**Rule 1915.1 Scope. Definitions.**

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

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

''action'' means all proceedings for 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;''

''home county'' means the county in which the child immediately preceding the time involved lived with the child's parents, a parent, or a person acting as parent, or in an institution, for at least six consecutive months, and in the case of a child less than six months old the county in which the child lived from birth with any of the persons mentioned. A period of temporary absence of the child from the physical custody of the parent, institution, or person acting as parent shall not affect the six-month or other period;

''legal custody'' means the legal right to make major decisions affecting the best interests of a minor child, including but not limited to, medical, religious and educational decisions;

''partial custody'' means the right to take possession of a child away from the custodial person for a certain period of 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 actual physical possession and control of a child;

''shared 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; and

''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 legal custody, physical custody and shared custody are taken from 23 Pa.C.S.A. §5302. For additional definitions, see the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.A. §**[5343]** 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).

Explanatory Comment--2008

The Uniform Child Custody Jurisdiction Act, formerly at subchapter B of Chapter 53 of the Domestic Relations Code, was repealed by Act 2004-39 and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act at Chapter 54 of the Domestic Relations Code. Amendments throughout the rules governing procedures in child custody matters were necessary to make the rules consistent with the Uniform Child Custody Jurisdiction and Enforcement Act and to update the citations to the statutory provisions.

**Rule 1915.2. Venue.**

(a) An action may be brought in any county

(1) (i) which is the home county of the child at the time of commencement of the proceeding, or

(ii) which had been the child's home county within six months before commencement of the proceeding and the child is absent from the county **[because of the child's removal or retention by a person claiming the child's custody or for other reasons and]** but a parent or person acting as parent continues to live in the county; or

(2) **[in which it is in the best interest of the child that the court decide the matter because]** when the court of another county does not have venue

under subdivision (1), and the child and the child's parents, or the child and at least one **[party]** parent or a person acting as a parent, have a significant connection with the county other than mere physical presence and there is available within the county substantial evidence concerning the child's **[present or future care]**, protection, training and personal relationships; or

(3) **[in which the child is physically present and the child has been abandoned or it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent]** when all counties in which venue is proper pursuant to subdivisions (1) and (2) have found that the court before which the action is pending is the more appropriate forum to determine the custody of the child; or

(4) **[in which]** when it appears that venue would not be proper in any other county under prerequisites substantially in accordance with paragraphs (1), (2) or (3)**[, or another court has declined to decide the matter on the ground that the court before which the action is pending is the more appropriate forum to determine the custody of the child, and it is in the best interest of the child that the court decide the matter.]** ; or

(5) when the child is present in the county and has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.

**[(b) Except under paragraphs (3) and (4) of subdivision (a), physical presence of the child within a county, or of the child and one of the parties, is not alone sufficient to establish venue.]**

**[(c)]**(b) Physical presence of the child or a party, while desirable, is not **[a prerequisite to venue]** necessary or sufficient to make a child custody determination except as provided in subdivision (a)(5) above.

**[(d)]**(c) **[For the convenience of parties and witnesses,] [t]**The court **[upon petition of any party]** at any time may transfer an action to the appropriate court of any other county where the action could originally have been brought or could be brought **[at the time of filing the petition to transfer]** if it determines that it is an inconvenient forum under the circumstances and the court of another county is the more appropriate forum. It shall be the duty of the prothonotary of the court in which the action is pending to forward to the prothonotary of the county to which the action is transferred certified copies of the docket entries, process, pleadings and other papers filed in the action. The costs and fees of the petition for transfer and the removal of the record shall be paid by the petitioner in the first instance to be taxable as costs in the case.

*Note:* Under the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.A. §**[5341]** 5401 et seq., the court may decline to exercise its jurisdiction in a particular action despite the action having been brought in a county of proper venue. Section **[5347]** 5426 of the **[Domestic Relations Code]** act, relating to simultaneous proceedings in other courts, provides for the mandatory refusal by the court to exercise its jurisdiction in an action. Section **[5348]** 5427 of the **[Code]** act, relating to inconvenient forum, and **[Sections 5349]** §5428 **[and 5364(f)]** of the **[Code]** act, relating to jurisdiction declined by reason of conduct, provide for the discretionary refusal by the court to exercise its jurisdiction. **[See 23 Pa.C.S. § § 5347, 5348, 5349 and 5364(f).]**

