

THE COURTS

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1 AND 4]

Proposed Amendment of Pa.R.J.C.P. 148 and 407

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rules of Juvenile Court Procedure 148 and 407 to reflect recent legislation 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:

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All communications in reference to the proposal should be received by April 30, 2021. 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 1. GENERAL PROVISIONS

PART B(1). EDUCATION AND HEALTH OF JUVENILE

Rule 148. Educational Stability and Removal from Home.

(A) *General Rule.* Any order resulting in the removal of the juvenile from home or a change in placement shall address the educational stability of the juvenile.

(B) *School of Origin.* [A] **Subject to statute, a juvenile removed from home shall remain in their school of origin unless the court finds remaining in the school of origin is not in the juvenile's best interest or protective of**

the community. If the court finds that it is not in the best interest for the juvenile or protective of the community to remain in the school of origin, then the court may order the juvenile to be enrolled in another school that best meets the juvenile's needs.

(C) *Another School.* [If] **Subject to statute, if a court orders the juvenile to be enrolled in another school pursuant to paragraph (B), then the juvenile shall attend a public school unless the court finds that a public school is not in the best interest of the juvenile or protective of the community.**

Comment

This rule is intended to apply at any point in a delinquency proceeding when the juvenile is removed from home, including pre-dispositional detention placement and post-dispositional modification resulting in the juvenile's out of home placement or a change to that placement. This rule is intended to complement rather than supersede the requirements of Rule 512(D)(6).

In paragraph (B), the best interest determination should be based on factors including the appropriateness of the current educational setting considering the juvenile's needs, the proximity of the school of origin relative to the placement location, and the protection of the community. This paragraph is intended to facilitate educational stability while the juvenile remains under the jurisdiction of the Juvenile Court and to codify the presumption that a juvenile is to remain in their school of origin absent evidence that it is not in the best interest of the juvenile or protective of the community to do so.

In paragraph (C), circumstances indicating that it may not be in the best interest for the juvenile to attend a public school includes the security and safety of the juvenile and treatment needs. Paragraph (C) is intended to codify the presumption that a juvenile is to attend public school while in placement absent evidence demonstrating that it is not in the best interest of the juvenile or protective of the community to do so. The bundling of residential services and educational services should not be permitted without a court order authorizing such.

The application of paragraph (B) & (C) is subject to statute governing the enrollment of a juvenile adjudicated of sexual assault upon another student enrolled in the same public school entity. See 24 P.S. § 13-1318.1.

For release of information to school, see Rule 163.

Official Note: Rule 148 adopted December 21, 2018, effective May 1, 2019. **Amended** _____, 2021, effective _____, 2021.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 148 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).

Final Report explaining the provisions of Rule 148 published with the Court's Order at 49 Pa.B. 610 (February 9, 2019).

Final Report explaining the amendments to Rule 148 published with the Courts' Order at Pa.B. (_____, 2021).

CHAPTER 4. ADJUDICATORY HEARING

Rule 407. Admissions.

* * * * *

(C) Written Admission Colloquy. If a juvenile is making an admission, the colloquy shall be:

- (1) in writing;
- (2) reviewed and completed with the juvenile by an attorney;
- (3) submitted to and reviewed by the court; and
- (4) substantially in the following form:

ADMISSION COLLOQUY FORM

In re _____ JD _____
 (Juvenile) :
 :
 : Delinquent Act(s): _____
 : _____
 : _____
 : _____

Answer all of the questions on this form. If you do not understand any question, leave it blank and ask your lawyer or the judge.

I admit that I did the following things (attorney shall list the delinquent acts, grading of acts, and counts): _____

* * * * *

Possible Consequences of Adjudication of Delinquency:

13) Do you understand that if you are found delinquent, the judge may make you pay money and place you outside of your home or on probation until you turn 21 years old? _____

14) Are you aware that if you are admitting to _____ that your driving license will be suspended now or in the future (which means you will not be able to drive)?

(lawyer shall write acts on this line, cross off, or write n/a).

15) Do you understand that this case can be used against you in the future? For example, if you break the law again, you may get a longer sentence in jail. _____

16) Do you understand that if you are found delinquent, other people may find out about it? You may also have to tell people, including colleges, military recruiters, or employers? _____

17) Do you understand that if you are not a U.S. citizen, it may cause problems, which could include being forced to leave the U.S.? _____

18) Do you understand that if you are admitting to sexual assault that you cannot attend the same school as the victim? You will either be expelled or transferred to another school. _____

Admission Agreements:

[18] (19) Are you aware that the judge does not have to accept any agreement between you and the District Attorney? _____ (write n/a if no agreement)

[19] (20) If you change your mind about admitting to the charges before the judge decides your disposition or consequences, then you can ask the judge to let you take back your admission.

