7 Pre-Adjudicatory Procedures

Summary of Contents

This chapter explores a variety of preliminary matters that must be addressed prior to adjudication hearings, including petition filing and content requirements, the appointment of counsel, discovery, summons and notices, and motions procedures.

Key Statutes

- 42 Pa.C.S. §6333 (subpoenas)
- 42 Pa.C.S. §6334 (petitions)
- 42 Pa.C.S. §6337 (right to counsel)
- 42 Pa.C.S. §6338 (other basic rights)

Rules

- Rule 123, Pa.R.J.C.P. (subpoenas)
- Rules 150-152, Pa.R.J.C.P. (counsel)
- Rules 330-336, Pa.R.J.C.P. (petitions)
- Rules 340-41, Pa.R.J.C.P. (procedures following filing of petition)
- Rules 344-353, Pa.R.J.C.P. (motion procedures)
- Rules 360-364, Pa.R.J.C.P. (adjudicatory summons and notice)
- Rules 380-381, Pa.R.J.C.P. (preservation of testimony and evidence)

JCJC Standards

- Hearing Procedures

§ 7-1 Petitions

The hearing process is formally initiated by the filing of a verified petition. The required contents of a petition track those applicable to written allegations (see § 4-2), including the following:[1]

- The name of the petitioner, together with a verification and signature.
- The juvenile's name, age, and address.
- The time and place the alleged offense was committed, the names and ages of any co-conspirators, and either "a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged," together with the provision of law violated, or else a certification that the juvenile has failed to comply with a sentence imposed for a summary offense.
- Statements that the acts alleged were "against the peace and dignity of the Commonwealth" or in violation of a local ordinance, that proceedings in the matter are "in the best interest of the juvenile and the public," and that "the juvenile is in need of treatment, supervision, or rehabilitation."

In addition to the above requirements, a petition must contain three additional items of information:

- The name and address of the juvenile's parent or guardian. If the whereabouts of the juvenile's parents, guardian, or custodian are unknown, or if they reside out of state, the name and address of any known adult relative residing within the county (or, failing this, nearest the court) may be substituted.[2]
- If the juvenile is presently in custody, the petition must provide place and time information so as to permit the scheduling of an expedited adjudication hearing.[3]
- An averment as to whether the case is eligible for limited public information pursuant to 42 Pa.C.S.§6307(b)(1)(i).[4]

Only a juvenile probation officer or an attorney for the Commonwealth may file a formal delinquency petition.

Multiple offenses alleged to have been committed by the same juvenile within the same judicial district may be included in one petition, as long as they are described separately. If all the offenses arose from the same delinquent episode, they must be combined in a single petition.[5] However, if more than one juvenile is alleged to have participated in an offense, a separate petition must be filed for each juvenile.[6]

Filing and Service of Petitions

While a private citizen may file a written allegation of delinquency, only a juvenile probation officer or an attorney for the Commonwealth may file a formal delinquency petition. A county District Attorney may opt to require that petitions be filed only by attorneys for the Commonwealth, either in all delinquency cases or in a defined class of cases, by filing a certification to that effect with the Court of Common Pleas.[7]

Promptly after filing, a copy of the petition must be served in person or by first-class mail on the juvenile and the juvenile's parent or guardian.[8] Copies must also be served on the juvenile's attorney, the attorney for the Commonwealth, and juvenile probation, but this service may be by alternative means (such as fax or e-mail) if the individuals agree.

§ 7-2 Attorney Representation

Juveniles are entitled to representation by counsel at every stage of a delinquency proceeding; those who are "without financial resources or otherwise unable to employ counsel" are entitled to court-appointed counsel.[9] The first time a juvenile appears before the court unrepresented, the judge must inform him of these rights in plain language.[10] It should be remembered that not all juveniles understand the term "counsel," or even "attorney," and that even apparently sophisticated ones may not fully grasp the need for an advisor and advocate in the situation in which they are placed. The basic points to be impressed upon each juvenile are that having a lawyer in court (1) is expected, (2) is free, and (3) helps the system function as it should. The court may continue proceedings at any time to enable an unrepresented juvenile to obtain counsel.

