

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1915]

Order Amending Rules 1915.4-1 and 1915.4-2 and Promulgating New Rule of Civil Procedure 1915.4-3; No. 484 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 30th day of October, 2007, Rules 1915.4-1 and 1915.4-2 of the Pennsylvania Rules of Civil Procedure are amended and new Pennsylvania Rule of Civil Procedure 1915.4-3 is promulgated as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective immediately.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.4-1. Alternative Hearing Procedures for Partial Custody or Visitation Actions.

(a) [Except as provided in subdivision (b),] A custody action shall proceed as prescribed by Rule 1915.4-3 unless the court, by local rule, adopts the alternative hearing procedure authorized by Rule 1915.4-2 pursuant to which an action for partial custody or visitation may be heard by a hearing officer [as prescribed by Rule 1915.4-2], except as provided in subdivision (b) below.

(b) Promptly after the parties' initial contact with the court as set forth in Rule 1915.4(a) [above], a party may move the court for a hearing before a judge, rather than a hearing officer, in an action for partial custody or visitation where:

- (1) there are complex questions of law, fact or both, or
- (2) the parties certify to the court that there are serious allegations affecting the child's welfare.

(c) The president judge or the administrative judge of the family division of each county shall certify that custody proceedings generally are conducted in accordance with either Rule 1915.4-2 or Rule 1915.4-3. The certification shall be filed with the Domestic Relations Procedural Rules Committee of the Supreme Court of Pennsylvania and shall be substantially in the following form:

I hereby certify that _____ County conducts its custody proceedings in accordance with Rule _____.

(President Judge) (Administrative Judge)

Note: Pursuant to Rule 1915.4-1, the following counties have certified to the Domestic Relations

Procedural Rules Committee that their custody proceedings generally are conducted in accordance with the rule specified below:

COUNTY RULE

Adams
Allegheny
Armstrong
Beaver
Bedford
Berks
Blair
Bradford
Bucks
Butler
Cambria
Cameron
Carbon
Centre
Chester
Clarion
Clearfield
Clinton
Columbia
Crawford
Cumberland
Dauphin
Delaware
Elk
Erie
Fayette
Forest
Franklin
Fulton
Greene
Huntingdon
Indiana
Jefferson
Juniata
Lackawanna
Lancaster
Lawrence
Lebanon
Lehigh
Luzerne
Lycoming
McKean
Mercer
Mifflin
Monroe
Montgomery
Montour
Northampton
Northumberland
Perry
Philadelphia
Pike
Potter
Schuylkill
Snyder
Somerset
Sullivan
Susquehanna
Tioga
Union
Venango
Warren

COUNTY	RULE
Washington	
Wayne	
Westmoreland	
Wyoming	
York	

Explanatory Comment—2007

The intent of the amendments to Rules 1915.4-1 and 1915.4-2, and new Rule 1915-4.3, is to clarify the procedures in record and non-record custody proceedings. When the first proceeding is non-record, no exceptions are required and a request for a de novo hearing may be made.

* * * * *

Rule 1915.4-2. **Partial Custody. Visitation.** Office Conference. Hearing. Record. Exceptions. Order.

(a) **Office Conference.**

(1) The office conference shall be conducted by a conference officer.

[(2) The hearing shall be conducted by a hearing officer. A hearing officer who is a lawyer employed by a judicial district shall not practice family law before a conference officer, hearing officer or permanent or standing master employed by the same judicial district.]

[(b)] (2) If the respondent fails to appear at the conference before the **conference** officer as directed by the court, the conference may proceed without the respondent.

[(c)] (3) The conference officer may make a recommendation to the parties relating to partial custody or visitation of the child or children. If an agreement for partial custody or visitation is reached at the conference, the conference officer shall prepare a written order in conformity with the agreement for signature by the parties and submission to the court together with the officer's recommendation for approval or disapproval. The court may enter an order in accordance with the agreement without hearing the parties.

[(d)] (4) At the conclusion of the conference, if an agreement relating to partial custody or visitation has not been reached, the parties shall be given notice of the date, time and place of a hearing **before a hearing officer**, which may be the same day, but in no event shall be more than forty-five days from the date of the conference.

