

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

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Source

The provisions of these Rules 1915.1—1915.25 adopted December 10, 1981, effective July 1, 1982, 12 Pa.B. 867; by order of June 25, 1982 and November 8, 1982, the effective date was extended to January 1, 1983, 12 Pa.B. 2169 and 12 Pa.B. 4040, unless otherwise noted.

Rule 1915.1. Scope. Definitions.

(a)(1) These rules govern the practice and procedure in all actions for custody, partial custody and visitation of minor children, including habeas corpus proceedings and claims for custody, partial custody or visitation asserted in an action of divorce or support.

Official Note: The term custody includes legal custody, physical custody and shared custody. See Definition Rule 1915.1(b).

Divorce Rule 1920.32(a) provides that when a claim for custody is joined with the action of divorce, the practice and procedure governing the claim for custody shall be in accordance with these rules.

(2) If a claim for partial custody or visitation is raised during the course of an action for support, the court may

- (i) enter an order with respect to the right to partial custody or visitation where there is
 - (A) proper venue under Rule 1915.2, and
 - (B) no current order of custody, partial custody or visitation outstanding, and
 - (C) no objection by a party to the determination of the claim, and
 - (D) no delay in the entry of the support order resulting from the determination of the claim; or

Official Note: See *Myers v. Young*, 285 Pa. Super. 254, 427 A.2d 209, 211 (1981), which held that “the trial court properly declined to defer the entry of an order of support until satisfactory visitation rights had been established.”

- (ii) require the commencement of a separate action pursuant to these rules.

Official Note: See 23 Pa.C.S. § 4349 which authorizes custody and visitation proceedings to be consolidated with support proceedings “to facilitate frequent and unimpeded contact between children and parents” if the custody or visitation matter may be “fairly and expeditiously . . . determined and disposed of in the support action or proceeding.”

(b) As used in this chapter, unless the context of a rule indicates otherwise, “action” means all proceedings for custody, partial custody or visitation, and proceedings for modification of prior orders of any court;

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

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

“legal custody” means the legal right to make major decisions affecting the best interests of a minor child, including but not limited to, medical, religious and educational decisions;

“partial custody” means the right to take possession of a child away from the custodial person for a certain period of time;

“person acting as parent” means a person other than a parent, including an institution, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

“physical custody” means actual physical possession and control of a child;

“shared custody” means shared legal or shared physical custody or both of a child in such a way as to assure the child of frequent and continuing contact, including physical access, to both parents; and

“visitation” means the right to visit a child, but does not include the right to remove the child from the custodial person’s control.

Official Note: The definitions of the terms legal custody, physical custody and shared custody are taken from 23 Pa.C.S.A. § 5302.

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

Explanatory Comment—1994

Whatever context in which the claim for custody, partial custody or visitation will arise, subdivision (a)(1) provides that the proposed rules will govern the practice and procedure. The custody rule is reinforced by Divorce Rule 1920.32(a).

Subdivision (b) provides the necessary definitions for the rules. The rules adopt the terms “custody,” “partial custody,” and “visitation” suggested by Judge Spaeth in his concurring opinion in *Scott v. Scott*, 240 Pa. Super. 65, 368 A.2d 288, 291 (1976).

Explanatory Comment—2008

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

Source

The provisions of this Rule 1915.1 amended November 8, 1982, effective January 1, 1983, 12 Pa.B. 4040; amended November 7, 1988, effective January 1, 1989, 18 Pa.B. 5323; amended March 30, 1994, effective July 1, 1994, 24 Pa.B. 1943; amended November 19, 2008, effective immediately, 38 Pa.B. 6595. Immediately preceding text appears at serial pages (331329) to (331330) and (285551).

Rule 1915.2. Venue.

- (a) An action may be brought in any county
- (1) (i) which is the home county of the child at the time of commencement of the proceeding, or
 - (ii) which had been the child’s home county within six months before commencement of the proceeding and the child is absent from the county but a parent or person acting as parent continues to live in the county; or
 - (2) when the court of another county does not have venue under subdivision (1), and the child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with the county other than mere physical presence and there is available within the county substantial evidence concerning the child’s protection, training and personal relationships; or
 - (3) when all counties in which venue is proper pursuant to subdivisions (1) and (2) have found that the court before which the action is pending is the more appropriate forum to determine the custody of the child; or

(4) when it appears that venue would not be proper in any other county under prerequisites substantially in accordance with paragraph (1), (2) or (3); or

(5) when the child is present in the county and has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.

(b) Physical presence of the child or a party, while desirable, is not necessary or sufficient to make a child custody determination except as provided in subdivision (a)(5) above.

(c) The court at any time may transfer an action to the appropriate court of any other county where the action could originally have been brought or could be brought if it determines that it is an inconvenient forum under the circumstances and the court of another county is the more appropriate forum. It shall be the duty of the prothonotary of the court in which the action is pending to forward to the prothonotary of the county to which the action is transferred certified copies of the docket entries, process, pleadings and other papers filed in the action. The costs and fees of the petition for transfer and the removal of the record shall be paid by the petitioner in the first instance to be taxable as costs in the case.