If an attorney is to be assigned, the assignment must occur prior to the detention hearing if the juvenile is detained, or otherwise prior to the adjudication hearing.[11] Once an attorney has been assigned or has entered an appearance on behalf of a juvenile, representation continues until court supervision is terminated and the case closed, unless the attorney is permitted to withdraw (see below).[12]

Waiver of Counsel

A juvenile may waive the right to counsel, but only if the waiver is knowing, intelligent and voluntary and the court has tested its basis by means of an on-the-record colloquy with the juvenile (see sidebar "A Recommended Waiver Colloquy").[13]

In general, as a matter both of law and of fundamental fairness, the court should be extremely reluctant to accept a juvenile's waiver of the right to counsel. The JCJC Standards Governing Hearing Procedures provide that a juvenile may not waive his right to counsel "unless he has had the opportunity to consult with an interested and informed adult" who is "primarily interested in the welfare" of the juvenile and aware of the rights guaranteed to him under the constitution.[14]

Judges should be extremely reluctant to accept a juvenile's waiver of the right to counsel.

Judges should not only be skeptical regarding attempts to waive the right to counsel, but alert to the possibility of interfamilial conflicts of interest in this area. The right to counsel is a personal one, and may be waived only by the juvenile, not by the juvenile's family.[15] Where there is reason to believe that a parent's interests may be in conflict with the juvenile's, and that the juvenile has been induced to waive his right in the service of a parental interest, it may be necessary to conduct separate colloquies regarding the positions of the family members—with the juvenile's occurring out of the hearing of his parents.

The court may assign "stand-by counsel" whenever a juvenile waives representation. In any case, the waiver applies only to the hearing for which it is made. Not only may it be revoked at any time, but the court must inform the juvenile of the right to counsel again at each subsequent hearing in the case.[16]

Withdrawal of Counsel

Under the Rules of Juvenile Court Procedure for Delinquency Matters, once an appearance has been entered or an assignment made, an attorney's obligation to represent a juvenile extends until the case is closed or a motion to withdraw is granted.[17] A motion to withdraw may be made orally in open court in the presence of the juvenile, or filed with the clerk of courts, with a copy to be served on the attorney for the Commonwealth as well as the juvenile. Unless new counsel for the juvenile has already entered an appearance, a motion to withdraw may be granted only if good cause is shown.[18]

§ 7-3 Discovery

The Pennsylvania Rules of Juvenile Court Procedure for Delinquency Matters provide detailed rules and procedures for the pre-trial exchange of evidence in juvenile delinquency cases.[19] Based generally on the discovery provisions of the Pennsylvania Rules of Criminal Procedure,[20] they list items that must be disclosed on request, provide for additional disclosure orders at the court's discretion, and prescribe remedies for a party's failure to comply with the duty to disclose.

Attorneys are expected to resolve discovery issues informally.

Discovery is intended to be an informal process. Attorneys in delinquency proceedings are required to make good faith efforts to resolve discovery issues informally before resorting to motions to compel disclosure.[21] If a discovery motion becomes necessary, it must be made, either orally or in writing, "as soon as possible prior to the adjudicatory hearing." Pending resolution of the motion, the parties should disclose all material about which there is no dispute.

A RECOMMENDED WAIVER COLLOQUY

It is recommended that, at a minimum, the court ask questions to elicit the following information in determining a knowing, intelligent, and voluntary waiver of counsel:

- Whether the juvenile understands the right to be represented by counsel;
- Whether the juvenile understands the nature of the allegations and the elements of each of those allegations;
- Whether the juvenile is aware of the dispositions, community service, or fines that may be imposed by the court;
- Whether the juvenile understands that if he or she waives the right to counsel, he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;
- Whether the juvenile understands that there are possible defenses to these allegations that counsel might be aware of, and if these defenses are not raised at the adjudicatory hearing, they may be lost permanently;
- Whether the juvenile understands that, in addition to defenses, the juvenile has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the juvenile, these errors may be lost permanently;
- Whether the juvenile knows the whereabouts of absent guardians and if they understand they should be present; and
- Whether the juvenile has had the opportunity to consult with his or her guardian about this decision.