(b) **Hearing.**

(1) The hearing shall be conducted by a hearing officer who must be a lawyer, and a record shall be made of the testimony. **A hearing officer who is a lawyer employed by a judicial district shall not practice family law before a conference officer, hearing officer or permanent or standing master employed by the same judicial district.**

[(e)] (2) The hearing officer shall receive evidence and hear argument. The hearing officer may recommend to the court that the parties and/or the subject child or children submit to examination and evaluation by experts pursuant to Rule 1915.8.

[(f)] (3) Within ten days of the conclusion of the hearing, the hearing officer shall file with the court and serve upon all parties a report containing a recommendation with respect to the entry of an order of partial custody or visitation. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order, including a specific schedule for partial custody or visitation.

[(g)] (4) Within twenty days after the date the hearing officer's report is mailed or received by the parties, whichever occurs first, any party may file exceptions to the report or any part thereof, to rulings on objections to evidence, to statements or findings of fact, to conclusions of law, or to any other matters occurring during the hearing. Each exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived unless, prior to entry of the final order, leave is granted to file exceptions raising those matters. If exceptions are filed, any other party may file exceptions within twenty days of the date of service of the original exceptions.

[(h)] (5) If no exceptions are filed within the twenty-day period, the court shall review the report and, if approved, enter a final order.

[(i)] (6) If exceptions are filed, the court shall hear argument on the exceptions within forty-five days of the date the last party files exceptions, and enter an appropriate final order within fifteen days of argument. No motion for Post-Trial Relief may be filed to the final order.

[Explanatory Comment—1994

These new rules provide an optional procedure for using hearing officers in partial custody and visitation cases. The procedure is similar to the one provided for support cases in Rule 1910.12: a conference, record hearing before a hearing officer and argument on exceptions before a judge. The terms "conference officer" and "hearing officer" have the same meaning here as in the support rules.

It is important to note that use of the procedure prescribed in Rules 1915.4-1 and 1915.4-2 is optional rather than mandatory. Counties which prefer to have all partial custody and visitation cases heard by a judge may continue to do so.

These procedures are not intended to replace or prohibit the use of any form of mediation or conciliation. On the contrary, they are intended to be used in cases which are not resolved through the use of less adversarial means.]

Explanatory Comment—2006

The time for filing exceptions has been expanded from ten to twenty days. The purpose of this amendment is to provide ample opportunity for litigants and counsel to receive notice of the entry of the order, to assure commonwealth-wide consistency in calculation of time for filing and to conform to applicable general civil procedural rules.

Rule 1915.4-3. Non-Record Proceedings. Trial.

(a) Non-Record Proceedings. In those jurisdictions which utilize an initial non-record proceeding such as a conciliation conference or office conference, if no agreement is reached at the conclusion of the proceeding, the conference officer or conciliator shall promptly notify the court that the matter should be listed for trial.

(b) **Trial.** The trial before the court shall be de novo. The court shall hear the case and render a decision within the time periods set forth in Rule 1915.4.

[Pa.B. Doc. No. 07-2056. Filed for public inspection November 9, 2007, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 1910 AND 1920]

Order Amending Rules 1910.11 and 1920.31; No. 485 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 30th day of October, 2007, Rules 1910.11 and 1920.31 of the Pennsylvania Rules of Civil Procedure are amended as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective immediately.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

* * * * *

(c) At the conference, the parties shall furnish to the officer true copies of their most recent federal income tax returns, their pay stubs for the preceding six months, verification of child care expenses and proof of medical coverage which they may have or have available to them. In addition, they shall provide copies of their Income and Expense Statements in the forms required by Rule 1910.27(c), completed as set forth below.

(1) For cases which can be determined according to the guideline formula, the Income Statement must be completed and the Expense Statement at Rule 1910.27(c)(2)(A) should be completed if a party is claiming unusual needs and unusual fixed expenses **that may warrant a deviation from the guideline amount of support pursuant to Rule 1910.16-5 or seeks apportionment of expenses pursuant to Rule 1910.16-6. In a support case that can be decided according to the guidelines, even if the support claim is raised in a divorce complaint, no expense form is needed unless a party claims unusual needs or unusual fixed expenses or seeks apportionment of expenses pursuant to Rule 1910.16-6. However, in the divorce action, the Expense Statement at Rule 1910.27(c)(2)(B) may be required.**

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CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.31. Joinder of Related Claims. Child and Spousal Support. Alimony. Alimony Pendente Lite. Counsel Fees. Expenses.