Official Note: Under the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.A. § 5401 et seq., the court may decline to exercise its jurisdiction in a particular action despite the action having been brought in a county of proper venue. Section 5426 of the act, relating to simultaneous proceedings in other courts, provides for the mandatory refusal by the court to exercise its jurisdiction in an action. Section 5427 of the act, relating to inconvenient forum, and § 5428 of the act, relating to jurisdiction declined by reason of conduct, provide for the discretionary refusal by the court to exercise its jurisdiction.

Explanatory Comment—2008

Subdivision (a) of Rule 1915.2 incorporates the categories of jurisdiction for initial custody determinations and temporary emergency proceedings in the Uniform Child Custody Jurisdiction and Enforcement Act at 23 Pa.C.S.A. §§ 5421 and 5424 as the venue provisions for these rules, restating them in rule form without change in substance. Subdivision (a) follows the policy of § 5471 of the Uniform Child Custody Jurisdiction and Enforcement Act, which provides that the provisions of the act “allocating jurisdiction and functions between and among courts of different states shall also allocate jurisdiction and functions between and among courts of common pleas of this Commonwealth.”

Subdivision (b), relating to the effect of the physical presence of the child or a party within a county, follows § 5421(c) without substantial change.

Subdivision (c) follows the inconvenient forum provisions of 23 Pa.C.S.A. § 5427.

Source

The provisions of this Rule 1915.2 amended March 30, 1994, effective July 1, 1994, 24 Pa.B. 1943; amended November 19, 2008, effective immediately, 38 Pa.B. 6596. Immediately preceding text appears at serial pages (285551) to (285552).

Rule 1915.3. Commencement of Action. Complaint. Order.

(a) Except as provided by subdivision (c), an action shall be commenced by filing a verified complaint substantially in the form provided by Rule 1915.15(a).

(b) An order shall be attached to the complaint directing the defendant to appear at a time and place specified. The order shall be substantially in the form provided by Rule 1915.15(b).

Official Note: See § 5430(d) of the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.A. § 5430(d), relating to costs and expenses for appearance of parties and child, and 23 Pa.C.S.A. § 5471, relating to intrastate application of the Uniform Child Custody Jurisdiction and Enforcement Act.

(c) A claim for custody, partial custody or visitation which is joined with an action of divorce shall be asserted in the complaint or a subsequent petition, which shall be substantially in the form provided by Rule 1915.15(a).

Official Note: Divorce Rule 1920.13(b) provides that claims which may be joined with an action of divorce shall be raised by the complaint or a subsequent petition.

(d) If the mother of the child is not married and the child has no legal or presumptive father, then a putative father initiating an action for custody, partial custody or visitation must file a claim of paternity pursuant to 23 Pa.C.S. § 5103 and attach a copy to the complaint in the custody action.

Official Note: If a putative father is uncertain of paternity, the correct procedure is to commence a civil action for paternity pursuant to the procedures set forth at Rule 1930.6.

(e) A grandparent seeking physical and/or legal custody of a grandchild pursuant to 23 Pa.C.S. § 5313(b) must plead, in paragraph 7 of the complaint set forth at Rule 1915.15(a), facts establishing the elements of a cause of action under §§ 5313(b)(1), (2) and (3).

Source

The provisions of this Rule 1915.3 amended March 30, 1994, effective July 1, 1994, 24 Pa.B. 1943; amended October 30, 2001, effective immediately, 31 Pa.B. 6273; amended October 31, 2002, effective immediately, 32 Pa.B. 5632. Immediately preceding text appears at serial pages (285552) to (285553).

Rule 1915.4. Prompt Disposition of Custody Cases.

(a) *Initial Contact With the Court.* Depending upon the procedure in the judicial district, the parties' initial in-person contact with the court (including, but not limited to a conference with a conference officer pursuant to Rule 1915.4-2, a conference with a judge, conciliation, mediation and/or class/seminar) shall be scheduled to occur not later than 45 days from the filing of a complaint or petition.

(b) *Listing Trials Before the Court.* Depending upon the procedure in the judicial district, within 180 days of the filing of the complaint either the court shall automatically enter an order scheduling a trial before a judge or a party shall file a praecipe, motion or request for trial, except as otherwise provided in this subdivision. If it is not the practice of the court to automatically schedule trials and neither party files a praecipe, motion or request for trial within 180 days of filing of the pleading, the court shall dismiss the matter unless the moving party has been granted an extension for good cause shown, which extension shall not exceed 60 days beyond the 180 day limit. A further reasonable extension may be

granted by the court upon agreement of the parties or when the court finds, on the record, compelling circumstances for a further reasonable extension.

(c) *Trial.* Trials before a judge shall commence within 90 days of the date the scheduling order is entered. Trials and hearings shall be scheduled to be heard on consecutive days whenever possible but, if not on consecutive days, then the trial or hearing shall be concluded not later than 45 days from commencement.

