

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

[204 PA. CODE CH. 221]

Administrative Regulations Governing Court Interpreters for Persons with Limited English Proficiency and for Persons who are Deaf or Hard of Hearing

In accordance with Judicial Code, 42 Pa.C.S. §§ 4411 and 4431, the Administrative Regulations Governing Court Interpreters for Persons with Limited English Proficiency and for Persons Who Are Deaf or Hard of Hearing have been amended by the Court Administrator of Pennsylvania in the following form and shall be effective March 1, 2018. Additions to the regulations are shown in bold and are underlined. Deletions from the regulations are shown in bold and brackets. The regulations can be found on the interpreter certification webpage located at <http://www.pacourts.us/judicial-administration/court-programs/interpreter-program>.

Filed in the Administrative Office of Pennsylvania Courts on February 12, 2018.

THOMAS B. DARR,
Court Administrator of Pennsylvania

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

CHAPTER 221. COURT INTERPRETERS FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY AND FOR PERSONS WHO ARE DEAF OR HARD OF HEARING

Subchapter 1. GENERAL PROVISIONS

§ 102. Definitions.

For purposes of these regulations:

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(g) *Immediate family member* means a [**spouse, child, parent or an individual who stands in loco parentis to a child in a proceeding pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters)] person other than a principal party in interest who is a spouse, child, parent, grandparent or guardian of a principal party in interest.**

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(o) *Principal party in interest* means a person involved in a judicial proceeding who is [**a plaintiff or defendant in a proceeding pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse); a defendant, parent of a defendant or direct victim in a proceeding pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters); a defendant or direct victim in a criminal proceeding; a person who is a named party in any other judicial proceeding; or a person who brings an action on behalf of a minor or incompetent person.]:**

(1) a named party or a fiduciary for a named party;

(2) a direct victim in a criminal proceeding or a proceeding pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters);

(3) a parent, guardian, or custodian of a minor or incapacitated person who is:

(i) a party;

(ii) a direct victim in a criminal proceeding or a proceeding pursuant to 42 Pa.C.S. Ch. 63; or

(iii) a witness.

(p) *Roster* means the list of certified and otherwise qualified interpreters maintained and distributed by the Court Administrator.

(q) *Staff Interpreter* means a certified or otherwise qualified interpreter who is an employee of the appellate court or judicial district and whose duties include providing services as an interpreter and functions related to interpreting.

(r) *Transliteration* means to convey spoken or written English in an English-based sign system and the process of conveying an English-based sign system in spoken or written English.

(s) *Witness* means a person who testifies in a judicial proceeding.

Comment

The definition of “Certified Interpreter” set forth in subsection (b) contains the requirement that the interpreter be certified by the Court Administrator. An interpreter who is certified pursuant to another jurisdiction or organization’s policies is nonetheless not a certified interpreter under these regulations if that individual has not been certified by the Court Administrator. Therefore, persons charged with applying these regulations should take care to confirm that an interpreter who purports to be certified has in fact been certified by the Court Administrator. A “Staff Interpreter” pursuant to subsection (q) is a full-time employee of the appellate court or judicial district whose duties include providing interpretation services. Persons employed as staff interpreters—even those employed as such on or before the date of the enactment of these regulations—will be required to be certified in their language of expertise by the Court Administrator in order to attain certified status under these regulations, if such certification is available.

These regulations are not intended to restrict a deaf or hard of hearing person’s ability pursuant to the Americans With Disabilities Act (ADA), 42 U.S.C. §§ 12101 *et seq.*, to request a process, procedure or means of communication other than an interpreter. Under the ADA and its regulations, a deaf or hard of hearing person may request a specific auxiliary aid and the public entity must give primary consideration to that choice unless another effective means of communication exists or it can demonstrate that doing so would fundamentally alter the nature of the service, program or activity or result in undue financial hardship. 28 CFR 35.160; 35.164; 28 CFR Pt. 35, App. A.

See 42 Pa.C.S. § 6302, defining “custodian” as “[a] person other than a parent or legal guardian, who stands in loco parentis to the child, or a person to whom legal custody of the child has been given by order of a court.” See also Pa.R.C.P. 76, which

defines fiduciaries to include “an executor, administrator, guardian, committee, receiver, trustee, assignee for the benefit of creditors, and any other person, association, partnership, or corporation, acting in any similar capacity.” Pa.R.C.P. 2051 defines “incapacitated person” to include “an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that the person is partially or totally unable to manage financial resources or to meet the essential requirements for physical health and safety.”

