

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 1, 9, 11, 13, 17, 21 AND 25] Proposed Amendments of Pa.R.A.P. 124, 905, 909, 1111, 1301, 1732, 2187, 2189 and 2541

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 124, 905, 909, 1111, 1301, 1732, 2187, 2189, and 2541 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 will neither 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:

Karla M. Shultz, Counsel
Appellate Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9551
appellaterules@pacourts.us

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 Appellate Court
Procedural Rules Committee*

PATRICIA A. McCULLOUGH,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

DOCUMENTS GENERALLY

Rule 124. Form of [**Papers;**] **Documents**. Number of Copies **to be Filed**.

(a) *Size and other physical characteristics*.—All [**papers**] **documents** filed in an appellate court shall be on 8 1/2 inch by 11 inch [**paper**] **pages** and shall comply with the following requirements:

(1) The [**papers**] **documents** shall be prepared on white [**paper (except for covers, dividers and similar sheets) of good quality**] **background**.

(2) The first [**sheet (except the cover of a brief or reproduced record)**] **page** shall contain a 3 inch space from the top of the [**paper**] **document** for all court stampings, filing notices, etc.

(3) Text must be double spaced, but quotations more than two lines long may be indented and single spaced. Footnotes may be single spaced. Except as provided in [**subdivision (2)**] **paragraph (a)(2)**, margins must be at least one inch on all four sides.

(4) Lettering shall be clear and legible and no smaller than 14 point in the text and 12 point in footnotes. Lettering shall be on only one side of a page, except that exhibits and similar supporting documents, briefs and reproduced records may be lettered on both sides of a page.

(5) Any metal fasteners or staples must be covered. Originals must be unbound. Copies must be firmly bound.

(6) No backers shall be necessary.

(b) *Nonconforming [papers] documents*.—The prothonotary of an appellate court may accept any nonconforming [**papers**] **documents**.

(c) [**Copies**].—**Except as otherwise prescribed by these rules:**

(1) **An original of an application for continuance or advancement of a matter shall be filed.**

(2) **An original and three copies of any other application in the appellate courts shall be filed, but the court may require additional copies.]**

Number of copies to be filed.—A party shall file the number of copies as specified in:

(1) **the copy and fee requirements set forth on each appellate court's web page;**

(2) **correspondence from the court; or**

(3) **a court order.**

Official Note: The 2013 amendment increased the minimum text font size from 12 point to 14 point and added a minimum footnote font size of 12 point. This rule requires a clear and legible font. The Supreme, Superior, and Commonwealth Courts use Arial, Verdana, and Times New Roman, respectively, for their opinions. A brief using [**one**] **the respective court's font is preferred, but a brief using any** of these fonts will be satisfactory.

The number of copies to be filed in the Supreme Court can be found at <http://www.pacourts.us/courts/supreme-court/copy-and-fee-requirements>.

The number of copies to be filed in the Superior Court can be found at <http://www.pacourts.us/courts/superior-court/copy-and-fee-requirements>.

The number of copies to be filed in the Commonwealth Court can be found at <http://www.pacourts.us/courts/commonwealth-court/copy-and-fee-requirements>.

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 905. Filing of Notice of Appeal.

(a) *Filing with clerk.*

(1) Two copies of the notice of appeal, the order for transcript, if any, and the proof of service required by Pa.R.A.P. 906, shall be filed with the clerk of the trial court. If the appeal is to the Supreme Court, the jurisdictional statement required by Pa.R.A.P. 909 shall also be filed with the clerk of the trial court.

(2) If the appeal is a children's fast track appeal, a concise statement of errors complained of on appeal as described in Pa.R.A.P. 1925(a)(2) shall be filed with the notice of appeal and served on the trial judge in accordance with Pa.R.A.P. 906(a)(2).

(3) Upon receipt of the notice of appeal, the clerk shall immediately stamp it with the date of receipt, and that date shall constitute the date when the appeal was taken, which date shall be shown on the docket.

(4) If a notice of appeal is mistakenly filed in an appellate court, or is otherwise filed in an incorrect office within the unified judicial system, the clerk shall immediately stamp it with the date of receipt and transmit it to the clerk of the court which entered the order appealed from, and upon payment of an additional filing fee the notice of appeal shall be deemed filed in the trial court on the date originally filed.

(5) A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.

(b) *Transmission to appellate court.*—The clerk shall immediately transmit to the prothonotary of the appellate court named in the notice of appeal a copy of the notice of appeal and all attachments, as well as a receipt showing collection of any docketing fee in the appellate court required under paragraph (c). If the appeal is a children's fast track appeal, the clerk shall stamp the notice of appeal with a "Children's Fast Track" designation in red ink, advising the appellate court that the appeal is a children's fast track appeal, and the clerk shall also transmit to the prothonotary of the appellate court named in the notice of appeal the concise statement of errors complained of on appeal required by subparagraph (a)(2) of this rule. The clerk shall also transmit with such **[papers] documents**:

[1.] (1) copies of all orders for transcripts relating to orders on appeal;

[2.] (2) a copy of any verified statement, application, or other document filed under Pa.R.A.P. 551—561 relating to *in forma pauperis*; and

[3.] (3) if the appeal is to the Supreme Court, the jurisdictional statement required by Pa.R.A.P. 909.

(c) *Fees.*—The appellant upon filing the notice of appeal shall pay any fees therefor (including docketing fees in the appellate court) prescribed by Chapter 27.

Official Note: To preserve a mailing date as the filing date for an appeal as of right from an order of the Commonwealth Court, see Pa.R.A.P. 1101(b).

[As to number of copies, see Pa.R.A.P. 124, note] To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note. The appellate

court portion of the filing fee will be transmitted pursuant to regulations adopted under 42 Pa.C.S. § 3502.

Rule 909. Appeals to the Supreme Court. Jurisdictional Statement. Sanctions. **Number of Copies to be Filed.**

(a) *General rule.*—Upon filing a notice of appeal to the Supreme Court, the appellant shall file with the prothonotary or clerk of the trial court a jurisdictional statement. The statement shall be in the form prescribed by **[Rule] Pa.R.A.P. 910(a) and (b)**. No statement need be filed in cases arising under Pa.R.A.P. 1941 (Review of Death Sentences).

(b) *Answer.*—Within 14 days after service of a jurisdictional statement, an adverse party may file with the Prothonotary of the Supreme Court **[an original and eight copies of]** an answer thereto in the form prescribed by **[Rule] Pa.R.A.P. 911**. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. No separate motion to dismiss a jurisdictional statement will be received. A party entitled to file an answer who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the jurisdictional statement will not be filed. The failure to file an answer will not be construed as concurrence in the jurisdictional statement.

(c) *Action by the Supreme Court.*—After consideration of the jurisdictional statement and the brief in opposition thereto, if any, the Court will enter an appropriate order which may include summary dismissal for lack of subject matter jurisdiction. If the Supreme Court in its order notes probable jurisdiction or postpones consideration of jurisdiction to the hearing on the merits, the Prothonotary of the Supreme Court forthwith shall notify the court below and the attorneys of record of the noting or postponement, and the case will then stand for briefing and oral argument. In such case, the parties shall address the question of jurisdiction at the outset of their briefs and oral arguments.

(d) *Sanctions.*—If the court finds that the parties have not complied with **[Rules 909 through 911] Pa.R.A.P. 909—911**, it may impose appropriate sanctions including but not limited to dismissal of the action, imposition of costs or disciplinary sanction upon the attorneys.

(e) Number of copies to be filed.—To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.

CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT

PETITION FOR ALLOWANCE OF APPEAL

Rule 1111. Form of **[Papers;] Documents**. Number of Copies **to be Filed**.

All **[papers] documents** filed under this chapter, other than under **[Rule] Pa.R.A.P. 1101** (appeals as of right from the Commonwealth Court), shall be prepared in the manner provided by **[Rule] Pa.R.A.P. 2171** (method of reproduction) through **[Rule] Pa.R.A.P. 2174** (tables of contents and citations). **[Eight copies shall be filed with the original.] To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.**

Official Note: This rule does not apply to appeals taken under **[Rule] Pa.R.A.P. 1101** (appeals as of right

from the Commonwealth Court), since those appeals are taken pursuant to Chapter 9 (appeals from lower courts).

CHAPTER 13. INTERLOCUTORY APPEALS BY PERMISSION

Rule 1301. Form of [**Papers;**] **Documents.** Number of Copies **to be Filed.**

All [**papers**] **documents** filed under this chapter may be produced on a word processor/computer or typewriter. [**Eight copies shall be filed with the original in the Supreme Court. Six copies shall be filed with the original in the Superior Court. One copy and the original shall be filed in the Commonwealth Court.**] **To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.**

[**Official Note:** Counsel are advised to check with the prothonotary of the appellate court before filing as the number of copies required may change from time to time without formal amendment of these rules.]

CHAPTER 17. EFFECT OF APPEALS; SUPERSEDEAS AND STAYS

STAY OR INJUNCTION IN CIVIL MATTERS

Rule 1732. Application for Stay or Injunction Pending Appeal. **Number of Copies to be Filed.**

(a) *Application to trial court.*—Application for a stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any *supersedeas*, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, must ordinarily be made in the first instance to the trial court, except where a prior order under this chapter has been entered in the matter by the appellate court or a judge thereof.

(b) *Contents of application for stay.*—An application for stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any *supersedeas*, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, may be made to the appellate court or to a judge thereof, but the application shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The application shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed such parts of the record as are relevant. Where practicable, the application should be accompanied by the briefs, if any, used in the trial court. The application shall contain the certificate of compliance required by Pa.R.A.P. 127.

