

Rule 1915.1. Scope. Definitions.

(a) **[(1)]** These rules govern the practice and procedure in all actions for **legal and physical custody[, partial custody and visitation]** of minor children, including habeas corpus proceedings and claims for custody[, **partial custody or visitation]** asserted in an action of divorce **[or support]**.

Note: The term custody includes **[legal custody,] shared legal custody, sole legal custody, [physical custody,] partial physical custody, primary physical custody, [and] shared physical custody, sole physical custody and supervised physical** custody. See **[Definition Rule 1915.1(b)] 23 Pa.C.S. §5322(a)**. **[Divorce]** Rule 1920.32(a) provides that when a claim for custody is joined with the action of divorce, the practice and procedure governing the claim for custody shall be in accordance with these rules.

[(2)] If a claim for partial custody or visitation is raised during the course of an action for support, the court may

(i) enter an order with respect to the right to partial custody or visitation where there is

- (A) proper venue under Rule 1915.2, and
- (B) no current order of custody, partial custody or visitation outstanding, and
- (C) no objection by a party to the determination of the claim, and
- (D) no delay in the entry of the support order resulting from the determination of the claim; or

Note: See *Myers v. Young*, 285 Pa. Super. 254, 427 A.2d 209, 211 (1981), which held that “the trial court properly declined to defer the entry of an order of support until satisfactory visitation rights had been established.”

(ii) require the commencement of a separate action pursuant to these rules.

Note: See 23 Pa.C.S. §4349 which authorizes custody and visitation proceedings to be consolidated with support proceedings “to facilitate frequent and unimpeded contact between children and parents” if the custody or visitation matter may be “fairly and expeditiously . . . determined and disposed of in the support action or proceeding.”]

(b) As used in this chapter, unless the context of a rule indicates otherwise,

“action” means all proceedings for **legal and physical custody[, partial custody or visitation,]** and proceedings for modification of prior orders of any court;

“custody” means the legal right to keep, control, guard, care for and preserve a child and includes the terms “legal custody,” “physical custody,” and “shared custody;”

* * *

“legal custody” means the **[legal]** right to make major decisions **[affecting the best interests of a minor] on behalf of the** child, including, but not limited to, medical, religious and educational decisions;

“partial **physical** custody” means the right to **[take possession] assume physical custody** of **[a] the** child **[away from the custodial person for a certain period of] for less than a majority of the** time;

“person acting as parent” means a person other than a parent, including an institution, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

“physical custody” means **the** actual physical possession and control of a child;

“primary physical custody” means the right to assume physical custody of the child for the majority of time;

“relocation” means a change in a residence of the child which significantly impairs the ability of a non-relocating party to exercise custodial rights;

“shared legal custody” means the right of more than one individual to legal custody of the child;

“shared **physical** custody” means **[shared legal or shared physical custody or both of a child in such a way as to assure the child of frequent and continuing contact, including physical access, to both parents] the right of more than one individual to assume physical custody of the child, each having significant periods of physical custodial time with the child; [and]**

“sole legal custody” means the right of one individual to exclusive legal custody of the child;

“sole physical custody” means the right of one individual to exclusive physical custody of the child; and

“supervised physical custody” means custodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors the interaction between the child and the individual with those rights.

Note: The term “supervised visitation” in the prior statute has been replaced by the term “supervised physical custody.”

[“visitation” means the right to visit a child, but does not include the right to remove the child from the custodial person’s control.]

Note: The definitions of the terms **of the various forms of** legal custody[,] **and** physical custody **[and shared custody]** are taken from 23 Pa.C.S.[A.] §[5302] **5322(a)**.

For additional definitions, see the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.[A.] §5402.

[Explanatory Comment--1994

Whatever context in which the claim for custody, partial custody or visitation will arise, subdivision (a)(1) provides that the proposed rules will govern the practice and procedure. The custody rule is reinforced by Divorce Rule 1920.32(a).

Subdivision (b) provides the necessary definitions for the rules. The rules adopt the terms “custody,” “partial custody,” and “visitation” suggested by Judge Spaeth in his concurring opinion in *Scott v. Scott*, 240 Pa. Super. 65, 368 A.2d 288, 291 (1976).]

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Rule 1915.3. Commencement of Action. Complaint. Order.

(a) Except as provided by subdivision (c), an action shall be commenced by filing a verified complaint substantially in the form provided by Rule 1915.15(a).

(b) An order shall be attached to the complaint directing the defendant to appear at a time and place specified. The order shall be substantially in the form provided by Rule 1915.15(b).

Note. See §5430(d) of the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.[A.] §5430(d), relating to costs and expenses for appearance of parties and child, and 23 Pa.C.S.[A.] §5471, relating to intrastate application of the Uniform Child Custody Jurisdiction and Enforcement Act.