§ 107. Cost of Providing Interpreters for Persons with Limited English Proficiency.

(a) *General rule.*—An interpreter appointed pursuant to § 203 for a principal party in interest or a witness is entitled to a reasonable fee for interpreter services and shall be reimbursed for actual and reasonable expenses by the county of the court or the appellate court that has jurisdiction over the judicial proceeding in accordance with the compensation schedule approved by the Court Administrator pursuant to 42 Pa.C.S. § 4411(d). In no event shall the costs of providing interpreter services be the responsibility of the person who is limited English proficient.

[(b) *Principal party in interest.*—If the person with limited English proficiency is a principal party in interest, the payment of the cost of providing the interpreter shall be the responsibility of the county of the court or the appellate court that has jurisdiction over the judicial proceeding for which the interpreter was appointed.

(c) *Witness.*—If the person with limited English proficiency is compelled to appear as a witness in a judicial proceeding for a criminal matter or juvenile proceeding pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters), the payment of the cost of providing the interpreter shall be the responsibility of the county of the court that has jurisdiction over the judicial proceeding for which the interpreter was appointed.

(d) [(b) *Assignment of costs.*—[Except as provided in subsections (b) and (c), disposition of all or part of the cost of providing interpreter services shall be in the discretion of the presiding judicial officer and in accordance with the compensation schedule established by the Court Administrator, unless the principal party in interest is indigent. If the principal party in interest is indigent, the cost of providing interpreter services shall be the responsibility of the county of the court or the appellate court that has jurisdiction over the judicial proceeding for which the interpreter was appointed. Except as provided in subsections (b) and (c)] In those cases where appointment of an interpreter is discretionary as specified in section 203(d) regarding appointment of interpreters for immediate family members, the presiding judicial officer may order reimbursement by the family member to the county of the court or the appellate court that has jurisdiction over the judicial proceeding for which the interpreter was appointed for its responsibilities under this chapter. In determining the amount of actual and reasonable expenses to be paid to the interpreter, the presiding judicial officer shall follow the fee schedule for interpreters established by the Court Administrator.

Comment

The compensation schedule referred to in subsection (a) will be published in the *Pennsylvania Bulletin* and the official website of the Administrative Office of Pennsylvania Courts and will be subject to periodic review. In a judicial district comprised of more than one county, the county of the court that has jurisdiction over the judicial proceedings is the county in which the cause of action arose.

[Pa.B. Doc. No. 18-285. Filed for public inspection February 23, 2018, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Order Amending Rules 1910.16-2, 1910.16-4 and 1910.16-7 of the Rules of Civil Procedure; No. 679 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 9th day of February, 2018, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interest of efficient administration:

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1910.16-2, 1910.16-4 and 1910.16-7 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on April 1, 2018.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-2. Support Guidelines. Calculation of Monthly Net Income.

Generally, the amount of support to be awarded is based upon the parties' monthly net income.

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(b) *Treatment of Public Assistance, SSI Benefits, Social Security Payments to a Child Due to a Parent's Death, Disability or Retirement and Foster Care Payments.*

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(3) *Foster Care Payments.* If either party to a support action is a foster parent and/or is receiving payments from a public or private agency for the care of a child who is not his or her biological or adoptive child, those payments shall not be included in the income of the foster parent or other caretaker for purposes of calculating child support for the foster parent's or other caretaker's biological or adoptive child.

* * * * *

Example 2. Two children live with Grandmother who receives \$800 per month in Social Security death benefits for the children as a result of Father's death. Grandmother also receives \$500 per month from a trust established by Father for the benefit of the children. Grandmother is employed and earns \$2,000 net per month. Grandmother seeks support from the children's mother, who earns [**\$1,500**] **\$2,000** net per month. For purposes of calculating Mother's support obligation, Grandmother's income will be \$1,300, the amount she receives on behalf of the children in Social Security derivative benefits and the income from the trust. (If Mother were receiving the benefit on behalf of the children it would be added to her income such that Mother's income would be [**\$2,300**] **\$2,800** and Grandmother's income would be \$500.) Therefore, Mother's and Grandmother's combined monthly net incomes total [**\$2,800**] **\$3,300**. The basic support amount at the [**\$2,800**] **\$3,300** income level for two children is [**\$949**] **\$1,115**. As Mother's income of [**\$1,500** is 54%] **\$2,000** is 61% of the parties' combined income of [**\$2,800**] **\$3,300**, her portion of the basic support obligation is [**\$512**] **\$680**. Since Mother's retirement or disability did not generate the child's derivative benefit, the benefit amount is not subtracted from her portion of the basic support amount and Mother owes Grandmother [**\$512**] **\$680**. If Grandmother was not receiving the children's derivative benefits or income from the trust, her income for purposes of calculating Mother's child support obligation would be zero, and Mother would pay 100% of the basic support amount because Grandmother has no duty to support the children.