Appeals:

[20] (21) If you are found delinquent after this admission, you can have a higher court review your case for only three reasons:

- a) You did not understand this admission or you were forced to admit;
- b) The court was not the proper court to take your admission; or
- c) The judge's disposition or consequence is more than the biggest punishment an adult would get for the same crime.

If you do not admit, do you understand you have other rights?

Lawyer's Representation and Opportunity to Speak with Guardian:

[21] (22) Are you okay with what your lawyer did for you and how he or she explained everything? _____

[22] (23) Did you talk with your parent or guardian about admitting to the charge(s)? _____

* * * * *

Comment

* * * * *

Pursuant to paragraph (C), an attorney is to review the written admission colloquy with the juvenile prior to entering the courtroom. The practice in some judicial districts permitting the juvenile probation officer to review this colloquy with the juvenile is inconsistent with this rule.

As used in Question 18 of the admission colloquy in paragraph (C)(4), "sexual assault" includes rape, 18 Pa.C.S. § 3121, statutory sexual assault, 18 Pa.C.S. § 3122.1, involuntary deviate sexual intercourse, 18 Pa.C.S. § 3123, sexual assault, 18 Pa.C.S. § 3124.1, aggravated sexual assault, 18 Pa.C.S. § 3125, and indecent assault, 18 Pa.C.S. § 3126. See 24 P.S. 13-13181(j) (defining "sexual assault").

Pursuant to paragraph (D), the written admission colloquy in paragraph (C) is to be amended when the juvenile is admitting to an act that would render the juvenile eligible for court-ordered involuntary treatment upon attaining 20 years of age. See 42 Pa.C.S. §§ 6358, 6403. The court is to conduct a colloquy as to the potential consequences of an admission of this type using the form in paragraph (D).

* * * * *

Official Note: Rule 407 adopted April 1, 2005, effective October 1, 2005. Amended January 18, 2012, effective April 1, 2012. Amended January 23, 2017, effective April 3, 2017. Amended, 2021, effective, 2021.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 407 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 407 published with the Courts' Order at 42 Pa.B. 664 (February 4, 2012).

Final Report explaining the amendments to Rule 407 published with the Courts' Order at 47 Pa.B. 825 (February 11, 2017).

Final Report explaining the amendments to Rule 407 published with the Courts' Order at Pa.B. (, 2021).

REPORT

Proposed Amendment of Pa.R.J.C.P. 148 & 407

The Juvenile Court Procedural Rules Committee proposes the amendment of Pennsylvania Rules of Juvenile Court Procedure 148 and 407 to reflect provisions of the Act of Nov. 3, 2020, P.L. 1087, amending the Public School Code of 1949 to, *inter alia*, add Section 1318.1, prohibiting a juvenile adjudicated delinquent of sexual assault from attending the same public school as the victim.

The Committee proposes the amendment of Rule 148 insofar as the Act appears to supersede the juvenile court's best interest/community protection analysis in determining whether a juvenile should remain in his or her school of origin. Application of the Act does not appear to invite judicial discretion. The proposed amendment is intended to place the reader on notice that application of the rule may be superseded by statute. A description and citation to the statute are contained in the Comment.

The Act imposes a collateral consequence on the juvenile for an admission of certain offenses. While the Act uses the phrase "sexual assault," that phrase is defined to include six enumerated offenses. *See* 24 P.S. 13-13181(j) (defining "sexual assault"). The Committee believes this collateral consequence is significant because it potentially affects a juvenile's education and ability to return to the school of origin, which may impact a juvenile's life beyond any term of supervision. The Committee is mindful that such a consequence may appear to have less significance when a juvenile goes to placement after adjudication; but the juvenile returning from placement may seek to return to public school. Further, not all juveniles adjudicated for an enumerated offense may go to placement after adjudication.

Accordingly, the Committee proposes amending the admission colloquy set forth in Rule 407(C) to add a question intended to ascertain a juvenile's understanding that returning to a school of origin may not be permitted due to the offense of "sexual assault." Thereafter, the Comment sets forth the enumerated offenses defined by the Act to be a "sexual assault." It is anticipated that the juvenile's counsel will advise the juvenile whether the admitted offense meets that statutory definition.