(d) *Prompt Decisions.* The judge's decision shall be entered and filed within 15 days of the date upon which the trial is concluded unless, within that time, the court extends the date for such decision by order entered of record showing good cause for the extension. In no event shall an extension delay the entry of the court's decision more than 45 days after the conclusion of trial.

(e) *Emergency or Special Relief.* Nothing in this rule shall preclude a party from seeking, nor a court from ordering, emergency or interim special relief at any time after the commencement of the action.

Official Note:: For service of original process in custody, partial custody and visitation matters, see Rule 1930.4.

Rescinded June 20, 1985, effective Jan 1, 1986. Note amended Oct. 2, 1995, effective Jan.1, 1996. Replaced by new rule.

Explanatory Comment—2000

A new rule requiring prompt custody trials was recommended by a special committee established by the Pennsylvania Superior Court. That committee concluded that the interests of children who are the subjects of custody litigation would best be served by a requirement that the litigation be concluded within specific time frames.

Source

The provisions of this Rule 1915.4 rescinded June 20, 1985, effective January 1, 1986, 15 Pa.B. 2452; amended October 2, 1995, effective January 1, 1996, 25 Pa.B. 4518; amended November 30, 2000, effective March 1, 2001, 30 Pa.B. 6423; amended July 8, 2010, effective September 6, 2010, 40 Pa.B. 4140. Immediately preceding text appears at serial pages (340193) to (340194).

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

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

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

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

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

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

(President Judge)

(Administrative Judge)

Note: Pursuant to Rule 1915.4-1, the following counties have certified to the Domestic Relations Procedural Rules Committee that their custody proceedings generally are conducted in accordance with the rule specified below:

COUNTY	RULE
Adams	1915.4-3
Allegheny	1915.4-2
Armstrong	1915.4-3
Beaver	1915.4-3
Bedford	1915.4-3
Berks	1915.4-3
Blair	1915.4-3
Bradford	1915.4-2
Bucks	1915.4-3
Butler	1915.4-3
Cambria	1915.4-2
Cameron	1915.4-3
Carbon	1915.4-2
Centre	1915.4-3
Chester	1915.4-3
Clarion	1915.4-3
Clearfield	1915.4-3
Clinton	1915.4-3
Columbia	1915.4-3
Crawford	1915.4-3
Cumberland	1915.4-3
Dauphin	1915.4-3
Delaware	1915.4-2
Elk	1915.4-3
Erie	1915.4-3
Fayette	1915.4-2
Forest	1915.4-2
Franklin	1915.4-3
Fulton	1915.4-3
Greene	1915.4-2
Huntingdon	1915.4-3
Indiana	1915.4-3
Jefferson	1915.4-3

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GENERAL

COUNTY	RULE
Juniata	1915.4-3
Lackawanna	1915.4-2
Lancaster	1915.4-3
Lawrence	1915.4-3
Lebanon	1915.4-3
Lehigh	1915.4-2
Luzerne	1915.4-2
Lycoming	1915.4-3
McKean	1915.4-3
Mercer	1915.4-3
Mifflin	1915.4-3
Monroe	1915.4-3
Montgomery	1915.4-3
Montour	1915.4-3
Northampton	1915.4-3
Northumberland	1915.4-3
Perry	1915.4-3
Philadelphia	1915.4-2
Pike	1915.4-2
Potter	1915.4-3
Schuylkill	1915.4-2
Snyder	1915.4-3
Somerset	1915.4-3
Sullivan	1915.4-3
Susquehanna	1915.4-3
Tioga	1915.4-2
Union	1915.4-3
Venango	1915.4-3
Warren	1915.4-2
Washington	1915.4-3
Wayne	1915.4-2
Westmoreland	1915.4-3
Wyoming	1915.4-3
York	1915.4-3

Explanatory Comment—1994

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

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

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

Explanatory Comment—2007

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

Source

The provisions of this Rule 1915.4-1 adopted July 15, 1994, effective January 1, 1995, 24 Pa.B. 3803; amended November 30, 2000, effective March 1, 2001, 30 Pa.B. 6423; amended October 30, 2007, effective immediately, 37 Pa.B. 5974; amended April 18, 2008, effective immediately, 38 Pa.B. 1815. Immediately preceding text appears at serial pages (331332) to (331334).

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

(a) *Office Conference.*

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

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

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

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

(b) *Hearing.*

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

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

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

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

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

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

Explanatory Comment—2006

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

Source

The provisions of this Rule 1915.4-2 adopted July 15, 1994, effective January 1, 1995, 24 Pa.B. 3803; amended November 30, 2000, effective March 1, 2001, 30 Pa.B. 6423; amended August 8, 2006, effective immediately, 36 Pa.B. 4709; amended October 30, 2007, effective immediately, 37 Pa.B. 5974. Immediately preceding text appears at serial pages (322436) to (322438).

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

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

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

Rule 1915.5. Question of Jurisdiction or Venue. No Responsive Pleading by Defendant Required. Counterclaim. Discovery.

