

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

NOTICE OF PROPOSED RULEMAKING

Proposed amendments of Pa.R.C.P. No. 1915.7 and 1915.10

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendments of Pa.R.C.P. No. 1915.7 and 1915.10 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:

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All communications in reference to the proposal should be received by **November 9, 2018**. 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



Walter J. McHugh, Esq.
Chair

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

REPUBLICATION REPORT

RECOMMENDATION 169

The Domestic Relations Procedural Rules Committee (Committee) is proposing amendments to Pa.R.C.P. No. 1915.7 and 1915.10 as the rules relate to custody agreements and orders. Specifically, the proposed amendments further refine the requirements for parties requesting that the court incorporate an agreement into a custody order, and how courts enter custody orders into the record. The Committee previously published this recommendation in the *Pennsylvania Bulletin*, 48 Pa. B. 1813 (March 31, 2018) with comment period ending June 8, 2018. After reviewing the comments received, the Committee has revised Recommendation 169 and is republishing for additional public comment.

As noted in the original Publication Report, the impetus for the Committee's proposed amendment to Pa.R.C.P. No. 1915.10 is the holding in *R.L.P. v. R.F.M.*, 110 A.3d 201 (Pa. Super. 2015). In *R.L.P.*, the Superior Court held that "in order to be sufficiently specific to be enforced, an order of custody must be entered as a separate written order, or as a separate section of a written opinion." *Id.* at 206. The Committee had received information that the practice of placing custody orders on the record without subsequently entering a written order continued, which was problematic for enforcement and understanding the terms of the agreements/orders. As the Committee determined that custody agreements or orders in a transcript format made enforcement very difficult, the Committee proposed the requirement of a written custody agreement or order once the parties placed a verbal agreement on the record.

The Committee is cognizant of the benefit to the court and parties of placing a custody agreement, in whole or in part, on the record. The Committee has revised the Recommendation after reviewing the comments from the first publication in which several commenters raised a concern that self-represented litigants may not comply with the provision requiring the parties to submit a written agreement of the verbal on-the-record agreement to the court. With this issue in mind, the Committee revised proposed Pa.R.C.P. No. 1915.7(b) by providing an alternative in the event the court determines the parties will not be able to submit a written custody agreement timely or at all.

The revised Recommendation clarifies in proposed Pa.R.C.P. No. 1915.7(b) that the practice of the parties placing a custody agreement on the record is an option for the court and parties, but that in doing so either the parties must submit a written custody

agreement to the court within ten days or the court must memorialize the agreement placed on the record into a written order for the parties to review and sign. Adding the requirement to the rule for the court to memorialize the verbal agreement if the court has concerns about the parties' ability to submit a written agreement is a best practice currently utilized by many judges.

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE
RECOMMENDATION 169**

Rule 1915.7. Consent Order.

[If an agreement for custody is reached and the parties desire a consent order to be entered, they shall note their agreement upon the record or shall submit to the court a proposed order bearing the written consent of the parties or their counsel.]

If the parties have an agreement regarding custody and requests the court enter a consent order incorporating the terms of the agreement:

(a) the parties shall submit to the court a proposed custody order bearing the written consent of the parties; or

(b) the parties may state the agreement on the record provided that:

(1) within ten days of placing the agreement on the record, the parties comply with subdivision (a); or

(2) the court memorializes the oral agreement from the record into a written custody order, which the parties shall review and sign.

Rule 1915.10. Decision. Order.

(a) The court may make the decision before the testimony has been transcribed. The court shall state the reasons for its decision **[either]** on the record in open court[,] **or** in a written opinion[, **or in the**] **or** order.

Note: See 23 Pa.C.S. § 5323(d)

(b) **[The terms of the order shall be sufficiently specific to enforce the order. The court's decision shall include safety provisions designed to protect an endangered party or a child in any case in which the court has found that either is at risk of harm.]****The court shall enter a custody order as a separate written order or in a separate section of a written opinion.**

(1) The court's order shall state sufficiently specific terms to enforce the order.

(2) If the court has made a finding that a party or child is at risk of harm, the court's order shall include safety provisions designed to protect the endangered party or child.

(c) **[Any]A** custody order shall include **a** notice **[of a party's]outlining the parties'** obligations **[pursuant to]under** 23 Pa.C.S. § 5337 **[dealing with]regarding** a party's intention to relocate with a minor child.

Note: See 23 Pa.C.S. § 5323(c).

See Pa.R.C.P. No. 1915.17 regarding relocation.

(d) **[No]A party may not file a** motion for post-trial relief **[may be filed]** to an order of legal or physical custody.

[Explanatory Comment—2013

The custody statute, at 23 Pa.C.S. § 5323(d), requires the court to delineate the reasons for its decision on the record in open court or in a written opinion or order. Subdivision (b) further defines and reinforces the requirements found in 23 Pa.C.S. § 5323(e). Examples of safety provisions include, but are not limited to: supervised physical custody, supervised or neutral custody exchange location, neutral party presence at custody exchange, telephone or computer-facilitated contact with the child, no direct contact between the parties, third-party contact for cancellations, third-party transportation and designating secure, neutral location for a child's passport. The statute, at 23 Pa.C.S. § 5323, requires that any custody order must include notice of a party's obligations when there is a proposed relocation under 23 Pa.C.S. § 5337. Rule 1915.17 also addresses relocation.]

Explanatory Comment—2013

Subdivision (b) further defines and reinforces the requirements found in 23 Pa.C.S. § 5323(e). Examples of safety provisions include, but are not limited to, supervised physical custody, a supervised or neutral custody exchange location, neutral party presence at custody exchange, telephone or computer-facilitated contact with the child, no direct contact between the parties, third-party contact for cancellations, third-party transportation, and designating secure, neutral location for a child's passport.