

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1915]

Order Amending Rule 1915.11 of the Pennsylvania Rules of Civil Procedure; No. 729 Civil Procedural Rules Docket

Order

Per Curiam

And Now, this 20th day of January, 2022, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment at 50 Pa.B. 3834 (August 1, 2020) and 51 Pa.B. 1013 (February 27, 2021):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1915.11 of the Pennsylvania Rules of Civil Procedure is amended in the attached form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective April 1, 2022.

Additions to the rule are shown in bold and are underlined.

Deletions from the rule are shown in bold and brackets.

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] **Appointing Child's Attorney. Child Interview. Child Attending 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.

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.]

(*Editor's Note:* Pa.R.C.P. 1915.11 as printed in 231 Pa. Code reads "Official Note" rather than "Note.")

(a) **Appointing Child's Attorney.**

(1) **Upon its own motion or a party's motion, the court may appoint an attorney to represent a child who is the subject of the action.**

(2) **The court's order appointing the child's attorney, as provided in Pa.R.Civ.P. 1915.19, may apportion to the parties the reasonable cost of the child's attorney.**

(3) **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 as provided in Pa.R.Civ.P. 1915.11-2.**

(b) **Child Interview.**

(1) **The court may interview a child in open court or in chambers.**

(2) **If the court interviews the child, the court shall conduct the child's interview on the record.**

(3) **If permitted by the court, a party's attorney or a party may observe the interview.**

(4) **As part of the interview process, the court shall permit either:**

(i) **the parties' attorneys to question the child under the court's supervision, provided that all parties are represented by an attorney; or**

(ii) **a party's attorney or a self-represented party to submit to the court written questions, which the court may include in its interview.**

(c) **Child Attending Proceedings. Unless ordered by the court or otherwise compelled to testify on the record, a child's attendance at a conference, hearing, or trial is not required.**

[Explanatory] Comment—1991

[Rule] Pa.R.Civ.P. 1915.15([b]c) 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] a custody action.**

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] Pa.R.Civ.P. 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**] **Pa.R.Civ.P.** 1915.15([**b**]**c**) has been revised to implement this policy.

Comment—2022

Although the rule states that a child is not required to attend a conference, hearing, or trial, the terminology used by a judicial district may vary for these court proceedings. The rule's intent is to limit the child's participation to only those proceedings in which the child will actively participate as a witness or in the court's interview.

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

ADOPTION REPORT

On January 20, 2022, the Supreme Court of Pennsylvania adopted Recommendation 2 of 2021 of the Domestic Relations Procedural Rules Committee (Committee). The Recommendation amends Pa.R.Civ.P. 1915.11. This rule addresses the appointment of a child's attorney in a custody case, the child interview by the court, and a child attending various court proceedings. The Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, Comment. The statements contained in this Adoption Report are those of the Committee, not the Court.

The Committee received correspondence suggesting Pa.R.Civ.P. 1915.11(b) 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 counsel. Currently, Pa.R.Civ.P. 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. Moreover, the current rule permits a party's attorney to question the child, but not a self-represented party, which was the basis for the proposed rulemaking. This specific provision creates the appearance of a disadvantage to the self-represented party by not allowing that party to put forth questions to the child that are relevant to the self-represented party's case and, presumably, the child's best interest. The Committee agreed this distinctively dissimilar treatment between represented and self-represented parties could impact the court's best interest analysis. Bearing in mind the court's overall concern in child custody cases is the child's best interest, including the process of determining the child's best interest, the Committee believes the Recommendation strikes a balance between the self-represented party's right to present evidence for determining the child's best interest and the child's best interest in addressing the court's questions without intimidation or fear.