Source: Comment, Rule 152, Pa.R.J.C.P.

Mandatory Disclosure by the Commonwealth

The Commonwealth is required to provide the juvenile or the juvenile's attorney with all of the following upon request:[22]

- Evidence favorable to the juvenile that is material either to adjudication or disposition and that is within the possession or control of the attorney for the Commonwealth.
- Any written confession or inculpatory statement in the possession or control of the attorney for the Commonwealth, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made.
- The circumstances and results of any identification of the juvenile by voice, photograph, or in-person identification.
- Any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the juvenile that are within the possession or control of the attorney for the Commonwealth.
- Any tangible objects, including documents, photographs, fingerprints, or other tangible evidence.
- The transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained.

With respect to all of the above items, the duty to disclose is continuing. That is, upon the discovery of previously requested evidence, material or witness identities coming within the mandatory disclosure rule, at any time prior to the end of the adjudicatory hearing, the attorney for the Commonwealth must promptly notify the court and the juvenile's attorney.[23]

Additional Disclosure Orders

In addition to the mandatory disclosure items listed above, the court may also order either party to disclose additional materials "upon a showing that they are material to the preparation of the case and that the request is reasonable."[24] Such a discovery order is specifically made subject to the juvenile's right against self-incrimination. The Comment accompanying this provision lists the following examples of evidence that may be material to the preparation of the case:

- Names and contact information for any eyewitnesses.
- All written or recorded statements, and substantially verbatim oral statements, of eyewitnesses.
- All written and recorded statements, and substantially verbatim oral statements, made by the juvenile, or by co-conspirators or accomplices, whether such individuals have been charged or not.

- Any other evidence specifically identified, provided the requesting party can also establish that its disclosure would be in the interests of justice, including details regarding any person involved in the case who has received or been promised valuable consideration in exchange for information.

As is the case with mandatory disclosures, a party subject to a discovery order has a continuing duty to disclose additional evidence, material or witness identities coming within the order.[25]

Remedies for Noncompliance

Whenever it appears that the Commonwealth has failed to make a mandatory disclosure or that either party has failed to comply with a discovery order, the court may (1) order the party to permit discovery/inspection, (2) grant a continuance, (3) prohibit the introduction of the evidence not disclosed (assuming it is evidence other than the testimony of the juvenile), or (4) make any other order it deems appropriate.[26]

Limits on Discovery

Discovery of attorney work product—legal research or documents containing "opinions, theories, or conclusions" of the attorneys on either side or their legal staffs—is not permitted.[27] In addition, either party may apply for a protective order denying, restricting, or deferring discovery, which the court may grant "upon a sufficient showing."[28] The court may permit this showing to be made wholly or partly in the form of "a written statement to be inspected by the court." If the motion for a protective order is granted, the written showing must be preserved under seal for appeal purposes.

Disclosure of Alibi Defense

At least two days in advance of the adjudicatory hearing, a juvenile who intends to offer an alibi defense must provide notice to the attorney for the Commonwealth, indicating the place where the juvenile claims to have been at the time of the offense, the names of all witnesses who will be called in support of the alibi, and contact information for each.[29] In the event of the juvenile's failure to comply, the court may (1) exclude all alibi evidence (except for the juvenile's own testimony), (2) exclude only the testimony of witnesses who were not identified in advance, (3) grant a continuance to enable the Commonwealth to investigate the alibi, or (4) make any other order that the interests of justice may require.[30]

While the juvenile cannot be prevented from testifying as to an alibi claim, the Commonwealth may cross-examine the juvenile concerning discrepancies between the alibi claimed at the hearing and any alibi notice given.[31]

