

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE
RECOMMENDATION 145**

Proposed Amendment to Pa.R.C.P. No. 1915.4-3

PUBLICATION REPORT

The Domestic Relations Procedural Rules Committee (“Committee”) proposes amendment of Pa.R.C.P. No. 1915.4-3 (Non-Record Proceedings. Trial), as the rule relates to the use of attorney-mediators in custody cases. This rule has recently been amended to preclude attorneys serving as conciliators, mediators, or presiding over a non-record custody proceeding from practicing family law before conference officers, hearings officers and judges in the judicial district in which the attorney had been appointed or employed.

When the prior amendment was being considered, the Committee recognized that the judicial districts utilized various terms or titles to identify the person presiding over non-record proceedings. Therefore, “mediator” was added to the rule text to include those judicial districts where the term described the person presiding over non-record proceedings pursuant to Pa.R.C.P. No. 1915.4-3.

After the effective date of the most recent amendment, the Committee received input from members of the judiciary that Pa.R.C.P. No. 1915.4-3 operated to preclude attorneys who serve as mediators pursuant to Chapter 1940 from practicing family. The comments from the judiciary suggested mediators, unlike persons presiding over non-record proceedings, had no contact with the court and did not make recommendations to the court. The comments further contended that court-established mediation programs successfully resolve a significant number of custody cases that would otherwise proceed through an already overburdened custody docket.

The Committee recognizes the benefit that mediation provides to the courts and custody litigants in the amicable resolution of child custody cases. As set forth in Chapter 1940, mediation is a process for alternate dispute resolution of child custody cases; it is not a non-record proceeding as contemplated by Pa.R.C.P. No. 1915.4-3. Therefore, based upon this feedback, the Committee proposes amending the rule to eliminate “mediator” from the rule entirely.

This proposed amendment is not intended to encourage the use of “mediators” in this capacity as a means of circumventing the proscription. Rather, the amendment is intended to eliminate any endorsement that “mediators” serving pursuant to Chapter 1940 should be presiding over a non-record proceeding pursuant to Pa.R.C.P. 1915.4-3. The Committee’s proposed amendment provides for exclusion from practicing family

law in the judicial district based solely on whether the attorney is presiding over the initial non-record proceeding, irrespective of the title held by the attorney in that capacity.