The Recommendation does not substantively amend subdivisions (a) and (c) with revisions in those subdivisions limited to stylistic changes. Instead, the Recommendation's substantive amendments are included in subdivision (b), which has been restyled, as well. This subdivision provides the court with two options for the parties or counsel to participate in the child interview. First, subdivision (b) incorporates the current rule's provision of permitting an attorney to question the child under the court's supervision into subdivision (b)(4)(i) but adds the qualifier requiring that all parties are represented; and second, the Recommendation adds subdivision (b)(4)(ii) as an additional option for the court to allow

counsel and a self-represented party to submit to the court written questions that are directed to the child, which the court may include in its child interview.

The amendment becomes effective April 1, 2022.

[Pa.B. Doc. No. 22-191. Filed for public inspection February 4, 2022, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Disclosure of Protected Health Information Pursuant to 45 C.F.R. § 164.512(e)(1)(i); Administrative Order No. 2 of 2022

Order

And Now, this 20th day of January, 2022, in order to effectuate the purposes of the Juvenile Act, 42 Pa.C.S. § 6301 et seq. to provide for the care, protection, safety and wholesome mental and physical development of children, it is hereby *Ordered* and *Decreed* that representatives of Community Behavioral Health Management ("CBH") are authorized and directed to disclose relevant and protected health information to the Court during the juvenile proceedings. Furthermore, CBH is authorized to disclose said information to the Behavioral Health Forensic Evaluation Center (BHFECC). The following protected health information, consistent with the Health Insurance Portability and Accountability Act of 1996, 45 CFR § 160 et seq., and specifically with 45 C.F.R. § 164.512(e)(1)(i) includes:

1. The mental health treatment history of the youth, including information relating to prior/current community-based treatment and/or treatment in a residential treatment facility and/or inpatient facility and prescribed medications.

2. The mental health treatment history of the youth's parent or guardian, including current mental health services authorized.

3. The drug and alcohol treatment history of the youth and the youth's parent or guardian, including information relating to prior/current community-based drug and alcohol treatment and/or drug and alcohol treatment in a residential treatment facility and/or inpatient facility and prescribed medications. Disclosure of drug and alcohol treatment information shall be pursuant to 42 C.F.R. Part 2 and 71 Pa. Stat. § 1690.108.

As required by Pa.R.J.A. 103(d), this Administrative Order has been submitted to the Supreme Court of Pennsylvania Juvenile Procedural Rules Committee for review and written notification has been received from the Rules Committee certifying that it is not inconsistent with any general rule of the Supreme Court. This Administrative Order shall be filed with the Office of Judicial Records (formerly the Prothonotary, Clerk of Courts and Clerk of Quarter Sessions) in a docket maintained for Administrative Orders issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified paper copies of this Administrative Order, accompanied by a copy on a computer diskette, shall be distributed to the Legislative Reference Bureau on a computer diskette for publication in the *Pennsylvania Bulletin*. As required by Pa.R.J.A. 103(d)(6) one certified copy of this Administrative Order shall be

filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at <http://courts.phila.gov>, and shall be incorporated in the compiled set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the Administrative Order and local rules shall also be published in *The Legal Intelligencer* and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

By the Court

HONORABLE MARGARET T. MURPHY,
Administrative Judge
Family Court Division
Court of Common Pleas

[Pa.B. Doc. No. 22-192. Filed for public inspection February 4, 2022, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BUCKS COUNTY

Order Promulgating Rule of Criminal Procedure 122.1—Appointment of Conflict Counsel. Approval of President Judge; Administrative Order No. 105

Order

And Now, this 19th day of January, 2022, Bucks County Rule of Criminal Procedure No. 122.1—Appointment of Conflict Counsel. Approval of President Judge, is promulgated as follows:

Rule 122.1. Appointment of Conflict Counsel. Approval of President Judge.

The Court may appoint in its discretion an attorney to serve as conflict counsel in any matter pending in the criminal division. All such appointments shall be effective from the time of appointment, and shall be subject to review by the President Judge, who may in her or his discretion vacate any appointment by written order.

Note: For the purpose of this rule, matters “pending in the criminal division” shall include all criminal, dependency and juvenile cases.