(c) *Number of copies to be filed.*—[**Seven copies of applications under this rule in the Supreme Court or the Superior Court, and three copies of applications under this rule in the Commonwealth Court, shall be filed with the original.**] **To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.**

Official Note: See generally *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), for the criteria for the issuance of a stay pending appeal.

CHAPTER 21. BRIEFS AND REPRODUCED RECORD

FILING AND SERVICE

Rule 2187. Number of Copies [**to be Served and Filed**] **to be Filed and Served.**

[(a) *General rule.*—Unless the appellate court directs otherwise, each party shall file:

(1) 25 copies of each definitive brief and reproduced record in the Supreme Court;

(2) 15 copies of each definitive brief and five copies of each reproduced record in the Commonwealth Court;

(3) 7 copies of each definitive brief and reproduced record in the Superior Court.

Each party shall serve 2 copies of its definitive brief and reproduced record on every other party separately represented.

(b) *Advance text of briefs.*—If the record is being reproduced pursuant to Rule 2154(b) (large records) two copies of each brief without definitive reproduced record pagination shall be served on each party separately represented. Proof of service showing compliance with this rule (but not including the advance text of the brief) shall be filed with the prothonotary of the appellate court.

(c) *In forma pauperis.*—Unless the appellate court directs otherwise, a party who has been permitted to proceed in forma pauperis shall file:

(i) 15 copies of each definitive brief with the Supreme Court;

(ii) 15 copies of each definitive brief with the Commonwealth Court;

(iii) 7 copies of each definitive brief with the Superior Court.

Each party who has been permitted to proceed in forma pauperis shall serve one copy of each definitive brief on every other party separately represented.

Explanatory Note]

(a) *Filing.*—**To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.**

(b) *Service.*

(1) *General rule.*—**A party shall serve one copy of its definitive brief and reproduced record on every other party separately represented.**

(2) *In forma pauperis.*—**A party proceeding in forma pauperis shall only serve one copy of each definitive brief on every other party separately represented. Pursuant to Pa.R.A.P. 2151(b), a party proceeding in forma pauperis is not required to reproduce the record.**

(3) *Advance text of briefs.*—**If the record is being reproduced pursuant to Pa.R.A.P. 2154(b) (large records) one copy of each brief without definitive reproduced record pagination shall be served on each party separately represented. Proof of service showing compliance with this rule, but not including the advance text of the brief, shall be filed with the prothonotary of the appellate court.**

Official Note: At the request of the appellate prothonotaries, it will no longer be necessary to file advance

copies (e.g., page proof) of the brief when service is made on the opposing party, but the requirement for the filing of a proof of such service is retained.

[Counsel are advised to check with the prothonotary of the appellate court before filing as the number of copies required may change from time to time without formal amendment of these rules.

Official Note: See Rule] See Pa.R.A.P. 2189 for procedure in cases involving the death penalty.

Rule 2189. Reproduced Record in Cases Involving the Death Penalty.

(a) *Number of copies.*—Any provisions of these rules to the contrary notwithstanding, in all cases involving the death penalty, [**eight copies of**] the entire record shall be reproduced and filed with the prothonotary of the Supreme Court[, **unless the Supreme Court shall by order in a particular case direct filing of a lesser number**]. **To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.**

(b) *Costs of reproduction.*—[**Appellant**] **The appellant**, or, in cases where **the** appellant has been permitted to proceed in *forma pauperis*, the county where the prosecution was commenced, shall bear the cost of reproduction.

(c) *Prior rules superseded.*—To the extent that this rule conflicts with provisions of [**Rule**] Pa.R.A.P. 2151(a), [**Rule**] Pa.R.A.P. 2152 (relating to necessity of reproduction of records); [**Rule**] Pa.R.A.P. 2152 (relating to content of reproduced records); [**Rule**] Pa.R.A.P. 2154(a) (relating to designation of contents of reproduced records); [**Rule**] and Pa.R.A.P. 2155 (allocating costs of reproduction of records)[; **and Rule 2187(a), (prescribing numbers of copies of reproduced record to be filed)**], the same are superseded.

Official Note: The death penalty statute, 42 Pa.C.S. § 9711, provides that the Supreme Court Prothonotary must send a copy of the lower court record to the Governor after the Supreme Court affirms a sentence of death. The statute does not state who is responsible for preparing the copy. This amendment provides for preparation of the Governor's copy of the record before the record is sent to the Supreme Court.

CHAPTER 25. POST-SUBMISSION PROCEEDINGS

APPLICATION FOR REARGUMENT

Rule 2541. Form of [**Papers**;] **Documents**. Number of Copies **to be Filed**.

All [**papers**] **documents** relating to applications for reargument shall be prepared in the manner prescribed by [**Rule**] Pa.R.A.P. 2171 (method of reproduction) through [**Rule**] Pa.R.A.P. 2174 (table of contents and citations). [**An original and eight copies of each application for reargument shall be filed with the Supreme Court. An original and 23 copies of each application for reargument shall be filed with the Superior Court. An original and 11 copies of each application for reargument shall be filed with Commonwealth Court.**] **To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.**

Official Note: This rule and the succeeding rules on reargument practice are patterned after the practice in [**Rules**] Pa.R.A.P. 1111 *et seq.* (petition for allowance of appeal).

[Counsel are advised to check with the prothonotary of the appellate court before filing as the number of copies required may change from time to time without formal amendment of these rules.]

PUBLICATION REPORT

The Appellate Court Procedural Rules Committee is considering proposing amendments to Pa.R.A.P. 124, 905, 909, 1111, 1301, 1732, 2187, 2189, and 2541 to direct practitioners to each appellate court's web page at www.pacourts.us for the number of copies of a document required for filing with that appellate court.

Currently, the Rules of Appellate Procedure specify the number of copies to be filed for a document. See, e.g., Pa.R.A.P. 124(c)(2) (requiring three copies of an application to be filed). Notwithstanding these specifications, each appellate court has the discretion to determine the number of copies required for filing. See the Official Notes to Pa.R.A.P. 1301, 2187, and 2541, which caution practitioners to consult the prothonotary's office of an appellate court before filing because the required number of copies may change from time to time without amendment of the rules.

Since technical requirements continually change, the Committee is proposing the amendment of Pa.R.A.P. 124(c) to require a party to file the number of copies as specified in (1) the "copy and fee requirements" found on each appellate court's web page, (2) correspondence from the court, or (3) a court order. The Official Note to Pa.R.A.P. 124 would be amended to provide the links to the specific web page for each appellate court's copy and fee requirements.

The proposed amendments of Pa.R.A.P. 905, 909, 1111, 1301, 1732, 2187, 2189, and 2541 delete any references to a specified number of copies to be filed. The Official Note of each rule is proposed to be amended to include a cross reference to Pa.R.A.P. 124(c) and its Official Note. Stylistic revisions to these rules are also proposed.

The Committee intends to consider similar amendments to number of copies requirements in Chapter 16 (Specialized Review) after those rules become effective.

All comments, concerns, and suggestions concerning this proposal are welcome.

[Pa.B. Doc. No. 20-1020. Filed for public inspection July 31, 2020, 9:00 a.m.]

**Title 231—RULES OF
CIVIL PROCEDURE**

PART I. GENERAL

[**231 PA. CODE CH. 1915**]

**Proposed Amendment of Pa.R.C.P. Nos. 1915.3-2,
1915.4-4, 1915.7 and 1915.10**

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. Nos. 1915.3-2, 1915.4-4, 1915.7 and 1915.10 for the reasons set forth in the

accompanying publication report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being 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
PO Box 62635
Harrisburg, PA 17106-2635
Fax: 717-231-9531
domesticrules@pacourts.us

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY OF MINOR CHILDREN

Rule 1915.3-2. Criminal Record or Abuse History.

[(a) *Criminal Record or Abuse History Verification*. A party must file and serve with the complaint, any petition for modification, any counterclaim, any petition for contempt or any count for custody in a divorce complaint or counterclaim a verification regarding any criminal record or abuse history of that party and anyone living in that party's household. The verification shall be substantially in the form set forth in subdivision (c) below. The party must attach a blank verification form to a complaint, counterclaim or petition served upon the other party. Although the party served need not file a responsive pleading pursuant to Rule 1915.5, he or she must file with the court a verification regarding his or her own criminal record or abuse history and that of anyone living in his or her household on or before the initial in-person contact with the court (including, but not limited to, a conference with a conference officer or judge or conciliation, depending upon the procedure in the judicial district) but not later than 30 days after service of the complaint or petition. A party's failure to file a Criminal Record or Abuse History Verification may result in sanctions against that party. Both parties shall file and serve updated verifications five days prior to trial.

(b) *Initial Evaluation*. At the initial in-person contact with the court, the judge, conference officer, conciliator or other appointed individual shall perform an initial evaluation to determine whether the existence of a criminal or abuse history of either party or a party's household member poses a threat to the child and whether counseling is necessary. The initial evaluation required by 23 Pa.C.S. § 5329(c) shall not be conducted by a mental health professional. After the initial evaluation, the court may order further evaluation or counseling by a mental health professional if the court determines it is necessary. Consistent with the best interests of the child, the court may enter a temporary custody order on behalf of a party with a criminal history or a party with a household member who has a criminal history, pending the party's or household member's evaluation and/or counseling.

Official Note: The court shall consider evidence of criminal record or abusive history presented by the parties. There is no obligation for the court to conduct an independent investigation of the criminal record or abusive history of either party or members of their household. The court should not consider ARD or other diversionary programs. When determining whether a party or household member requires further evaluation or counseling, or whether a party or household member poses a threat to a child, the court should give consideration to the severity of the offense, the age of the offense, whether the victim of the offense was a child or family member and whether the offense involved violence.]

(a) *Criminal Record/Abuse History Verification*.

(1) *Confidential Document*. A party's Criminal Record/Abuse History Verification form shall be confidential and shall not constitute a public record.