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Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation, Formula.

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(d) *Divided or Split Physical Custody. When Each Party Owes Child Support to the Other Party. Varied Partial or Shared Custodial Schedules.*

(1) *Divided or Split Physical Custody. When Each Party Owes Child Support to the Other Party.* When calculating a child support obligation and each party owes child support to the other party as a result of the custodial arrangement, the court shall offset the parties' respective child support obligations and award the net difference to the obligee as child support.

Example 1. If the parties have three children, one child resides with Mother and two children reside with Father, and their monthly net incomes are [**\$2,500**] **\$4000** and [**\$1,250**] **\$2,000** respectively, Mother's child support obligation is calculated using the schedule in Pa.R.C.P. No. 1910.16-3 for two children at the parties' combined monthly net income of [**\$3,750**] **\$6,000**. The amount of basic child support to be apportioned between the parties is [**\$1,224**] **\$1,523**. As Mother's income is 67% of the parties' combined monthly net income, Mother's support obligation for the two children living with Father is [**\$820**] **\$1,020**. Father's child support obligation is calculated using the schedule in Pa.R.C.P. No. 1910.16-3 for one child at the parties' combined monthly net income of [**\$3,750**] **\$6,000**. The amount of basic child support to be apportioned between the parties is [**\$853**] **\$1,071**. Father's support obligation for the child living with Mother is [**\$281**] **\$353**. Subtracting [**\$281** from **\$820**] **\$353**

from **\$1,020** produces a net basic support amount of [**\$539**] **\$667** payable to Father as child support.

Example 2. If the parties have two children, one child resides with Mother and the parties share custody (50% - 50%) of the other child, and the parties' monthly net incomes are as set forth in Example 1. The child support obligation is calculated using the schedule in Pa.R.C.P. No. 1910.16-3 for the one child primarily residing with Mother at the parties' combined monthly net income of [**\$3,750**] **\$6,000**, the amount of basic child support to be apportioned between the parties is [**\$853**] **\$1,071**. Father's income is 33% of the parties' combined monthly net income, and the support obligation for the child living with Mother is [**\$281**] **\$353**. For Mother's obligation for the child with the 50% - 50% shared custody arrangement, using the schedule in Pa.R.C.P. No. 1910.16-3 for one child at the parties' combined monthly net income of [**\$3,750**] **\$6,000**, the amount of basic child support to be apportioned between the parties is [**\$853**] **\$1,071**. Mother's proportionate share of the combined monthly net incomes is 67%, but it is reduced to 47% after applying the shared parenting time adjustment for 50% custody under subdivision (c). Mother's child support obligation for the shared custody child is [**\$401** (**\$853**)] **\$503** (**\$1,071** × 47%). As Mother's obligation is greater than Father's obligation, Father is the obligee and receives the net of the two obligations by subtracting [**\$281** from **\$401**, or **\$120**] **\$353** from **\$503**, or **\$150**.

(2) *Varied Partial or Shared Custodial Schedules.* When the parties have more than one child and each child spends either (a) different amounts of partial or shared custodial time with the party with the higher income or (b) different amounts of partial custodial time with the party with the lower income, the trier of fact shall add the percentage of time each child spends with that party and divide by the number of children to determine the party's percentage of custodial time. If the average percentage of custodial time the children spend with the party is 40% or more, the provisions of subdivision (c) apply.

Example 1. The parties have two children and one child spends 50% of the time with Mother, who has the higher income, and the other child spends 20% of the time with Mother. Add those percentages together and divide by the number of children (50% plus 20% = 70% divided by 2 children = 35% average time with Mother). Pursuant to subdivision (c), Mother does not receive a reduction in the support order for substantial parenting time.

Example 2. The parties have three children. Two children spend 50% of the time with Mother, who has the higher income, and the third child spends 30% of the time with Mother. Add the percentages of custodial time for all three children together and divide by the number of children (50% plus 50% plus 30% = 130% divided by three children = 43.33% average percentage of time with Mother). Pursuant to subdivision (c), Mother receives a reduction in the support order for substantial parenting time.

