

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed amendments of Pa.R.C.P. Nos. 1915.3, 1915.5, and 1915.15**

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. Nos. 1915.3, 1915.5, and 1915.15 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being published 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  
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Harrisburg, PA 17106-2635  
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All communications in reference to the proposal should be received by **October 4, 2019**. 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  
RULE PROPOSAL 172**

**Rule 1915.3. Commencement of Action. Complaint. Order[.]**

(a) Except as provided **[by]in** subdivision (c), **[an action shall be commenced]the plaintiff shall commence a custody action** by filing a verified complaint substantially in the form provided by Pa.R.C.P. No. 1915.15(a).

*Note:* See Pa.R.C.P. No. 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

(b) An order shall be attached to the complaint **or petition for modification** directing the defendant to appear at a time and place specified. The order shall be substantially in the form provided by **[Rule]Pa.R.C.P. No.** 1915.15(**[b]c**).

*Note:* See **[\$ 5430(d) of the ]**Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S. § 5430(d), relating to costs and expenses for appearance of parties and child, and 23 Pa.C.S. § 5471, relating to intrastate application of the Uniform Child Custody Jurisdiction and Enforcement Act.

(c) A **[claim for custody which]custody claim that** is joined with **[an action of divorce]a divorce action** shall be asserted in the **divorce** complaint or a subsequent petition, which shall be substantially in the form provided by **[Rule]Pa.R.C.P. No.** 1915.15(a).

*Note:* **[Rule]See Pa.R.C.P. No.** 1920.13(b)**[ provides that claims which may be joined with an](claims that are joined in a divorce** action**[ of divorce]** shall be raised **[by the]in a** complaint or a subsequent petition).

(d) If the **child's** mother**[ of the child]** is not married and the child has no legal or presumptive father, **[then ]**a putative father initiating **[an action of ]a** custody **[must]action shall** file a **paternity** claim**[ of paternity]** pursuant to 23 Pa.C.S. § 5103 and attach a copy to the **custody** complaint**[ in the custody action]**.

*Note:* If a putative father is uncertain of paternity, the correct procedure is to commence a civil action for paternity pursuant to the procedures set forth at **[Rule]Pa.R.C.P. No.** 1930.6.

**[(e) A grandparent who is not in loco parentis to the child and is seeking physical and/or legal custody of a grandchild pursuant to 23 Pa.C.S. § 5323 must plead, in paragraph 9 of the complaint set forth at Rule 1915.15(a), facts establishing standing under § 5324(3). A grandparent or great-grandparent seeking partial physical custody or supervised physical custody must plead, in paragraph 9 of the complaint, facts establishing standing pursuant to 23 Pa.C.S. § 5325.]**

**(e) Pleading Facts Establishing Standing.**

- (1) An individual seeking physical or legal custody of a child, who is *in loco parentis* to the child, shall plead facts establishing standing under 23 Pa.C.S. § 5324(2) in Paragraph 9(a) of the complaint in Pa.R.C.P. No. 1915.15(a).**
- (2) A grandparent seeking physical or legal custody of a grandchild, who is not in *loco parentis* to the child, shall plead facts establishing standing under 23 Pa.C.S. § 5324(3) in Paragraph 9(b) of the complaint in Pa.R.C.P. No. 1915.15(a).**
- (3) An individual seeking physical or legal custody of a child, who is not *in loco parentis* to the child, shall plead facts establishing standing under 23 Pa.C.S. § 5324(4) and (5) in Paragraph 9(c) of the complaint in Pa.R.C.P. No. 1915.15(a).**
- (4) A grandparent or great-grandparent seeking partial physical custody or supervised physical custody of a grandchild or great-grandchild shall plead facts establishing standing under 23 Pa.C.S. § 5325 in Paragraph 9(d) of the complaint in Pa.R.C.P. No. 1915.15(a).**

(f) An unemancipated minor parent may commence, maintain, or defend **[an action of ]a** custody **action** of the minor parent's child without the requirement of the appointment of a guardian for the minor parent.

## Explanatory Comment — 2019

Act of May 4, 2018, P.L. 112, No. 21, amended 23 Pa.C.S. § 5324 by adding a new class of third-party standing for individuals seeking custody of a child whose parents do not have care and control of the child. The individual seeking custody may or may not be related to the child. Subject to Section 5324(5), the newly added standing provision requires that: (1) the individual has assumed or is willing to assume responsibility for the child; (2) the individual has a sustained, substantial, and sincere interest in the child's welfare; and (3) the child's parents do not have care and control of the child. In asserting standing under Section 5324(4), the plaintiff shall demonstrate the Section 5324(4) standing provisions by clear and convincing evidence. Additionally, if a juvenile dependency proceeding has been initiated or is ongoing or if there is an order for permanent legal custody, Section 5324(5) provides that an individual cannot assert standing under Section 5324(4).