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

[Pa.B. Doc. No. 21-361. Filed for public inspection March 12, 2021, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SCHUYLKILL COUNTY

Revised Local Rules of Civil Procedure 1915.3, 1915.4(a), 1915.4-2, 1915.7, 1915.8 and 1915.12; S-305-21

Order of Court

And Now, this 1st day of March, 2021, at 12:30 p.m., the Schuylkill County Court of Common Pleas hereby revises Local Rules of Civil Procedure No. 1915.3, 1915.4(a), 1915.4-2, 1915.7, 1915.8 and 1915.12 for use in the Schuylkill County Court of Common Pleas, Twenty-First Judicial District, effective 30 days after publication in the *Pennsylvania Bulletin*.

The Schuylkill County District Court Administrator is Ordered and Directed to do the following:

1) File one (1) copy of this Order and Rule with the Administrative Office of the Pennsylvania Courts via email to rulescommittees@pacourts.us.

2) File two (2) paper copies of this Order and Rule and (1) electronic copy in a Microsoft Word format to bulletin@palrb.us with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3) Publish the local rule on the Schuylkill County Court website at www.co.schuylkill.pa.us.

4) Incorporate the local rule into the set of local rules on www.co.schuylkill.pa.us within thirty (30) days after publication in the *Pennsylvania Bulletin*.

5) File one (1) copy of the local rule in the Office of the Prothonotary for public inspection and copying.

6) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

By the Court

WILLIAM E. BALDWIN,
President Judge

Custody Procedure

Rule 1915.3. Commencement of Action. Complaint. Order.

(a) Other than pleadings related to relocation, the moving party shall file in the office of the Prothonotary an original and one (1) copy of all pleadings involving custody issues, including complaints, petitions for modifications, special relief or contempt and preliminary objections. The filing shall be accompanied by the payment of the designated filing and administrative fees. The Prothonotary shall immediately transmit the original and copy to the Civil Court Administrator for assignment and scheduling. The Court Administrator will return the original to the Prothonotary and give the copy to the Conciliation Office, which will send to the moving party a copy of the scheduling order and a conciliation questionnaire. The moving party shall be responsible for service of a copy of the pleading, scheduling order and conciliation questionnaire upon all other parties pursuant to Pa.R.C.P. 402, and shall file a proof of service that complies with Pa.R.C.P. 1930.4(h).

(a.1) A request for a continuance of a Custody Conference or Hearing shall be on the Continuance Form established by the Court. The Continuance Form shall be filed in the Prothonotary's Office and immediately trans-

mitted to the Custody Conciliation Office. Continuance forms are available from the Prothonotary or Court Administrator's Office.

The request shall include a statement of the reasons for the request, whether the request is opposed or unopposed, the number of times the case has been previously continued and a certification by counsel that his/her client has been informed about the request for continuance.

Counsel have an ongoing duty to consult their scheduling calendar immediately upon receipt of a notice scheduling a court proceeding. In the event a continuance is necessary because of a prior attachment or emergency situation, counsel shall promptly request a continuance, and failure to do so may subject counsel to the contempt powers of the Court. Continuance requests shall be made as the conflict is, or should be known, or within twenty-four (24) hours after discovery of emergency circumstances. Emergency circumstances must be explained in writing, and requests due to scheduling conflicts must include a copy of the conflict attachment notice.

The Custody Conciliation Officer shall have the authority to approve only one continuance request from each party. If the Custody Conciliation Officer denies the request for a continuance for any reason, the Officer shall state the reasons for the denial on the written request.

A party may appeal the denial of a request for continuance to the President Judge by submission of the denied continuance request to the President Judge. It is that party's responsibility to advise the Custody Conciliation Officer of the appeal and of the President Judge's decision.

(a.2) In addition to the information required by Pa.R.C.P. 1915.15, every complaint for custody, partial custody or visitation, and every petition for modification of an existing custody order, shall contain the following language:

(1) "Plaintiff has been advised of the requirements to attend the Kids First program."

(2) "Defendant has been advised of the requirements to attend the Kids First program."

(a.3) A completed order shall be attached to the complaint or petition which includes a provision that all parties attend the Kids First Program and the Custody Conciliation Conference which shall be substantially in the form set forth in Sch.R.C.P. 1915.15. All parties named in the pleadings must register for and attend the Kids First program as ordered.

(a.4) PARENT EDUCATION PROGRAM

(1) The Court Administrator shall determine the dates, times, and location of the Parent Education Program designated by the Court.

