

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

The Domestic Relations Procedural Rules Committee (Committee) is proposing the adoption of Pennsylvania Rules of Civil Procedure 1915.3-3 and 1915.3-4, and the amendment of Pennsylvania Rules of Civil Procedure 1915.3-2, 1915.4-4, 1915.7, 1915.10, 1915.15, and 1915.25.

As background, Act 107 of 2013, effective January 1, 2014, prompted the Committee to discuss rule amendments to further those legislative changes, which included directing custody courts to consider child abuse and the involvement of a party, household member, or child with a child protective services agency when determining child custody under 23 Pa.C.S. §§ 5321 - 5340. Act 107 amended not only Title 23 as it relates to child custody, but also the Child Protective Services Law (CPSL), 23 Pa.C.S. §§ 6301 - 6375, and the Juvenile Act, 42 Pa.C.S. §§ 6301 - 6375. The Act directed the Department of Public Welfare, now the Pennsylvania Department of Human Services (DHS), the local county children and youth social services agency and the court of common pleas to cooperate with the exchange of information necessary for a court to determine child custody. See 23 Pa.C.S. § 5329.1(b). DHS and county agencies were directed to provide custody courts with greater access to confidential records and files for proceedings under the CPSL and the Juvenile Act. The information sharing was necessary for the custody court to determine the amended factors in 23 Pa.C.S. §§ 5328(a)(2.1) and 5329.1(a).

These statutory changes raised several procedural and evidentiary issues. First, child custody proceedings are adversarial, and the parties are required to present evidence in support of a claim for custody, including addressing the Section 5328 factors. The parties to a custody proceeding, as well as the custody court, may not have knowledge of all participants' prior or ongoing involvement with a county agency. Further, the parties to a custody proceeding may not have access to juvenile court records or county agency files, which may contain relevant information for the custody proceeding. Moreover, some dependency and county agency information or reports are confidential and, as such, a custody litigant may be precluded from obtaining evidence relevant to the custody action.

Second, the Act amends the CPSL and Juvenile Act by granting courts of common pleas access to reports, files, and court records to assist the court in determining custody. The Committee observes that this access is only provided to the court and not to the parties. As raised in comments to prior proposals, requiring the custody judge to access county agency information and files places the judge in an investigative, rather than an

adjudicative, role. Respondents to prior proposals objected to this judicial investigative role.

Complicating matters are varying local procedures and practices for custody cases and juvenile dependency cases. In judicial districts in which a judge may hear both custody and dependency cases or the judicial district is “one family one judge,” the issues are less problematic since the custody court often would have knowledge of the parties’ or child’s involvement with a county agency and dependency court. Additionally, the court would already have access to the dependency case records and may have conducted hearings in which this information had been entered as evidence. However, even in these judicial districts, the issue of how county agency and dependency court information will be entered into evidence in the custody action is still problematic in many circumstances, as is third-party litigants accessing confidential county agency reports and information.

Indicative of the complexity of these issues, the Committee previously published four proposals for public comment on this topic. See 46 Pa.B. 3932 (July 23, 2016), 47 Pa.B. 3333 (June 17, 2017), 49 Pa.B. 3469 (July 6, 2019), and 50 Pa.B. 3826 (August 1, 2020). After reviewing comments from the most recent publication and additional Committee deliberations, the Committee proposes revisions to the previous rule proposal, revisions to other relevant rules and proposes two new rules.

Proposed Adoption of Pa.R.Civ.P. 1915.3-3 (Report of Child Abuse and Protective Services) and Pa.R.Civ.P. 1915.3-4 (Form for Report of Child Abuse and Protective Services).

The Committee proposes a new Pa.R.Civ.P. 1915.3-3 to provide a procedure for a custody court to request information from the local county agency, as well as the return and dissemination of that information. This rule, as well as Pa.R.Civ.P. 1915.3-4, which provides the form for the request of information, will promote uniformity of procedure for each local court.

Subdivision (a) confirms the purpose for the rule, which is in accordance with 23 Pa.C.S. § 5329.1(a). Subdivision (b) provides definitions for both Pa.R.Civ.P. 1915.3-3 and 1915.3-4.

Subdivision (c) outlines the minimum circumstances under which the court should request information from the local county agency. The Committee wanted to provide a general guideline for submission of the court’s request, while allowing each court discretion in deciding whether to request a report in other circumstances.

Subdivision (d) provides a timeline for the county agency to return the report to the court. The decision to specify “no later than five days” for the return of the report was selected considering the court’s need for information as quickly as possible, while being

mindful of the administrative burden on county agencies. The proposed subdivision provides the court with the option of designating a different timing if there is a pressing need for the information to be returned sooner.

