

CUSTODY PROCEDURE

RULE 1915.1(b) DEFINITIONS.

These rules shall govern all actions for custody, partial custody, and visitation, including original actions, petitions for relocation, petitions to modify decrees, registration of foreign decrees and petitions for contempt. The rules shall be interpreted as supplementing the Rules of Civil Procedure governing custody actions Pa.R.C.P. 1915.1 et seq.

Amended September 27, 2012; Effective November 12, 2012

“Kids First.” A four hour orientation and education program established to help parents and other parties in child custody actions to understand the effects of separation, divorce, and family conflicts in their lives and in the lives of their children.

Amended November 23, 2010; Effective January 10, 2011

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.

Amended September 27, 2012; Effective November 12, 2012

(a.1) *Relocation* – A party filing a counter-affidavit regarding relocation shall file in the office of the Prothonotary an original and one (1) copy of the counter-affidavit, accompanied by the payment of the designated filing and administrative fees. Upon receipt of service of the counter-affidavit, the relocating party shall expeditiously file in the office of the Prothonotary an original and one (1) copy of the notice of the proposed relocation that was served on the non-relocating party, accompanied by payment of the designated filing and administrative fees, which shall include a custody conciliation conference fee. The relocating party shall attach to this filing a copy of any existing order(s) of Court affecting the custody of the subject child(ren). The Prothonotary shall, immediately after filing, transmit the original and copy of each filing to the Civil Court Administrator for scheduling. The Court Administrator will hold the counter-affidavit of the non-relocating party until the relocating party files the notice of the proposed relocation and pays the required fees, after which the Court Administrator will return the originals to the Prothonotary and give the copies to the Conciliation Office, which shall schedule a conciliation conference within fourteen (14) days and send to all parties a copy of the scheduling order and a conciliation questionnaire.

Adopted September 27, 2012; Effective November 12, 2012

(a.2) If there is no existing order of Court awarding any of the parties primary custody of the subject child(ren), a party seeking primary custody of the child(ren) shall file a complaint for custody before the case will be assigned for disposition.

Adopted September 27, 2012; Effective November 12, 2012

(b) If a custody claim is asserted in a divorce complaint, 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.

(c) 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."

(d) 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 in substantially 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.

Amended November 23, 2010; Effective January 10, 2011

RULE 1915.3a PARENT EDUCATION PROGRAM.

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

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

Amended September 11, 2013; Effective October 28, 2013

RULE 1915.4 PROMPT DISPOSITION OF CUSTODY CASES.

- (a) The Court shall appoint one or more person(s) as Court Conciliation Officer(s) to:
 - (1) conciliate custody cases filed with the Court;
 - (2) recommend to the Court interim Orders in appropriate custody cases which shall be in the best interest of the child;
 - (3) recommend appointment of counsel for the child;
 - (4) recommend the ordering of home studies, psychologicals, or other evaluations by expert witnesses.
- (b) 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. Failure of a party to appear at the conference may provide grounds for the entry of an Interim Order.
- (c) 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.
- (d) More than one (1) conciliation conference may be scheduled by the Custody Conciliation Officer, as that Officer deems necessary to conciliate the matter.
- (e) 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.
- (f) 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. Any report by the Conciliation Officer will be filed with the Prothonotary, who shall seal the report to all except the Court and the parties.
 - (1) Within five (5) days of filing Exceptions to the Report of the Custody Conciliation Officer, Pursuant to Pa.R.C.P. 1910.12(f), the party raising exceptions shall request a transcript of all the testimony, pursuant to Pa.R.J.A. 5000.5, and shall thereupon make a deposit with the Court Reporter for the cost of said transcript pursuant to Pa.R.J.A. 5000.6.

(2) If both parties file Exceptions to the Report of the Custody Conciliation Officer, they shall equally bear the cost of the transcript of the testimony.

(3) In the event of the failure of an excepting party within the time allowed either to order the transcript, or to pay for the same, or to file a memorandum of law, the exceptions may be deemed to have been withdrawn and may be dismissed by the Court.

(4) Upon filing of the transcript of testimony, the file shall be delivered to the Court for disposition pursuant to Pa.R.C.P. 1910.12(h). Within ten (10) days of receiving notice of such filing with the Court, the moving party shall file a memorandum of law related to the issues raised in the exceptions, and shall within three (3) days serve a copy of such memorandum upon counsel or upon the opposing party, if not represented by counsel, the opposing party may within ten (10) days file an opposing memorandum.

Amended June 27, 2011; Effective August 15, 2011

(f.1) *Relocation* – If at the conclusion of the conciliation conference, a custody relocation case remains contested, the Custody Conciliation Officer shall determine if a party is seeking a change in primary custody, partial custody, or visitation. Where primary custody is in dispute, the case shall be transferred to the Civil Court Administrator for assignment to a Judge to be expeditiously heard. Where partial custody or visitation is in dispute, the case shall be transferred to a hearing officer.