Example 3. The parties have three children, Mother has primary custody (60% - 40%) of one child, Father has primary custody (60% - 40%) of one child, and the parties share custody (50% - 50%) of the third child. The parties' monthly net incomes are \$2,500 (Mother) and [**\$1,250**] **\$2,000** (Father). As a result of the custodial arrangement, Father owes support for the child in the primary custody of Mother and Mother owes support for the child in the

primary custody of Father and for the child shared equally between the parties. Father's child support obligation is calculated using the schedule in Pa.R.C.P. No. 1910.16-3 for one child at the parties' combined monthly net income of [**\$3,750**] **\$4,500**. The amount of basic child support to be apportioned between the parties is [**\$853**] **\$940**. Father's proportionate share of the combined monthly net incomes is [**33%**] **44%**, but is reduced to [**23%**] **34%** after applying the shared parenting time adjustment for 40% custody under subdivision (c). Father's child support obligation for this child is [**\$196 (\$853 × 23%)**] **\$320 (\$940 × 34%)**. Mother's child support obligation is calculated using the schedule in Pa.R.C.P. No. 1910.16-3 for two children at the parties' combined monthly net income of [**\$3,750**] **\$4,500**. The amount of basic child support to be apportioned between the parties is [**\$1,224**] **\$1,349**. Mother has varying partial or shared custody of the two children (40% and 50%). Under subdivision (d)(2), the custodial time is averaged or in this case 45%. Mother's proportionate share of the combined monthly net incomes is [**67%**] **56%**, but it is reduced to [**52%**] **41%** after applying the shared parenting time adjustment for 45% custody under subdivision (c). Mother's child support obligation for these children is [**\$636 (\$1,224 × 52%)**] **\$553 (\$1,349 × 41%)**. Offsetting the support amounts consistent with subdivision (d)(1), Mother's obligation is greater than Father's obligation, and Father is the obligee receiving the net of the two obligations by subtracting [**\$196 from \$636, or \$440**] **\$320 from \$553, or \$233**.

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Rule 1910.16-7. Support Guidelines. Awards of Child Support When There are Multiple Families.

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(b) When the total of the obligor's basic support obligations exceeds 50% of his or her monthly net income, the court may consider a proportional reduction of these obligations. Since, however, the goal of the guidelines is to treat each child equitably, a first or later family shall not receive preference, and the court shall not divide the guideline amount for all of the obligor's children among the households in which those children live.

Example 1. The obligor is sued for support of an out of wedlock child. The obligor is already paying support for two children of the first marriage, and has an intact second marriage with one child. The relevant monthly net incomes are \$3,800 for the obligor, \$1,100 for the former spouse, \$0 for the current spouse and \$1,500 for the parent of the new child. The obligor's basic support obligations to each family are \$1,097 for the two children of the first marriage, \$862 for the one child of the second marriage, and \$727 for the one child out of wedlock for a total support obligation of \$2,686. Since the total of these obligations exceeds 50% of the obligor's monthly net income of \$3,800 per month, the court may consider a proportional reduction of all of the orders.

Example 2. The obligor is sued for support of three children of a second marriage. There is already an order in effect for two children of the first marriage. The relevant monthly net incomes are [**\$1,600**] **\$2,500** for the obligor, \$0 for the first spouse and \$500 for the second spouse. The obligor's basic support obligations to each family are [**\$555**] **\$849** for the two children of the first marriage and [**\$641**] **\$987** for the three children of the

second marriage for a total support obligation of [**\$1,196**] **\$1,836**. Since this total obligation leaves the obligor with only [**\$404**] **\$664** on which to live, the orders are too high as the obligor must be left with a Self-Support Reserve of \$981. However, reducing the order for three children while leaving the existing order intact would give preference to the first family, contrary to the rule. Therefore, both orders must be reduced proportionally.

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[Pa.B. Doc. No. 18-286. Filed for public inspection February 23, 2018, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 1915 AND 1940]

Order Amending Rules 1915.1, 1915.4-3, 1940.2 and 1940.5 of the Rules of Civil Procedure; No. 678 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 8th day of February, 2018, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 46 Pa.B. 7524 (December 3, 2016):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1915.1, 1915.4-3, 1940.2, and 1940.5 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on April 1, 2018.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY OF MINOR CHILDREN

Rule 1915.1. Scope. Definitions.

(a) These rules govern the practice and procedure in all actions for legal and physical custody of minor children, including habeas corpus proceedings and claims for custody asserted in an action of divorce.