(2) *Plaintiff or Petitioner*. Contemporaneous with initiating a custody action or a contempt proceeding, the plaintiff or petitioner shall:

(i) complete and sign a Criminal Record/Abuse History Verification form;

Official Note: See subdivision (d) for the Criminal Record/Abuse History Verification form.

(ii) file the completed form and the complaint, petition, or counterclaim initiating the action or contempt proceeding with the prothonotary; and

(iii) serve on the defendant or respondent with the pleading initiating the custody action:

(A) his or her filed verification form; and

(B) a blank Criminal Record/Abuse History Verification form for the defendant or respondent to complete and file.

(3) *Defendant or Respondent*. After being served with a pleading initiating a custody action or contempt proceeding, the defendant or respondent shall:

(i) complete and sign the blank Criminal Record/Abuse History Verification form served with the initiating pleading;

(ii) file the completed form with the prothonotary before the initial in-person contact with the court

or within 30 days of service of the initiating pleading, whichever occurs first; and

(iii) serve his or her filed verification form on the plaintiff or petitioner.

(4) Updating Verification Form. A party shall complete, sign, file with the prothonotary, and serve on the other party an updated verification in the following circumstances.

(i) Pending Court Proceedings. At each of the following:

- (A) hearing;
- (B) pretrial conference; or
- (C) trial; or

(ii) After a Final Order. Provided the child remains subject to the court's jurisdiction, when a party knows the information on the most recently filed verification is inaccurate or has changed relative to him or her or his or her household member.

(5) Sanctions. A party's failure to file a Criminal Record/Abuse History Verification may result in sanctions against that party.

(b) Initial Evaluation.

(1) During the initial in-person custody proceeding, the judge, conference officer, conciliator, or other appointed individual shall evaluate whether a party or household member poses a threat to the child.

(i) In determining whether a party or household member poses a threat to the child or requires an additional evaluation or counseling, as provided in 23 Pa.C.S. § 5329(d)-(e), the judge, conference officer, conciliator, or other appointed individual shall consider:

(A) a party's Criminal Record/Abuse History Verification form; and

(B) other information or documentation of a party's or household member's criminal record or abuse history that are provided by a party.

(ii) To the extent a party or household member has a criminal record relating to an enumerated offense in 23 Pa.C.S. § 5329(a) or an abuse history, the judge, conference officer, conciliator, or other appointed individual shall consider:

- (A) the severity of the offense or abuse;
- (B) when the offense or abuse occurred;
- (C) if the victim was a child or family member; and
- (D) whether the offense or abuse involved physical violence.

(2) When the initial evaluation set forth in subdivision (b)(1) determines that a party or household member poses a threat to the child, the conference officer, conciliator, or other appointed individual conducting the evaluation may recommend to the judge, and the judge may order:

(i) a party or party's household member to undergo an additional evaluation or counseling by a mental health professional appointed by the court; or

(ii) temporary custody pending the additional evaluation or counseling, if it is in the child's best interest.

(c) Verification. The verification regarding criminal record or abuse history shall be substantially in the following form:

(Caption)

CRIMINAL RECORD/ABUSE HISTORY VERIFICATION

I _____, hereby swear or affirm[], subject to penalties of law including 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities] that:

[1. Unless indicated by my checking the box next to a crime below, neither I nor any other member of my household have been convicted or pled guilty or pled no contest or was adjudicated delinquent where the record is publicly available pursuant to the Juvenile Act, 42 Pa.C.S. § 6307 to any of the following crimes in Pennsylvania or a substantially equivalent crime in any other jurisdiction including pending charges:]

1. As to the following listed Pennsylvania crimes or offenses or other jurisdiction's substantially equivalent crimes or offenses, check the box(es) next to any applicable crime or offense in which you or a household member:

- has pleaded guilty or no contest;
- has been convicted;
- has charges pending; or
- has been adjudicated delinquent under the Juvenile Act, 42 Pa.C.S. §§ 6301—6375, and the record is publicly available as set forth in 42 Pa.C.S. § 6307.

A party should also identify a listed criminal offense even if the offense had been resolved by Accelerated Rehabilitative Disposition (ARD) or another diversionary program, had been expunged pursuant to 18 Pa.C.S. § 9122, or a court has entered an order for limited access, i.e., Clean Slate, pursuant to 18 Pa.C.S. §§ 9122.1 or 9122.2.

<i>Check all that apply</i>	<i>Crime</i>	<i>Self</i>	<i>Other household member</i>	<i>Date of conviction, guilty plea, no contest plea, or pending charges</i>	<i>Sentence</i>
<input type="checkbox"/>	18 Pa.C.S. Ch. 25 (relating to criminal homicide)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2702 (relating to aggravated assault)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

<i>Check all that apply</i>	<i>Crime</i>	<i>Self</i>	<i>Other household member</i>	<i>Date of conviction, guilty plea, no contest plea, or pending charges</i>	<i>Sentence</i>
<input type="checkbox"/>	18 Pa.C.S. § 2706 (relating to terroristic threats)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2709.1 (relating to stalking)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2718 (related to strangulation)	<input type="checkbox"/>	<input type="checkbox"/>	=====	=====
<input type="checkbox"/>	18 Pa.C.S. § 2901 (relating to kidnapping)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2902 (relating to unlawful restraint)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2903 (relating to false imprisonment)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2910 (relating to luring a child into a motor vehicle or structure)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3121 (relating to rape)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3122.1 (relating to statutory sexual assault)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3124.1 (relating to sexual assault)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3125 (relating to aggravated indecent assault)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3126 (relating to indecent assault)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3127 (relating to indecent exposure)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3129 (relating to sexual intercourse with animal)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3130 (relating to conduct relating to sex offenders)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3301 (relating to arson and related offenses)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 4302 (relating to incest)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 4303 (relating to concealing death of child)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 4304 (relating to endangering welfare of children)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 4305 (relating to dealing in infant children)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other sexual materials and performances)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 6301 (relating to corruption of minors)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 6312 (relating to sexual abuse of children)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

<i>Check all that apply</i>	<i>Crime</i>	<i>Self</i>	<i>Other household member</i>	<i>Date of conviction, guilty plea, no contest plea, or pending charges</i>	<i>Sentence</i>
<input type="checkbox"/>	18 Pa.C.S. § 6318 (relating to unlawful contact with minor)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 6320 (relating to sexual exploitation of children)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	Finding of contempt of a Protection from Abuse Order or agreement under 23 Pa.C.S. § 6114 [(relating to contempt for violation of protection order or agreement)]	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	Finding of contempt of a Protection of Victims of Sexual Violence and Intimidation order or agreement under 42 Pa.C.S. § 62A14	<input type="checkbox"/>	<input type="checkbox"/>	=====	=====
<input type="checkbox"/>	Driving under the influence of drugs or alcohol	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	Manufacture, sale, delivery, holding, offering for sale or possession of any controlled substance or other drug or device	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

[2. Unless indicated by my checking the box next to an item below, neither I nor any other member of my household have a history of violent or abusive conduct, or involvement with a Children & Youth agency, including the following:

<i>Check all that apply</i>	<i>Self</i>	<i>Other household member</i>	<i>Date</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____]

2. Check the box(es) next to the statements that apply to you, a household member, or your child.

<i>Check all that apply</i>	<i>Self</i>	<i>Household member</i>	<i>Child</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Check all that apply

- A history of “abuse” as that term is defined in the Protection from Abuse Act, 23 Pa.C.S. § 6102.
- A history of “sexual violence” or “intimidation” as those terms are defined in 42 Pa.C.S. § 62A03 (relating to Protection of Victims of Sexual Violence and Intimidation).

Self

Household member

Child

3. Please list any evaluation, counseling, or other treatment received following a conviction or finding of abuse:

4. If [any conviction above] you checked a box in (1) or (2) that applies to [a] your household member, who is not a party, state that person’s name, date of birth, and relationship to the child.

5. If you are aware that the other party or [members of] the other party’s household member has [or have] a criminal [record/abuse] record or abuse history, please explain:

I verify that the information above is true and correct to the best of my knowledge, information or belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date

Plaintiff/Defendant Signature

Printed Name

ONLY A PARTY CAN SIGN THIS FORM. IF A PARTY IS REPRESENTED BY AN ATTORNEY, THE ATTORNEY CANNOT SIGN THIS FORM ON BEHALF OF THE PARTY.

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Signature

Printed Name

(d) Child Abuse and Protective Services Involvement. A judicial district shall develop procedures by local rule, as necessary, for:

(1) obtaining the information required by 23 Pa.C.S. § 5329.1(a) from the county children and youth social service agency;

(2) distributing the information obtained in subdivision (d)(1) to the parties or the parties’ counsel, as appropriate, while ensuring that sharing confidential reports and information is consistent with the law, including 23 Pa.C.S. § 6340; and

(3) introducing the relevant information into evidence at a hearing or trial, including authenticating witness testimony.

Comment—2020

There is no obligation for the court to conduct an independent investigation of a party’s or his or her household member’s criminal record or abuse history.

Subdivision (a)(1) provides that the Criminal Record/Abuse History Verification form is a confidential document under the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania. A party with a criminal offense expunged or granted limited access is generally not required to disclose such information. See 18 Pa.C.S. § 9122.5. However, the Verification form requires a party to disclose this information, including the information of a household member. Although most of the listed offenses would be ineligible for expungement or limited access due to

the severity and nature of the criminal offense, some listed criminal offenses could be expunged or subject to limited access. As such, to avoid inadvertently disclosing this information to individuals not associated with the court or the custody litigation, the rule deems the Verification form a confidential document under the *Public Access Policy*.

