

PROPOSED RULES

AMENDMENTS TO THE RULES OF CIVIL PROCEDURE RELATING TO DOMESTIC RELATIONS MATTERS

SUPREME COURT OF PENNSYLVANIA DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

RECOMMENDATION 103

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not officially be adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than **Friday, September 24, 2010** directed to:

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Deleted material is **bold** and **[bracketed]**. New material is **bold and underlined**.

By the Domestic Relations Procedural Rules Committee

Carol A. Behers, Esquire
Chair

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

RECOMMENDATION 103

Rule 1915.11. Appointment of Attorney for Child. Interrogation of Child. Attendance of Child at Hearing or Conference.

(a) The court may on its own motion, or the motion of a party, appoint an attorney to represent the child in the action. The court may assess the cost upon the parties or any of them or as otherwise provided by law. **The order appointing an attorney to represent the child shall be in substantially the form set forth in Rule 1915.19.**

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Explanatory Comment--1981

Rule 1915.11 does not address the question of the right of the child to separate counsel. It merely recognizes that if the circumstances of a particular case warrant counsel for the child, the court may appoint an attorney on its own motion or on the motion of a party.

The Superior Court has prescribed a procedure for the interrogation of a child who is the subject of a custody action. In *Gerald G. v. Theresa G.*, 284 Pa. Super. 498, 426 A.2d 157 (1981), the court stated that: "when a hearing judge interviews a child in a custody case, certain procedures must be generally met: (1) counsel must be present; (2) counsel must have the opportunity to question the child; and (3) the testimony must be transcribed and made a part of the record." Subdivision (b) incorporates this procedure.

There may be cases in which it is appropriate to interrogate the child in open court or in the presence of the parties. To accommodate these occasions, subdivision (b) leaves these matters to the discretion of the trial judge.

Explanatory Comment--1991

Rule 1915.15(b) provides a form of order to appear at a conference or hearing in an action for custody, partial custody or visitation of minor children. Prior to its recent amendment, the form required that one or more children who are the subject of the action attend the hearing or conference.

However, the presence of a child in court is not always necessary or desirable. The experience may be traumatic and disruptive. Consequently, the child should not be required to attend a hearing or conference in every case. When the presence of a child is required and the

custodial party does not voluntarily bring the child, the court may issue an order for the child's attendance.

New subdivision (c) has been added to Rule 1915.11 to provide that, in the absence of an order of court, a child who is the subject of the action need not be brought to a conference or a hearing before the court. The form of order to appear provided by Rule 1915.15(b) has been revised to implement this policy.

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Rule 1915.19. Form of Order Appointing Counsel for the Child.

The order appointing an attorney to represent a child in a child custody action pursuant to Rule 1915.11 shall be in substantially the following form:

(Caption)

ORDER OF COURT

AND NOW, THIS _____ **day of** _____, **20** _____, **it is hereby ordered as follows:**

Pursuant to Pa.R.C.P. 1915.11, _____ **is appointed as attorney for the minor child** _____ **(D.O.B.) in connection with the civil proceedings related to the custody of the minor child.**

The child's attorney shall not be called to testify and communications between the child's attorney and the child shall be privileged, consistent with the attorney-client relationship.

It is ordered and decreed that the relevant schools, the police department, all hospitals and all social service agencies including home and school agencies who have records, reports and/or information pertaining to the child relevant to the custody of the child, shall allow the child's attorney access to all files and records in its possession, custody or control and shall cooperate in responding to all relevant inquires. These files/records may include but are not limited to medical, psychological or psychiatric charts including evaluations and progress notes and records, X-rays, photographs, tests, test evaluations, intake and discharge summaries, police records, and school records including report cards, educational assessments and educational plans, relevant to this custody dispute and/or relevant to any special needs or requirements of the child. The child's attorney shall have the

right to copy any part of the files and records maintained in connection with the child.

It is further ordered and decreed that the child's attorney shall be permitted to see and speak with the child, and family, medical and/or social service providers connected with this case, and take all steps appropriate to and consonant with this order.

The fees for the child's attorney shall be paid as follows:

This appointment shall terminate upon the entry of a final order resolving the petition pending as of the date of this order or as provided in subsequent order of court.

BY THE COURT:

J.

Explanatory Comment--2010

An attorney representing a child in a child custody case is not a guardian ad litem or a best interests attorney. Counsel for the child shall zealously represent the child as any other client in an attorney-client relationship.