

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

NOTICE OF PROPOSED RULEMAKING

Proposed amendment of Pa.R.C.P. No. 1915.11

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania an amendment to Pa.R.C.P. No. 1915.11 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being republished 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:

**Bruce J. Ferguson, Counsel
Domestic Relations Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
Fax: 717-231-9531
domesticrules@pacourts.us**

All communications in reference to the proposal should be received by **May 14, 2021**. 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

The Honorable Daniel J. Clifford
Chair

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

RULE PROPOSAL 178 - Republication

[Rule 1915.11. Appointment of Attorney for Child. Interview 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 of the child's attorney upon the parties in such proportions as the court deems appropriate or as otherwise provided by law. The order appointing an attorney to represent the child shall be in substantially the form set forth in Pa.R.C.P. No. 1915.19.

(b) The court may interview a child, whether or not the child is the subject of the action, in open court or in chambers. The interview shall be conducted in the presence of the attorneys and, if permitted by the court, the parties. The attorneys shall have the right to interview the child under the supervision of the court. The interview shall be part of the record.

(c) Unless otherwise directed by the court, the child who is the subject of the action shall not be required to attend a hearing before the court or a conference.

Note: A party may bring a child to a conference or hearing but, in the absence of an order of court, is not required to do so.]

Rule 1915.11. Attorney Appointment for Child. Child Interview. Child Attending Proceedings

(a) Attorney Appointment for Child.

(1) Upon its own motion or a motion of a party, the court may appoint an attorney to represent a child, who is the subject of the action.

(2) The court's order appointing the child's attorney, as set forth in Pa.R.C.P. No. 1915.19, may apportion to the parties the reasonable cost of the child's attorney.

(3) The child's attorney:

(i) shall represent the child's legal interest;

(ii) shall zealously represent the child as any other client in an attorney-client relationship; and

(iii) shall not act as the child's guardian *ad litem* or best interest attorney.

Note: See Pa.R.C.P. No. 1915.11-2 for the appointment of a guardian *ad litem*.

(b) Child Interview.

(1) The court may interview a child in open court or in chambers.

(2) The court shall conduct the child's interview on the record.

(3) A party's attorney or, if permitted by the court, a party may observe the interview.

(4) As part of the interview process, the court shall permit either:

(i) a party's attorney to question the child under the court's supervision; or

(ii) a party's attorney or a self-represented party to submit to the court written questions, which the court may include in its interview.

(c) Child Attending Proceedings. Unless ordered by the court or otherwise compelled to testify on the record, a child's attendance at a conference, hearing, or trial is not required.

[Explanatory]Comment — 1991

[Rule]Pa.R.C.P. No. 1915.15([b]c) 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]****a custody action.**

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.

Subdivision (c) has been added to **[Rule]Pa.R.C.P. No. 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]Pa.R.C.P. No. 1915.15([b]c)** has been revised to implement this policy.

Comment — 2021

Although the rule states that a child is not required to attend a conference, hearing, or trial, the terminology used by a judicial district may vary for these court proceedings. The rule's intent is to limit the child's participation to only those proceedings in which the child will actively participate as a witness or the court's interview.

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

PUBLICATION REPORT - REPUBLICATION

RULE PROPOSAL 178

The Domestic Relations Procedural Rules Committee (Committee) is proposing an amendment to Pa.R.C.P. No. 1915.11. This rule addresses the appointment of an attorney for a child in a custody case, the child interview by the court, and a child attending various court proceedings. The Committee previously published the Rule Proposal at 50 Pa.B. 3834 (August 1, 2020). After receiving comments, the Committee revised the proposal and is republishing the Rule Proposal for additional comments.

The republished Rule Proposal address the comments, including those suggesting that permitting a parent into the court's interview could be problematic, and that many judges incorporate a party into the process by allowing the self-represented parent to provide written questions to the judge for inclusion into the child's interview in lieu of directly questioning the child. The Committee has adopted this practice into the Rule Proposal.

Other changes from the first publication include clarifying that the court may interview a child, which includes the subject child or any other child testifying in the action, in open court or in chambers. The court's interview is on the record. Subdivision (c) is rewritten to clarify that a child should only participate in proceedings in which the child will actually testify or participate in the court's interview. The intent is to eliminate a parent needlessly bringing the child to every proceeding.

Finally, the rule is rewritten in its entirety and is in an outline format. As part of the rewrite, the Committee proposes deleting the Note following the rule text as it is confusing and could be interpreted to conflict with subdivision (c).

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.