Adopted September 27, 2012; Effective November 12, 2012

(g) 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 (e) hereof. If no agreement is achieved, the Conciliation Officer will proceed pursuant to subsection (f) hereof and provide the Court and parties with a supplemental report.

(h) Unless the Conciliation Officer's report is recommending further expert evaluations, within twenty (20) days after receiving a copy of the Conciliation Officer's report to the Court, each party shall file a pretrial memorandum, which shall include the following:

(1) a list of all fact witnesses;

(2) a list of all expert witnesses;

(3) issues for resolution;

(4) estimated length of trial;

(5) documentary reports from appropriate agencies;

(6) reports of experts intended to be called as witnesses which the Custody Conciliation Officer did not previously have in Officer's possession; and

(7) the manner to be utilized in presentation of expert witnesses or expert reports (i.e. stipulation of parties or presentation of testimony).

If the Conciliation Officer's report recommends further expert evaluations, the parties' pretrial memoranda shall be filed within twenty (20) days after receiving a copy of the

Conciliation Officer's supplemental report. Failure to provide the information requested timely and completely prior to trial may be grounds for excluding the evidence or witnesses at trial.

(i) The Court will notify the parties of the time and date for trial or may elect to first schedule a pretrial conference.

**RULE 1915.4-2 OFFICE CONFERENCE. HEARING. RECORD. EXCEPTIONS.
ORDER**

(b.1) *Relocation*

(1) In cases of relocation where primary custody is not in dispute, the hearing officer shall schedule a hearing within fourteen days after the case is assigned for hearing.

(2) Within seven days of the conclusion of the hearing, the hearing officer shall file with the court and serve upon all parties a report in conformance with Pa.R.C.P. No. 1915.4-2(b)(3).

(3) Exceptions to the hearing officer's report, with an accompanying brief, shall be filed by a party excepting to the hearing officer's report within fourteen days after the report is mailed. A party who opposes exceptions filed by another party shall file an opposing brief within ten days after service of the exceptions.

(4) When exceptions are filed to the 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 twenty 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 twenty 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.

(5) Exceptions to the hearing officer's report shall be decided on the parties' briefs unless oral argument is requested by praecipe of one of the parties.

Amended September 27, 2012; Effective November 12, 2012

(g) A party who files exceptions to the hearing officer's report pursuant to Pa.R.C.P. 1915.4-2(g) 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.

(i) 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.

Adopted November 13, 2007; Effective Immediately

RULE 1915.5 QUESTION OF JURISDICTION OR VENUE. NO RESPONSIVE PLEADING BY DEFENDANT REQUIRED. COUNTERCLAIM.

(a) Only the issues set forth in Pa.R.C.P. 1915.5(a) may be raised by way of preliminary objections. Filing of preliminary objections shall be as set forth in Sch.R.C.P. 1915.3, and thereafter shall be governed by Sch.R.C.P. 1028(c).

(b) If a question of jurisdiction or venue is raised prior to the conciliation conference, such objections shall be referred by the Custody Conciliation Officer to the Court for disposition.

(c) Counterclaims, crossclaims or answers shall be filed with the Prothonotary prior to the conciliation conference, and a copy provided to the Custody Conciliation Officer.

RULE 1915.7 CONSENT ORDER.

(a) 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.

(b) 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.

(1) 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.

Amended October 18, 2006; Effective December 4, 2006

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.

(b) 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 COMPLAINT.

(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.

RULE 1915.15 FORM OF COMPLAINT.

(a) In addition to the information required by Pa.R.C.P. 1915.15(a) and (b), each complaint for custody, partial custody, or visitation, or a petition to modify an existing custody order, shall have attached to its front an order in substantially the following form:

**THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY
TWENTY-FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

Plaintiff :
 : No: S-
 :
vs. : Custody
 :
Defendant :

ORDER OF COURT

AND NOW, this _____ day of _____, 20 __, at _____ o'clock ____m.; you are hereby ORDERED to appear as follows:

You have been sued in Court to obtain/modify (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) named in the Complaint.

I. CUSTODY CONCILIATION CONFERENCE

You are ORDERED to appear in person at the Custody Conciliation Office, of the Schuylkill County Courthouse on _____, for a Custody Conciliation Conference.

You are further ORDERED to bring with you the fully completed conciliation questionnaire provided by the Court.

If you fail to appear as provided by the Order, an Order of Custody may be entered against you or the Court may issue a Warrant for your arrest.

You must file with the Court a verification regarding any criminal record or abuse history regarding you and anyone living in your household on or before the initial in-person contact with the Court (including, but not limited to, a conference with a conference officer or judge or conciliation) but not later than 30 days after service of the complaint or petition.

No party may make a change in the residence of any child which significantly impairs the ability of the other party to exercise custodial rights without first complying with all of the applicable provisions of 23 Pa.C.S. §5337 and Pa.R.C.P. No. 1915.17 regarding relocation.