Consistent with the statutory change in Act 21 of 2018, subdivision (e) has been revised to include a third party seeking custody of a child under 23 Pa.C.S. § 5324(4). The subdivision has been reorganized to follow the statutory provisions in 23 Pa.C.S. §§ 5324(2)-(4) and 5325. Similarly, Paragraph 9 on the Complaint for Custody form in Pa.R.C.P. No. 1915.15(a) has been reorganized to follow the statutory and rules sequence, as well. See Pa.R.C.P. No. 1915.15(a).

**Rule 1915.5. Question of Jurisdiction, Venue or Standing. [No Responsive Pleading by Defendant Required.] Counterclaim. Discovery. No Responsive Pleading by Defendant Required**

**[(a) A party must raise any question of jurisdiction of the person or venue, and may raise any question of standing, by preliminary objection filed within twenty days of service of the pleading to which objection is made or at the time of hearing, whichever first occurs. No other pleading shall be required, but if one is filed it shall not delay the hearing.]**

**(a) Question of Jurisdiction, Venue, or Standing.**

**(1) A party shall raise jurisdiction of the person or venue by preliminary objection.**

**(2) A party may raise standing by preliminary objection or at a custody hearing or trial.**

**(3) The court may raise standing *sua sponte*.**

**(4) In a third-party plaintiff custody action in which standing has not been resolved by preliminary objection, the court shall address the third-party plaintiff's standing and include its standing decision in a written opinion or order.**

*Note:* The court may raise at any time a question of (1) jurisdiction over the subject matter of the action or (2) the exercise of its jurisdiction pursuant to **[\$]Section 5426** of the Uniform Child Custody Jurisdiction and Enforcement Act, relating to simultaneous proceedings in other courts, **[\$]Section 5427**, relating to inconvenient forum, and **[\$]Section 5428**, relating to jurisdiction declined by reason of conduct. The Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S. § 5407, provides that, upon request of a party, an action in which a question of the existence or exercise of jurisdiction is raised shall be given calendar priority and handled expeditiously.

(b) A party may file a counterclaim asserting the right of physical or legal custody within **[twenty]20** days of service of the complaint upon that party or at the time of hearing, whichever first occurs. The claim shall be in the same form as a complaint as required by **[Rule]Pa.R.C.P. No. 1915.3**.

(c) There shall be no discovery unless authorized by special order of court.

*Note:* The rule relating to discovery in domestic relations matters generally is **[Rule]Pa.R.C.P. No. 1930.5**.

**(d) Except as set forth in subdivisions (a) and (b), a responsive pleading shall not be required. If a party files a responsive pleading, it shall not delay a hearing or trial.**

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## Explanatory Comment — 2019

Act of May 4, 2018, P.L. 112, No. 21, amended 23 Pa.C.S. § 5324 by adding a new class of third-party standing for individuals seeking custody of a child whose parents do not have care and control of the child. Subject to the limitations in 23 Pa.C.S. § 5324(5), the newly added standing provision requires that: (1) the individual has assumed or is willing to assume responsibility for the child; (2) the individual has a sustained, substantial, and sincere interest in the child's welfare; and (3) the child's parents do not have care and control of the child. In asserting standing under Section 5324(4), the plaintiff shall demonstrate the Section 5324(4) standing provisions by clear and convincing evidence.

Typically, when a third party is seeking custody of a child, the child's parents can raise the issue of the third party's standing to pursue custody. However, Section 5324(4) permits a party to seek custody of a child when the child's parents do not have care and control of the child. If the parents' lack of care and control also results in their non-participation in the custody litigation, the third party's standing may go unchallenged. Subdivision (a) has been amended by including two new subdivisions to address this circumstance. Subdivision (a)(3) permits the court to raise standing *sua sponte* and, if third-party standing is not resolved by preliminary objection, the court shall address the standing issue in its written opinion or order as required by subdivision (a)(4).

**Rule 1915.15. Form of Complaint. Caption. Order. Petition to Modify a Custody Order[.]**

(a) The complaint in **[an action for custody]a custody action** shall be substantially in the following form:

(Caption)

**COMPLAINT FOR CUSTODY**

1. The plaintiff is \_\_\_\_\_, residing at \_\_\_\_\_.  
(Street) (City) (Zip Code) (County)

2. The defendant is \_\_\_\_\_, residing at \_\_\_\_\_.  
(Street) (City) (Zip Code) (County)

3. Plaintiff seeks (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody) of the following child(ren):

Name	Present Residence	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

The child (was)(was not) born out of wedlock.

The child is presently in the custody of \_\_\_\_\_, (Name) who resides at \_\_\_\_\_.  
(Street) (City) (State)

During the past five years, the child has resided with the following persons and at the following addresses:

(List All Persons)	(List All Addresses)	(Dates)
_____	_____	_____
_____	_____	_____
_____	_____	_____

A parent of the child is \_\_\_\_\_, currently residing at \_\_\_\_\_.