Following receipt of an alibi notice but prior to the adjudicatory hearing, the attorney for the Commonwealth must disclose the names of any witnesses who will be called to disprove or discredit the alibi claim, and provide contact information for each.[32] Otherwise, the court may (1) exclude all evidence offered to disprove the alibi, (2) exclude only the testimony of witnesses who were not identified in advance, (3) grant a continuance to enable the juvenile to investigate, or (4) make any other order that the interests of justice may require.[33]

§ 7-4 Motion Procedures

Motions practice in delinquency cases is governed by Rules 344 through 353 of the Pennsylvania Rules of Juvenile Court Procedure for Delinquency Matters. Motions may be oral or written, but if time permits, written motions are preferred.[34] They must state with particularity the grounds, any supporting facts, and the relief or order requested. If written, they must be signed; any factual basis not already on the record must be verified to be true and correct to the personal knowledge, information, or belief of the person making the motion.[35] Answers are not generally required, but written answers are subject to signature and verification requirements similar to those applicable to motions.[36]

A party's pre-hearing requests for relief must generally be included in one omnibus motion.

Generally, unless the "interests of justice" require otherwise, all pre-adjudicatory requests for relief must be included in one omnibus motion, to be made "as soon as practical" before the adjudicatory hearing, but in any case prior to the calling of the first witness.[37] Types of relief to be included in an omnibus motion include requests for continuance, for joint or separate hearings, for suppression of evidence, for psychiatric examination, for dismissal of a petition, for disqualification of a judge, for appointment of an investigator, and for a pre-hearing conference.[38] The court should generally dispose of omnibus motions prior to the adjudicatory hearing, postponing the hearing if necessary.[39]

Suppression of Evidence

A motion to suppress evidence obtained in violation of the juvenile's rights[40] must normally be contained in the juvenile's omnibus motion for relief. If not, the suppression issue will be deemed waived, unless the opportunity to seek suppression "did not previously exist, or the interests of justice otherwise require."[41] Following a motion to suppress, the court must make formal findings of fact and conclusions of law regarding whether the evidence in question was illegally seized, and issue an order granting or denying relief. If the court denies the motion, the decision is "final and binding" for purposes of the subsequent adjudication hearing, and the evidence will be admitted unless the juvenile can make a showing of new evidence in favor of suppression that was unavailable at the time the original motion was resolved.[42]

A motion for suppression of evidence may be joined with a motion for the return of property illegally seized.[43]

Motions for Joint or Separate Hearings

Separate petitions involving one juvenile may be resolved in a single adjudicatory hearing if (1) evidence of each of the offenses alleged would be admissible in a hearing on the other offenses or (2) all of the offenses alleged are based on the same act or transaction. When offenses are alleged in separate petitions involving different juveniles, a single hearing may be held if all the juveniles are alleged to have participated in the same act or transaction or the same series of acts or transactions.[44] Oral or written notice of consolidation must be provided to the juvenile(s) prior to any joint hearing.[45]

When a consolidated hearing is planned, any party may move for separate hearings. Conversely, any party may request consolidation of hearings. Either type of request should ordinarily be included in an omnibus motion. If the above requirements for joint hearings are not met, the court must order separate adjudicatory hearings. But even if consolidation would otherwise be proper under the rules, the court may order separate hearings (or "other appropriate relief") if any party would be prejudiced by a joint hearing.[28]

§ 7-5. Summonses, Notices, and Subpoenas

A written summons compelling attendance at the adjudication hearing, together with a copy of the petition, must be issued by the court and served on the juvenile and the juvenile's parents/guardians at least 14 days in advance of the hearing (or 7 days if the juvenile is detained).[47] The summons must specify the date, time and place of the hearing, inform the juvenile of the right to counsel (and to assigned counsel if necessary), and contain a warning that failure to appear may result in arrest.[48] Service must be made in person or by first-class mail.[49]

The attorney for the Commonwealth, the juvenile's attorney, and the juvenile probation office are all entitled to written notice of an adjudication hearing as well. Like the summons, the notice must be served in person or by first-class mail at least 14 days in advance of the hearing (or 7 days if the juvenile is detained).[50]

Victims must be notified of the date, time, and place of the adjudication hearing.