(c) A claim for custody[, **partial custody or visitation**] which is joined with an action of divorce shall be asserted in the complaint or a subsequent petition, which shall be substantially in the form provided by Rule 1915.15(a).

Note: **[Divorce]** Rule 1920.13(b) provides that claims which may be joined with an action of divorce shall be raised by the complaint or a subsequent petition.

(d) If the mother of the child is not married and the child has no legal or presumptive father, then a putative father initiating an action for custody[, **partial custody or visitation**] must file a claim of paternity pursuant to 23 Pa.C.S. §5103 and attach a copy to the complaint in the custody action.

Note: If a putative father is uncertain of paternity, the correct procedure is to commence a civil action for paternity pursuant to the procedures set forth at Rule 1930.6.

(e) A grandparent who is not in loco parentis to the child and is seeking physical and/or legal custody of a grandchild pursuant to 23 Pa.C.S. §**[5313(b)] 5323** must plead, in paragraph **[7] 9** of the complaint set forth at Rule 1915.15(a), facts establishing **[the elements of a cause of action] standing** under §**[5313(b)(1), (2) and (3)] 5324(3)**. **A grandparent or great-grandparent seeking partial physical custody or supervised physical custody must plead, in paragraph 9 of the complaint, facts establishing standing pursuant to 23 Pa.C.S. §5325.**

[Explanatory Comment--2002

In *R.M. v. Baxter*, 777 A.2d 446 (Pa.2001), the Pennsylvania Supreme Court held that 23 Pa.C.S. §5313(b) confers automatic standing on grandparents to seek physical and legal custody of a grandchild. However, establishing a cause of action under the statute requires the existence of the elements set forth at 23 Pa.C.S. §§5313(b)(1), (2) and (3).]

* * *

Rule 1915.3-2. Criminal or Abuse History.

(a) Criminal or Abuse History Verification. The petitioner must file and serve with the complaint, or any petition for modification, a verification regarding any criminal or abuse history of the petitioner and anyone living in the petitioner's household. The verification shall be substantially in the form set forth in subdivision (c) below. The petitioner must attach a blank verification form to a complaint or petition served upon the respondent. Although the respondent need not file a responsive pleading pursuant to Rule 1915.5, the

respondent must file with the court a verification regarding any criminal or abuse history of the respondent and anyone living in the respondent's household on or before the initial in-person contact with the court (including, but not limited to, a conference with a conference officer or judge or conciliation, depending upon the procedure in the judicial district) but not later than 30 days after service of the complaint or petition upon the respondent. Both parties shall file and serve updated verifications five days prior to trial.

(b) Initial Evaluation. At the initial in-person contact with the court, the judge, conference officer, conciliator or other appointed individual shall perform an initial evaluation to determine whether the existence of a criminal or abuse history of either party or a party's household member poses a threat to the child and whether counseling is necessary. The initial evaluation required by 23 Pa.C.S. §5329(c) shall not be conducted by a mental health professional. After the initial evaluation, the court may order further evaluation or counseling by a mental health professional if the court determines it is necessary. Consistent with the best interests of the child, the court may enter a temporary custody order on behalf of a party with a criminal history or a party with a household member who has a criminal history, pending the party's or household member's evaluation and/or counseling.

Note: The court shall consider evidence of criminal or abusive history presented by the parties. There is no obligation for the court to conduct an independent investigation of the criminal or abusive history of either party or members of their household. The court should not consider ARD or other diversionary programs. When determining whether a party or household member requires further evaluation or counseling, or whether a party or household member poses a threat to a child, the court should give consideration to the severity of the offense, the age of the offense, whether the victim of the offense was a child or family member and whether the offense involved violence.

(c) Verification. The verification regarding criminal or abuse history shall be substantially in the following form:

(Caption)

CRIMINAL RECORD / ABUSE HISTORY VERIFICATION

I _____, hereby swear or affirm, subject to penalties of law including 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities that:

1. Unless indicated by my checking the box next to a crime below, neither I nor any other member of my household have been convicted or pled guilty or pled no contest or was adjudicated delinquent where the record is publicly available pursuant to the Juvenile Act, 42 Pa.C.S. §6307 to any of the following crimes in Pennsylvania or a substantially equivalent crime in any other jurisdiction, including pending charges:

<u>Check all that apply</u>	<u>Crime</u>	<u>Self</u>	<u>Other household member</u>	<u>Date of conviction, guilty plea, no contest plea or pending charges</u>	<u>Sentence</u>
<input type="checkbox"/>	<u>18 Pa.C.S. Ch. 25 (relating to criminal homicide)</u>	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	<u>18 Pa.C.S. §2702 (relating to aggravated assault)</u>	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	<u>18 Pa.C.S. §2706 (relating to terroristic threats)</u>	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	<u>18 Pa.C.S. §2709.1 (relating to stalking)</u>	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	<u>18 Pa.C.S. §2901 (relating to kidnapping)</u>	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