Subdivision (e) requires the report to be filed with the court and disseminated to the parties. This is to make the report a part of the record and to allow the parties the opportunity to subpoena the county agency, if additional information is needed in a custody proceeding.

Subdivision (f) was deemed necessary due to the Committee's decision that the report should be filed and disseminated to the parties. The intention of this subdivision is to maintain the confidentiality associated with county agency investigations, for the protection of the subject children, parties, and any interested third parties.

Subdivision (g) establishes the right of the parties and the court to subpoena the county agency to provide witnesses to attend any custody proceedings. The Committee believed that this subdivision was necessary due to the elimination of requests for any narrative explanation from the county agency in the report.

The Committee also proposes a new Pa.R.Civ.P. 1915.3-4 providing a form to be used in for this procedure. The form is intended to solicit the factors set forth in in 23 Pa.C.S. § 5329.1. The Committee proposes that the first page of the report in Pa.R.Civ.P. 1915.3-4 be the same as the first page of the Criminal Record or Abuse History Verification in Pa.R.Civ.P. 1915.3-2. Each party's Verification form will be filed with the court after being completed. In appropriate circumstances, the court or its designee can take the first page of each party's Verification form and submit it to the county agency to request information directly from the county agency.

The contents of the proposed form are similar to a DHS form currently in use in some counties. The DHS form, "Information Sharing in Custody Filings", was transmitted with the Office of Children Youth and Families' Bulletin # 3490-19-03 in October 2019. However, the Committee had concerns that some of the items on the DHS form invited open-ended statements and possibly opinions, which would be hearsay if admitted as evidence. Specifically, the Committee sought to eliminate soliciting any potential hearsay in the form as well as the necessity of preserving confidentiality to protect the identity of the reporter and to protect the parties involved. To eliminate potential hearsay statements, the Committee did not include the open-ended requests for "any pertinent information" in subdivisions I. (G.) and II. (I.) from the DHS form. The Committee acknowledges this may result in the increased need for a county agency representative to testify in custody proceedings but believed the Pennsylvania Rules of Evidence require it.

To preserve confidentiality, the Committee also omitted the requests for dates of referrals in the DHS form I.(A.) and II.(A.). The general timing of the alleged abuse will be evident, but specifically indicating the date of any referral might pinpoint the referral source, which is to remain confidential.

Amendment of Pa.R.Civ.P. 1915.3-2 (Criminal Record or Abuse History), Pa.R.Civ.P. 1915.4-4 (Pre-Trial Procedures), Pa.R.Civ.P. 1915.7 (Consent Order), Pa.R.Civ.P. 1915.10 (Decision. Order), Pa.R.Civ.P. 1915.15 (Form of Complaint. Caption. Order. Petition to Modify a Custody Order), and Pa.R.Civ.P. 1915.25 (Suspension of Acts of Assembly.)

The Committee proposes amending Pa.R.Civ.P. 1915.3-2, 1915.4-4, 1915.7, 1915.10, 1915.15 and 1915.25. Given the scope of these amendments to Pa.R.Civ.P. 1915.3-2, 1915.4-4, 1915.7 and 1915.10, the text following the rule number and title would be rescinded and replaced. The new text also reflects stylistic revisions such as subdividing and numbering subparts for ease of readability, relocation, and consolidation of commentary.

The Committee proposes comprehensive changes to Pa.R.Civ.P. 1915.3-2, which provides the procedures governing the parties' criminal record and abuse history, including the Verification form. The revised Pa.R.Civ.P. 1915.3-2(a)(1) requires that the Verification form remain confidential. This is to protect the parties, their household members, and the children involved.

Regarding the timing of the filing, the Committee proposes a modest revision of the requirements for the responding party. Currently, the defendant or respondent must file and serve the completed Verification form "on or before the initial in-person contact with the court ... but not later than 30 days after service of the complaint or petition." As proposed, Pa.R.Civ.P. 1915.3-2(a)(3) would require, in pertinent part, that the Verification form be filed with the prothonotary "before" the initial in-person contact or within 30 days of service of the initiating pleading, whichever occurs first. This amendment would ensure the court has the responding party's information before the initial in-person proceeding. The Committee believes it is necessary for the court to have the most current information about the parties' and household member's criminal record and abuse history to properly determine the best interest of the child.

In addition, the parties and court should be informed of any changes to the household membership since the previous filing. As such, subdivision (a)(4) places an obligation on the parties to update the form. This will enable the parties and the court to have current and accurate information so they can understand any potential threats of harm to the child. The parties would be required to update the form either five days after a change in circumstances or no less than one day before any proceeding, whichever

occurs first. Subdivision (a)(5) addresses sanctions for a party's failure to comply with the requirement of filing their updated Verification form.