(a) A party must raise any question of jurisdiction of the person or venue by preliminary objection filed within twenty days of service of the pleading to which

objection is made or at the time of hearing, whichever first occurs. No other pleading shall be required, but if one is filed it shall not delay the hearing.

Official Note: The court may raise at any time a question of (1) jurisdiction over the subject matter of the action or (2) the exercise of its jurisdiction pursuant to § 5426 of the Uniform Child Custody Jurisdiction and Enforcement Act, relating to simultaneous proceedings in other courts, § 5427, relating to inconvenient forum, and § 5428, relating to jurisdiction declined by reason of conduct. The Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.A. § 5407, provides that, upon request of a party, an action in which a question of the existence or exercise of jurisdiction is raised shall be given calendar priority and handled expeditiously.

(b) A party may file a counterclaim asserting the right of custody, partial custody or visitation within twenty days of service of the complaint upon that party or at the time of hearing, whichever first occurs. The claim shall be in the same form as a complaint as required by Rule 1915.3.

(c) There shall be no discovery unless authorized by special order of court.

Official Note: The rule relating to discovery in domestic relations matters generally is Rule 1930.5.

Explanatory Comment—1994

Under subdivision (a), the defendant may but is not required to plead to the complaint. All averments may be disputed by the defendant at the custody hearing. An attorney who wished to file another pleading may do so. However, the action is not to be delayed to permit its filing.

Source

The provisions of this Rule 1915.5 amended March 30, 1994, effective July 1, 1994, 24 Pa.B. 1943; amended May 5, 1997, effective July 1, 1997, 27 Pa.B. 2532; amended November 19, 2008, effective immediately, 38 Pa.B. 6596. Immediately preceding text appears at serial pages (331336) and (328357).

Rule 1915.6. Joinder of Parties.

(a)(1) If the court learns from the pleadings or any other source that a parent whose parental rights have not been previously terminated or a person who has physical custody of the child is not a party to the action, it shall order that the person be joined as a party. Such person shall be served with a copy of all prior pleadings and notice of the joinder substantially in the form prescribed by Rule 1915.16(a).

(2) The person joined must file any objection to the order of joinder within twenty days after notice of the order.

(3) The person joined may file a counterclaim asserting a right to custody, partial custody or visitation in the form required for a complaint by Rule 1915.3. A copy of the counterclaim shall be served upon all other parties to the action as provided by Rule 440.

(b) If the court learns from the pleadings or any other source that any other person who claims to have custody or visitation rights with respect to the child is not a party to the action, it shall order that notice be given to that person of the pendency of the action and of the right to intervene therein. The notice shall be substantially in the form prescribed by Rule 1915.16(b).

Source

The provisions of this Rule 1915.6 amended March 30, 1994, effective July 1, 1994, 24 Pa.B. 1943; amended November 19, 2008, effective immediately, 38 Pa.B. 6598. Immediately preceding text appears at serial page (328357).

Explanatory Comment—1994

The position taken by the rules is that a person in physical custody of the child and a parent whose parental rights have not been terminated are necessary parties to a custody determination. While it may be desirable to have other persons who claim custody or visitation rights as parties to the action, their joinder is not a prerequisite to a custody determination.

Rule 1915.7. Consent Order.

If an agreement for custody, partial custody or visitation is reached and the parties desire a consent order to be entered, they shall note their agreement upon the record or shall submit to the court a proposed order bearing the written consent of the parties or their counsel.

Source

The provisions of this Rule 1915.7 amended November 8, 1982, effective January 1, 1983, 12 Pa.B. 4040. Immediately preceding text appears at serial page (72639).

Rule 1915.8. Physical and Mental Examination of Persons.

(a) The court may order the child(ren) and/or any party to submit to and fully participate in an evaluation by an appropriate expert or experts. The order, which shall be substantially in the form set forth in Rule 1915.18, may be made upon the court's own motion, upon the motion of a party with reasonable notice to the person to be examined, or by agreement of the parties. The order shall specify the place, manner, conditions and scope of the examination and the person or persons by whom it shall be made and to whom distributed. In entering an order directing an evaluation pursuant to this rule, the court shall consider all appropriate factors including the following, if applicable:

- (1) the allocation of the costs, including insurance coverage, if any, attendant to the undertaking of the evaluation and preparation of the resultant report and court testimony of any appointed expert;
- (2) the execution of appropriate authorizations and/or consents to facilitate the examination;
- (3) any deadlines imposed regarding the completion of the examination and payment of costs;
- (4) the production of any report and of underlying data to counsel and/or any unrepresented party upon the completion of the examination; and
- (5) any additional safeguards that are deemed appropriate as a result of the alleged presence of domestic violence and/or child abuse.

(b) Unless otherwise directed by the court, the expert shall deliver to the court, to the attorneys of record for the parties, to any unrepresented party, and to the guardian ad litem and/or counsel for the child, if any, copies of any reports arising from the evaluation setting out the findings, results of all tests made, diagnosis and conclusions. No reports shall be filed of record or considered evidence unless and until admitted by the court. Any report which is prepared at the request of a party, with or without a court order, and which a party intends to introduce at trial, must be delivered to the court and the other party at least thirty days before trial. If the report or any information from the evaluator is provided to the court, the evaluator shall be subject to cross-examination by all counsel and any unrepresented party without regard to who obtains or pays for the evaluation.

