

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

NOTICE OF PROPOSED RULEMAKING

Proposed amendments of Pa.R.C.P. No. 1915.7 and 1915.10

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendments of Pa.R.C.P. No. 1915.7 and 1915.10 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **June 8, 2018**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Domestic Relations Procedural Rules
Committee

Walter J. McHugh, Esq.
Chair

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE
RECOMMENDATION 169**

Rule 1915.7. Consent Order.

[If an agreement for custody is reached and the parties desire a consent order to be entered, they shall note their agreement upon the record or shall submit to the court a proposed order bearing the written consent of the parties or their counsel.]

If the parties have an agreement regarding custody and request that the court enters a consent order incorporating the terms of the agreement:

(a) the parties shall submit to the court a proposed custody order bearing the written consent of the parties; or

(b) the parties may state the agreement on the record; but, within ten days of placing the agreement on the record, the parties shall comply with subdivision (a).

Rule 1915.10. Decision. Order.

(a) The court may make the decision before the testimony has been transcribed. The court shall state the reasons for its decision **[either]** on the record in open court[,], **or** in a written opinion[,], **or in the** **or** order.

Note: See 23 Pa.C.S. § 5323(d)

(b) **The court shall enter a custody order as a separate written order or in a separate section in a written opinion with the**~~The~~ terms of the order **shall be** sufficiently specific **[to enforce]for enforcement of** the order. The court's **[decision]order** shall include safety provisions designed to protect an endangered party or **[a]** child in any case in which the court has found that either is at risk of harm.

(c) **[Any]A** custody order shall include **a** notice **[of a party's]outlining the parties'** obligations **[pursuant to]under** 23 Pa.C.S. § 5337 **[dealing with]regarding** a party's intention to relocate with a minor child.

Note: See 23 Pa.C.S. § 5323(c).

See Pa.R.C.P. No. 1915.17 regarding relocation.

(d) **[No]A party may not file a** motion for post-trial relief **[may be filed]** to an order of legal or physical custody.

[Explanatory Comment—2013

The custody statute, at 23 Pa.C.S. § 5323(d), requires the court to delineate the reasons for its decision on the record in open court or in a written opinion or order. Subdivision (b) further defines and reinforces the requirements found in 23 Pa.C.S. § 5323(e). Examples of safety provisions include, but are not limited to: supervised physical custody, supervised or neutral custody exchange location, neutral party presence at custody exchange, telephone or computer-facilitated contact with the child, no direct contact between the parties, third-party contact for cancellations, third-party transportation and designating secure, neutral location for a child's passport. The statute, at 23 Pa.C.S. § 5323, requires that any custody order must include notice of a party's obligations when there is a proposed relocation under 23 Pa.C.S. § 5337. Rule 1915.17 also addresses relocation.]

Explanatory Comment—2013

Subdivision (b) further defines and reinforces the requirements found in 23 Pa.C.S. § 5323(e). Examples of safety provisions include, but are not limited to, supervised physical custody, a supervised or neutral custody exchange location, neutral party presence at custody exchange, telephone or computer-facilitated contact with the child, no direct contact between the parties, third-party contact for cancellations, third-party transportation, and designating secure, neutral location for a child's passport.

SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE
PUBLICATION REPORT
RECOMMENDATION 169

The Domestic Relations Procedural Rules Committee (Committee) is proposing amendments to Pa.R.C.P. No. 1915.7 and 1915.10 as the rules relate to custody agreements and orders. Specifically, the proposed amendments further refine the requirements for parties requesting that the court incorporate an agreement into a custody order, and how courts enter custody orders into the record.

The impetus for the Committee's proposed amendment to Pa.R.C.P. No. 1915.10 is the holding in *R.L.P. v. R.F.M.*, 110 A.3d 201 (Pa. Super. 2015). In *R.L.P.*, the Superior Court held that "in order to be sufficiently specific to be enforced, an order of custody must be entered as a separate written order, or as a separate section of a written opinion." *Id.* at 206. The Committee received information that the practice of placing custody orders on the record without subsequently entering a written order continued.

The Committee agreed with the Superior Court that custody orders transcribed from the oral record typically do not adequately comport with the requirements of 23 Pa.C.S. § 5323 making enforcement by the courts difficult and understanding of the terms by the parties and other third parties, e.g., schools, law enforcement, difficult. To clarify the rule, the Committee proposes amending Pa.R.C.P. No. 1915.10 by incorporating the court's holding in *R.L.P.* into the rule.

Additionally, the Committee concluded that a similar amendment to Pa.R.C.P. No. 1915.7 was necessary. The current rule permits parties to enter a verbal custody agreement into the record or present the court with a written consent order. Although the Committee recognizes the importance of memorializing the parties' agreement while the parties are before the court, a custody order transcribed in this circumstance creates similar problems for enforcement and understanding. As such, the Committee proposes amending Pa.R.C.P. No. 1915.7 by requiring the parties submit a written consent order within ten days of placing the verbal agreement on the record. In this manner, the court can preserve the parties' agreement on the record, and the parties will have a succinctly written custody order.