Explanatory Comment--**[1994]** 2008

Subdivision (a) of Rule 1915.2 incorporates the **[four]** categories of jurisdiction for initial custody determinations and temporary emergency proceedings in the Uniform Child Custody Jurisdiction and Enforcement Act **[of]** at 23 Pa.C.S.A. §§**[5344(a)(1) to (4)]** 5421 and 5424 as the venue provisions for these rules, restating them in rule form without change in substance. Subdivision (a) follows the policy of **[Section 5364(a)]** §5471 of the **[Domestic Relations Code]** Uniform Child Custody Jurisdiction and Enforcement Act, which provides that**[, except as otherwise provided by that section,]** the provisions of the **[UCCJA]** act "allocating jurisdiction and functions between and among courts of different states shall also allocate jurisdiction and functions between and among courts of common pleas of this Commonwealth."

Subdivision**[s]** (b) **[and (c)]** relating to the effect of the physical presence of the child or a party within a county, follows **[Section 5344(b) and (c) of the Domestic Relations Code]** §5421(c) without substantial change.

Subdivision (c) follows the inconvenient forum provisions or 23 Pa.C.S.A. §5427.

**[Subdivision (d) incorporates the forum non conveniens provision of Assumpsit Rule 1006(d), with one change. Under Rule 1006(d), an action may be transferred only to a county where the action could originally have been brought at the time of filing the petition to transfer. This permits the court to evaluate the situation of the parties at the time they are before the court on the petition to transfer.]**

## 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 **[Section 5352(c)]** §5430(d) of the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.A. §[**5352(c)]** 5430(d), relating to costs and expenses for appearance of parties and child, and **[Section 5364(a),]** 23 Pa.C.S.A. §**[5364(a)]** 5471, relating to intrastate application of the Uniform Child Custody Jurisdiction and Enforcement Act.

* * *

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

(a) A party must raise any question of jurisdiction of the person or venue by preliminary objection filed within twenty days of service of the pleading to which objection is made or at the time of hearing, whichever first occurs. No other pleading shall be required, but if one is filed it shall not delay the hearing.

*Note:* The court may raise at any time a question of (1) jurisdiction over the subject matter of the action or (2) the exercise of its jurisdiction pursuant to **[Section 5347]** §5426 of the **[Domestic Relations Code]** Uniform Child Custody Jurisdiction and Enforcement Act, relating to simultaneous proceedings in other courts, **[Section 5348]** §5427, relating to inconvenient forum, and **[Sections 5349 and 5364(f)]** §5428, relating to jurisdiction declined by reason of conduct. **[See 23 Pa.C.S. § § 5347, 5348, 5349 and 5364(f)]**. The Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.A. §**[5366]** 5407, provides that, upon request of a party, an action in which a question of the existence or exercise of jurisdiction is raised shall be given calendar priority and handled expeditiously.

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**Rule 1915.6. Joinder of Parties.**

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(b) If the court learns from the pleadings or any other source that any other person who claims to have custody or visitation 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).

**[*Note*: Subdivision (a) incorporates the provision of the Uniform Child Custody Jurisdiction Act, 23 Pa.C.S. §5351, requiring a person not a party who has physical custody of the child to be joined as a party and notified of the pendency of the proceeding. Subdivision (a) also extends the requirement of the Uniform Act, 23 Pa.C.S. §5345, that a parent whose parental rights have not been previously terminated be given notice of the proceeding and an opportunity to be heard by requiring the joinder of such parent. Subdivision (b), in providing for intervention by persons claiming custody or**

**visitation rights, is inconsistent with and therefore suspends the Uniform Act, 23 Pa.C.S. § 5351, insofar as the Act requires the joinder of such persons.]**

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.

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

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(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.

See **[Section 5356 of]** the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.A. §§**[5356]** 5443 and 5445, relating to **[filing]** registration and enforcement of custody decrees of another state, and **[Section 5364(a),]** 23 Pa.C.S.A. §**[5364(a)]** 5471, relating to intrastate application of the Uniform Child Custody Jurisdiction and Enforcement Act.

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

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Explanatory Comment--**[1994]** 2008

In an effort to promote uniformity of practice throughout the Commonwealth, several forms are included in the rules. Two aspects of these forms are worthy of mention. First, much of the information which must be set forth in the complaint is required by the **[Domestic**

**Relations Code]** Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.A. §**[5350]** 5429. Second, the complaint is verified by use of a statement that it is subject to the penalties of the Crimes Code relating to unsworn falsification to authorities. A notary public is not needed.

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