(c) If a party refuses to obey an order of court made under subdivision (a) of this rule, the court may make an order refusing to allow the disobedient party to support or oppose designated claims or defenses, prohibiting the party from introducing in evidence designated documents, things or testimony, prohibiting the party from introducing evidence of physical or mental condition, or making such other order as is just. The willful failure or refusal of a party to comply with an order entered pursuant to this rule may also give rise to a finding of contempt and the imposition of such sanctions as may be deemed appropriate by the court, including, but not limited to, an adverse inference against the non-complying party.

(d) A petition for contempt alleging failure to comply with an order entered pursuant to subdivision (a) of this rule shall be treated in an expedited manner.

Explanatory Comment—2007

This rule addresses the process for any number of expert evaluations a court may order in a custody case, including, but not limited to, physical, mental health, custody and/or drug and alcohol evaluations, and/or home studies. Since the initial promulgation of this rule in 1981, the frequency of utilizing professionals as expert witnesses in child custody litigation has increased considerably. In appropriate cases, evaluations have served as a means to provide the court with a full and complete record and to facilitate settlement of the litigation.

The proposed revisions to Rule 1915.8 are intended to afford the trial court and the parties a more flexible and case-sensitive means of determining the scope and parameters of a physical and/or mental examination, including deadlines, costs, underlying data, and access. In many instances, the previous sixty-day deadline was impractical and ignored. While some cases demanded that the evaluation be completed in less than 60 days, others demanded far more time than that. The revisions to this rule also specifically permit the trial court to draw an adverse inference from one party's failure to comply with an order pursuant to this rule.

Source

The provisions of this Rule 1915.8 amended May 16, 1994, effective July 1, 1994, 24 Pa.B. 2882; amended May 23, 2007, effective August 1, 2007, 37 Pa.B. 2602; amended August 2, 2010, effective immediately, 40 Pa.B. 4634. Immediately preceding text appears at serial pages (340200) to (340201).

Rule 1915.9. No Default Judgment.

No judgment may be entered by default or on the pleadings.

Rule 1915.10. Decision.

(a) The court may make the decision before the testimony has been transcribed.

(b) No motion for post-trial relief may be filed to an order of custody, partial custody or visitation.

Official Note: See 23 Pa.C.S. § 5301 et seq. for provisions relating to the award of sole or shared custody (§§ 5303, 5304), counseling and the temporary award of custody pending counseling (§ 5305), submission of a plan to implement a custody order (§ 5306), removal of a party or child from the Commonwealth (§ 5308), access to records of the child (§ 5309), and modification of existing custody orders (§ 5310).

The statute also provides that the court shall state on the record its reasons when it declines to enter an award of custody as agreed to by the parents or under the plan developed by them (23 Pa.C.S. § 5307).

Source

The provisions of this Rule 1915.10 amended October 19, 1983, effective January 1, 1984, 13 Pa.B. 3629; amended November 7, 1988, effective January 1, 1989, 18 Pa.B. 5323. Immediately preceding text appears at serial page (85746).

Rule 1915.11. Appointment of Attorney for Child. Interrogation of Child. Attendance of Child at Hearing or Conference.

(a) The court may on its own motion or the motion of a party appoint an attorney to represent the child in the action. The court may assess the cost upon the parties or any of them or as otherwise provided by law.

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

Source

The provisions of this Rule 1915.11 amended April 29, 1991, effective July 1, 1991, 21 Pa.B. 2337. Immediately preceding text appears at serial pages (134347) to (134348).

Rule 1915.12. Civil Contempt for Disobedience of Custody Order. Petition. Form of Petition. Service. Order.

(a) A petition for civil contempt shall begin with a notice and order to appear in substantially the following form:

NOTICE AND ORDER TO APPEAR

Legal proceedings have been brought against you alleging you have willfully disobeyed an order of court for (custody) (partial custody) (visitation).

If you wish to defend against the claim set forth in the following pages, you may but are not required to file in writing with the court your defenses or objections.

Whether or not you file in writing with the court your defenses or objections, you must appear in person in court on _____, at _____ .M.,
(Day and Date) (Time)
in Courtroom _____, _____
(Address)

IF YOU DO NOT APPEAR IN PERSON, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

If the court finds that you have willfully failed to comply with its order for (custody) (partial custody) (visitation), you may be found to be in contempt of court and committed to jail, fined or both.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(Name)

(Address)

(Telephone Number)

BY THE COURT:

J.

Date: _____

(b) The petition shall allege the facts which constitute wilful failure to comply with the custody, partial custody or visitation order, a copy of which shall be attached to the petition.