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|--------------------------|--|--------------------------|--------------------------|-------|-------|
| <input type="checkbox"/> | <u>18 Pa.C.S. §2902</u>
<u>(relating to unlawful restraint)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §2903</u>
<u>(relating to false imprisonment)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §2910</u>
<u>(relating to luring a child into a motor vehicle or structure)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §3121</u>
<u>(relating to rape)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §3122.1</u>
<u>(relating to statutory sexual assault)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §3123</u>
<u>(relating to involuntary deviate sexual intercourse)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §3124.1</u>
<u>(relating to sexual assault)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §3125</u>
<u>(relating to aggravated indecent assault)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §3126</u>
<u>(relating to indecent assault)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §3127</u>
<u>(relating to indecent exposure)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |

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|--------------------------|---|--------------------------|--------------------------|-------|-------|
| <input type="checkbox"/> | <u>18 Pa.C.S. §3129</u>
<u>(relating to sexual intercourse with animal)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §3130</u>
<u>(relating to conduct relating to sex offenders)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §3301</u>
<u>(relating to arson and related offenses)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §4302</u>
<u>(relating to incest)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §4303</u>
<u>(relating to concealing death of child)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §4304</u>
<u>(relating to endangering welfare of children)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §4305</u>
<u>(relating to dealing in infant children)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §5902(b)</u>
<u>(relating to prostitution and related offenses)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §5903(c) or (d)</u>
<u>(relating to obscene and other sexual materials and performances)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §6301</u>
<u>(relating to corruption of minors)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |

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|--------------------------|--|--------------------------|--------------------------|-------|-------|
| <input type="checkbox"/> | <u>18 Pa.C.S. §6312</u>
<u>(relating to sexual abuse of children)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §6318</u>
<u>(relating to unlawful contact with minor)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>18 Pa.C.S. §6320</u>
<u>(relating to sexual exploitation of children)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>23 Pa.C.S. § 6114</u>
<u>(relating to contempt for violation of protection order or agreement)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>Driving under the influence of drugs or alcohol</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>Manufacture, sale, delivery, holding, offering for sale or possession of any controlled substance or other drug or device</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |

2. Unless indicated by my checking the box next to an item below, neither I nor any other member of my household have a history of violent or abusive conduct including the following:

- | <u>Check all that apply</u> | <u>Self</u> | <u>Other household member</u> | <u>Date</u> |
|-----------------------------|---|-------------------------------|-------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| | <u>A finding of abuse by a Children & Youth Agency or similar agency in Pennsylvania or similar statute in another jurisdiction</u> | | |

Abusive conduct as defined under the Protection from Abuse Act in Pennsylvania or similar statute in another jurisdiction _____

Other: _____ _____

3. Please list any evaluation, counseling or other treatment received following conviction or finding of abuse:

4. If any conviction above applies to a household member, not a party, state that person's name, date of birth and relationship to the child.

5. If you are aware that the other party or members of the other party's household has or have a criminal/abuse history, please explain:

I verify that the information above is true and correct to the best of my knowledge, information or belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Signature

Printed Name

* * *

Rule 1915.4-1. Alternative Hearing Procedures for Partial Custody [or Visitation] Actions.

(a) A custody action shall proceed as prescribed by Rule 1915.4-3 unless the court, by local rule, adopts the alternative hearing procedure authorized by Rule 1915.4-2 pursuant to which an action for partial custody **[or visitation]** may be heard by a hearing officer, except as provided in subdivision (b) below.

(b) Promptly after the parties' initial contact with the court as set forth in Rule 1915.4(a), a party may move the court for a hearing before a judge, rather than a hearing officer, in an action for partial custody **[or visitation]** where:

* * *

Explanatory Comment--1994

These **[new]** rules provide an optional procedure for using hearing officers in partial custody **[and visitation]** cases. The procedure is similar to the one provided for support cases in Rule 1910.12: a conference, record hearing before a hearing officer and argument on exceptions before a judge. The terms "conference officer" and "hearing officer" have the same meaning here as in the support rules.

It is important to note that use of the procedure prescribed in Rules 1915.4-1 and 1915.4-2 is optional rather than mandatory. Counties which prefer to have all partial custody **[and visitation]** cases heard by a judge may continue to do so.

These procedures are not intended to replace or prohibit the use of any form of mediation or conciliation. On the contrary, they are intended to be used in cases which are not resolved through the use of less adversarial means.

* * *

Rule 1915.4-2. Partial Custody. [Visitation.] Office Conference. Hearing. Record. Exceptions. Order.

(a) *Office Conference.*

* * *

(3) The conference officer may make a recommendation to the parties relating to partial custody or **[visitation] supervised physical custody** of the child or children. If an agreement for partial custody or **[visitation] supervised physical custody** is reached at the conference, the conference officer shall prepare a written order in conformity with the agreement for signature by the parties and submission to

the court together with the officer's recommendation for approval or disapproval. The court may enter an order in accordance with the agreement without hearing the parties.