This parent is (married) (divorced) (single).

A parent of the child is \_\_\_\_\_, currently residing at \_\_\_\_\_.

This parent is (married) (divorced) (single).

4. **[The ]Plaintiff's** relationship **[ of plaintiff ]** to the child is that of \_\_\_\_\_.

**[The plaintiff]Plaintiff** currently resides with the following persons:

Name	Relationship
_____	_____
_____	_____

5. **[The ]Defendant's** relationship **[ of defendant ]** to the child is that of \_\_\_\_\_.

**[The defendant]Defendant** currently resides with the following persons:

Name	Relationship
_____	_____
_____	_____

6. Plaintiff (has) (has not) participated as a party or witness, or in another capacity, in other litigation concerning the custody of the child in this or another court. The court, term and number, and its relationship to this action is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Plaintiff (has) (has no) information of a custody proceeding concerning the child pending in a court of this Commonwealth or any other state. The court, term and number, and its relationship to this action is: \_\_\_\_\_.

Plaintiff (knows) (does not know) of a person not a party to the proceedings who has physical custody of the child or claims to have custodial rights with respect to the child. The name and address of such person is: \_\_\_\_\_.

7. The **child's** best interest and permanent welfare **[of the child ]** will be served by granting the relief requested because (set forth facts showing that the granting of the

relief requested will be in the child's best interest and permanent welfare)[ of the child]:

\_\_\_\_\_

\_\_\_\_\_.

8. Each parent whose parental rights to the child have not been terminated and the person who has physical custody of the child have been named as parties to this action. All other persons, named below, who are known to have or claim a right to custody of the child will be given notice of the pendency of this action and the right to intervene:

Name	Address	Basis of Claim
_____	_____	_____
_____	_____	_____
_____	_____	_____

**[9. (a) If the plaintiff is a grandparent who is not in loco parentis to the child and is seeking physical and/or legal custody pursuant to 23 Pa.C.S. § 5323, you must plead facts establishing standing pursuant to 23 Pa.C.S. § 5324(3).**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(b) If the plaintiff is a grandparent or great-grandparent who is seeking partial physical custody or supervised physical custody pursuant to 23 Pa.C.S. § 5325, you must plead facts establishing standing pursuant to § 5325.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(c) If the plaintiff is a person seeking physical and/or legal custody pursuant to 23 Pa.C.S. § 5324(2) as a person who stands in loco parentis to the child, you must plead facts establishing standing.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ ]

**9. (a) If the plaintiff is seeking physical or legal custody of a child, who is in loco parentis to the child, the plaintiff shall plead facts establishing standing under 23 Pa.C.S. § 5324(2).**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(b) If the plaintiff is a grandparent seeking physical or legal custody of a grandchild and is not *in loco parentis* to the child, the plaintiff shall plead facts establishing standing under 23 Pa.C.S. § 5324(3).**

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**(c) If the plaintiff is seeking physical or legal custody of a child and is not in *in loco parentis* to the child, the plaintiff shall plead facts establishing standing pursuant to 23 Pa.C.S. § 5324(4) and (5).**

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**(d) If the plaintiff is a grandparent or great-grandparent seeking partial physical custody or supervised physical custody of a grandchild or great-grandchild, the plaintiff shall plead facts establishing standing under 23 Pa.C.S. § 5325.**

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10. Plaintiff has attached the Criminal Record/Abuse History Verification form required pursuant to Pa.R.C.P. No. 1915.3-2.

Wherefore, **[plaintiff]****Plaintiff** requests the court to grant (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody) of the child.

\_\_\_\_\_  
**Plaintiff**/Attorney for Plaintiff

I verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Plaintiff

*Note:* The form of complaint is appropriate if there is one plaintiff and one defendant and **[if]** the custody of one child is sought**[, or if]or** the custody of several children is sought and the information required by **[paragraphs]****Paragraphs** 3 to 7 is identical for all of the children. If there are **[multiple]****more than two** parties, the complaint should be appropriately adapted to accommodate them. If the custody of

several children is sought and the information required is not identical for all of the children, the complaint should contain a separate paragraph for each child.

See Pa.R.C.P. No. 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

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## Explanatory Comment — 2019

Act of May 4, 2018, P.L. 112, No. 21, amended 23 Pa.C.S. § 5324 by adding a new class of third-party standing for individuals seeking custody of a child whose parents do not have care and control of the child. The individual seeking custody may or may not be related to the child. Subject to the limitations in 23 Pa.C.S. § 5324(5), the newly added standing provision requires that: (1) the individual has assumed or is willing to assume responsibility for the child; (2) the individual has a sustained, substantial, and sincere interest in the child's welfare; and (3) the child's parents do not have care and control of the child. In asserting standing under Section 5324(4), the plaintiff shall demonstrate the Section 5324(4) standing provisions by clear and convincing evidence. Additionally, if a juvenile dependency proceeding has been initiated or is ongoing or if there is an order for permanent legal custody, Section 5324(5) provides that an individual cannot assert standing under Section 5324(4).

