), 101 Ohio St. 3d 398, 2004-Ohio-1500

- ✓ 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)

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 caseload timeframes. Refer to the Indian Child Welfare Act Checklists and Native American Directory published by the National Council of Juvenile and Family Court Judges.

HEARING PROCEDURE

Rules of Evidence: Strict Compliance.

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)

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)

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)

ADJUDICATORY FINDINGS



The court SHALL NOT consider the best interests of the child in making a determination at the adjudicatory hearing as to whether the child is dependent, abused or neglected.

- ✓ If there is an **admission**, address the parties personally and determine whether each party:
 - ✓ is making the admission voluntarily, with understanding of the nature of the allegations and the consequences of the admission;
- AND**
 - ✓ understands that by entering an admission, that s/he is **waiving the right to challenge** the witnesses and evidence against them, to remain silent, and to introduce evidence at the adjudicatory hearing. *Juv. R. 29(D)(1) and (2)*
- ✓ 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, 2151.031, 2151.04 and 2151.35(A)(1); Juv. R. 29(E)(4)*
- ✓ 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)*

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. 2151.28(B), 2151.33(B)(1) and 2151.419(A)(1); Juv. R. 27(B)(1)*
- 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)*
- AND**
 - ✓ 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 § 472(1)*

- ☑ Determine whether the child should remain or be placed in shelter care until the dispositional hearing. *R.C. 2151.28(B); Juv. R. 29(F)(4)*
- ☑ If a shelter care determination is made, determine whether there is an appropriate relative willing to take temporary custody of the child, and, if so, whether have they been appointed. *R.C. 2151.28(B)(1); Juv. R. 7(F)(3) and 27(B)(1)*
- ☑ If the court finds that the relative placement is NOT appropriate, set forth the reasons for that determination in writing. *R.C. 2151.314(B)(2); Juv. R. 29(F)(4)*
- ☑ If a shelter care determination is made, issue **written findings of fact** that sustain the relative placement conclusion. *R.C. 2151.28(B)(1); Juv. R. 7(F)(3), 27(B)(1) and 29(F)(4)*

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)*

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)*



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

- ☑ 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. 2151.28(B)(3) and 2151.35(B)(1); 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 Entry.