(4) At the conclusion of the conference, if an agreement relating to partial custody or **[visitation] supervised physical custody** has not been reached, the parties shall be given notice of the date, time and place of a hearing before a hearing officer, which may be the same day, but in no event shall be more than forty-five days from the date of the conference.

(b) *Hearing.*

* * *

(3) Within ten days of the conclusion of the hearing, the hearing officer shall file with the court and serve upon all parties a report containing a recommendation with respect to the entry of an order of partial custody or **[visitation] supervised physical custody**. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order, including a specific schedule for partial custody or **[visitation] supervised physical custody**.

* * *

Rule 1915.4-3. Non-Record Proceedings. Trials.

(a) *Non-Record Proceedings.* In those jurisdictions **[which] that** utilize an initial non-record proceeding such as a conciliation conference or office conference, if no agreement is reached at the conclusion of the proceeding, the conference officer or conciliator shall promptly notify the court that the matter should be listed for trial.

(b) *Trial.* The trial before the court shall be de novo. The court shall hear the case and render a decision within the time periods set forth in Rule 1915.4.

Rule 1915.5. Question of Jurisdiction or Venue. No Responsive Pleading by Defendant Required. Counterclaim. Discovery.

* * *

(b) A party may file a counterclaim asserting the right of **physical or legal custody[, partial custody or visitation]** within twenty days of service of the complaint upon that party or at the time of hearing, whichever first occurs. The claim shall be in the same form as a complaint as required by Rule 1915.3.

* * *

Rule 1915.6. Joinder of Parties.

* * *

(3) The person joined may file a counterclaim asserting a right to **physical or legal** custody[, **partial custody or visitation**] in the form required for a complaint by Rule 1915.3. A copy of the counterclaim shall be served upon all other parties to the action as provided by Rule 440.

(b) If the court learns from the pleadings or any other source that any other person who claims to have **[custody or visitation] custodial** rights with respect to the child is not a party to the action, it shall order that notice be given to that person of the pendency of the action and of the right to intervene therein. The notice shall be substantially in the form prescribed by Rule 1915.16(b).

Explanatory Comment--1994

The position taken by the rules is that a person in physical custody of the child and a parent whose parental rights have not been terminated are necessary parties to a custody determination. While it may be desirable to have other persons who claim custody **[or visitation]** rights as parties to the action, their joinder is not a prerequisite to a custody determination.

Rule 1915.7. Consent Order.

If an agreement for custody[, **partial custody or visitation**] 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.

* * *

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, in a written opinion, or in the order.**

(b) The terms of the order shall be sufficiently specific to enforce the order. The court's decision 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 custody order shall include notice of a party's obligations pursuant to 23 Pa.C.S. §5337 dealing with a party's intention to relocate with a minor child.

[(b)] (d) No motion for post-trial relief may be filed to an order of legal or physical custody[, partial custody or visitation].

[Note: See 23 Pa.C.S. § 5301 et seq. for provisions relating to the award of sole or shared custody (§ § 5303, 5304), counseling and the temporary award of custody pending counseling (§ 5305), submission of a plan to implement a custody order (§ 5306), removal of a party or child from the Commonwealth (§ 5308), access to records of the child (§ 5309), and modification of existing custody orders (§ 5310).

The statute also provides that the court shall state on the record its reasons when it declines to enter an award of custody as agreed to by the parents or under the plan developed by them (23 Pa.C.S. § 5307).

Explanatory Comment--1981

Subdivision (a) attempts to balance the right of the parties to be informed of the bases for the court's decision with the burden that right imposes upon the court. The rule imposes a minimal burden by requiring the court to give the reasons for its decision in contested cases involving custody and partial custody. The court may give its reasons in contested cases involving visitation, but it is not required to do so. The reasons may be stated in narrative form.

The decision differs significantly from the opinion which will be required if an action is appealed to the Superior Court. In that event, the trial judge must file "a complete and comprehensive opinion which contains a thorough analysis of the record and specific reasons for the court's ultimate decision." In re Jennifer Lynn Arnold, 286 Pa. Super. 171, 428 A.2d 627 (1981).

Except for enforcement or contempt proceedings, there is no post-trial practice. Subdivision (a) provides that the order entered by the lower court is "a final order for purposes of appeal." Subdivision (c) [now, subd. (b)] prohibits the filing of exceptions to the order of custody, partial custody or visitation.

The court need not wait until the testimony has been transcribed to make its decision and enter the order. This may be done at the conclusion of the hearing.]

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.

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. Counsel for the child shall represent the child's legal interests and zealously represent the child as any other client in an attorney-client relationship. Counsel for the child shall not perform the role of a guardian ad litem or best interests attorney. 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.

* * *

[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] [s]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.

* * *

Rule 1915.11-2. Appointment of Guardian Ad Litem.

