

Rule 1910.1. Scope. Definitions.

(a) Except as provided by subdivision (b), the rules of this chapter govern all civil actions or proceedings brought in the court of common pleas to enforce a duty of support, or an obligation to pay alimony pendente lite.

Official Note

A duty of support is imposed by the following statutes: 23 Pa._C.S.A. §4321 and Section 3 of the Support Law of June 24, 1937, P. L. 2045, 62 P. S. §1973 (repealed) now Act 43-2005, July 7, 2005, P.L. 196. The procedure under the rules of this chapter implements Chapter 43[, **subchapter C**] of Part V of the Domestic Relations Code, [of] Title 23 of the Consolidated Statutes, 23 Pa._C.S.A. §[**4341**] 4301 et seq., relating to support proceedings. The procedure under these rules provides an alternative to the [**intercounty**] intrastate and interstate procedures under [**the Revised Uniform Reciprocal Enforcement of Support Act (1968)**] Parts VIII and VIII-A of the Domestic Relations Code, 23 Pa._C.S.A. §§[**4501**] 7101 et seq. and 8101 et seq. For alimony and alimony pendente lite, see Sections 3701 and 3702 of the Divorce Code, 23 Pa._C.S.A. §§3701, 3702.

Official Note

Long arm jurisdiction is available in support actions brought pursuant to these rules per 23 Pa._C.S.A. §4342(c).

(b) The rules of this chapter shall not govern

(1) an action or proceeding for support based upon a contract or agreement which provides that it may not be enforced by an action in accordance with these rules, [**and**]

(2) an application for a temporary order of support and other relief pursuant to the Protection from Abuse Act of December 19, 1990, P. L. 1240, No. 206, 23 Pa._C.S.A. §6101 et seq. or

(3) an action for support of an indigent brought pursuant to Chapter 46 of the Domestic Relations Code, 23 Pa. C.S.A. §4601 et seq.

Official Note

Where a contract or agreement provides that it cannot be enforced in accordance with the rules, actions upon a contract or agreement for support are to be heard by the court and not a conference officer or hearing officer under Rules 1910.11 or 1910.12. However, such actions should be expedited and given preference in court listings.

(c) As used in this chapter, unless the context of a rule indicates otherwise, the following terms shall have the following meanings:

“Conference officer,” the person who conducts an office conference pursuant to Rule 1910.11.

“Hearing officer,” the person who conducts a hearing on the record and makes recommendations to the court pursuant to Rule 1910.12.

“Overdue support,” the amount of delinquent support equal to or greater than one month’s support obligation which accrues after entry or modification of a support order as the result of obligor’s nonpayment of that order.

“Past due support,” the amount of support which accrues prior to entry or modification of a support order as the result of retroactivity of that order. When nonpayment of the order causes overdue support to accrue, any and all amounts of past due support owing under the order shall convert immediately to overdue support and remain as such until paid in full.

“Suspend,” eliminate the effect of a support order for a period of time.

“Terminate,” end not only the support order, but the support obligation as well.

“Trier of fact,” the judge, hearing officer, or conference officer who makes factual determinations.

“Vacate,” declare a particular support order null and void, as if it were never entered.

Explanatory Comment—1994

Nothing in this rule should be interpreted to eliminate the distinctions between spousal support and alimony pendente lite which are established by case law.

Alimony pendente lite must be distinguished from permanent alimony for purposes of this rule. The rule applies only to alimony pendente lite. The procedure for obtaining permanent alimony is governed by Section 3702 of the Divorce Code, 23 Pa. C.S.A. §3702, and Rules of Civil Procedure 1920.1 et seq. Agreements for alimony approved by the court in connection with actions for divorce under Section 3701 of the Divorce Code are deemed to be court orders enforceable under Section 3703 of the Code.

Section 3105(a) of the Divorce Code provides that all agreements relating to matters under the code, whether or not merged or incorporated into the decree, are to be treated as orders for purposes of enforcement unless the agreement provides otherwise. Subdivision (b)(1) is amended to conform to the statute.

