

**SUPREME COURT OF PENNSYLVANIA  
JUVENILE COURT PROCEDURAL RULES COMMITTEE**

**PUBLICATION REPORT**

**Proposed Amendment of Pa.R.J.C.P. 160, 1160, 1409, 1515, and 1631**

The Juvenile Court Procedural Rules Committee (“Committee”) proposes to amend Rules 160 and 1160 to reflect the amendment of the Juvenile Act regarding access to juvenile court records. The Committee further proposes to amend Rules 1409, 1515, and 1631 to establish procedures for orders affecting or transferring custody.

Concerning the proposed amendments to Pa.R.J.C.P. 160 and 1160, they are primarily intended to reflect statutorily expanded access to juvenile court records for courts determining child custody and the Department of Human Services determining expungement of an indicated or founded report of child abuse. *See also* 42 Pa.C.S. § 6307(a)(4.1), (a)(6.5). Further, subdivisions (b) and (c) are proposed to be added to Pa.R.J.C.P. 1160 to maintain a parallel structure with Pa.R.J.C.P. 160.

Concerning the custody order procedures, the Committee acknowledges the long-standing use of custody order in dependency matters. However, there appears to be a varied state practice concerning the docketing of those custody orders. The Committee previously proposed amendments that would require the filing of a separate custody order on the custody docket. *See* 46 Pa.B. 3951 (July 23, 2016); 47 Pa.B. 3333 (June 17, 2017). Ultimately, rulemaking was discontinued in favor of perpetuating practices more responsive to local conditions. However, after continued monitoring of local practices, the Committee now proposes new amendments intended to establish a degree of uniformity through statewide procedures.

The proposed amendments contained in Pa.R.J.C.P. 1409 and 1631 would require the filing of a dependency court custody order on the custody docket when the dependency court awards custody in lieu of dependency or when terminating supervision. The custody order must be separate from the dependency order to prevent the unnecessary dissemination of confidential information that may be contained within the dependency order and findings. Yet, a custody order simply setting forth present conditions and limitations would not assist a judge in deciding whether a subsequent modification is in the best interest of the child. Therefore, the custody order is to contain the dependency court docket number and either set forth necessary facts or state where such findings may be found on the dependency docket. Finally, the custody order shall be filed on the custody docket. Left to local rule are the procedures governing further filings and the waiver of filing fees.

Additionally, Pa.R.J.C.P. 1409(a)(2) was revised to clarify that a petition may be dismissed due to: 1) a lack of evidence; or 2) a ready, willing, and able parent. Pa.R.J.C.P. 1515 was revised to differentiate the types of custody, *i.e.*, physical and legal custody, so that any conditions and limitations will be specific to the type of custody.

Moreover, in Pa.R.J.C.P. 1631, subdivision (b) would be further subdivided to address custody orders when supervision is terminated. Subdivision (b)(1) would require a custody order when supervision is terminated pursuant to subdivisions (a)(3), (a)(5), or (a)(6). However, there are circumstances when a child's parents are separated and the child is reunified with one parent who has been, and continues to be, the primary caregiver. After supervision has been terminated, the other parent may file a custody action but there would be nothing on the custody docket regarding the prior dependency case. The subcommittee thought it would be in the child's best interest for the dependency court to be able to enter a custody order addressing any "visitation" or partial custody of the child involving the other parent. The dependency court could then ensure that any conditions or limitations would be protective of the child. Accordingly, the Committee proposes subdivision (b)(2) authorizing, but not mandating, the creation and entry of a custody order.

This proposal does not require a dependency court entering a custody order to address all the custody factors in Title 23. See 23 Pa.C.S. § 5328. The Committee was not inclined to make such a proposal primarily because dependency proceedings are subject to the Juvenile Act in Title 42, not Title 23. Further, there did not appear a generally accepted practice of the dependency court addressing the Title 23 custody factors. Yet, the Committee recognizes that not addressing the custody factors may render a custody order more readily subject to modification. Comments are specifically invited on this topic.

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