Additionally, a requirement for the parties to update the Verification form has been added in subdivision (a)(4). The rule’s intent is for the court and parties to have the most current information available, including after a final order—provided the child remains under the court’s jurisdiction. Although the rule provides for the filing of an amended Verification form at a hearing, pretrial conference, or trial, the terminology used by a judicial district may vary for these court proceedings.

Subdivision (d) requires a judicial district to develop local rules for obtaining, distributing, and introducing into evidence information from the county children and youth social service agency. In a judicial district with a “one family—one judge” policy or in a county in which a judge presides over the custody and dependency cases, a local rule may not be necessary as provided in subdivision (d) as the judge will have access to the requisite Section 5329.1 information as set forth in 23 Pa.C.S. §§ 5328(a)(2.1) and 5329(a). In contrast, a local procedure may be necessary in a judicial district in which the juvenile dependency court’s information and the county children and youth social service agency’s file are not readily accessible to a custody court judge who is not directly involved in the juvenile dependency case.

In several counties, judicial districts have developed forms to elicit the appropriate Section 5329.1 information from the children and youth social service agency. In a judicial district using such a form, the court should ensure that the information or documentation obtained from the agency, which may be confidential, is handled in accordance with applicable laws related to the distribution of confidential information and the Pennsylvania Rules of Evidence.

The Verification form has been updated to include a new criminal offense, 18 Pa.C.S. § 2718 (relating to strangulation), which was added to 23 Pa.C.S. § 5329 in Act 32 of 2020 (effective August 4, 2020). In addition, the Verification form has been amended to require the disclosure of a finding of contempt related to a Protection of Victims of Sexual Violence and Intimidation Order under 42 Pa.C.S. § 62A14. The form already required the disclosure of a finding of contempt in a PFA action.

Rule 1915.4-4. Pre-Trial Procedures.

* * * * *

(e) At the pre-trial conference, the court shall consider the following [shall be considered]:

- (1) issues for resolution by the court;
- (2) unresolved discovery matters;
- (3) [**any**] agreements of the parties;
- (4) issues relating to expert witnesses;
- (5) settlement [**and/or**] or mediation of the case;

(6) a party’s or household member’s criminal record or abuse history or a party’s, household member’s, or child’s involvement with the juvenile dependency court or the children and youth social service agency as outlined in 23 Pa.C.S. §§ 5329 and 5329.1, including the admissibility of related documents, other evidentiary issues, or testimony;

(7) such other matters as may aid in the disposition of the case; and

[(7)] (8) if a trial date has not been scheduled, [it shall be scheduled] the court shall schedule the trial at the pre-trial conference.

* * * * *

Rule 1915.7. Consent Order.

If the parties have an agreement regarding custody and request that the court enter a consent order incorporating the agreement’s terms:

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

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

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

(2) the court memorializes the oral agreement from the record into a written custody order.

Official 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*.

[See Pa.R.C.P. No. 1915.10(b) regarding written custody order requirements.]

* * * * *

Rule 1915.10. Decision. Order.

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

[*Official Note:* See 23 Pa.C.S. § 5323(d).]

(b) The court shall enter a custody order as a separate written order or in a separate section of a written opinion.

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

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

(c) A custody order shall include a notice outlining the parties’ obligations under:

(1) 23 Pa.C.S. § 5337, regarding a party’s intention to relocate with a minor child; **and**

[*Official Note:* See 23 Pa.C.S. § 5323(c) and Pa.R.C.P. No. 1915.17.]

(2) Pa.R.C.P. No. 1915.3-2(a)(4)(ii), regarding a party’s ongoing obligation to complete, file, and serve the Criminal Record/Abuse History Verification form.

(d) A party may not file a motion for post-trial relief to an order of legal or physical custody.

* * * * *

Comment—2020

Similar to the rule’s requirement that the court include in a custody order provide a notice to the parties of his or her obligation with regard to relocation, the rule now provides that the custody court order contain a notice to the parties notifying him or her of the ongoing obligation to update the Criminal Record/Abuse History Verification form. Under no circumstances does a party filing an updated Verification form impose a duty on the court to respond or react to a newly revealed criminal record or abuse history absent another party petitioning the court for relief.

REPUBLICATION REPORT

Rule Proposal 154

The Domestic Relations Procedural Rules Committee (“Committee”) is proposing amendments to Pa.R.C.P. No. 1915.3-2, Criminal Record or Abuse History, Pa.R.C.P. No. 1915.4-4, Pre-Trial Procedures, Pa.R.C.P. No. 1915.7—Consent Order, and Pa.R.C.P. No. 1915.10—Decision. Order. Initially, Act 107 of 2013, effective January 1, 2014, prompted the Committee to discuss rule amendments to further those legislative changes, which included directing custody courts to consider child abuse and the involvement of a party, household member, or child with a child protective services agency when determining child custody under 23 Pa.C.S. §§ 5321—5340. Furthermore, Act 107 amended not only Title 23 as it relates to child custody, but also the Child Protective Services Law, 23 Pa.C.S. §§ 6301—6375, and the Juvenile Act, 42 Pa.C.S. §§ 6301—6375. Act 107 directed the Department of Public Welfare, now the Department of Human Services (DHS), the local county children and youth social services agency (CYS), and the court of common pleas to cooperate with the exchange of information that is necessary for a court to determine child custody.

As it relates to child custody determinations, Act 107 provided statutory changes requiring inter-branch cooperation between family courts and DHS, including CYs, for sharing reports and other information of families and children involved with CYs and a custody court. The information sharing is necessary for a custody court to determine the amended factors in 23 Pa.C.S. §§ 5328(a)(2.1) and 5329.1(a). These statutory changes also provide a number of procedural and evidentiary problems.

First, child custody proceedings are adversarial, and the parties are required to present evidence in support of his or her claim for custody, which address the Section 5328 factors, including (a)(2.1). Often the custody litigants are not the dependency action litigants (*e.g.*, grandparents, other third parties). Those litigants may not have access to juvenile court records and CYs files, which may have relevancy in the custody action. Moreover, some dependency and CYs information or reports are confidential and, as such, a custody litigant may be precluded from obtaining evidence relevant to the custody action.

Second, the Act amends the Child Protective Services Law and Juvenile Act by granting courts of common pleas access to reports, files, and court records that would assist the court in determining custody. Allowing the custody judge access to CYs information and files places the judge in an investigative rather than an adjudicative

role. Previous published versions of this Rule Proposal had many comments objecting to this judicial investigative role.

Complicating matters are the varying judicial district court procedures for custody cases and juvenile dependency cases. In judicial districts in which a judge may hear both custody and dependency cases or the judicial district is “one family one judge,” the issues are less problematic since the custody court often would have knowledge of the parties’ or child’s involvement with CYs and dependency court. Additionally, the court would already have access to the dependency case records and files, and may have conducted hearings in which this information had been entered as evidence. However, even in these judicial districts, the issue of how CYs and dependency court information will be entered into evidence in the custody action is still problematic in many circumstances, as is third-party litigants accessing confidential CYs reports and information.

On three occasions, the Committee published for public comment in the *Pennsylvania Bulletin* a variation of this Rule Proposal. *See* 46 Pa.B. 3932 (July 23, 2016), 47 Pa.B. 3333 (June 17, 2017), and 49 Pa.B. 3469 (July 6, 2019). After reviewing comments from the most recent publication and additional Committee deliberations, the Committee has substantially revised the previous proposal, and the Committee is now republishing the Rule Proposal for public comment.

Initially, the Committee proposes reformatting Pa.R.C.P. No. 1915.3-2 into an outline format rather than the current narrative format. The current Rule Proposal significantly restructures the rule. The Committee believes this format is more easily understood and followed, especially in rules in which there are numerous procedural parts. As such, subdivisions (a) and (b) have been completely rewritten. The rule revision includes the current rule’s narrative provisions reformatted and enumerated into distinct subdivisions with additional provisions detailing when the parties must update the Criminal Records/Abuse History Verification form and addressing sanctions for failure to file the form.

Of significance, the Committee believes that it is critical that the court have the most current information on the parties and household member’s criminal record and abuse history to properly determine custody. As such, the Rule Proposal provides that the party’s shall have the ongoing obligation for updating the Verification form so that the parties and the court have current and accurate information so they can understand any potential threats of harm to the child. The Rule Proposal requires the parties to update the Verification form at each hearing, pretrial conference, or trial and after a final order, if the court has jurisdiction over the child, when a party’s or household member’s circumstances have changed relative to the required disclosures, which would impact the most recently filed Verification form’s accuracy.

Finally, as it relates to Pa.R.C.P. No. 1915.3-2(b), the Committee has deleted the Note following the current rule text and, instead, incorporated the relevant portions into the rule text. The Committee determined that the Note’s information would be better suited and have greater significance in practice by its inclusion into the rule text.

Also, the Committee proposes adding subdivision (d) to Pa.R.C.P. No. 1915.3-2, which will require judicial districts to develop local rules/procedures for obtaining the requisite information from CYs and the dependency

courts, as appropriate. As set forth in the accompanying Comment, the variation in judicial district procedures in custody and juvenile dependency cases makes a “one-size fits all” statewide rule difficult and impractical. The Committee’s deliberations suggested that the local courts were in a better position to develop procedures between two court divisions and a county agency.

Another statutory change impacting Pa.R.C.P. No. 1915.3-2 is a recent amendment to 23 Pa.C.S. § 5329. Act 32 of 2020 (effective August 4, 2020) amends Section 5329 and adds 18 Pa.C.S. § 2718 (related to strangulation) to the list of criminal offenses that the court must consider in awarding custody. The Committee proposes amending the Criminal Record/Abuse History Verification form to include that statutory amendment along with adding contempt of Protection of Victims of Sexual Violence and Intimidation order or agreement to the list of offenses included on the form.