(c) The petition shall be in substantially the following form:

(Caption)
PETITION FOR CIVIL CONTEMPT FOR
DISOBEDIENCE OF (CUSTODY) (PARTIAL CUSTODY)
(VISITATION) ORDER

The Petition of _____, respectfully represents:

1. That on _____, Judge _____ entered an Order awarding (Petitioner) (Respondent) (custody) (partial custody) (visitation) of the minor child(ren) _____
(Name(s) of Child(ren))

A true and correct copy of the order is attached to this petition.

2. Respondent has willfully failed to abide by the order in that _____

WHEREFORE, Petitioner requests that Respondent be held in contempt of court.

(Attorney for Petitioner) (Petitioner)

I verify that the statements made in this complaint are true and correct. 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 Petitioner

(d) The petition shall be served upon the respondent by personal service or regular mail. No answer to the petition shall be required. If service is by mail, the hearing on the petition shall not be held sooner than seven days after mailing of the petition unless the court for cause shown orders an earlier hearing. If the respondent fails to appear, the court shall continue the hearing and may order personal service by the sheriff or constable, or alternative service as accepted by the court, of the petition and notice of a new hearing date or the court may issue a bench warrant for production of the respondent in court and not for imprisonment.

(e) After hearing, an order committing a respondent to jail for contempt of a custody, partial custody or visitation order shall specify the condition which must be fulfilled to obtain release of the respondent.

Official Note: See 23 Pa.C.S.A. § 4346 relating to contempt for noncompliance with visitation or partial custody order.

See the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.A. §§ 5443 and 5445, relating to registration and enforcement of custody decrees of another state, and 23 Pa.C.S.A. § 5471, relating to intrastate application of the Uniform Child Custody Jurisdiction and Enforcement Act.

Source

The provisions of this Rule 1915.12 amended November 8, 1982, effective January 1, 1983, 12 Pa.B. 4040; amended November 7, 1988, effective January 1, 1989, 18 Pa.B. 5323; amended March 30, 1994, effective July 1, 1994, 24 Pa.B. 1943; amended December 2, 1994, effective March 1, 1995, 24 Pa.B. 6263; amended March 18, 2004, effective June 16, 2004, 34 Pa.B. 1754; amended November 19, 2008, effective immediately, 38 Pa.B. 6596. Immediately preceding text appears at serial pages (303581) to (303582).

Rule 1915.13. Special Relief.

At any time after commencement of the action, the court may on application or its own motion grant appropriate interim or special relief. The relief may include but is not limited to the award of temporary custody, partial custody or visitation; the issuance of appropriate process directing that a child or a party or person having physical custody of a child be brought before the court; and a direction

that a person post security to appear with the child when directed by the court or to comply with any order of the court.

Official Note: This rule supplies relief formerly available by habeas corpus for production of the child.

Rule 1915.14. Disobedience of Order. Arrest. Contempt.

If a person disobeys an order of court other than a custody, partial custody or visitation order, the court may issue a bench warrant for the arrest of the person and if the disobedience is wilful may, after hearing, adjudge the person to be in contempt.

Official Note: For disobedience of a custody, partial custody or visitation order, see Rule 1915.12.

Rule 1915.15. Form of Complaint. Caption. Order. Petition to Modify a Partial Custody or Visitation Order.

(a) The complaint in an action for custody, partial custody or visitation shall be in substantially the following form:

(Caption)

COMPLAINT FOR (CUSTODY) (PARTIAL CUSTODY) (VISITATION)

1. The plaintiff is _____,
residing at _____,
(Street) (City) (Zip Code) (County)

2. The defendant is _____,
residing at _____,
(Street) (City) (Zip Code) (County)

3. Plaintiff seeks (custody) (partial custody) (visitation) of the following child(ren):

Name	Present Residence	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

The child (was) (was not) born out of wedlock.

The child is presently in the custody of _____,
(Name)

who resides at _____,
(Street) (City) (State)

During the past five years, the child has resided with the following persons and at the following addresses:

(List All Persons)	(List All Addresses)	(Dates)
_____	_____	_____
_____	_____	_____
_____	_____	_____

The mother of the child is _____,
currently residing at _____.
She is (married) (divorced) (single).

The father of the child is _____,
currently residing at _____.
He is (married) (divorced) (single).

4. The relationship of plaintiff to the child is that of _____.
The plaintiff currently resides with the following persons:

Table with 2 columns: Name, Relationship. Includes blank lines for entry.

5. The relationship of defendant to the child is that of _____.
The defendant currently resides with the following persons:

Table with 2 columns: Name, Relationship. Includes blank lines for entry.

6. Plaintiff (has) (has not) participated as a party or witness, or in another capacity, in other
litigation concerning the custody of the child in this or another court. The court, term and number,
and its relationship to this action is: _____.

Plaintiff (has) (has no) information of a custody proceeding concerning the child pending in a
court of this Commonwealth or any other state. The court, term and number, and its relationship to
this action is: _____.

Plaintiff (knows) (does not know) of a person not a party to the proceedings who has physical
custody of the child or claims to have custody or visitation rights with respect to the child. The
name and address of such person is: _____.