The Committee proposes several changes to the Verification form in subdivision (c). The parties are required to complete the information on the form and the form has been revised to confirm that only a party, and not their attorney, must sign the form. As outlined in proposed Pa.R.Civ.P. 1915.3-4, the first page of the Verification form, which is to include the names of all children and parties involved with the matter, may be used by the court to submit a request to the county agency regarding any involvement by the parties with the county agency, as provided in Pa.R.Civ.P. 1915.3-3.

The form has been expanded to include any pending charges, as well any offenses that have been resolved by Accelerated Rehabilitative Disposition or another diversionary program but have not been expunged. This addition will provide the court with the most relevant and recent information to ensure the best interest of the child, while being cognizant of the limitations associated with requesting information regarding expunged crimes or offenses resolved through limited access or "Clean Slate" programs.

Statutory changes impacting Pa.R.Civ.P. 1915.3-2 are the amendments of 23 Pa.C.S. § 5329. Act 32 of 2020, effective August 4, 2020, amended Section 5329 and adds 18 Pa.C.S. § 2718 (related to strangulation) to the list of criminal offenses that the court must consider in determining the best interest of the child. Act 38 of 2021, effective August 30, 2021 amended Section 5329 and adds 18 Pa.C.S. Ch. 30 (related to human trafficking) as well as 18 Pa.C.S. § 5902(b.1) to the list of criminal offenses that the court must consider as well. To provide the court with a complete history of violent or abusive conduct, the Committee proposes the form include that statutory amendment along with adding contempt of Protection of Victims of Sexual Violence and Intimidation order or agreement to the list of offenses included on the form. A "catch-all" category of "other" is also proposed to be included for other forms of abuse or violent conduct that may not be specifically enumerated.

Concerning Pa.R.Civ.P. 1915.4-4, the proposed amendment would require the court to address the parties' criminal record or abuse history at a pre-trial conference. In addition, the proposed amendment would require the court to address the admissibility of the county agency documents and information and other related evidentiary issues, including authentication of county agency records, during a pretrial conference. The Committee also proposes removing the explanatory comment in Pa.R.Civ.P. 1915.4-4 because it is a historical explanation of prior rulemaking and, in part, is a reiteration of the rule text.

For Pa.R.Civ.P. 1915.7, a portion of the note in the current rule, referencing Pa.R.Civ.P. 1915.10(b) regarding written custody order requirements, is proposed to be

eliminated. Pa.R.Civ.P. 1915.10(b) relates to a court's decision in custody, not an agreement by the parties. Therefore, it is irrelevant to Pa.R.Civ.P. 1915.7.

Also proposed is the removal of the 2019 explanatory comment in Pa.R.Civ.P. 1915.7 because it provides a historical explanation of prior rulemaking and, in part, is a reiteration of the rule text. A portion of the 1981 explanatory comment is proposed to be removed due to reiteration of the rule text. The remaining portion of the 1981 explanatory comment was re-styled and would be placed in the Comment.

Regarding Pa.R.Civ.P. 1915.10, subdivision (c) would be amended to require the court's custody order to include a notice outlining the parties' ongoing obligation to update the Verification form post-final order. This amendment is intended to inform the other party of any changes that may have a significant impact on the child and the child's best interest. By requiring a party to update the Verification form when his or her circumstances, or those of a household member, warrant, the other party can obtain information and assess whether a modification of the order is necessary. This requirement is fashioned after the current relocation notice requirement. As proposed, subdivision (c) is subdivided so that both requirements, relocation and updating Verification forms, are in separate subdivisions. A comment was added to confirm that the filing of an updated Verification form does not impose a duty on the court to review, respond, or react unless a party petitions the court for relief. It is proposed that the explanatory comments in Pa.R.Civ.P. 1915.10 be moved to the Comment at the end of the rule.

In Pa.R.Civ.P. 1915.15, subdivision (c) would set forth the form of the order of court that must be attached to the front of the complaint or petition for modification that is served on the defendant or respondent. The change in this rule reflects the same timing as Rule 1915.3-2(a)(3). It is also proposed that the explanatory comments in Pa.R.Civ.P. 1915.15 be removed. They provide reasoning behind the amendments at the time they were drafted, but they do not aid in the application of the rule.

Finally, it is proposed that, Pa.R.Civ.P. 1915.25 be revised to suspend 23 Pa.C.S. § 6339, insofar as it is inconsistent with Pa.R.Civ.P. 1915.3-3 and 1915.3-4. The Committee agreed that the reports from DHS provide critical information for courts to consider in custody matters. If a court relies upon information in these reports, the reports must be provided to the parties to avoid a violation of the parties' right to due process.

The Committee invites comments, concerns, and suggestions regarding this rulemaking proposal.