As noted above, the Rule Proposal includes amendments to Pa.R.C.P. Nos. 1915.4-4, 1915.7, 1915.10. With regard to Rule 1915.4-4, the proposed amendment would require that the court address the parties’ criminal record or abuse history at a pre-trial conference. In addition, the proposed amendment would require the court to address the admissibility of the CYS documents and information and other related evidentiary issues, including authenticating CYS witness testimony, during a pretrial conference, as well.

Finally, the Committee proposes amending Rule 1915.10(c) by adding a provision requiring that the court’s custody order include a notice outlining the parties’ ongoing obligation to update the Verification form post-final order. The Committee reasoning in proposing this obligation is that often after a final order one party’s circumstances change that are unknown to the other party, which could have significant impact on the child and the child’s best interest. By requiring a party to update the Verification when his or her circumstances (or his or her household member’s circumstances) warrant, the other party can obtain information and assess whether a modification of the order is necessary. This requirement is fashioned after a similar relocation notice requirement. As proposed, subdivision (c) is subdivided so that both requirements, relocation and updating verifications, are in separate subdivisions.

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

[Pa.B. Doc. No. 20-1021. Filed for public inspection July 31, 2020, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1915]

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:

Bruce J. Ferguson, Counsel
Domestic Relations Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
Fax: 717-231-9531
domesticrules@pacourts.us

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY OF MINOR CHILDREN

Rule 1915.11. [**Appointment of Attorney for Child. Interview of Child. Attendance of Child at Hearing or Conference.**] **Appointment of Attorney for Child. Child Interview by the Court. Child Attending Court Proceedings.**

[(a) **The court may on its own motion, or the motion of a party, appoint an attorney to represent the child in the action. Counsel for the child shall represent the child’s legal interests and zealously represent the child as any other client in an attorney-client relationship. Counsel for the child shall not perform the role of a guardian *ad litem* or best interests attorney. The court may assess the cost of the child’s attorney upon the parties in such proportions as the court deems appropriate or as otherwise provided by law. The order appointing an attorney to represent the child shall be in substantially the form set forth in Pa.R.C.P. No. 1915.19.**

(b) **The court may interview a child, whether or not the child is the subject of the action, in open court or in chambers. The interview shall be conducted in the presence of the attorneys and, if permitted by the court, the parties. The attorneys shall have the right to interview the child under the supervision of the court. The interview shall be part of the record.**

(c) **Unless otherwise directed by the court, the child who is the subject of the action shall not be required to attend a hearing before the court or a conference.**

Official Note: A party may bring a child to a conference or hearing but, in the absence of an order of court, is not required to do so.

Explanatory Comment—1991

Rule 1915.15(b) provides a form of order to appear at a conference or hearing in an action for custody, partial custody or visitation of minor children. Prior to its recent amendment, the form required that one or more children who are the subject of the action attend the hearing or conference.

However, the presence of a child in court is not always necessary or desirable. The experience may be traumatic and disruptive. Consequently, the child should not be required to attend a hearing or conference in every case. When the presence of a child is required and the custodial party does not voluntarily bring the child, the court may issue an order for the child's attendance.

Subdivision (c) has been added to Rule 1915.11 to provide that, in the absence of an order of court, a child who is the subject of the action need not be brought to a conference or a hearing before the court. The form of order to appear provided by Rule 1915.15(b) has been revised to implement this policy.]

(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.

Official 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.

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.

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.

[Pa.B. Doc. No. 20-1022. Filed for public inspection July 31, 2020, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 2 AND 3]

Proposed Amendments of Pa.R.J.C.P. 240 and 391

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rules of Juvenile Court Procedure 240 and 391 clarifying procedures to permit the extended detention of a juvenile when procedural requirements are not met 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
 juvenilerules@pacourts.us

All communications in reference to the proposal should be received by September 15, 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 Juvenile Court
 Procedural Rules Committee*

JUDGE JOY REYNOLDS McCROY,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION

PART D. PRE-ADJUDICATORY DETENTION

Rule 240. Detention of Juvenile.

A. *Detention [requirements] Requirements.* If a juvenile is brought before the court or delivered to a detention facility designated by the court, the juvenile probation officer immediately shall:

- 1) examine the written allegation;
- 2) make an investigation, which may include an intake conference with the juvenile, the juvenile's attorney, guardian, or other interested and informed adult; and
- 3) release the juvenile, unless it appears that the juvenile's detention is warranted.

B. *Filing of [petition] Petition.* The release of the juvenile shall not prevent the subsequent filing of a petition.

C. *Prompt [hearing] Hearing.* If the juvenile is not released, a detention hearing shall be held no later than [**seventy-two**] **72** hours after the juvenile is placed in detention. Neither the juvenile nor the juvenile's attorney shall be permitted to waive the detention hearing.

D. *Time [restrictions] Restrictions.* Except as provided in [**paragraphs (D)(1) and (D)(2)**] **this paragraph**, if the adjudicatory hearing is not held [**or notice of request for transfer is not submitted within the ten-day period as specified in Rules 391 and 404**], **as required by Rule 404(A), or a transfer hearing is not held, as required by Rule 391(B)**, the juvenile shall be released.

1) [**A**] **Upon motion, a** juvenile may be detained for an additional single period not to exceed [**ten**] **10** days when the court determines that:

- a) evidence material to the case is unavailable;
- b) due diligence to obtain such evidence has been exercised; **and**
- c) there are reasonable grounds to believe that such evidence will be available at a later date[; and].

[d) the detention of the juvenile would be warranted.]

2) **[A] Upon motion, a juvenile may be detained for [successive ten-day intervals] additional periods, each of which shall not exceed 10 days,** if the delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:

- a) delay caused by the unavailability of the juvenile **[or the juvenile's attorney]**;
- b) delay caused by any continuance granted at the request of the juvenile **[or the juvenile's attorney]**; or
- c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

3) Whenever extended detention is sought under this paragraph, the court shall consider whether detention remains warranted.

Comment

If a juvenile is detained, the guardian should be notified immediately. See Rules 220 (Procedure in Cases Commenced by Arrest Without Warrant) and 313(B) (Detention from Intake—Notice to Guardian) for notification of the guardian.

Nothing in paragraph (C) is intended to preclude the use of stipulations or agreements among the parties, subject to court review and acceptance at the detention hearing.

Under paragraph (D)(2), if the juvenile causes delay, the juvenile may continue to be held in detention. **[The additional period] Additional periods** of detention should not **individually** exceed ten days. **[The court may continue such detention for successive ten-day intervals if the juvenile caused the delay.]** The time restrictions of paragraph (D) apply to a juvenile who is placed in detention, even if previously released.

[For time restrictions on detention for juveniles scheduled for a transfer hearing to criminal proceedings, see Rule 391.]

Under paragraph (D)(3), whenever extension of a juvenile's detention may result, the court should consider whether continued detention is warranted and whether a less restrictive alternative to secured detention is available.

For statutory provisions on detention, see 42 Pa.C.S. §§ 6325, 6331, 6335. For the Juvenile Court Judges Commission's Detention Standards, see 37 Pa. Code §§ 200.101 *et seq.* (2003).

If a juvenile is detained, the juvenile is to be placed in a detention facility, which does not include a county jail or state prison. See Rule 120 and its Comment for definition of "detention facility."

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES

PART G. TRANSFER FOR CRIMINAL PROSECUTION

Rule 391. Time Restrictions for Detention of Juveniles Scheduled for Transfer Hearing.

A. *Generally.* The detention requirements of Rules 240, 241, 242, and 243 shall be followed for juveniles scheduled for a transfer hearing **[except for the time restrictions provided in paragraph (B) of this rule].**

B. *Time Restrictions.* If the transfer hearing is not held within ten days of the filing of the notice of request for transfer to criminal proceedings, the juvenile shall be released **[except as provided in paragraphs (B)(1) and (B)(2)] unless the exceptions of Rule 240(D) apply.**

[1) A juvenile may be detained for an additional single period not to exceed ten days when the court determines:

- a) that evidence material to the case is unavailable, including a psychological or psychiatric evaluation;
- b) that due diligence to obtain such evidence or evaluation has been exercised;
- c) that there are reasonable grounds to believe that such evidence or evaluation will be available at a later date; and
- d) that the detention of the juvenile would be warranted.

2) A juvenile may be detained for successive ten-day intervals if the result of delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:

- a) delay caused by the unavailability of the juvenile or the juvenile's attorney;
- b) delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney; or
- c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.]

Comment

The filing of a request for transfer to criminal proceedings resets the ten-day clock for a hearing for the juvenile in detention. The transfer hearing is to be held within ten days of the filing of a request for transfer to criminal proceedings, not ten days from the date of detention for the juvenile. This time requirement is different than the time requirement for the adjudicatory hearing under Rule 240(D). See Rule 800.

[Under Paragraph (B)(1), the case may be extended for only one single period of ten days. However, under paragraph (B)(2) when the juvenile causes delay, the case may be extended for successive ten-day intervals.]

* * * * *

REPORT

Proposed Amendment of Pa.R.J.C.P. 240 and 391

The Juvenile Court Procedural Rules Committee proposes the amendment of Pennsylvania Rules of Juvenile

Court Procedure 240 and 391 to clarify procedures to permit the extended detention of a juvenile when procedural requirements are not met.

First, Rule 391(B) states “if the transfer hearing is not held within ten days of the filing of the notice of request for transfer to criminal proceedings, the juvenile shall be released except as provided in paragraphs (B)(1) and (B)(2).” The text of paragraphs (B)(1) and (B)(2) are almost identical to Rule 240(D) with the exception of “including a psychological or psychiatric evaluation” in paragraph (B)(1)(a). Rather than repeat the language of Rule 240(D), the Committee proposes removing the language from Rule 391(B)(1) and B(2) and simply refer the reader to Rule 240(D). A similar approach has already been taken with Rule 404(A).

