

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed amendment of Pa.R.C.P. No. 1915.11**

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania an amendment to Pa.R.C.P. No. 1915.11 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:

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Pennsylvania Judicial Center  
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All communications in reference to the proposal should be received by **October 2, 2020**. 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 178**

\*\*\* The following rule text replaces the current rule text in its entirety \*\*\*

**Rule 1915.11. Appointment of Attorney for Child. Child Interview by the Court.  
Child Attending Court Proceedings**

(a) *Appointment of Attorney for Minor Child.*

- (1) Upon its own motion or a motion of a party, the court may appoint an attorney to represent a child, who is the subject of the action.
- (2) The court may apportion the cost of the child's attorney to the parties.
- (3) The order appointing the child's attorney shall be substantially in the form in Pa.R.C.P. No. 1915.19.
- (4) The child's attorney:
  - (i) shall represent the child's legal interest;
  - (ii) shall zealously represent the child as any other client in an attorney-client relationship; and
  - (iii) shall not act as the child's guardian *ad litem* or best interest attorney.

*Note:* See Pa.R.C.P. No. 1915.11-2 for the appointment of a guardian *ad litem*.

(b) *Child Interview by the Court.*

- (1) The court shall interview the child, along with other minor children who are called to testify in the action, in open court or in chambers and on the record.
  - (i) Except as provided in (b)(1)(ii), a party and his or her attorney may observe the interview.
  - (ii) A party may waive observation of the interview, including by his or her attorney.

(iii) During the interview, the court shall permit a party's attorney or a self-represented party to either:

(A) question the child under the court's supervision; or

(B) submit written questions to the court, which the court may include in its interview.

(2) The court shall include the transcript of the interview in the record.

(c) *Child Attending Court Proceedings.* A child's attendance at a court proceeding, e.g., conference, hearing, or trial, is not required unless the court orders the child to attend the proceeding.

**\*\*\* The preceding rule text replaces the current rule text in its entirety \*\*\***

\* \* \*

**COMMENT — 2020**

**Subdivision (b) permits a party or his or her attorney to observe the child interview process, which the party may waive. The rule further provides the court with an alternative to live questioning of the child by the attorney or self-represented party through submission of written questions to the court for the child's interview. This alternative participation would obviate circumstances in which the court determines that the attorney or self-represented party directly questioning the child could intimidate or otherwise adversely impact the child or the court's ability to acquire information from the child. As the rule provides that the questioning is under the court's supervision, the court has the ability to address inappropriate questions or conduct by the attorney or self-represented party during the interview process.**

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

**PUBLICATION REPORT**

**RULE PROPOSAL 178**

The Domestic Relations Procedural Rules Committee (Committee) is proposing an amendment to Pa.R.C.P. No. 1915.11. This rule addresses the appointment of an attorney for a child in a custody case, the child interview by the court, and children attending various court proceedings.

The Committee received correspondence suggesting the current rule infringes upon a self-represented party's ability to represent himself or herself by not permitting the self-represented party to participate in the child interview in the same manner as a represented party through his or her counsel. The Rule Proposal's primary purpose is amending subdivision (b) by allowing a self-represented party to directly participate in the child's interview. As in the current rule, the proposed rule requires the court to supervise the questioning of the child by a party's attorney or a self-represented party, which should ensure that inappropriate questions or behavior by a litigant or an attorney can be promptly addressed by the court.

Currently, Pa.R.C.P. No. 1915.11(b) provides that the court may interview the child in the presence of the parties' attorneys and, if the court permits, the parties. This aspect of the rule is unchanged, and the provision is rewritten into subdivision (b)(1)(i). Also, the Committee is proposing adding a waiver provision into subdivision (b)(1)(ii) in which a party may waive not only his or her observation of the child's interview, but also his or her attorney's observation. In practice, the parties and counsel often agree to not observe the child's interview to allow for a more fruitful and honest discussion between the court and the child. Proposed subdivision (b)(1)(ii) essentially codifies that current practice.

More significantly, however, the Rule Proposal incorporates and modifies the current rule's provision of permitting an attorney to interview the child under the court's supervision into subdivision (b)(1)(iii). The current rule permits only an attorney to interview the child. The Rule Proposal would allow a self-represented party the same opportunity do so under the court's supervision. The Committee is cognizant of the potential problems associated with a parent or third party questioning a child; however, the few cases in which this becomes an issue should not thwart a self-represented party's ability to represent himself or herself, especially when the court supervises the interview. Moreover, the Committee is cognizant that a self-represented party has the same rights as a represented party and, as such, should be afforded the same opportunity to interview the child. Furthermore, as a self-represented party is obligated to understand the rules and the law and conduct himself or herself in the same manner as an attorney, it would

seem incompatible to that requirement for this rule to hinder a party's ability to self-represent by not permitting the party to question the child. See *Rich v. Acrivos*, 815 A.2d 1106 (Pa. Super. 2003).

To help the court manage the child's interview by the attorneys or parties, the proposed rule provides that in lieu of live questioning of the child by the attorneys or parties, the court may request that a party or the party's attorney provide the court with questions for the child that the court may include in its interview. Similar to subdivision (b)(1)(ii), the Committee is essentially codifying this common practice into subdivision (b)(1)(iii).

Finally, the current rule's subdivisions (a) and (c) are substantively unchanged, but the Committee is proposing rewriting these narrative subdivisions into an outline format. As a result, Pa.R.C.P. No. 1915.11 is rewritten in its entirety.

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.