Official Note: The term custody includes shared legal custody, sole legal custody, partial physical custody, primary physical custody, shared physical custody, sole physical custody and supervised physical custody. See 23 Pa.C.S. § 5322(a). Rule 1920.32(a) provides that when a claim for custody is joined with the action of divorce, the practice and procedure governing the claim for custody shall be in accordance with these rules.

(b) As used in this chapter, unless the context of a rule indicates otherwise, **the following terms shall have the following meanings:**

“action[” means],” all proceedings for legal and physical custody and proceedings for modification of prior orders of any court;

“child,” an unemancipated individual under 18 years of age;

“conference officer,” an individual who presides over an office conference pursuant to Pa.R.C.P. No. 1915.4-2(a) or the initial non-record proceeding under Pa.R.C.P. No. 1915.4-3(a). For purposes of these rules, a conciliator is synonymous with a conference officer;

“custody[” means],” the legal right to keep, control, guard, care for, and preserve a child and includes the terms “legal custody,” “physical custody,” and “shared custody;”

“hearing officer,” a lawyer who conducts a record hearing on partial custody cases pursuant to Pa.R.C.P. No. 1915.4-2(b);

“home county[” means],” the county in which the child [immediately preceding the time involved lived with the child’s parents, a parent, or] lived with either or both parents, a person acting as a parent, or in an institution[,] for at least six consecutive months immediately preceding the filing of the action, and in the case of a child less than six months old, the county in which the child lived from birth with any of the persons mentioned. A period of temporary absence of the child from the physical custody of the parent, institution, or person acting as parent shall not affect the six-month or other period;

“*in loco parentis*,” a person who puts himself or herself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of a legal adoption. The status of *in loco parentis* embodies two ideas: (1) the assumption of a parental status; and (2) the discharge of parental duties;

Official Note: See *A.S. v. I.S.*, 130 A.3d 763, 766 n.3 (Pa. 2015).

“legal custody[” means],” the right to make major decisions on behalf of the child, including, but not limited to, medical, religious, and educational decisions;

“mediator,” an individual qualified under Pa.R.C.P. No. 1940.4 and who assists custody litigants independently from the procedures set forth in Pa.R.C.P. Nos. 1915.1—1915.25 by engaging the litigants in the alternative dispute principles in Pa.R.C.P. No. 1940.2 to resolve custody matters in whole or in part;

“mediation,” the confidential process by which a neutral mediator assists the parties in attempting to reach a mutually acceptable agreement on issues arising in a custody action. Mediation is not a court proceeding; rather, it is an independent, non-record proceeding in lieu of court involvement for the purpose of assisting the parties to address the child’s best interest. An agreement reached by the parties must be based on the voluntary decisions of the parties and not the decision of the mediator. The agreement may resolve all or only some of the disputed issues. The parties are required to mediate in good faith, but are not compelled to reach an agreement. While mediation is an alternative means of conflict resolution, it is not a substitute for the

benefit of legal advice. The participants in mediation shall be limited to the parties to the custody action, primarily the child’s parents and persons acting as parents. Except as provided in Pa.R.C.P. No. 1940.5(c), non-parties, including children, grandparents, and the parties’ attorneys, shall not participate in the mediation.

“non-record proceeding,” the initial office conference set forth in Pa.R.C.P. No. 1915.4-3. Mediation, as outlined in Pa.R.C.P. No. 1940.1—1940.9, shall not be construed as a non-record proceeding;

“partial physical custody[” means],” the right to assume physical custody of the child for less than a majority of the time;

“person acting as a parent[” means],” a person other than a parent, including an institution, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody. See also the definition of *in loco parentis*;

“physical custody[” means],” the actual physical possession and control of a child;

“primary physical custody[” means],” the right to assume physical custody of the child for the majority of time;

“relocation[” means],” a change in a residence of the child [which] that significantly impairs the ability of a non-relocating party to exercise custodial rights;

“shared legal custody[” means],” the right of more than one individual to legal custody of the child;

“shared physical custody[” means],” the right of more than one individual to assume physical custody of the child, each having significant periods of physical custodial time with the child;

“sole legal custody[” means],” the right of one individual to exclusive legal custody of the child;

“sole physical custody[” means],” the right of one individual to exclusive physical custody of the child; and

“supervised physical custody[” means],” custodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors the interaction between the child and the individual with those rights.

Official Note: The term “supervised visitation” in the prior statute has been replaced by the term “supervised physical custody.”