In addition, victims of juvenile offenders are entitled to receive notice of all "significant actions and proceedings" in delinquency cases, which would obviously include adjudication hearings.[51] Responsibility for notifying victims rests with the attorney for the Commonwealth in some counties, and with juvenile probations in others.

Subpoenas

At the request of the juvenile, the juvenile's parents, a probation officer or district attorney, or any other party, or on the court's own motion, the court or the court clerk may issue a subpoena requiring the attendance of a witness or the production of papers at the hearing.[52] The subpoena must identify and provide the address and telephone number of the person who applied for it, and state on whose behalf the witness is being ordered to testify.[53] It may be served via first-class mail as well as in person or by registered or certified mail, return receipt requested. However, only a completed return receipt, signed receipt of personal delivery, or a process-server's signed affidavit of in-person delivery constitute *prima facie* evidence of service.

Bench Warrants

The court may issue a bench warrant for the arrest of a person who fails to appear in response to a summons or subpoena, but in either case the warrant must be supported by a finding that sufficient notice was given.[54]

§ 7-6. Preservation of Testimony

Following the commencement of a delinquency proceeding, the testimony of a witness who may be unavailable for a later hearing may be taken and preserved, either pursuant to a court order or by agreement of the parties.[55]

Any party may request the court to order the preservation of testimony.[56] After notice and hearing, the court may order a witness's testimony to be taken and preserved if it appears that the witness may later become unavailable (by dying, becoming incompetent, or leaving the jurisdiction, for example), or if, "due to exceptional circumstances," the interests of justice require it. The judge must state on the record the grounds for an order to take and preserve testimony, and the order itself must specify the time and place at which the testimony will be taken and the manner in which it will be recorded, preserved, and safeguarded until the hearing.

The rules provide a procedure for preserving testimony for a later hearing, either by court order or by agreement.

Testimony that is to be preserved pursuant to a court order, unless the order specifies otherwise, is taken in the presence of the judge as well as the juvenile, the juvenile's attorney and the attorney for the Commonwealth, who are given full opportunity to examine and cross-examine the witness and to raise objections.[57] However, the court need not make rulings on admissibility until the testimony is offered into evidence at the later hearing.

The parties may also agree to take and preserve a witness's testimony, conducting what amounts to a deposition.[58] The parties' agreement must be reduced to writing and filed with the clerk, and must contain the same specifics as a court order for the preservation of testimony—that is, the time, the place, and the manner of recording, preserving and keeping the testimony until the hearing. Testimony to be preserved by agreement should be taken in the presence of the juvenile, the juvenile's attorney, and the attorney for the Commonwealth, unless the parties agree otherwise. As when the testimony is presided over by the court, the parties have full opportunity to examine, cross-examine, and raise objections. The court must rule on admissibility when the testimony is later offered into evidence.

The court may order or the parties may agree to the recording of testimony by any means, but if the testimony is to be recorded on video, it must be simultaneously taken down by a stenographer, and certain basic technical requirements must be met.[59] For example, the recording must begin with detailed identifying statements, must show the swearing-in of the witness, and must be timed throughout by an on-camera digital clock. All objections and their grounds must be made on the recording. If the testimony is recorded without the court presiding, a log must be kept of each objection, showing the time it was made, in order to facilitate later admissibility rulings; in making its rulings on objections, the court may either read the stenographic transcript or view pertinent sections of the video with the aid of the log.[60]