(a) The court may, on its own motion or the motion of a party, appoint a guardian ad litem to represent the best interests of the child in a custody action. The guardian ad litem shall be a licensed attorney or licensed mental health professional. The guardian ad litem shall not act as the child's counsel or represent the child's legal interests. Prior to appointing a guardian ad litem, the court shall make a finding that the appointment is necessary to assist the court in determining the best interests of the child.

(b) The court may order either or both parties to pay all or part of the costs of appointing a guardian ad litem.

(c) The guardian ad litem shall file of record and provide copies of any reports prepared by the guardian ad litem to each party and the court not later than 20 days prior to trial. The admissibility of the report shall be determined at the hearing. Prior to disclosure to the parties of confidential information prohibited by 23 Pa.C.S. §5336, the court shall make a determination of whether the information may be disclosed. The guardian ad litem shall attend all proceedings and be prepared to testify. The guardian ad litem shall be subject to cross-examination if called to testify by either party or the court.

(d) The order appointing a guardian ad litem shall be in substantially the form set forth in Rule 1915.21.

Note: 23 Pa.C.S. §5334 is suspended insofar as it (1) requires that a guardian ad litem be an attorney, (2) permits the guardian ad litem to represent both the best interests and

legal interests of the child, (3) provides the guardian ad litem the right to examine, cross-examine, present witnesses and present evidence on behalf of the child, and (4) prohibits the guardian ad litem from testifying.

Rule 1915.12. Civil Contempt for Disobedience of Custody Order. Petition. Form of Petition. Service. Order.

(a) A petition for civil contempt shall begin with a notice and order to appear in substantially the following form:

NOTICE AND ORDER TO APPEAR

Legal proceedings have been brought against you alleging you have willfully disobeyed an order of court for **[(custody) (partial custody) (visitation)] custody**. If you wish to defend against the claim set forth in the following pages, you may but are not required to file in writing with the court your defenses or objections. Whether or not you file in writing with the court your defenses or objections, you must appear in person in court on

* * *

If the court finds that you have willfully failed to comply with its order **[for (custody) (partial custody) (visitation)]**, you may be found to be in contempt of court and committed to jail, fined or both.

* * *

(b) The petition shall allege the facts which constitute **[wilful] willful** failure to comply with the custody**[, partial custody or visitation]** order, a copy of which shall be attached to the petition.

(c) The petition shall be in substantially the following form:

(Caption)

PETITION FOR CIVIL CONTEMPT FOR
DISOBEDIENCE OF **[(CUSTODY) (PARTIAL CUSTODY)
(VISITATION)] CUSTODY** ORDER

The Petition of _____, respectfully represents:

1. That on _____, Judge _____ entered an Order awarding (Petitioner) (Respondent) **[(custody) (partial custody) (visitation)] (shared legal custody) (sole legal custody) (partial physical custody) (primary**

physical custody) (shared physical custody) (sole physical custody) (supervised physical custody) of the minor child(ren)

(Name(s) of Child(ren))

* * *

(e) After hearing, an order committing a respondent to jail for contempt of a custody[, **partial custody or visitation**] order shall specify the condition which must be fulfilled to obtain release of the respondent.

[Note: See 23 Pa.C.S.A. §4346 relating to contempt for noncompliance with visitation or partial custody order.]

Note: See the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.[A.] §§5443 and 5445, relating to registration and enforcement of custody decrees of another state, and 23 Pa.C.S.[A.] §5471, relating to intrastate application of the Uniform Child Custody Jurisdiction and Enforcement Act.

[Explanatory Comment--1981

In *Cahalin v. Goodman*, 280 Pa. Super. 228, 421 A.2d 696 (1980), the Superior Court imposed upon custody proceedings the five-step contempt procedure mandated by *Crislip v. Harshman*, 243 Pa. Super 349, 365 A.2d 1260 (1976), in actions for support.

Rule 1915.12 provides a streamlined contempt procedure. Subdivision (a) prescribes the nature of the petition. It will begin with a notice and order in the nature of an extended notice to defend. The notice includes the time and location of the hearing upon the petition and the consequences of a failure to appear. The petition must contain facts showing a "willful" failure to obey the custody, partial custody or visitation order.

The prothonotary or another person designated by the court is to serve the petition upon the defendant by regular mail. Safeguards are provided by subdivision (c) for continuance of the hearing when the defendant fails to appear. The court is then given the option of either ordering personal service of the petition with a notice of a new hearing date or issuing a bench warrant as may be appropriate. If personal service is ordered, it shall be by the sheriff. If a bench warrant is issued, the rule directs that the warrant provide for producing the defendant in court and not for imprisonment in the county jail. The object of the warrant is to bring the defendant before the court and not to have the defendant languish in jail overnight or over a weekend.

The defendant is not required to answer the petition and he is given a period of at least seven days in which to defend.