Official Note: The definitions of the terms of the various forms of legal custody and physical custody are taken from 23 Pa.C.S. § 5322(a).

For additional definitions, see the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S. § 5402.

[Explanatory Comment—2008

The Uniform Child Custody Jurisdiction Act, formerly at subchapter B of Chapter 53 of the Domestic Relations Code, was repealed by Act 2004-39 and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act at Chapter 54 of the Domestic Relations Code. Amendments throughout the rules governing procedures in child custody matters were necessary to make the rules consistent with the Uniform Child Custody Jurisdiction

and Enforcement Act and to update the citations to the statutory provisions.]

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

(a) *Non-Record Proceedings.* [In those jurisdictions that 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.] In judicial districts utilizing an initial non-record proceeding, i.e., office conference, if an agreement is not finalized by the conclusion of the proceeding, the conference officer shall promptly notify the court that the matter should be listed for trial. [Any] A lawyer employed by, or under contract with, a judicial district or appointed by the court to serve as a [conciliator or mediator or] conference officer to preside over a non-record proceeding shall not practice family law before a conference officer, hearing officer, permanent or standing master, or judge of the same judicial district.

(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] Pa.R.C.P. No. 1915.4.

Explanatory Comment—2018

The amendment to this rule, in conjunction with the amendment to Pa.R.C.P. No. 1915.1, standardizes terminology used in the custody process and identifies court personnel by title and in some cases qualifications. Of note, the term “mediator,” which had been included in the rule, has been omitted and is specifically defined in Pa.R.C.P. No. 1915.1.

As in the support rules, custody conference officers preside over conferences and hearing officers preside over hearings. Regardless of the individual’s title, presiding over a conference or a hearing triggers the family law attorney practice preclusion in this rule and in Pa.R.C.P. No. 1915.4-2(b) in the case of a hearing officer. Mediators, as defined in Pa.R.C.P. No. 1915.1 and as qualified in Pa.R.C.P. No. 1940.4, do not preside over custody conferences or hearings; rather, mediators engage custody litigants in alternative dispute resolution methods pursuant to Chapter 1940 of the Rules of Civil Procedure and, as such, the preclusion from practicing family law in the same judicial district in which an attorney/mediator is appointed is inapplicable.

CHAPTER 1940. VOLUNTARY MEDIATION IN CUSTODY ACTIONS

Rule 1940.2. Definitions.

As used in this Chapter, the following terms shall have the following meanings:

“Mediation,” [is] the confidential process by which a neutral mediator assists the parties in attempting to reach a mutually acceptable agreement on issues arising in a custody action. [The role of the mediator is to assist the parties in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise and finding points of agreement.] Mediation is not a court proceeding; rather, it is an independent, non-record proceeding in lieu

of court involvement for the purpose of assisting the parties to address the child’s best interest. An agreement reached by the parties must be based on the voluntary decisions of the parties and not the decision of the mediator. The agreement may resolve all or only some of the disputed issues. [Parties] The parties are required to mediate in good faith[,] but are not compelled to reach an agreement. While mediation is an alternative means of conflict resolution, it is not a substitute for the benefit of legal advice. The participants in mediation shall be limited to the parties to the custody action, primarily the child’s parents and persons acting as parents. Except as provided in Pa.R.C.P. No. 1940.5(c), non-parties, including children, grandparents, and the parties’ attorneys, shall not participate in the mediation.

Official Note: See Pa.R.C.P. No. 1915.1 for the definition of a person acting as a parent.

“Memorandum of Understanding,” [is] the written document prepared by a mediator [which] that contains and summarizes the resolution reached by the parties during mediation. A Memorandum of Understanding is primarily for the benefit of the parties and is not legally binding on either party.

“Orientation Session,” [is] the initial process of educating the parties on the mediation process so that they can make an informed choice about continued participation in mediation. This process may be mandated by the court and may be structured to include either group or individual sessions. An orientation session may also include an educational program for parents and children on the process of divorce and separation and the benefits of mediation in resolving custody disputes.

Rule 1940.5. Duties of the Mediator. Role of the Mediator.

(a) As part of the orientation session, the mediator must inform the parties in writing of the following:

(1) the costs of mediation;

Official Note: [Rule] Pa.R.C.P. No. 240 sets forth the procedures for obtaining leave to proceed *in forma pauperis* when the parties do not have the financial resources to pay the costs of litigation. This rule applies to court-connected mediation services as well, so that parties without sufficient resources may file a petition seeking a waiver or reduction of the costs of mediation.