(2) Brochures and registration forms for the Parent Education program will be available at the Custody Office, Schuylkill County Law Library, and the Prothonotary's Office.

(3) Parties residing outside of Schuylkill County may contact the presenter for possible alternative programs or alternative scheduling if they are unable to attend the scheduled program.

(4) The presenter of the Program is authorized to approve individual requests for changes to the registration requirements and scheduling, only upon a showing of good cause.

(5) Upon successful completion of the Program, the presenter shall issue a certificate of completion to the party and provide the Court Administration of Schuylkill County with a certification of completion which shall be docketed and made part of the record.

(6) The affidavit of service or the certificates of service of a complaint for custody/modification for (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody) of the child(ren) shall contain a statement that the opposing party or counsel of record for the opposing party has been served with the Parent Education brochure and registration form.

(7) A party to a custody proceeding who has successfully completed the Parent Education program will be excused from attending another program if the party files of record an affidavit stating that the party has attended and successfully completed the Parent Education program designated by the Court with a copy of the certificate of completion attached as an exhibit.

(c) If a custody claim is asserted in a divorce complaint or counterclaim, the moving party shall, after filing the divorce with the Prothonotary, provide two (2) copies, with the appropriate order attached as per Sch.R.C.P. 1915.15, to the Civil Court Administrator for assignment and scheduling. Thereafter the pleading will be processed and served as in subsection (a) hereof.

Rule 1915.4(a). Prompt Disposition of Custody Cases—Conciliation.

(1) The Court shall appoint one or more person(s) as Court Conciliation Officer(s) to:

(i) conciliate custody cases filed with the Court;

(ii) recommend to the Court interim Orders in appropriate custody cases which shall be in the best interest of the child;

(iii) recommend appointment of counsel for the child;

(iv) recommend the ordering of home studies, psychologicals, or other evaluations by expert witnesses.

(2) All custody matters not specifically reserved to the Court shall be promptly scheduled for a conference before the Custody Conciliation Officer. All parties shall complete the Court's custody conciliation questionnaire and attend such conference.

(3) To facilitate the conciliation process and encourage frank, open, and meaningful exchanges between the parties and their respective counsel, statements made by the parties, or their witnesses shall not be admissible as evidence in Court. The Custody Conciliation Officer may not be a witness for any party.

(4) More than one (1) conciliation conference may be scheduled by the Custody Conciliation Officer, as that Officer deems necessary to conciliate the matter.

(5) If the parties are able to reach an agreement during the conciliation conference, the Conciliation Officer will prepare a stipulation and submit it to the parties for their signature. Upon execution of the stipulation by all parties, the Conciliation Officer will also sign indicating his or her review and shall transmit the stipulation and a proposed order to the Court for approval.

(6) If at the conclusion of the conciliation process the case remains contested, the custody Conciliation Officer shall transfer the case to the Court for assignment to a Judge; except that actions for partial custody shall be assigned to a hearing officer and shall proceed in accordance with Pa.R.C.P. 1915.4-2. As part of that transfer, the custody Conciliation Officer shall prepare and file a report to the Court with copies to the parties. The report shall include such information about the case as shall be directed by the court, which may include a suggested interim order for consideration by the Court. The failure of a party to appear for conciliation will not preclude the entry of an interim order. A report by the Conciliation Officer will be filed with the Prothonotary, who shall seal the report to all except the Court and the parties.

(7) If after receiving the Conciliation Officer's report, the Court orders the parties to submit to evaluations and/or studies, the parties shall promptly comply with the Court's direction regarding the payment for and scheduling of the evaluations and studies. Following receipt of the report(s) from the expert(s), the Court will promptly schedule another conference for the parties with the Conciliation Officer. If the parties reach an agreement at this conference, they may proceed in accordance with subsection (5) hereof. If no agreement is achieved, the Conciliation Officer will proceed pursuant to subsection (6) hereof and provide the Court and parties with a supplemental report.

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

(b)(4) A party who files exceptions to the hearing officer's report pursuant to Pa.R.C.P. 1915.4-2(b)(4) shall contemporaneously file a supporting brief and serve a copy of the exceptions and brief on all other parties. Any party opposing exceptions to the hearing officer's report shall, within twenty (20) days after being served with exceptions, file a brief in opposition thereto and serve the opposing parties with a copy thereof.