ENDNOTES

[1] 42 Pa.C.S. §6334 and Rule 330, Pa.R.J.C.P.
[2] 42 Pa.C.S. §6334(a)(3).
[3] 42 Pa.C.S. §6334(a)(4) and Rule 330, Pa.R.J.C.P.
[4] Rule 330, Pa.R.J.C.P.
[5] Rule 332, Pa.R.J.C.P.
[6] Rule 333, Pa.R.J.C.P.
[7] Rule 330(A), Pa.R.J.C.P.
[8] Rule 331, Pa.R.J.C.P.
[9] 42 Pa.C.S. §6337.
[10] Rule 151(A), Pa.R.J.C.P.
[11] Rule 151(B), Pa.R.J.C.P.
[12] Rule 150(B), Pa.R.J.C.P. The language of the rule—that "counsel shall represent the juvenile until final judgment"—should be understood to mean until the court's supervision is terminated and the case closed.
[13] Rule 152, Pa.R.J.C.P.
[14] 37 Pa. Code §200.326.
[15] See Comment to Rule 152, Pa.R.J.C.P. Prior to the adoption of the Rules of Juvenile Court Procedure for Delinquency Cases, a juvenile's parent or guardian was allowed to waive the juvenile's right to counsel under 42 Pa.C.S. §6337, but that provision has been superseded by Rule 152.
[16] Rule 152, Pa.R.J.C.P.
[17] Rule 150(B), Pa.R.J.C.P.
[18] Rule 150(C), Pa.R.J.C.P.
[19] See Rules 340-341, Pa.R.J.C.P.
[20] Rule 573, Pa.R.Crim.P. (Pretrial Discovery and Inspection).
[21] Rule 340(A), Pa.R.J.C.P.
[22] Rule 340(B), Pa.R.J.C.P. As the Comment to Rule 340 notes, the rule is not "intended to limit in any way disclosure of evidence constitutionally required to be disclosed." Accordingly, any exculpatory evidence coming within the rule of *Brady v. Maryland*, whether or not listed in Rule 340(B), must be disclosed.
[23] Rule 340(D), Pa.R.J.C.P.
[24] Rule 340(C), Pa.R.J.C.P.
[25] Rule 340(D), Pa.R.J.C.P.
[26] Rule 340(E), Pa.R.J.C.P.
[27] Rule 341(G), Pa.R.J.C.P.
[28] Rule 341(F), Pa.R.J.C.P.
[29] Rule 341(A), Pa.R.J.C.P.
[30] Rule 341(B), Pa.R.J.C.P.
[31] Rule 341(C), Pa.R.J.C.P.
[32] Rule 341(D), Pa.R.J.C.P.
[33] Rule 341(E), Pa.R.J.C.P.
[34] See Official Comment, Rule 344, Pa.R.J.C.P.
[35] Rule 344(C), Pa.R.J.C.P.
[36] Rule 344(D), Pa.R.J.C.P.
[37] Rules 346 and 347, Pa.R.J.C.P.
[38] Comment, Rule 346, Pa.R.J.C.P.
[39] Rule 348, Pa.R.J.C.P.
[40] See 42 Pa.C.S. §6338(b): "An extrajudical statement, if obtained in the course of violation of this chapter or which could be constitutionally inadmissible in a criminal proceeding, shall not be used against him. Evidence illegally seized or obtained shall not be received over objection to establish the allegations made against him."
[41] Rule 350, Pa.R.J.C.P.
[42] Rule 350(D), Pa.R.J.C.P.

[43] Rule 353, Pa.R.J.C.P.
[44] Rule 351(A), Pa.R.J.C.P.
[45] Rule 351(B), Pa.R.J.C.P.
[46] Rule 352, Pa.R.J.C.P.
[47] Rules 360, 362, and 363, Pa.R.J.C.P.
[48] Rule 362, Pa.R.J.C.P.
[49] Rule 363, Pa.R.J.C.P.
[50] Rules 360 and 363, Pa.R.J.C.P.
[51] 18 P.S. §11.201.
[52] 42 Pa.C.S. §6333.
[53] Rule 123, Pa.R.J.C.P.
[54] Rules 123 and 364, Pa.R.J.C.P.
[55] Rule 380, Pa.R.J.C.P.
[56] Rule 380(A), Pa.R.J.C.P.
[57] See Comment, Rule 380, Pa.R.J.C.P.
[58] Rule 380(B), Pa.R.J.C.P.
[59] Rule 381, Pa.R.J.C.P.
[60] See Comment, Rule 381, Pa.R.J.C.P.