7. The best interest and permanent welfare of the child will be served by granting the relief
requested because (set forth facts showing that the granting of the relief requested will be in the
best interest and permanent welfare of the child): _____.

8. Each parent whose parental rights to the child have not been terminated and the person who
has physical custody of the child have been named as parties to this action. All other persons,
named below, who are known to have or claim a right to custody or visitation of the child will be
given notice of the pendency of this action and the right to intervene:

Table with 3 columns: Name, Address, Basis of Claim. Includes blank lines for entry.

Wherefore, plaintiff requests the court to grant (custody) (partial custody) (visitation) of the
child.

Attorney for Plaintiff

I verify that the statements made in this Complaint are true and correct. I understand that false
statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn fal-
sification to authorities.

Plaintiff

Official Note: The form of complaint is appropriate where there is one plaintiff and one
defendant and where the custody of one child is sought, or where the custody of several chil-
dren is sought and the information required by paragraphs 3 to 7 is identical for all of the chil-
dren. Where there are multiple parties, the complaint should be appropriately adapted to accom-

 (Name)

 (Address)

 (Telephone Number)

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of _____ County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference or hearing.

BY THE COURT:

 J.

Date: _____

Explanatory Comment—2008

In an effort to promote uniformity of practice throughout the Commonwealth, several forms are included in the rules. Two aspects of these forms are worthy of mention. First, much of the information which must be set forth in the complaint is required by the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.A. § 5429. Second, the complaint is verified by use of a statement that it is subject to the penalties of the Crimes Code relating to unsworn falsification to authorities. A notary public is not needed.

Source

The provisions of this Rule 1915.15 amended November 8, 1982, effective January 1, 1983, 12 Pa.B. 4040; amended April 29, 1991, effective July 1, 1991, 21 Pa.B. 2337; amended December 2, 1994, effective March 1, 1995, 24 Pa.B. 6263; amended March 2, 2000, effective immediately, 30 Pa.B. 1646; amended March 18, 2004, effective June 16, 2004, 34 Pa.B. 1754; amended November 19, 2008, effective immediately, 38 Pa.B. 6596. Immediately preceding text appears at serial pages (303582), (265467) to (265468) and (303583).

Rule 1915.16. Form of Order and Notice. Joinder. Intervention.

(a) The order and notice joining a party in an action under Rule 1915.6(a) shall be substantially in the following form:

(Caption)

ORDER AND NOTICE

A complaint has been filed in the Court of Common Pleas of _____ County concerning custody, partial custody and visitation of the following child(ren): _____

The Court has learned you may have a legal interest in custody, partial custody or visitation of the child(ren) named.

A hearing will be held in Courtroom _____ of the Court of Common Pleas,

 (Address)

on _____, at _____ .M. If you wish to have custody,

(Day and Date) (Time)

partial custody or visitation of the child(ren) or wish to present evidence to the Court on those matters, you should appear at the place and time and on the date above.

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CUSTODY OF MINOR CHILDREN

231 Rule 1915.16

If you have the child(ren) in your possession or control, you must appear and bring them to the Courthouse with you.

If you wish to claim the right to custody, partial custody or visitation, you may file a counterclaim.

If you fail to appear as provided by this order or to bring the child(ren), an order for custody, partial custody or visitation may be entered against you or the Court may issue a warrant for your arrest.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(Name)
(Address)
(Telephone Number)

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of _____ County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court.

BY THE COURT:

_____ J.

Date: _____

(b) The order for notice of the pendency of the action and the right to intervene required by Rule 1915.6(b) shall be substantially in the following form:

(Caption)

ORDER AND NOTICE

A complaint has been filed in the Court of Common Pleas of _____ County concerning custody, partial custody and visitation of the following child(ren):

_____. The Court has learned you claim custody, partial custody or visitation rights with respect to the child(ren) named.

A hearing will be held in Courtroom _____ of the Court of Common Pleas _____, (Address)

on _____, at _____, _____ .M. If you wish to assert your (Day and Date) (Time)

claim to custody, partial custody or visitation rights with respect to the child(ren) or wish to present evidence to the Court on those matters, you should petition the Court, on or before the above date, for leave to intervene in the proceedings.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT

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GENERAL

AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(Name)

(Address)

(Telephone Number)

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of _____ County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court.

BY THE COURT:

J.

Date: _____

Source

The provisions of this Rule 1915.16 amended December 2, 1994, effective March 1, 1995, 24 Pa.B. 6263; amended March 18, 2004, effectively June 16, 2004, 34 Pa.B. 1754. Immediately preceding text appears at serial pages (265469) to (265470) and (202647).

Rule 1915.18. Form of Order Directing Expert Examination and Report.

The order of court directing expert evaluation in a custody matter pursuant to Rule 1915.8 shall be in substantially the following form:

(Caption)

ORDER OF COURT

AND NOW, this ____ day of _____, 20____, it is hereby ORDERED, that:

1. The evaluator shall be _____ or will be selected by the parties.

2. The evaluator shall conduct a

- Physical Evaluation
- Psychological Evaluation
- Custody Evaluation
- Drug and/or Alcohol Evaluation
- Home Study
- Other (Specify) _____

3. The evaluator shall shall not make specific recommendations for legal and physical custody. If the evaluator makes specific recommendations, the evaluator shall state the specific reasons for the recommendations.