Second, Rule 240(D) states “except as provided in paragraph (D)(1) and (D)(2), if the adjudicatory hearing is not held or notice of request for transfer is not submitted within the ten-day period as specified in Rules 391 and 404, the juvenile shall be released.” It has become apparent to the Committee that the triggering event for continued detention when a transfer is initiated differs between Rule 391(B) and Rule 240(D). Rule 391(B) is triggered when a transfer hearing is untimely whereas Rule 240(D) is triggered when the notice of request for a transfer hearing is untimely.

The Committee believes that the triggering event under Rule 391(B) should be the transfer hearing, not the notice. Therefore, the Committee proposes amending Rule 240(D) to include the transfer hearing and remove mention of the notice.

Third, the Committee proposes introducing a motion requirement to paragraph (D). This requirement is not separate from that for seeking a continuance, but part of a motion for continuance pursuant to Rule 122. The Committee also proposes expanding the court’s consideration of the necessity for continued detention anytime that continued detention is sought. Finally, the Committee proposes removing the juvenile’s attorney as a cause for the juvenile’s continued detention.

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

[Pa.B. Doc. No. 20-1023. Filed for public inspection July 31, 2020, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 5 AND 6]

Proposed Amendment of Pa.R.J.C.P. 515, 610 and 632

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rules of Juvenile Court Procedure 515, 610, and 632 concerning the imposition of financial obligations on juveniles at the time of disposition 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
 juvenilerules@pacourts.us

All communications in reference to the proposal should be received by September 15, 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 Juvenile Court
 Procedural Rules Committee*

JUDGE JOY REYNOLDS McCOY,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 515. Dispositional Order.

A. *Generally.* When the court enters a disposition after an adjudication of delinquency pursuant to Rule 409(A)(2), the court shall issue a written order, which provides balanced attention to the protection of the community, accountability for the offenses committed, and development of the juvenile’s competencies to enable the juvenile to become a responsible and productive member of the community. The order shall include:

- 1) the court’s findings pursuant to Rule 512(D);
- 2) a designation whether the case is eligible pursuant to 42 Pa.C.S. § 6307(b)(1.1)(i) for limited public information;
- 3) a directive that the juvenile shall submit to fingerprinting and photographing by, or arranged by, the law enforcement agency that submitted the written allegation in all cases in which the juvenile has not previously been fingerprinted or photographed;
- 4) the date of the order; and
- 5) the signature and printed name of the judge entering the order.

B. [*Restitution. If restitution is ordered in a case, the*] **Financial Obligations. If the court orders the payment of fines, costs, fees, or restitution, the amounts shall be reasonable and as part of a plan of rehabilitation considering the nature of the acts committed and the earning capacity of the juvenile.** The dispositional order shall include:

1) [a specific amount] the specific amounts of fines, costs, fees, or restitution to be paid by the juvenile;

2) to whom the [restitution] financial obligations shall be paid; and

3) a payment schedule[, if so determined by the court] based upon the juvenile's ability to pay.

C. *Guardian [participation] Participation.* The dispositional order shall include any conditions, limitations, restrictions, and obligations imposed upon the guardian.

D. *Disposition [reporting] Reporting.* The court shall forward the case disposition to the Juvenile Court Judges' Commission, as required by the Commission.

Comment

Pursuant to paragraph (A)(2), the court is to determine if the case is eligible for limited public information under the requirements of 42 Pa.C.S. § 6307(b)(1.1)(i). See 42 Pa.C.S. § 6307(b)(2). When the case is designated, the clerk of courts is to mark the file clearly. For information that is available to the public in those eligible cases, see Rule 160.

See 23 Pa.C.S. § 5503 and 42 Pa.C.S. §§ 6308, 6309 & 6310.

[**Dispositional orders should comport in substantial form and content to the Juvenile Court Judges' Commission model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social Security Act. For model orders, see <http://www.jcjc.state.pa.us> or <http://www.dpw.state.pa.us> or request a copy on diskette directly from the Juvenile Court Judges' Commission, Room 401, Finance Building, Harrisburg, PA 17120.**]

Pursuant to paragraph (B), financial obligations may be imposed as a plan of rehabilitation consistent with the goals of balanced and restorative justice: 1) the protection of the community; 2) the imposition of accountability for offenses committed; and 3) the development of competencies to enable the juvenile to become a responsible and productive member of the community. See 42 Pa.C.S. § 6352(a).

In determining the amount of the financial obligation pursuant to paragraph (B), the judge may include a contribution to a restitution fund. See 42 Pa.C.S. § 6352(a)(5). A juvenile's earning capacity can be determined by examining factors including, but not limited to, the juvenile's physical and intellectual capabilities, maturity, education, work history, availability of suitable employment, and the priority of other uses of earnings, including essential goods and services, dependents, and the pursuit of higher education. The primary purpose of a financial obligation should be the juvenile's rehabilitation, not the juvenile's punishment or the victim's recompense. See generally *Commonwealth v. Petrick*, 217 A.3d 1217 (Pa. 2019). The satisfaction of a financial obligation using third party funds does not further a juvenile's rehabilitation.

Assuming the court finds the juvenile has a sufficient earning capacity to impose a reasonable financial obligation, the court should determine the

juvenile's ability to pay the financial obligation pursuant to paragraph (B)(3). In determining a payment schedule, the court should include the frequency, amount, and duration of payments. A juvenile with a present ability to satisfy a financial obligation should be placed on an immediate and full payment schedule.

When a disposition is no longer consistent with the goals of balanced and restorative justice, a juvenile's plan of rehabilitation may be changed through a dispositional review hearing and modification of dispositional order, including an adjustment of financial obligations. See Rule 610(A)-(B).

The court shall retain jurisdiction over the juvenile until the financial obligation has been satisfied, the juvenile attains 21 years of age, or supervision has otherwise been terminated. See 42 Pa.C.S. § 6352(a)(5); see also Rule 632 (Early Termination of Court Supervision by Motion).

Official Note: Rule 515 adopted April 1, 2005, effective October 1, 2005. Amended August 20, 2007, effective December 1, 2007. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately. Amended April 29, 2011, effective July 1, 2011. Amended February 13, 2019, effective June 28, 2019. Amended _____, 2020, effective _____, 2020.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 515 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 515 published with the Court's Order at 37 Pa.B. 4866 (September 8, 2007).

Final Report explaining the amendment to Rule 515 published with the Court's Order at 39 Pa.B. 4743 (August 8, 2009).

Final Report explaining the amendments to Rule 515 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

Final Report explaining the amendments to Rule 515 published with the Courts Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 515 published with the Court's Order at 49 Pa.B. 916 (March 2, 2019).

Final Report explaining the amendments to Rule 515 published with the Court's Order at Pa.B. _____, 2020.

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART B. MODIFICATIONS AND REVIEWS

Rule 610. Dispositional and Commitment Review.

A. *Dispositional [review hearing] Review Hearing.* The court shall review its disposition and conduct dispositional review hearings for the purpose of ensuring that the juvenile is receiving necessary treatment and services and that the terms and conditions of the disposition are being met.

1) In all cases, the court shall conduct dispositional review hearings at least every six months.

2) In all cases, the juvenile shall appear in person at least once a year.

3) The court may schedule a review hearing at any time.

B. **[Change in] Modification of Dispositional Order.** Whenever there is a **[request for a change in] motion for a modification of** the dispositional order, other than a motion to revoke probation as provided in Rule 612, notice and an opportunity to be heard shall be given to the parties and the victim. **Any outstanding restitution amounts may not be reduced by modification of the dispositional order without specific notice to the victim prior to the hearing that a modification may be ordered.**

1) The juvenile may be detained pending a court hearing.

2) A detention hearing shall be held within **[seventy-two] 72** hours of the juvenile's detention, if detained.

3) The juvenile shall be given a statement of reasons for the discharge from a placement facility or **[request for change in] motion for modification of** the dispositional order.

4) A review hearing shall be held within **[twenty] 20** days of the discharge from the placement facility or **[request for change in] motion for modification of** the dispositional order.

C. **Advanced [communication technology] Communication Technology.** A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

D. **Post-Dispositional Rights.** A colloquy and inquiry of post-dispositional rights shall be conducted when a juvenile is aggrieved by a **[change in] modification of** the dispositional order.

Comment

At any hearing, if it is determined that the juvenile is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 147.

Under paragraph (A), the court is to conduct dispositional review hearings as frequently as necessary to ensure that the juvenile is receiving necessary treatment and services and that the terms and conditions of the disposition are being met. *See* Rule 800.

When conducting a dispositional review hearing, the court is to ensure that the disposition continues to provide balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies to enable the juvenile to become a responsible and productive member of the community. **A change in the plan of rehabilitation may result in the adjustment of financial obligations imposed pursuant to Rule 515.**

Nothing in this rule prohibits the juvenile from requesting an earlier review hearing. The juvenile may file a motion requesting a hearing when there is a need for change in treatment or services.

Additionally, nothing in this rule is intended to prohibit the emergency transfer of a juvenile from a placement facility to a detention facility pending reconsideration of the dispositional order, and this rule is not intended to preclude a motion for modification of a dispositional order after the juvenile has been detained.