Subdivision (d) continues the present case law requirement that the order state the condition which must be fulfilled so that the defendant will be released from prison.]

Rule 1915.13. Special Relief.

At any time after commencement of the action, the court may on application or its own motion grant appropriate interim or special relief. The relief may include, but is not limited to, the award of temporary **legal or physical** custody[, **partial custody or visitation**]; the issuance of appropriate process directing that a child or a party or person having physical custody of a child be brought before the court; and a direction that a person post security to appear with the child when directed by the court or to comply with any order of the court.

Note: This rule supplies relief formerly available by habeas corpus for production of the child.

Explanatory Comment--1981

Rule 1915.13 contains a broad provision empowering the court to provide special relief where appropriate. In a custody proceeding, such special relief might include relief in the nature of a writ of ne exeat, directing the parties not to leave the jurisdiction and not to remove the child from the jurisdiction.

The rule catalogs several types of relief which might be granted, including the entry of a temporary order of custody, partial custody or visitation. The rule specifically provides that the power of the court to grant special relief shall not be limited to the types of relief cataloged.

Rule 1915.14. Disobedience of Order. Arrest. Contempt.

If a person disobeys an order of court other than a custody[, **partial custody or visitation**] order, the court may issue a bench warrant for the arrest of the person and if the disobedience is willful may, after hearing, adjudge the person to be in contempt.

Note: For disobedience of a custody[, **partial custody or visitation**] order, see Rule 1915.12.

[Explanatory Comment--1981

Rule 1915.14 governs disobedience of orders of court other than an order of custody, partial custody or visitation. Contempt of a custody, partial custody or visitation order is governed by Rule 1915.12.

Although general in terms, the rule will apply primarily to a party who fails to appear before the judge at the hearing.

The failure to obey a court order includes the failure of a party to bring a child to a hearing as required by order of court as well as the failure to appear in person.

The failure to obey an order of court is itself sufficient to cause the court to issue a warrant. However, the finding of contempt may be made only after a hearing at which it is determined that the failure to obey the order was willful.]

Rule 1915.15. Form of Complaint. Caption. Order. Petition to Modify a [Partial] Custody [or Visitation] Order

(a) The complaint in an action for custody[, **partial custody or visitation**] shall be in substantially the following form:

(Caption)

**COMPLAINT FOR CUSTODY [(CUSTODY)
(PARTIAL CUSTODY) (VISITATION)]**

* * *

3. Plaintiff seeks [(custody)(partial custody)(visitation)] **(shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody)** of the following child(ren):

* * *

Plaintiff (knows) (does not know) of a person not a party to the proceedings who has physical custody of the child or claims to have **[custody or visitation] custodial** rights with respect to the child. The name and address of such person is: _____

* * *

8. Each parent whose parental rights to the child have not been terminated and the person who has physical custody of the child have been named as parties to this action. All other persons, named below, who are known to have or claim a right to custody **[or visitation]** of the child will be given notice of the pendency of this action and the right to intervene:

Name	Address	Basis of Claim
_____	_____	_____
_____	_____	_____
_____	_____	_____

9. (a) If the plaintiff is a grandparent who is not in loco parentis to the child and is seeking physical and/or legal custody pursuant to 23 Pa.C.S. §5323, you must plead facts establishing standing pursuant to 23 Pa.C.S. §5324(3).

(b) If the plaintiff is a grandparent or great-grandparent who is seeking partial physical custody or supervised physical custody pursuant to 23 Pa.C.S. §5325, you must plead facts establishing standing pursuant to §5325.

(c) If the plaintiff is a person seeking physical and/or legal custody pursuant to 23 Pa.C.S. §5324(2) as a person who stands in loco parentis to the child, you must plead facts establishing standing.

10. I have attached the Criminal Record/Abuse History Verification form required pursuant to Pa.R.C.P. No. 1915.3-2.

Wherefore, plaintiff requests the court to grant [(custody)(partial custody)(visitation)] (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody) of the child.

* * *

(b) A petition to modify a **[partial]** custody **[or visitation]** order shall be in substantially the following form:

(Caption)

**PETITION FOR MODIFICATION
OF A [PARTIAL] CUSTODY
[OR VISITATION] ORDER**

1. The petition of _____ respectfully represents that on _____, **[19]20** an Order of Court was entered for **[(PARTIAL CUSTODY) (VISITATION)] (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody)**, a true and correct copy of which is attached.

* * *

WHEREFORE, Petitioner requests that the Court modify the existing Order **[for (PARTIAL CUSTODY) (VISITATION)]** because it will be in the best interest of the child(ren).

* * *

(c) The order to be attached at the front of the complaint or petition for modification shall be in substantially the following form:

(Caption)

ORDER OF COURT

You, _____, (defendant) (respondent), have been sued in court to (OBTAIN)(MODIFY) [custody, partial custody or visitation] (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody) of the child(ren):

* * *

If you fail to appear as provided by this order, an order for custody[, **partial custody or visitation**] may be entered against you or the court may issue a warrant for your arrest.