Consistent with the statutory change in the Act, Paragraph 9 in the Complaint for Custody form has been revised to include a third party seeking custody of a child under 23 Pa.C.S. § 5324(4). Also, Paragraph 9 has been reorganized to sequentially follow the statutory provisions in 23 Pa.C.S. §§ 5324(2)-(4) and 5325. Similarly, Pa.R.C.P. No. 1915.3(e) has been reorganized to follow the statutory sequence. See Pa.R.C.P. No. 1915.3(e).

**SUPREME COURT OF PENNSYLVANIA  
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE  
PUBLICATION REPORT  
RULE PROPOSAL 172**

The Domestic Relations Procedural Rules Committee (Committee) is proposing amendments to Pa.R.C.P. Nos. 1915.3, 1915.5, and 1915.15.

Act of May 4, 2018, P.L. 112, No. 21 (Act), amended 23 Pa.C.S. § 5324 by adding a new class of third-party standing for individuals seeking custody of a child whose parents do not have care and control of the child. The individual seeking custody may or may not be related to the child. Subject to 23 Pa.C.S. § 5324(5), the newly added standing provision requires that: (1) the individual has assumed or is willing to assume responsibility for the child; (2) the individual has a sustained, substantial, and sincere interest in the child's welfare; and (3) the child's parents do not have care and control of the child. In asserting standing under Section 5324(4), the plaintiff shall demonstrate standing by clear and convincing evidence. Additionally, if a juvenile dependency proceeding has been initiated or is ongoing or if there is an order for permanent legal custody, Section 5324(5) provides that an individual cannot assert standing under Section 5324(4).

Consistent with the statutory change in the Act, the Committee proposes revising Pa.R.C.P. No. 1915.3(e) to include a third party seeking custody of a child under Section 5324(4). The Rule Proposal reorganizes subdivision (e) to follow the sequential order in the statutory provisions in Sections 5324(2)-(4) and 5325. Similarly, the Rule Proposal revises and reorganizes Paragraph 9 in Pa.R.C.P. No. 1915.15(a), which is the Complaint for Custody form, to include a third party seeking custody of a child under Section 5324(4) and follows the statutory and rules sequence, as well.

Typically, when a third party seeks custody of a child, the child's parents can raise the issue of the third party's standing to pursue custody. However, Section 5324(4) only permits a party to seek custody of a child when the child's parents do not have care and control of the child. If the parents' lack of care and control also results in their non-participation in the custody litigation, the third party's standing may go unchallenged. The Committee proposes amending Pa.R.C.P. No. 1915.5(a) by including two new subdivisions to address this circumstance.

First, the proposed amendment to Pa.R.C.P. No. 1915.5(a)(3) would permit the court to raise standing *sua sponte*. This proposed rule amendment may appear to be in tension with Supreme Court precedent. See *In re: Nomination Petition of DeYoung*, 903 A.2d 1164 (Pa. 2006); *Rendell v. Pa. State Ethics Comm'n*, 983 A.2d 708 (Pa. 2009).

Specifically, the Supreme Court in *DeYoung* noted it “has consistently held that a court is prohibited from raising the issue of standing *sua sponte*.” *DeYoung*, 903 A.2d at 1168. However, the Superior Court has analyzed third-party standing as being intertwined with subject-matter jurisdiction and, as such, within the province of the court to raise standing *sua sponte*. See *Hill v. Divecchio*, 625 A.2d 642 (Pa. Super. 1993), *alloc. denied*, 645 A.2d 1316 (Pa. 1991); *Grom v. Burgoon*, 672 A.2d 823, 824 - 825 (Pa. Super. 1996); and *R.M. v. J.S.*, 20 A.3d 496 (Pa. Super. 2011).

With the statutory requirement under Section 5324(4)(iii) that the parents not have care and control of the child, the typical preliminary objection process of a parent raising the issue of a third party’s standing or litigating the issue at trial may be ineffective and impractical. The Committee proposes that permitting a court to raise standing *sua sponte* may be the most efficient, timely, and perhaps the only way this issue properly comes before the court in order for the third-party plaintiff to demonstrate by clear and convincing evidence the statutory requirements under Section 5324(4).

Second, if third-party standing is not resolved by preliminary objection, the Rule Proposal requires in subdivision (a)(4) that the court address the standing issue in its written opinion or order. This procedure will ensure that the court will properly assess and determine a third party’s standing, whether by the court *sua sponte* or a party by preliminary objection.

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