Under paragraph (B), the attorney for the Commonwealth or its designee is to notify the victim of the date, time, place, and purpose of the review hearing. Prior to ordering the **[change in] modification of** the dispositional order, the court is to give the victim an opportunity to submit an oral and/or written victim-impact statement if the victim so chooses. *See* **[Victim's]** Victims Bill of Rights, 18 P.S. **[§] §§ 11.201 et seq.** **Whenever a motion seeks a reduction of outstanding restitution, the victim should be given specific notice of the relief sought prior to the hearing. A court may not order a downward adjustment of outstanding restitution without first ensuring that notice was given to the victim of the possibility that such an adjustment was specifically being considered at the dispositional review hearing.**

Any persons may be subpoenaed to appear for the hearing. *See* Rule 123 and 42 Pa.C.S. § 6333. However, nothing in these rules requires the attendance of the victim unless subpoenaed. If the victim is not present, the victim is to be notified of the final outcome of the proceeding.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing to be conducted via teleconferencing, two-way simultaneous audio-visual communication, or similar method. The juvenile is to be afforded all the same rights and privileges as if the hearing was held with all present in the courtroom.

If a juvenile is detained or placed, the juvenile is to be placed in a detention facility or placement facility, which does not include a county jail or state prison. *See* Rule 120 and its Comment for definitions of "detention facility" and "placement facility."

For the colloquy and inquiry of post-dispositional rights, *see* Rule 512(C). If a change in disposition results in an out-of-home placement, then the court should also explain to the juvenile the availability of review of the out-of-home placement pursuant to Pa.R.A.P. 1770.

Official Note: Rule 610 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. Amended June 28, 2013, effective immediately. Amended May 11, 2017, effective October 1, 2017. **Amended _____, 2020, effective _____, 2020.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 610 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the revisions of Rule 610 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006).

Final Report explaining the amendments to Rule 610 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

Final Report explaining the amendments to Rule 610 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 610 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

Final Report explaining the amendments to Rule 610 published with the Court's Order at 43 Pa.B. 3938 (July 13, 2013).

Final Report explaining the amendments to Rule 610 published with the Court's Order at 47 Pa.B. 2969 (May 27, 2017).

Final Report explaining the amendments to Rule 610 published with the Court's Order at Pa.B. (, 2020).

PART D. CESSATION OF COURT JURISDICTION OR SUPERVISION

Rule 632. Early Termination of Court Supervision by Motion.

A *Motion*. Any party may move for early termination of court supervision. The motion shall state with specificity why early termination is sought and why the requirements of Rule 631(A) have not been met.

B. *Notice*.

1) In addition to the service requirements of Rule 345, any party moving for early termination shall serve the motion on the juvenile probation officer.

2) The victim shall provided notice of the motion for early termination of court supervision.

C. *Objection*.

1) A party or the juvenile probation officer may object to the motion under paragraph (A) and request a hearing.

2) Such objection shall be made within [**thirty**] **30** days of the date of the motion; otherwise, objections are deemed waived.

D. *Court's [**determination**] **Determination***. The court shall:

1) rule on the motion and any objections without a hearing; or

2) schedule a hearing.

E. *Hearing*. If objections have been made pursuant to paragraph (C) [**and/or**] **or** the court has determined a hearing is necessary, the court shall hold a hearing and give each party, the victim, and the juvenile probation officer an opportunity to be heard before the court enters its final order.

F. *Termination*. When the requirements of paragraphs (A) through (E) have been met and the court is satisfied that there [**are**] **is a** compelling [**reasons**] **reason** to discharge the juvenile prior to the completion of the requirements of Rule 631(A), the court may order an early discharge of the juvenile from its supervision.

Comment

If a party has moved for early termination of court supervision of a juvenile pursuant to paragraph (A) or the court has scheduled a hearing pursuant to paragraph (E), the attorney for the Commonwealth or its designee is to notify the victim of the motion for early termination and/or the date, time, place, and purpose of the hearing.

The victim may be present at the hearing and is to be afforded the opportunity to submit an oral and/or written victim-impact statement. See Rule 132 and the Victim's Bill of Rights, 18 P.S. [§] **§§** 11.201 *et seq.*

For the submission of victim-impact statements by victims of personal injury crimes prior to the release or transfer of a juvenile from a placement facility, see Victim's Bill of Rights, 18 P.S. § 11.201(8.1)(iii).

Any persons may be subpoenaed to appear for the hearing. See Rule 123 and 42 Pa.C.S. § 6333. However, nothing in these rules requires the attendance of the

victim unless subpoenaed. If the victim is not present, the victim is to be notified of the final outcome of the proceeding.

For procedures on motions, see Rule 344. For filing and service requirements, see Rule 345.

If all parties are in agreement with the termination, the court may terminate court supervision without a hearing.

For procedures on the dispositional order, see Rule 515. See also, 42 Pa.C.S. § 6352. For collection of outstanding restitution regardless of court supervision status, see 42 Pa.C.S. § 9728.

"Compelling reason," as set forth in paragraph (F), should reflect consideration of the statutory goals of balanced and restorative justice: 1) the protection of the community; 2) the imposition of accountability for offenses committed; and 3) the development of competencies to enable the juvenile to become a responsible and productive member of the community. See In the Interest of D.C.D., 171 A.3d 727 (Pa. 2017); 42 Pa.C.S. § 6352(a). The court has broad discretion in weighing each goal as appropriate to the individual juvenile. See id. at 742.

Official Note: Rule 632 adopted February 26, 2008, effective April 1, 2008. Amended May 26, 2011, effective July 1, 2011. **Amended , 2020, effective , 2020.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 632 published with the Court's Order at 38 Pa.B. 1146 (March 8, 2008).

Final Report explaining the amendments to Rule 632 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

Final Report explaining the amendments to Rule 632 published with the Court's Order at Pa.B. (, 2020).

REPORT

Proposed Amendment of Pa.R.J.C.P. 515, 610, and 632

The Juvenile Court Procedural Rules Committee herein proposes amendment of Pennsylvania Rules of Juvenile Court Procedure 515, 610, and 632 concerning the imposition of financial obligations on juveniles at the time of disposition.

The Committee previously published proposed amendments to Rules 515 and 610 concerning the imposition of financial obligations on juveniles at the time of disposition. See 49 Pa.B. 2474 (May 14, 2019). Although the proposal suggested a change to the rule text in Rule 515 to a more encompassing phrase of "financial obligations," most of the proposal involved revisions to the commentary. The purpose of these revisions was to explain the operation of the rules and Juvenile Act to permit subsequent modifications to outstanding financial obligations.

The Committee received 14 comments. After reviewing the comments, the Committee recognized, consistent with the prior publication report, the limits on which procedural rulemaking can address the issues of policy raised in the comments. The Committee did not disagree with the sentiment and seeming frustration expressed by some commenters regarding juveniles' ability to satisfy financial obligations. Nor did the Committee disagree with the

burden that such obligations place on a juvenile beyond the jurisdiction of the juvenile court. Further, the Committee acknowledged that perspectives on the imposition of financial obligations differed among stakeholders, especially when financial obligations are imposed as restitution. Moreover, while some commenters believe that some costs are “mandatory” regardless of circumstance and others contend that imposition of any cost must be consistent with the Juvenile Act, the Committee believed this difference of opinion is best resolved through adjudicatory proceedings or legislative action than by procedural rulemaking.

The Committee discussed at length the implication of modifying restitution after the initial imposition. Concerns were expressed that victims have notice and the opportunity to be heard prior to the court ordering a modification of restitution. Rule 610(B) currently requires notice to the victim when there is going to be a change in disposition. However, the notice is not specific to restitution so the victim does not know if the change concerns restitution.

What follows is a description of additional revisions contained in the current proposal:

- Rule 515(B)(3) is revised to make a payment schedule mandatory and based on the juvenile’s ability to pay. Likely, the juvenile is going to lack the present funds to immediately pay financial obligations unless the amount is relatively low. In that instance, the judge can order the immediate and full payment without burdening the court with creating a schedule. However, in response to comments, there would also be an inquiry into the juvenile’s ability to pay. The inquiry involves the *collection* of the financial obligation, not the *calculation* of that amount because the calculation requires consideration of the juvenile’s earning potential, per the Juvenile Act. Through scheduling, the judge will be informed just how long payments may extend including beyond the juvenile’s 21st birthday.

- In the Comment to Rule 515, users are reminded that the financial obligation must be consistent with the goals of balanced and restorative justice (“BARJ”). This statement is also intended to encompass the goals in the “plan of rehabilitation.”

- In the Comment to Rule 515, factors are included to determine a juvenile’s earning capacity. Several of these factors are from *Commonwealth v. B.D.G.*, 959 A.2d 362, 367-68 (Pa. Super. 2008) (*en banc*) (quoting *In Interest of Dublinski*, 695 A.2d 827, 830 (Pa. Super. 1997)). Additional factors include the availability of suitable employment, and the priority of other uses of earnings, including essential goods and services, dependents, and the pursuit of higher education.

- In the Comment to Rule 515, a reference to case law and the rehabilitative purpose of restitution was added. The word “primary” was chosen to describe “purpose” to indicate that a secondary purpose may be the compensation of the victim for loss caused by the juvenile. A citation to *Commonwealth v. Petrick*, 217 A.3d 1217 (Pa. 2019) was added in support of this premise.

- In the Comment to Rule 515, a statement is added indicating that the use of third party funds to satisfy financial obligations do not further a juvenile’s rehabilitation. This statement is intended to guard against parents paying a juvenile’s financial obligation and circumventing the accountability function of financial obligations. This statement was prompted by commenters’ citation of *In re C.W.*, 7 A.3d 891 (Pa. Cmwlth. 2010) for the proposition

that parental income is not relevant for the calculation of a juvenile’s earning capacity. Additionally, the statement is intended to address commenters’ concerns that juveniles from indigent families may be subject to longer terms of supervision relative to juveniles from families with the means to satisfy financial obligations. *See also* 42 Pa.C.S. § 6352(a)(5) (“[T]he court shall retain jurisdiction until there has been full compliance with the order.”).

The Committee is aware of 23 Pa.C.S. §§ 5503(a) & 5505, whereby parents of a juvenile can be held liable, subject to caps, for injury caused by the juvenile. The Committee specially invites comment on the interplay between consideration of a juvenile’s earning capacity and parental liability for restitution in determining financial obligations.