4. The parties shall participate fully with the evaluator on a timely basis, including retaining the evaluator upon appropriate terms, scheduling appointments, paying promptly, participating in all sessions and in appropriate testing

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recommended by the evaluator and executing any reasonable consents relating to themselves and their children.

5. If the evaluation is a medical necessity, the service may be covered by insurance. If so, both parties shall promptly cooperate to maximize the use of available insurance coverage, if any, and to notify the other party of the result. The plaintiff defendant shall submit the costs to his or her insurance first. The cost of the unreimbursed portion of the evaluation shall preliminarily be allocated between the parties with the plaintiff paying _____ % and the defendant paying _____ % without prejudice to the ultimate apportionment of such costs by subsequent agreement of the parties or order of court.

6. The cost of the evaluation shall be borne by the county, subject to reimbursement by _____ .

7. The cost for the evaluator’s time for depositions and/or testimony for hearing shall be allocated _____ % to the plaintiff and _____ % to the defendant or paid by the party seeking the testimony.

8. The evaluator may consult with and/or interview any person the evaluator reasonably believes can provide relevant information, including other experts and/or fact witnesses.

9. The evaluator may utilize the services of another qualified professional (e.g. to perform additional services) without court approval.

10. Subject to the applicable rules of evidence, the evaluator’s file (including notes, exhibits, correspondence, test interpretations and, to the extent it is not a violation of copyright law or applicable professional rules, raw test data) shall promptly be made available to counsel for the parties.

11. Provided that the parties cooperate on a timely basis, the evaluator shall deliver his or her report to counsel for the parties, any unrepresented party, the guardian *ad litem* and/or counsel for the child, if any, and to the court at least ___ days prior to the first day of trial. The report shall not be filed of record.

12. Prior to and/or subsequent to the submission of the evaluator’s written report, counsel for the parties shall not be permitted to communicate with the evaluator as to substantive issues, without the consent or direct participation of counsel for the other party.

13. If the report or any information from the evaluator is provided to the court, the evaluator shall be subject to cross examination by all counsel and any unrepresented party regardless of who obtains or pays for the services of the evaluator.

14. The evaluator shall be provided with a copy of this order.

15. The evaluator’s report shall not be inappropriately disseminated.

16. Other provisions: _____

FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN FINES, IMPRISONMENT OR OTHER SANCTIONS.

BY THE COURT:

J.

Source

The provisions of this Rule 1915.18 adopted May 16, 1994, effective July 1, 1994, 24 Pa.B. 2882; amended May 23, 2007, effective August 1, 2007, 37 Pa.B. 2602; amended August 2, 2010, effective immediately, 40 Pa.B. 4634. Immediately preceding text appears at serial pages (340210) to (340212).

Rule 1915.24. Acts of Assembly Not Suspended.

The following Acts or parts of Acts of Assembly shall not be deemed suspended or affected:

- (1) Chapter 63 of the Judicial Code, 42 Pa.C.S. § 6301 et seq., known as the Juvenile Act;
- (2) Section 5341 et seq. of the Domestic Relations Code, 23 Pa.C.S. § 5341 et seq., known as the Uniform Child Custody Jurisdiction Act, except to the extent suspended by Rule 1915.25 governing Suspension of Acts of Assembly;
- (3) The Act of December 19, 1990, No. 206, 23 Pa.C.S. § 6301 et seq., known as the Child Protective Services Law;
- (4) The Act of October 7, 1976, No. 218, as amended, 23 Pa.C.S. § 6101 et seq., known as the Protection from Abuse Act; and
- (5) Chapter 53, Subchapter A of Title 23 of the *Consolidated Statutes*, 23 Pa.C.S. § 5301 et seq., setting forth general custody provisions.

Source

The provisions of this Rule 1915.24 amended November 8, 1982, effective January 1, 1983, 12 Pa.B. 4040; amended November 7, 1988, effective January 1, 1989, 18 Pa.B. 5323; amended March 30, 1994, effective July 1, 1994, 24 Pa.B. 1943. Immediately preceding text appears at serial pages (157279) to (157280).

Rule 1915.25. Suspension of Acts of Assembly.

Section 5351 of the Domestic Relations Code, 23 Pa.C.S. § 5351, of the Uniform Child Custody Jurisdiction Act, relating to additional parties, is suspended insofar as it provides for the joinder of a person not a party who claims to have custody or visitation rights with respect to the child.

Official Note: Rule 1915.6(b) provides that a person not a party who claims to have custody or visitation rights with respect to the child shall be given notice of the pendency of the proceedings and of the right to intervene.

Source

The provisions of this Rule 1915.25 amended March 30, 1994, effective July 1, 1994, 24 Pa.B. 1943. Immediately preceding text appears at serial page (157280).

[Next page is 1920-1.]