(2) the process of mediation;

(3) that the mediator does not represent either or both of the parties;

(4) the nature and extent of any relationships with the parties and any personal, financial, or other interests that could result in a bias or conflict of interest;

(5) that mediation is not a substitute for the benefit of independent legal advice; and

(6) that the parties should obtain legal assistance for drafting any agreement or for reviewing any agreement drafted by the other party.

(b) When mediating a custody dispute, the mediator shall ensure that the parties consider fully the best interests of the child or children.

(c) With the consent of the parties, the mediator may meet with the parties’ children or invite other persons to participate in the mediation.

(d) The role of the mediator is to assist the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, and finding points of agreement.

[Pa.B. Doc. No. 18-287. Filed for public inspection February 23, 2018, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 11]

Proposed Amendment of Pa.R.J.C.P. 1151

The Juvenile Court Procedural Rules Committee proposes the amendment of Rule 1151 to provide for the appointment of counsel for a dependent child 18 years of age or older for the reasons set forth in the accompanying explanatory 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:

Daniel A. Durst, Chief Counsel
 Juvenile Court Procedural Rules Committee
 Supreme Court of Pennsylvania
 Pennsylvania Judicial Center
 PO Box 62635
 Harrisburg, PA 17106-2635
 FAX: 717-231-9541
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All communications in reference to the proposal should be received by May 14, 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 Juvenile Court
 Procedural Rules Committee*

JENNIFER R. SLETVOLD,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART B(2). COUNSEL

Rule 1151. Assignment of Guardian *Ad Litem* and Counsel.

A. *Guardian ad litem for child.* The court shall assign a guardian ad litem to represent the legal interests and the best interests of the child **less than 18 years of age**

if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:

1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the physical, mental or emotional health, or morals;

2) has been placed for care or adoption in violation of law;

3) has been abandoned by parents, guardian, or other custodian;

4) is without a parent, guardian or legal custodian; or

5) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety, or welfare of the child.

B. *Counsel for child.* The court shall appoint legal counsel for a child:

1) if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:

a) while subject to compulsory school attendance is habitually and without justification truant from school;

b) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of the child's guardian and who is ungovernable and found to be in need of care, treatment, or supervision;

c) is under the age of ten years and has committed a delinquent act;

d) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (B)(1)(b);

e) has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (B)(1)(b); or

f) has filed a motion for resumption of jurisdiction pursuant to Rule 1634; **[or]**

2) when the child is 18 years of age or older; or

[2)] 3) upon order of the court.

C. *Counsel and Guardian ad litem for child.*

1) If a child has legal counsel and a guardian ad litem, counsel shall represent the legal interests of the child and the guardian ad litem shall represent the best interests of the child.

2) If a child younger than 18 years of age has a guardian ad litem, then that representative may be appointed as counsel when the child becomes 18 years of age unless the court determines there is a conflict.

D. *Time of appointment.*

1) *Child in custody.* The court shall appoint a guardian ad litem or legal counsel immediately after a child is taken into protective custody and prior to any proceeding.

2) *Child not in custody.* If the child is not in custody, the court shall appoint a guardian ad litem or legal counsel for the child when a dependency petition is filed.

E. *Counsel for other parties.* If counsel does not enter an appearance for a party, the court shall inform the

party of the right to counsel prior to any proceeding. If counsel is requested by a party in any case, the court shall assign counsel for the party if the party is without financial resources or otherwise unable to employ counsel. Counsel shall be appointed prior to the first court proceeding.

Comment

See 42 Pa.C.S. §§ 6302, 6311, and 6337.

The age specifications set forth in paragraphs (A) and (B)(2) are intended to effectuate a requirement that a guardian ad litem be appointed in every case when a child is younger than 18 years of age and counsel be appointed in every case when a child is 18 years of age or older.

The guardian ad litem for the child **younger than 18 years of age** may move the court for appointment as legal counsel and assignment of a separate guardian ad litem, when, for example, the information that the guardian ad litem possesses gives rise to the conflict and can be used to the detriment of the child. To the extent 42 Pa.C.S. § 6311(b)(9) is inconsistent with this rule, it is suspended. See Rule 1800. See also Pa.R.P.C. 1.7 and 1.8.

Pursuant to paragraph (B)(1)(f), the court is to appoint legal counsel when a motion for resumption of jurisdiction has been filed. It is best practice to appoint the guardian ad litem or legal counsel who was previously assigned to the child as legal counsel.