- In the Comment to Rule 515, further explanation is added indicating that a disposition should be reviewed when the disposition no longer meets the goals of BARJ.

- In the Comment to Rule 515, the last paragraph concerning the use and location of form orders is removed given the statewide use of PACMS for generating orders.

- Rule 610(B) is revised to add a second sentence requiring notice to the victim prior to any reduction of outstanding restitution in a dispositional review hearing. The specific notice provision is intended to address the use of more generalized language in a modification motion that fails to inform the other parties that the filing party may seek a decrease in restitution owed at the hearing. Corresponding commentary was added to the Comment.

- In the Comment to Rule 610, the proposed sentence in the 3rd paragraph is revised to replace “diminution” with “adjustment.”

- The text of Rule 632 is revised to clarify that only a single compelling reason is sufficient for early termination of court supervision. The current version, with pluralized “reasons,” suggests there must be more than one compelling reason.

- The Comment to Rule 632 is revised to include the definition for “compelling reason” discussed by the Court in *In the Interest of D.C.D.*, 1717 A.3d 727 (Pa. 2017). This commentary is intended to aid readers in applying the rule.

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

[Pa.B. Doc. No. 20-1024. Filed for public inspection July 31, 2020, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Administrative Suspension

Notice is hereby given that the following attorneys have been Administratively Suspended by Order of the Supreme Court of Pennsylvania dated March 18, 2020, pursuant to Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective July 17, 2020 for Compliance Group 2.

Notice with respect to attorneys having Pennsylvania registration addresses, which have been administratively suspended by said Order, was published in the appropriate county legal journal.

Bigley, Sean F.
Rancho Palos Verdes, CA

Bilderback, Kathleen Woolsey
St. Louis, MO

Champagne, Leon H.
Wilmington, DE

Forgey, Jason Matthew
Frisco, TX

Holmes, Joshua David
Stephens City, VA

Johnson, Woodie, III
Fort Washington, MD

Kosik, Robert A.
Arlington, VA

Moxie, Dwight O.
Irvine, CA

Nelson, Andrea Louise
Rockville, MD

Sahai, Manjari
Chaska, MN

Shields, John Edward, Jr.
Willingboro, NJ

Sussman, Jonathan
Brooklyn, NY

Tran, Phong Ngoc
Cherry Hill, NJ

Walker, Cynthia
Sarasota, FL

Williams, LaMonte Jeffrey, II
Las Vegas, NV

SUZANNE E. PRICE,
Attorney Registrar

[Pa.B. Doc. No. 20-1025. Filed for public inspection July 31, 2020, 9:00 a.m.]

SUPREME COURT

Filing an Affidavit of Compliance with the Federal CARES Act in Landlord-Tenant Cases; No. 537 Judicial Administration Doc.

Order

Per Curiam

And Now, this 16th day of July, 2020, *It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that every action by a landlord against a tenant for the recovery of possession of real property filed on or after March 27, 2020 through August 24, 2020 shall be accompanied by an Affidavit of Compliance with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (“CARES Act”) in the following form as available on the website of the Administrative Office of Pennsylvania Courts at <http://www.pacourts.us/forms/for-the-public> (for actions in magisterial district courts and courts of common pleas) or as available on the website of

the Philadelphia Municipal Court at <https://www.courts.phila.gov/municipal/civil/>, respectively. A copy of the completed affidavit shall be attached to the complaint and served upon the tenant.

Additionally, every action by a landlord who is a federally backed multifamily mortgage loan borrower, as defined by section 4023(f)(2)-(3) of the CARES Act, against a tenant for the recovery of real property shall continue to be accompanied by the Affidavit of Compliance with the CARES Act through the earlier of 60 days after the termination of the national emergency on COVID-19 as declared by the President or March 1, 2021. See Affidavit, questions 4 and 5.

Notwithstanding the provisions of Pa.R.E. 802, the affidavit is admissible at the hearing or trial for the recovery of possession of real property.

[CAPTION]

To the Landlord or Authorized Agent: Please see Supplemental Instructions for information about the CARES Act and definitions of terms used in this affidavit.

AFFIDAVIT OF COMPLIANCE WITH THE CARES ACT

In order to support my assertion that this filing complies with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136, enacted March 27, 2020 (“CARES Act”), I affirm that:

1. Neither I, the property, nor any tenant of the property participates in or receives subsidies or benefits under any of covered housing programs or rural housing voucher programs listed:

- Public Housing (42 U.S.C. § 1437d)
- Section 8 Housing Choice Voucher (42 U.S.C. § 1437f)
- Section 8 Project-based Housing (42 U.S.C. § 1437f)
- Section 202 Housing for the Elderly (12 U.S.C. § 1701q)
- Section 811 Housing for Persons with Disabilities (42 U.S.C. § 8013)
- Section 236 Multifamily Housing (12 U.S.C. § 1715z-1)
- Below Market Interest Rate (BMIR) Housing (12 U.S.C. § 1715l(d))
 - HOME (42 U.S.C. §§ 12741 *et seq.*)
 - Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. §§ 12901 *et seq.*)
 - Continuum of Care or other McKinney-Vento Act Homelessness Programs (42 U.S.C. §§ 11360 *et seq.*)
- Section 515 Rural Rental Housing (42 U.S.C. § 1485)
- Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486)
- Section 533 Housing Preservation Grants (42 U.S.C. § 1490m)
- Section 538 Multifamily Rental Housing (42 U.S.C. § 1490p-2)
- Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)
- Rural Housing Voucher Program (42 U.S.C. § 1490r)

2. The property is not subject to a federally backed mortgage loan or a federally backed multifamily mortgage loan. Examples of a federally backed mortgage loan or federally backed multifamily mortgage loan include mortgage loans guaranteed by the Federal Housing Adminis-

tration, HUD, the Department of Veterans Affairs, or the USDA, and those that were purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

□ 3. I have confirmed that there is no unsatisfied mortgage on the property that was purchased or securitized by the Federal Home Loan Mortgage Corporation (“Freddie Mac”) or the Federal National Mortgage Association (“Fannie Mae”) by checking the property via the mortgage lookup tool for Freddie Mac (www.FreddieMac.com/mymortgage) and Fannie Mae (www.KnowYourOptions.com/loanlookup).

For Landlords with Federally Backed Multifamily Loans After August 24, 2020

□ 4. If the property is the subject of a federally backed multifamily mortgage loan, there is no mortgage on the property that is currently in forbearance status, and there is no pending application for mortgage forbearance. See CARES Act, § 4023(d).

□ 5. If the property is the subject of a federally backed multifamily mortgage loan that was in forbearance status under the CARES Act that has now expired, I have provided the required notice to vacate to the tenant. See CARES Act, § 4023(d).

I, _____, verify that the facts set forth in this affidavit are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 related to unsworn falsification to authorities.

Date Signature of Landlord or Authorized Agent

AFFIDAVIT OF COMPLIANCE WITH THE CARES ACT

Supplemental Instructions

The federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (“CARES Act”) was enacted on March 27, 2020. Among other things, the CARES Act provides a temporary moratorium related to certain eviction actions. During the 120-day period following enactment, *i.e.*, through July 25, 2020, a landlord may not “make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges.” CARES Act, § 4024(b)(1). The moratorium also applies to the charging of “fees, penalties, or other charges to the tenant related to such nonpayment of rent.” CARES Act, § 4024(b)(2).

On July 16, 2020, the Supreme Court of Pennsylvania ordered that every action by a landlord against a tenant for the recovery of possession of real property filed in a magisterial district court or the Philadelphia Municipal Court shall be accompanied by an Affidavit of Compliance with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 as available on the website of the Administrative Office of Pennsylvania Courts at <http://www.pacourts.us/forms/for-the-public> (for actions in magisterial district courts) or on the website of the Philadelphia Municipal Court at <https://www.courts.phila.gov/municipal/civil/>, respectively. The requirement is in effect through August 24, 2020 to ensure that a landlord has given the proper notice to vacate required by section 4024(c) of the CARES Act.

Landlords who are federally backed multifamily mortgage loan borrowers must continue to use the affidavit

through the earlier of 60 days after the termination of the national emergency on COVID-19 as declared by the President or March 1, 2021. This requirement ensures that the landlord is compliant with the renter protections during a forbearance period afforded by section 4023(d) of the CARES Act, as well as the notice to vacate requirement of section 4023(e) of the CARES Act.

In addition to filing the affidavit with the complaint, a landlord shall demonstrate compliance with the CARES Act by presenting testimony and evidence including, but not limited to, the affidavit filed by the landlord at the inception of the case at the time of the hearing for the recovery of possession of real property. A tenant may present testimony and evidence that the landlord is not in compliance with the CARES Act.

Terms used in the affidavit have the following meanings:

“Covered dwelling” means a dwelling that is occupied by a tenant pursuant to a residential lease or without a lease or with a lease terminable under State law, and is on or in a covered property. CARES Act, § 4024(a)(1).

“Covered property” means any property that participates in one of the covered housing programs or the rural housing voucher program listed on the affidavit or has a Federally backed mortgage loan or a Federally backed multifamily mortgage loan. CARES Act, § 4024(a)(2).

“Federally backed mortgage loan” includes any loan (other than temporary financing such as a construction loan) that (A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1 to 4 families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and (B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. CARES Act, § 4024(a)(4).

“Federally backed multifamily mortgage loan” includes any loan (other than temporary financing such as a construction loan) that (A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and (B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. CARES Act, §§ 4023(f)(2)(3), 4024(a)(5).

[Pa.B. Doc. No. 20-1026. Filed for public inspection July 31, 2020, 9:00 a.m.]