II. PARENT EDUCATION PROGRAM

1. ALL PARTIES NAMED ABOVE SHALL ATTEND AND COMPLETE THE PARENT EDUCATION PROGRAM DESIGNATED BY THE COURT. THE PROGRAM IS REQUIRED FOR ALL PARTIES PARTICIPATING IN A CUSTODY ACTION. PARTICIPATION IS REQUIRED WHETHER OR NOT AN AGREEMENT IS SUBMITTED.

2. EACH OF YOU SHALL CONTACT THE PARENT EDUCATION PROGRAM IDENTIFIED IN THE ENCLOSED BROCHURE OR BY CALLING (TOLL FREE) 888-215-7445 WITHIN TEN (10) DAYS OF RECEIVING THIS ORDER TO REGISTER AND ATTEND THE NEXT AVAILABLE PROGRAM. IF YOU FAIL TO COMPLY WITH THE PROVISIONS OF THIS ORDER, CONTEMPT CHARGES AGAINST YOU SHALL BE FILED WITH THE COURT.

YOU ARE EACH REQUIRED TO PAY THE FEE FOR THE PROGRAM DIRECTLY TO THE PROGRAM PROVIDER. THIS INFORMATION IS INCLUDED IN THE ENCLOSED BROCHURE OR BY CALLING (TOLL FREE) 888-215-7445.

3. LOCATION OF PARENTING EDUCATION PROGRAM:

**SCHUYLKILL COUNTY COURTHOUSE
401 N. 2ND STREET
POTTSVILLE, PA 17901
570-628-1330**

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

III. GENERAL PROVISIONS

YOU SHOULD TAKE THIS PAPER (and the attached papers) TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Pennsylvania Bar Association Lawyer Referral Service
100 South Street, P.O. Box 186, Harrisburg, PA 17108
1-800-692-7375

Counsel and *pro se* litigants without counsel are ORDERED to *immediately* consult their schedules for conflicts and to promptly request a continuance where necessary because of a prior attachment or emergency situation. All requests for a continuance of a Custody Conciliation Conference must be made on the APPLICATION FOR CONTINUANCE form available from the offices of the Court Administrator, Custody Conciliator or Prothonotary in the Schuylkill County Courthouse. The application must be filed in the Prothonotary Office. A continuance will be granted only upon good cause shown.

The moving party shall immediately serve on all interested parties a copy of the original pleading, this order, the designated Parent Education Program Brochure which includes registration and information, and a custody conciliation questionnaire; and shall further file an affidavit verifying service.

Americans With Disabilities Act of 1990: The Court of Common Pleas of Schuylkill 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.

IV. INMATE PROVISIONS

YOU ARE A NAMED PARTY IN AN ACTION SEEKING CUSTODIAL RIGHTS REGARDING YOUR CHILD(REN). THE SCHUYLKILL COUNTY CUSTODY CONCILIATION OFFICE WILL AFFORD YOU THE OPPORTUNITY TO HAVE INPUT VIA TELEPHONE AT THE CONFERENCE WITH THE CUSTODY CONCILIATOR. YOU ARE RESPONSIBLE FOR ARRANGING THE TELEPHONE CONFERENCE THROUGH THE APPROPRIATE PRISON PERSONNEL ONCE YOU ARE NOTIFIED OF THE DAY AND TIME OF THE CONFERENCE. YOU MUST PROVIDE THE CUSTODY CONCILIATION OFFICE WITH A TELEPHONE NUMBER AND A CONTACT PERSON SO THAT THE CUSTODY CONCILIATION OFFICE CAN CONTACT THE PERSON AT THE SCHEDULED TIME FOR THE CUSTODY CONFERENCE.

IN THE EVENT THAT YOU ELECT TO PARTICIPATE IN THE CONFERENCE VIA TELEPHONE CONFERENCE YOU MUST NOTIFY OUR OFFICE WITH THE APPROPRIATE CONTACT INFORMATION AT LEAST FORTY-EIGHT (48) HOURS PRIOR TO THE SCHEDULED CONFERENCE.

IN ADDITION YOU HAVE THE RIGHT TO FILE A WRIT OF HABEAS CORPUS AD TESTIFICANDUM.

IF YOU ELECT NEITHER APPROACH, YOU MAY SUBMIT AN INFORMAL BRIEF AT LEAST TWENTY-FOUR (24) HOURS PRIOR TO THE SCHEDULED CONFERENCE THAT SETS FORTH YOUR PROPOSAL REGARDING THE CUSTODIAL ISSUES REGARDING YOUR CHILD(REN). YOUR BRIEF WILL BE CONSIDERED AT THE TIME OF THE SCHEDULED CONFERENCE.

BY THE COURT,

Date: _____

Amended September 3, 2013; Effective Immediately

RULE 1915.17 CUSTODY CONFERENCE CONTINUANCE.

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 transmitted 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.

Amended January 5, 2011; Effective February 28, 2011