When the exceptions are filed to a hearing officer's report, the Custody Office shall immediately notify the stenographer, who shall complete and file the transcript of the proceedings before the hearing officer within thirty (30) days. Unless granted leave by the Court to proceed in forma pauperis, the party filing exceptions shall pay the cost of transcription. If exceptions are filed by more than one party, the transcription costs shall be shared by the excepting parties on a pro rata basis. The transcription costs shall be paid within thirty (30) days of the date of filing exceptions. If the costs are not timely paid, the stenographer shall so notify the Court after which the exceptions of the non-paying party may be dismissed.

The exceptions to the hearing officer's report shall be decided on the briefs of the parties unless oral argument is requested by praecipe of one or more parties.

Rule 1915.7. Consent Order.

If the parties are able to reach an agreement prior to the conciliation conference, they may file a petition requesting that a consent order be entered and include a proposed order. The order shall be substantially in the form of the custody stipulation utilized pursuant to Sch.R.C.P. 1915.4. The parties may be required to complete a questionnaire. The Court may, in its discretion, enter an order without taking testimony.

If the parties are able to reach an agreement after the conciliation conference, they may file a stipulation signed by the parties and counsel. The order shall be substantially in the form of the custody stipulation utilized

pursuant to Sch.R.C.P. 1915.4. The Court may, in its discretion, enter an order without taking testimony.

If an order for psychological and/or home evaluations has been entered, then the proposed order shall include a provision to vacate the order for psychological and/or home evaluations.

Rule 1915.8. Physical and Mental Examination of Persons.

(a) The Custody Conciliation Officer shall maintain and, on request, provide counsel and the parties with a list of psychiatrists, psychologists, social workers, counselors, and the like, who are available for consultation, evaluation, and testimony in custody matters.

In the event that psychological studies, home studies or other evaluations are deemed necessary to a proper disposition of the matter and ordered by the Court, the cost of such studies may be assessed against the parties in a manner as determined by the Court after reviewing the report of the Custody Conciliation Officer following the conciliation conference. Such assessment will be based on what the Court believes to be in the best interest of the child and what will best facilitate the timely resolution of the matter, taking into consideration the parties' ability to pay.

Rule 1915.12. Civil Contempt.

(a) Petitions for contempt of Custody Orders shall follow the procedure and form set forth in Pa.R.C.P. 1915.12. The petitioner shall complete a praecipe to transmit indicating that the matter is a contempt petition, shall list witnesses and time necessary for hearing and list the Judge who entered the Order to be enforced. Filing and transmittal shall follow Sch.R.C.P. 1915.3.

Upon receipt of service of a petition for contempt and the praecipe for transmittal the responding party shall, within five (5) days, submit a written report to the Court Administrator estimating the time required for presentation of respondent's case and a list of witnesses to be called.

[Pa.B. Doc. No. 21-362. Filed for public inspection March 12, 2021, 9:00 a.m.]

SUPREME COURT

Elimination and Modification of Magisterial Districts within the 7th Judicial District of the Commonwealth of Pennsylvania; No. 452 Magisterial Rules Doc.

Order

Per Curiam

And Now, this 25th day of February, 2021, upon consideration of the Petition of the President Judge of the Seventh Judicial District (Bucks County) to eliminate Magisterial District Court 07-1-04 and modify Magisterial Districts 07-1-02 and 07-1-03 of the Seventh Judicial District (Bucks County) of the Commonwealth of Pennsylvania, it is hereby *Ordered* that the Petition is *Denied*.

[Pa.B. Doc. No. 21-363. Filed for public inspection March 12, 2021, 9:00 a.m.]

SUPREME COURT**Relocation of Magisterial District 31-1-02 within the
Thirty-first Judicial District of the Common-
wealth of Pennsylvania; No. 453 Magisterial
Rules Doc.****Order***Per Curiam*

And Now, this 1st day of March, 2021, upon consider-
ation of the Petition for Relocation of Magisterial District
Court 31-1-02 within the Thirty-first Judicial District

(Lehigh County) of the Commonwealth of Pennsylvania, it is hereby *Ordered and Decreed* that the Petition, which provides for the relocation of the office of Magisterial District 31-1-02 to the Old Lehigh County Courthouse, 501 West Hamilton Avenue, Allentown Pennsylvania, which is outside of the boundaries of Magisterial District 31-1-02, is granted. The relocation may occur at the discretion of the President Judge pursuant to the renovation of the building and to enable appropriate notice to be provided.

[Pa.B. Doc. No. 21-364. Filed for public inspection March 12, 2021, 9:00 a.m.]