There is considerable diversity in the terminology used throughout the rules, and in the various counties, to describe the individuals who conduct conferences and hearings pursuant to the support rules. The addition of subdivision (c) to the rules standardizes terminology and eliminates the confusion which results from individual counties using inconsistent terms to refer to persons performing the same function. All references in the rules to conference or hearing officers have been amended to conform to the terminology set forth in subdivision (c).

In an effort to further standardize the terminology used in support matters, the additional terms are defined.

Explanatory Comment—2000

Act 1998-127 technically amended Act 1997-58 to define and differentiate between past due and overdue support to clarify that only overdue support constitutes a lien by operation of law against the obligor's real or personal property. 23 Pa. C.S. A. §4302 now defines overdue support as "support which is delinquent under a payment schedule established by the court." Past due support is defined as "support included in an order of support which has not been paid."

The definitions of past due and overdue support in this rule do not substantively change the legislative definitions. They merely elaborate on them in terms which are more familiar and helpful to the bench and bar. Specifically, past due support consists of the purely retroactive arrearages which accumulate between the date of the filing of the complaint or petition for modification and the date of the hearing and entry of the initial or modified support order. Overdue support refers to the delinquent arrearages which accrue after entry of the order due to the obligor's failure to pay support pursuant to the order.

These definitions are important for determining the remedies available for collecting support arrearages. Pursuant to 23 Pa. C.S. A. §4352(d), only overdue support (delinquent arrearages) constitutes a lien by operation of law against the obligor's property. Conversely, past due support (retroactive arrears) does not operate as a lien against this property as long as the obligor remains current on the support order.

Rule 1910.20 extends this legislative distinction between overdue and past due support to the following remedies available to collect support: (1) consumer agency reporting under 23 Pa. C.S. A. §4303; (2) suspension of licenses under 23 Pa. C.S. A. §4355; and (3) the full range of new collection remedies under 23 Pa. C.S. A. §4305(b)(10). Accordingly, these remedies are available only to collect overdue support. They are not available to collect past due support as long as the obligor remains current on the order. If, however, the obligor subsequently defaults

on the support order, Rule 1910.20(c) provides that any past due support still owing under the order immediately becomes overdue support subject to the full range of collection remedies. It remains overdue support until collected in full.

Pursuant to Rule 1910.20(c), all overdue support, including past due support which has converted to overdue support, remains subject to Act 58 remedies until paid in full. Any repayment plan subsequently agreed to by the parties, or ordered by the court pursuant to a contempt proceeding (including any arrearage component), does not preclude the use of these remedies for collecting overdue support more quickly, whenever feasible.

In cases involving past due support only, the obligee is not entirely without remedy in the event that additional income or assets of the obligor are discovered after the hearing which would enable collection of past due support more quickly. In these cases, identification of those income sources or assets provides a basis for modification pursuant to Rule 1910.19. Modification includes increasing the rate of repayment on past due support and, if appropriate, ordering that the past due support be paid in full. In these cases, the obligee may also petition the court for special relief pursuant to Rule 1910.26 to have the income or assets frozen and seized pending the petition for modification in order to secure payment of past due support.

Explanatory Comment—2007

Act 43-2005, July 7, 2005, P.L. 196, repealed the Act of June 24, 1937 (P.L. 2045, No. 397), known as The Support Law and added Chapter 46 to the Domestic Relations Code, 23 Pa.C.S.A. §4601 et seq. Section 4 of Act 43-2005 states that the addition of Chapter 46 is a continuation of the Act of June 24, 1937 (P.L. 2045, No. 397). Chapter 46 addresses the responsibility of certain family members to maintain indigent relatives, whether or not the indigent person is a public charge. New subdivision (b)(3) clarifies that the support rules and guidelines do not apply to actions brought under Chapter 46 of the Domestic Relations Code.