This rule shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

WALLACE H. BATEMAN, Jr.,
President Judge

[Pa.B. Doc. No. 22-193. Filed for public inspection February 4, 2022, 9:00 a.m.]

Title 255—LOCAL COURT RULES

WAYNE COUNTY

Local Rule of Criminal Procedure 576.1; No. 17-2022 MD

Order

And Now, this 25th day of January, 2022, in compliance with Rule 103 of the Pennsylvania Rules of Judicial

Administration, it is hereby *Ordered* that the Court adopts the following Local Rule of Criminal Procedure 576.1.

The Effective Date of this Local Rule is 30 days after the date of publication in the *Pennsylvania Bulletin*.

The District Court Administrator is directed to:

1. File one (1) certified copy of this Order with the Administrative Office of Pennsylvania Courts;
2. Submit two (2) certified copies of this Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* along with a copy of this Order on a CD-ROM or other agreed upon alternate format;
3. Publish a copy of this Order on the Wayne County Court of Common Pleas website;
4. Compile the local rule within the complete set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*.

Local Rule Criminal Procedure 576.1. Electronic Filing and Service of Legal Papers.

A. The 22nd Judicial District Court of Common Pleas of Wayne County and the Administrative Office of Pennsylvania Courts (AOPC) have agreed upon an implementation plan for PACFile in Wayne County for certain criminal filings. In accordance with Pa.R.Crim.P. 576.1 and this rule, legal papers may be filed electronically using the PACFile electronic filing system developed by the AOPC. Electronic filing is permissive and not mandatory.

B. *Legal Papers Defined.* The “legal papers” which may be filed electronically includes all written motions, written answers and any notices or documents for which filing is required or permitted, including orders, exhibits and attachments, except the following:

1. Applications for a search warrant;
2. Applications for an arrest warrant;
3. Submissions filed or authorized to be filed under seal;
4. Grand jury materials;
5. Submissions filed by ex parte as authorized by law; and,
6. Exhibits offered into evidence, whether or not admitted, in a court proceeding.

C. All filings shall comply with the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.

D. Attorneys or self-represented individuals who file legal papers electronically must establish a PACFile account using the Unified Judicial System of Pennsylvania Web Portal. Pursuant to Pennsylvania Rule of Criminal Procedure 576.1(D)(2), the establishment of a PACFile account constitutes consent to participate in electronic filing, including acceptance of service electronically of any document filed using PACFile.

E. Applicable filing fees shall be accepted in the same manner as currently required by statute, court order, Local Rule or as established by fee schedule.

F. The Office of the Clerk of Courts shall convert legal papers in paper format to an electronic PDF version, except for those filings excluded in subsection (B) of this rule. Once converted to PDF, the PDF version shall be deemed to be the original legal paper and shall be used as

such for all purposes. Neither the Clerk of Courts nor the Court is required to maintain a physical hard copy of any legal paper filed electronically.

G. Use of the PACFile system shall constitute as the filer's certification that the electronic notice and service of other documents through the PACFile system will be accepted by filer. The submission of an electronic filing shall satisfy the service requirements of Pa.R.Crim.P. 576 on any attorney or party who has established an account as provided in subsection D. Parties utilizing PACFile shall serve physical paper format copies on all parties to the case who do not utilize PACFile, pursuant to Pa.R.Crim.P. 576.

H. Service of legal papers on any attorney or party who has not established an account as provided in subsection

(D) of this rule shall be made in accordance with Pa.R.Crim.P. 576. Specifically, the following offices must be served in accordance with Rule 576: Sheriff, Adult Probation, Court Reporter, and Court Administration. This applies to the service of court orders and notices. Distribution to those parties not automatically served via PACFile with a court order or notice must be filed with the Clerk of Courts office with a complete distribution list including the names and addresses of all parties required to be served with a paper copy.

By the Court

JANINE EDWARDS,
President Judge

[Pa.B. Doc. No. 22-194. Filed for public inspection February 4, 2022, 9:00 a.m.]