(a)(1) Within thirty days after the service of the pleading or petition containing a claim for [**child or spousal support,**] alimony[, **alimony pendente lite**] or counsel fees, costs and expenses, each party shall file a true copy of the most recent federal income tax return, pay stubs for the preceding six months, a completed Income Statement in the form required at Rule 1910.27(c)(1) and a completed Expense Statement in the form required by Rule 1910.27(c)(2)(B). **If a claim for child support, spousal support or alimony pendente lite is raised in a divorce complaint, no expense form is needed in a support action that can be decided pursuant to the support guidelines unless a party claims unusual needs or unusual fixed expenses or seeks deviation pursuant to Rule 1910.16-5 or apportionment of expenses pursuant to Rule 1910.16-6.**

* * * * *

[Pa.B. Doc. No. 07-2057. Filed for public inspection November 9, 2007, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 13]

Proposed Amendments to Rules 1320, 1324 and 1330

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 1320 and 1330 and the new Rule 1324 be adopted and prescribed. The proposed modified Rule 1320 sets forth that any person may present an application for a private petition. The new proposed Rule 1324 allows juvenile probation officers to file a petition in certain cases. The proposed modified Rule 1330 adds that juvenile probation officers may file dependency petitions. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the intent of the rules. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

A. Christine Riscili, Esq.
Staff Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

no later than Friday, December 21, 2007.

*By the Juvenile Court
Procedural Rules Committee*

FRANCIS BARRY MCCARTHY,
Chair

Annex A
TITLE 237. JUVENILE RULES
PART I. RULES
Subpart B. DEPENDENCY MATTERS
CHAPTER 13

PART C. PETITION

Rule 1320. Application to File a Private Petition.

A. *Application contents.* Any person[, other than the county agency,] may present an application to file a private petition with the court. The application shall include the following information:

- 1) the name of the person applying for a petition;
- 2) the name of the alleged dependent child;
- 3) the relationship of the person presenting this application to the child and to any other parties;
- 4) if known, the following:
 - a) the date of birth and address of the child;
 - b) the name and address of the child's guardian, or the name and address of the nearest adult relative;
 - c) if a child is Native American, the child's Native American history or affiliation with a tribe;
 - d) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child;
- 5) a concise statement of facts in support of the allegations for which the application for a petition has been filed;
- 6) a statement that the applying person has reported the circumstances underlying this application to the county agency or a reason for not having reported the circumstances underlying the application;
- 7) a verification by the person making the application that the facts set forth in the application are true and correct to the person's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and
- 8) the signature of the person and the date of the execution of the application for a petition.

B. *Service.* If a person presents an application for a petition under this rule, the person shall serve the application on the court and all parties to the proceeding.

Comment

Rule 1330 requires that the county agency file a petition. Any person, other than the county agency or the juvenile probation officer, is to file an application to file a petition under this Rule. Rule 1800 suspends 42 Pa.C.S. § 6334, which provides any person may file a petition.

See Rule 1321 for hearing on application and finding that a petition is to be filed by the county agency.

See Rule 1324 for the ability of juvenile probation officers to file dependency petitions. An application for a private petition under this rule is not necessary in those cases.

Official Note: Rule 1320 adopted August, 21, 2006, effective February 1, 2007. **Amended** , **effective**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1320 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). **Final Report explaining the modifications of Rule 1320 published with the Court's Order at 37 Pa.B. 5978 (November 10, 2007).**

Rule 1324. Petitions by Juvenile Probation Officers.

A juvenile probation officer may file a dependency petition:

- 1) pursuant to 42 Pa.C.S. § 6302, dependent child paragraphs (5) through (9); or
- 2) in conjunction with a delinquency proceeding.

Comment

A juvenile probation officer may seek to invoke the court's jurisdiction under the "status offense" definition of a dependent child under the Juvenile Act, 42 Pa.C.S. § 6302, dependent child paragraphs 5 through 9, or at any time during the course of a delinquency proceeding.

Official Note: Rule 1324 adopted , effective

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1324 published with the Court's Order at 37 Pa.B. 5978 (November 10, 2007).