You must file with the court a verification regarding any criminal record or abuse history regarding you and anyone living in your household on or before the initial in-person contact with the court (including, but not limited to, a conference with a conference officer or judge or conciliation) but not later than 30 days after service of the complaint or petition.

No party may make a change in the residence of any child which significantly impairs the ability of the other party to exercise custodial rights without first complying with all of the applicable provisions of 23 Pa.C.S. §5337 and Pa.R.C.P. No. 1915.17 regarding relocation.

* * *

Rule 1915.16. Form of Order and Notice. Joinder. Intervention

(a) The order and notice joining a party in an action under Rule 1915.6(a) shall be substantially in the following form:

(Caption)

ORDER AND NOTICE

A complaint has been filed in the Court of Common Pleas of _____ County concerning custody[, **partial custody and visitation**] of the following child(ren):

_____.

The Court has learned you may have a legal interest in custody[, **partial custody or visitation**] of the child(ren) named.

A hearing will be held in Courtroom _____ of the Court of Common Pleas, _____ (Address), on _____ (Day and Date), at _____ (Time), _____.M. If you wish to [**have custody, partial custody or visitation of the child(ren)**] protect any legal interest you may have or wish to present evidence to the Court on those matters, you should appear at the place and time and on the date above.

If you have the child(ren) in your possession or control, you must appear and bring them to the Courthouse with you.

If you wish to claim **[the] a** right of custody[, **partial custody or visitation**], you may file a counterclaim.

If you fail to appear as provided by this order or to bring the child(ren), an order for custody[, **partial custody or visitation**] may be entered against you or the Court may issue a warrant for your arrest.

* * *

(b) The order for notice of the pendency of the action and the right to intervene required by Rule 1915.6(b) shall be substantially in the following form:

(Caption)

ORDER AND NOTICE

A complaint has been filed in the Court of Common Pleas of _____ County concerning custody[, **partial custody and visitation**] of the following child(ren):

_____.

The Court has learned you claim [**custody, partial custody or visitation**] custodial rights with respect to the child(ren) named.

A hearing will be held in courtroom _____ of the Court of Common Pleas, _____ (Address), on _____ (Day and Date), at _____ (Time), _____.M. If you wish to assert your claim to [**custody, partial custody or visitation**] custodial rights with respect to the child(ren) or wish to present evidence to the Court on those matters, you should petition the Court, on or before the above date, for leave to intervene in the proceedings.

* * *

[Explanatory Comment--1981

See Explanatory Comment following Rule 1915.15.]

Rule 1915.17. Relocation. Notice and Counter-Affidavit.

(a) A party proposing to change the residence of a child must notify every other person who has custodial rights to the child and provide a counter-affidavit by which a person may agree or object. The form of the notice and counter-affidavit are set forth in subdivisions (i) and (j) below. The notice shall be sent by certified mail, return receipt requested, addressee only or pursuant to Pa.R.C.P No. 1930.4, no later than the sixtieth day before the date of the proposed change of residence or other time frame set forth in 23 Pa.C.S. §5337(c)(2).

(b) If the other party objects to the proposed change in the child's residence, that party must serve the counter-affidavit on the party proposing the change by certified mail, return receipt requested, addressee only, or pursuant to Pa.R.C.P. No. 1930.4 within 30 days of receipt of the notice required in subdivision (a) above. If there is an existing child custody case, the objecting party also shall file the counter-affidavit with the court.

(c) If no objection to a proposed change of a child's residence is timely served after notice, the proposing party may change the residence of the child and such shall not be considered a "relocation" under statute or rule.

(d) The procedure in any relocation case shall be expedited. There shall be no requirement for parenting education or mediation prior to an expedited hearing before a judge.

(e) If the party proposing the relocation seeks an order of court, has served a notice of proposed relocation as required by 23 Pa.C.S. §5337, has not received notice of objection to the move and seeks confirmation of relocation, the party proposing the relocation shall file:

(1) a complaint for custody and petition to confirm relocation, when no custody case exists, or

(2) a petition to confirm relocation when there is an existing custody case and

(3) a proposed order including the information set forth at 23 Pa.C.S. §5337(c)(3).

(f) If the party proposing the relocation has received notice of objection to the proposed move after serving a notice of proposed relocation as required by 23 Pa.C.S. §5337 et seq., the party proposing relocation shall file:

(1) a complaint for custody or petition for modification, as applicable;

(2) a copy of the notice of proposed relocation served on the non-relocating party;

(3) a copy of the counter-affidavit indicating objection to relocation; and

(4) a request for a hearing.

(g) If the non-relocating party has been served with a notice of proposed relocation and the party proposing relocation has not complied with subdivision (f) above, the non-relocating party may file:

(1) a complaint for custody or petition for modification, as applicable;

(2) a counter-affidavit as set forth in 23 Pa.C.S. §5337(d)(1), and

(3) a request for a hearing.

