

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

**REPUBLICATION 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 directed that 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 with the exchange of information necessary for 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 met several times to discuss various resolutions to the statutory changes and challenges. The DRPRC previously published for public comment this Recommendation in the *Pennsylvania Bulletin*, 46 Pa.B. 3932 (July 23, 2016). The subcommittee reconvened to discuss the comments received and, subsequently, it revised the proposed amendments. The DRPRC is now republishing the Recommendation with those revisions.

In reviewing the comments, the DRPRC noted that some comments objected to the proposed requirement that the court makes inquiries into the dependency proceedings of the child. The comments suggested this type of action by a judge would be investigatory in nature and not an appropriate role for the judiciary. However, Act 107 of 2013 amended 23 Pa.C.S. § 5328(a)(2.1) and imposed upon the court the duty to determine the information outlined in 23 Pa.C.S. § 5329.1 relating to child abuse and involvement with protective services when awarding any type of custody. The statute now provides for information sharing between the county agency, the juvenile court, and the custody court to further the mandate. The proposed rule amendments are ‘implementing rules’ and, as such, provide a means for the custody court to obtain the statutorily mandated information from the child protective services agency and the juvenile court. With the dual issue of a significant number of *pro se* custody litigants

and that not all custody parties are also parties to the companion juvenile dependency case, which would allow the party access to the juvenile docket and file, the subcommittee and the DRPRC agreed the custody judge might be the only person able to obtain all of the relevant dependency information to fulfill the statutory requirement imposed on the custody court prior to awarding custody to a party. As such, the proposed amendments maintain the judiciary's hands-on approach to acquiring the initial juvenile dependency information in Pa.R.C.P. No. 1915.3(f).

However, as the previously proposed amendment to Pa.R.C.P. No. 1915.3 required a stay of custody proceedings after determining that the child or child's family had involvement with the dependency court, the revised Recommendation provides for the custody court to communicate with the dependency court and afterward, the custody judge would determine if a stay was necessary for the custody action based on criteria outlined in proposed Pa.R.C.P. No. 1915.3(f). This revision provides flexibility for the custody court to determine how best to move the case forward.

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 communicating the result of the terminated dependency action on the custody docket. Proposed amendments to Pa.R.J.C.P. 1409, 1515 and 1631 propose that the dependency court would generate a custody order when the court terminates supervision or dismisses a petition because of the availability of a ready, willing, and able parent which would be filed under seal 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 would proceed through the domestic relations court.

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