Rule 1330. Petition: Filing, Contents, Function, Aggravated Circumstances.

A. *Filings.*

1) A dependency petition may be filed at any time; however, if a child is taken into custody, the requirements of paragraph (A)(2) shall be met.

2) Within twenty-four hours of the shelter care hearing, the county agency or the juvenile probation officer shall file a dependency petition with the clerk of courts when:

- a) the child remains in protective custody pursuant to Rule 1201, 1202 or 1210; or
- b) the child is not in protective custody but it is determined at a shelter care hearing pursuant to Rule 1242 that the filing of a dependency petition is appropriate.

B. *Petition contents.* Every petition shall set forth plainly:

- 1) the name of the petitioner;
- 2) the name, date of birth, and address of the child, if known;
- 3) the name and address of the child's guardian, or if unknown, the name and address of the nearest adult relative;
- 4) if a child is Native American, the child's Native American history or affiliation with a tribe;
- 5) a statement that:
 - a) it is in the best interest of the child and the public that the proceedings be brought;
 - b) the child is or is not currently under the supervision of the county agency;
 - 6) a concise statement of facts in support of the allegations for which the petition has been filed;
 - a) facts for each allegation shall be set forth separately;

b) the relevant statute or code section shall be set forth specifically for each allegation;

7) a verification by the petitioner that the facts set forth in the petition are true and correct to the petitioner's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;

8) the signature of the petitioner and the date of the execution of the petition; and

9) the whereabouts of the child unless disclosure is prohibited by court order and if taken into custody, the date and time thereof.

C. *Aggravated circumstances.* A motion for finding of aggravated circumstances may be brought in the petition pursuant to Rule 1701(A).

Comment

Petitions should be filed without unreasonable delay.

Under paragraph (A)(2), a petition is to be filed twenty-four hours after the shelter care hearing if the requirements of (A)(2)(a) and (b) are met. Rule 1800 suspends 42 Pa.C.S. § 6331 only as to the time requirement of when a petition is to be filed.

Additionally, paragraph (A)(2) requires that the county agency file a petition. Any other person, other than the county agency, is to file an application to file a petition under Rule 1320 **unless the exception under Rule 1324 applies.** Rule 1800 suspends 42 Pa.C.S. § 6334, which provides any person may file a petition.

For the safety or welfare of a child or a guardian, the court may order that the addresses of the child or a guardian not be disclosed to specified individuals.

A motion for finding of aggravated circumstances may be brought in a dependency petition. See Rule 1701(A). If aggravated circumstances are determined to exist after the filing of a petition, a written motion is to be filed pursuant to Rules 1701 and 1344.

The aggravated circumstances, as defined by 42 Pa.C.S. § 6302, are to be specifically identified in the motion for finding of aggravated circumstances.

Official Note: Rule 1330 adopted August, 21, 2006, effective February 1, 2007. **Amended** , **effective**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1330 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). **Final Report explaining the modifications of Rule 1330 published with the Court's Order at 37 Pa.B. 5978 (November 10, 2007).**

Explanatory Report

Rule 1320—Application to File a Private Petition

The Committee is proposing that the Comment to this Rule include a cite to the New Rule 1324 which provides for the filing of petitions by the juvenile probation officer.

Rule 1324—Petitions by Juvenile Probation Officers

This new proposed rule allows the juvenile probation officer to file a dependency petition in certain classes of cases. The juvenile probation officer may file a petition in the status offense cases pursuant to 42 Pa.C.S. § 6302 paragraphs (5) through (9) or in any class of dependency case if it is in conjunction with a delinquency proceeding.

Rule 1330—Petition: Filing, Contents, Function, Aggravated Circumstances

The Committee is proposing that the Comment to this Rule include the ability of the juvenile probation officer to file dependency petitions in certain classes of cases.

[Pa.B. Doc. No. 07-2058. Filed for public inspection November 9, 2007, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Reinstatement

Notice is hereby given that by Order of the Supreme Court of Pennsylvania issued October 11, 2007, M. Abraham Ahmad was reinstated to the practice of law in this Commonwealth. In accordance with Rule 218(h), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,

Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 07-2059. Filed for public inspection November 9, 2007, 9:00 a.m.]