(h) If a non-relocating party has not been served with a notice of proposed relocation and seeks an order of court preventing relocation, the non-relocating party shall file:

(1) a complaint for custody or petition for modification, as applicable;

(2) a statement of objection to relocation; and

(3) a request for a hearing.

(i) The notice of proposed relocation shall be substantially in the following form:

(Caption)

NOTICE OF PROPOSED RELOCATION

You, _____, are hereby notified that _____ (party proposing relocation) _____ proposes to relocate with the following minor child(ren):

To object to the proposed relocation, you must complete the attached counter-affidavit and serve it on the other party by certified mail, return receipt requested, addressee only, or pursuant to Pa.R.C.P. No. 1930.4 within 30 days of receipt of this notice. If there is an existing child custody case, you also must file the counter-affidavit with the court. If you do not object to the proposed relocation within 30 days, the party proposing relocation has the right to relocate and may petition the court to approve the proposed relocation and to modify any effective custody orders or agreements. FAILURE TO OBJECT WITHIN 30 DAYS WILL PREVENT YOU FROM OBJECTING TO THE RELOCATION ABSENT EXIGENT CIRCUMSTANCES.

Address of the proposed new residence:

Check here if the address is confidential pursuant to 23 Pa.C.S. §5336(b).

Mailing address of intended new residence (if not the same as above)

Check here if the address is confidential pursuant to 23 Pa.C.S. §5336(b).

Names and ages of the individuals who intend to reside at the new residence:

Name

Age

Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).

Home telephone number of the new residence:

Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).

Name of the new school district and school the child(ren) will attend after relocation:

Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).

Date of the proposed relocation:

Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).

Reasons for the proposed relocation:

Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).

Proposed modification of custody schedule following relocation:

Other information:

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(i) The counter-affidavit that must be served with the relocation notice shall be substantially in the following form as set forth at 23 Pa.C.S. §5337(d):

(Caption)

COUNTER-AFFIDAVIT REGARDING RELOCATION

This proposal of relocation involves the following child/children:

<u>Child's Name</u>	<u>Age</u>	<u>Currently residing at:</u>
<hr/>	<hr/>	<hr/>
<u>Child's Name</u>	<u>Age</u>	<u>Currently residing at:</u>
<hr/>	<hr/>	<hr/>
<u>Child's Name</u>	<u>Age</u>	<u>Currently residing at:</u>
<hr/>	<hr/>	<hr/>

I have received a notice of proposed relocation and (check all that apply):

1. **I do not object to the relocation**

2. **I do not object to the modification of the custody order consistent with the proposal for modification set forth in the notice.**

3. **I do not object to the relocation, but I do object to modification of the custody order.**

4. I plan to request that a hearing be scheduled by filing a request for hearing with the court:

a. Prior to allowing (name of child/children) to relocate.

b. After the child/children relocate.

5. I do object to the relocation

6. I do object to the modification of the custody order.

I understand that in addition to objecting to the relocation or modification of the custody order above, I must also serve this counter-affidavit on the other party by certified mail, return receipt requested, addressee only, or pursuant to Pa.R.C.P. No. 1930.4, and, if there is an existing custody case, I must file this counter-affidavit with the court. If I fail to do so within 30 days of my receipt of the proposed relocation notice, I understand that I will not be able to object to the relocation at a later time.

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).

(Date)

(Signature)

* * *

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

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.

* * *

Rule 1915.21. Form of Order Appointing Guardian Ad Litem.

The order appointing a guardian ad litem in a child custody action pursuant to Rule 1915.11-2 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. No. 1915.11-2, _____ is appointed as guardian ad litem for the minor child _____ (D.O.B. _____) in connection with the civil proceedings related to the custody of the minor child.

The child's guardian ad litem shall represent the best interests of the child. The guardian ad litem shall not act as the child's attorney or represent the child's legal interests.

It is ordered and decreed that all relevant schools, police departments, hospitals and 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 guardian ad litem 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 guardian ad litem 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 guardian ad litem 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 guardian ad litem shall provide copies of any reports prepared by the guardian ad litem to each party, or to their counsel, and to the court not later than 20 days prior to trial. The guardian ad litem shall attend all proceedings and be prepared to testify. The guardian ad litem shall be subject to cross-examination if called to testify by either party or the court.

The fees for the guardian ad litem 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.

* * *

Rule 1915.25. Suspension of Acts of Assembly.

* * *

23 Pa.C.S. §5334 is suspended insofar as it (1) requires that a guardian ad litem be an attorney, (2) permits the guardian ad litem to represent both the best interests and legal interests of the child, (3) provides the guardian ad litem the

right to examine, cross-examine, present witnesses and present evidence on behalf of the child, and (4) prohibits the guardian ad litem from testifying.