SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

PUBLICATION REPORT

RECOMMENDATION 154

The Domestic Relations Procedural Rules Committee ("DRPRC") is proposing an amendment to Pa.R.C.P. No. 1915.3, Commencement of Action. Complaint. Order, and Pa.R.C.P. No. 1915.3-2, Criminal Record or Abuse History. Act 107 of 2013 ("Act") became effective on January 1, 2014 and mandated a custody court consider child abuse and the involvement of a party or child with a child protective services agency when making a child custody determination under 23 Pa.C.S. §§ 5321 - 5340. The Act further required the Department of Public Welfare, now the Department of Human Services, local county children and youth social services agencies, and the courts of common pleas to cooperate in the determination of a child custody order.

The Act amended not only Title 23 as it relates to child custody, but also the Child Protective Services Law, 23 Pa.C.S. §§ 6301 - 6375, and the Juvenile Act, 42 Pa. C.S. §§ 6301 - 6375. As the Act amended the domestic relations law and juvenile law, a subcommittee of members of the DRPRC and the Juvenile Court Procedural Rules Committee met to discuss the interplay between the Act, the two bodies of procedural rules, and the local practice in the courts of common pleas. The subcommittee identified two key issues: (1) how to resolve concurrent pending actions for child custody and dependency; and (2) communicating resolution of terminated dependency cases in the context of a custody order.

Regarding the first issue, frequently custody cases are initiated or requests for modification of existing custody orders are made when a child is removed from a home by a county children and youth social services agency. These contemporaneous custody and dependency cases may be problematic with respect to court resources, the parties' ability to defend or prosecute both actions, and possibly inconsistent results due to a number of factors, including legal representation, expert witness availability, and other third party testimony.

The Rules Committees believe the domestic relations judge and the juvenile court judge are in the best position to determine how a case should proceed. Therefore, the DRPRC is proposing an amendment to Pa.R.C.P. No. 1915.3 requiring the court to ascertain prior to the initial custody proceeding whether the subject child or children of the custody action have a court active juvenile case or is otherwise involved with a child protective services agency. If the court determines an active juvenile case is pending, the rule would permit the domestic relations judge to temporarily stay a custody proceeding for 30 days and refer the case to the juvenile judge for review and

appropriate action, including consolidation. In the event the juvenile judge takes no action, the temporary stay is terminated automatically and the custody case may proceed as usual.

In addition, the DRPRC is proposing the Criminal Record/Abuse History form in Pa.R.C.P. No. 1915.3-2 be amended to include additional party disclosures regarding sexual violence and intimidation. Paragraph 2 of the form document has been revised to include clarifying the disclosures related to juvenile court and child protective services involvement by the parties and child.

In conjunction with these proposed amendments, the Juvenile Court Procedural Rules Committee is proposing amendments to the dependency rules to provide for a resolution of the second key issue: communicating the result of the terminated dependency action by way of a custody order. Proposed amendments to Pa.R.J.C.P. 1515 and 1631 propose that the dependency court generate a custody order when court supervision is terminated that would be filed in the prothonotary's office and served on the parties to the dependency action. In the event a party believes a modification of the custody order is necessary in the future, the action can proceed through the domestic relations court.

The DRPRC invites comments, concerns, and suggestions regarding this rulemaking proposal.