Under paragraph (C), legal counsel represents the legal interests of the child and the guardian ad litem represents the best interests of the child.

Nothing in these rules anticipates that a guardian [**ad litem**] for an adult is to be appointed by these rules. For appointment of a guardian of the person, see 20 Pa.C.S. § 5501 *et seq.* and Pa. O.C. Rules 14.2—14.5.

Pursuant to paragraph (E), the court is to inform all parties of the right to counsel if they appear at a hearing without counsel. If a party is without financial resources or otherwise unable to employ counsel, the court is to appoint counsel prior to the proceeding. Because of the nature of the proceedings, it is extremely important that every “guardian” has an attorney. Therefore, the court is to encourage the child’s guardian to obtain counsel. Pursuant to Rule 1120, a guardian is any parent, custodian, or other person who has legal custody of a child, or person designated by the court to be a temporary guardian for purposes of a proceeding. See Pa.R.J.C.P. 1120.

Official Note: Rule 1151 adopted August 21, 2006, effective February 1, 2007. Amended February 20, 2007, effective immediately. Amended May 12, 2008, effective immediately. Amended April 29, 2011, effective July 1, 2011. Amended October 21, 2013, effective December 1, 2013. **Amended _____, 2018, effective _____, 2018.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1151 published with the Court’s Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to this rule published with the Court’s order at 37 Pa.B. 1123 (March 10, 2007).

Final Report explaining the amendments to Rule 1151 published with the Court’s Order at 38 Pa.B. 2360 (May 24, 2008).

Final Report explaining the amendments to Rule 1151 published with the Court’s Order at 41 Pa.B. 2430 (May 14, 2011).

Final Report explaining the amendments to Rule 1151 published with the Court’s Order at 43 Pa.B. 6658 (November 9, 2013).

Final Report explaining the amendments to Rule 1151 published with Court’s Order at Pa.B. _____, 2018.

REPORT

Proposed Amendment of Pa.R.J.C.P. 1151

The Juvenile Court Procedural Rules Committee proposes the amendment of Rule 1151 to provide for the appointment of counsel for a dependent child 18 years of age or older.

The Juvenile Act provides that “[e]xcept as provided under section 6337.1 (relating to right to counsel for children in dependency and delinquency proceedings), counsel must be provided for a child.” 42 Pa.C.S. § 6337. Section 6337.1 states “[l]egal counsel shall be provided for a child who is alleged or has been found to be a dependent child in accordance with the Pennsylvania Rules of Juvenile Court Procedure.” 42 Pa.C.S. § 6337.1(a).

The statutory directive for the provision of counsel is satisfied when a dependency proceeding is initiated because statute further provides that an alleged dependent child is to be appointed an attorney to serve as a guardian ad litem (“GAL”) to represent the legal interests and the best interests of the child. See 42 Pa.C.S. § 6311(a). The procedures for doing so are set forth in Pa.R.J.C.P. 1151. When legal and best interests may conflict, the GAL is to seek the appointment of counsel to represent the child’s legal interests. See Pa.R.J.C.P. 1151, Comment at ¶ 2.

The Committee recently considered the distinction between the appointment of a GAL and the appointment of counsel when a child is 18 years of age or older in the context of resumption of jurisdiction. For example, Rule 1151(B)(1)(f) provides counsel for the child who has filed a motion for the resumption of jurisdiction, but Rule 1151(A) does not provide for the appointment of a GAL for the child. In contrast, it was reported that a child 18 years of age or older remaining under the jurisdiction of the juvenile court would continue to have a GAL.

This illustration led to a further examination of the GAL paradigm and whether a GAL, as opposed to counsel, should represent a child 18 year of age or older. It was believed at that age that many children could express their own interests and direct counsel. Accordingly, the Committee proposes amendment of Rule 1151 to maintain the current model of a GAL in all cases and counsel when there is a conflict for a child under 18 years if age. However, the Committee further proposes a reversal of the model for a child 18 years of age or older whereby counsel would be appointed in all cases and a GAL when there is a conflict.

The Committee acknowledges a previous proposal that sought to clarify the role and duties of attorneys in juvenile court proceedings patterned after the American Bar Association's Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings. *See* 42 Pa.B. 5470 (August 25, 2012). The present proposal is not intended as a revision and republication of that earlier proposal.

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

[Pa.B. Doc. No. 18-288. Filed for public inspection February 23, 2018, 9:00 a.m.]
