

**SUPREME COURT OF PENNSYLVANIA  
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE  
RECOMMENDATION 54**

**RULE 1910.16-4 SUPPORT GUIDELINES. CALCULATION OF SUPPORT  
OBLIGATION, FORMULA**

\* \* \*

**(c) Substantial or Shared Physical Custody.**

\* \* \*

(2) Without regard to which parent initiated the support action, [W]hen the children spend equal time with both parents, the Part II formula cannot be applied unless the obligor is the parent with the higher income. In no event shall an order be entered requiring the parent with the lower income to pay basic child support to the parent with the higher income. However, nothing in this subdivision shall prevent the entry of an order requiring the parent with less income to contribute to additional expenses pursuant to Rule 1910.16-6. Pursuant to either party's initiating a support action, the trier of fact may enter an order against either party based upon the evidence presented without regard to which party initiated the action. [and] If application of the formula in Part II results in obligee receiving a larger share of the parties' combined income in cases in which the parties share custody equally, then the court shall adjust the support obligation so that the combined income is allocated equally between the two households.

Example. Mother and Father have monthly net incomes of \$3,000 and \$2,000 respectively. Mother has filed for support for the parties' two children with whom they share time equally. Pursuant to the Basic Child Support Schedule at Rule 1910.16-3, the support amount for two children at their parents' combined net income level is \$1,335 per month. Mother's share is 60% of that amount, or \$801. Father's share is 40%, or \$534. Application of subdivisions a. and b. of the Part II formula results in a 20% reduction in support when each parent spends 50% of the time with the children. Because the parties share custody equally, Mother cannot be the obligee for purposes of the Part II calculation because she has the higher income of the two parents. In these circumstances, although Mother initiated the support action, she would become the obligor even if Father has not filed for support. Father cannot be an obligor in the Part II calculations nor can the amount of support Mother is obligated to pay to Father be offset by calculating Father's adjusted amount of support under Part II because a support order cannot be entered against the parent with the lesser income. Using Mother as the obligor, her adjusted percentage share of the basic support amount is 40% (60% -

20%=40%). Her adjusted share of the basic support amount is \$534 (40% of \$1,335). However, instead of \$534 per month, Mother's support obligation would be adjusted to \$500 per month to allocate the parties' combined income equally between the two households. This is the presumptively correct amount of basic support payable to Father under these circumstances.

**[Example. Where the obligor and obligee have monthly net incomes of \$3,000 and \$2,000 respectively, their combined child support obligation for two children is \$1,433. Obligor's share of this obligation is 55%, or \$788. If the children spend equal time with both parents, the formula in Part II results in a support obligation of \$501 payable to obligee. Since this amount gives obligee \$3,001 of the combined income, and leaves obligor with only \$2,499 of the combined income, the obligor's support obligation must be adjusted to \$250 to equalize the combined income between the parties' households. This is the presumptively correct amount of basic support payable to obligee under these circumstances.]**

\* \* \*

**(d) Divided or Split Physical Custody.**

\* \* \*

(2) When calculating a combined child support and spousal or APL obligation, and one or more children reside with each party, the court shall, except as set forth in subdivision (3) below, offset the obligor's spousal and child support obligation with the obligee's child support obligation and award the net difference to the obligee as spousal and child support. . . .

(3) When one or more of the children resides with each party and the obligee's net income is 10% or less of the parties' combined net monthly income, then, in calculating the spousal support or APL obligation, the court shall deduct from the obligor's income both the support owed for the child or children residing with the obligee, as well as the direct support the obligor provides to the child or children living with the obligor, calculated in accordance with the guidelines as if the child or children were not living with the obligor.

\* \* \*

**(f) Allocation. Consequences.**

\* \* \*

(3) Unallocated charging orders for child and spousal support, or child support and alimony pendente lite, shall terminate upon the death of the payee spouse or payee ex-spouse.

[(3)](4) In the event that obligor defaults on an unallocated order, . . . .

\* \* \*

#### **Explanatory Comment—2000**

Subdivision (3) is new and the former subdivision (3) has been renumbered as subdivision (4). The new language is intended to insure alimony tax treatment of unallocated orders pursuant to §71 of the Internal Revenue Code. A similar change has been made to the form order at Rule 1910.27(e). New Rule 1910.19(d) provides that all spousal support and alimony *pendente lite* orders terminate upon the death of the payee. Termination of a charging order does not affect arrears existing at that time.

\* \* \*

#### **RULE 1910.16-6 SUPPORT GUIDELINES. ADJUSTMENTS TO THE BASIC SUPPORT OBLIGATION.**

**(a) Child care expenses.** Reasonable child care expenses paid by the custodial parent, if necessary to maintain employment or appropriate education in pursuit of income, are the responsibility of both parents. These expenses shall be allocated between the parties in proportion to their net incomes and obligor's share added to his or her basic support obligation. When the custodial parent is receiving a child care subsidy through the Department of Public Welfare, the expenses to be allocated between the parties shall be the full unsubsidized cost of the child care, not just the amount actually paid by the custodial parent. However, if allocation of the unsubsidized amount would result in a support order that is overly burdensome to the obligor, deviation pursuant to Rule 1910.16-5 may be warranted.

\* \* \*

**Official Note:** A child care subsidy provided by the Department of Public Welfare should not be used to reduce the child care expenses subject to allocation between the parties to the extent that obligor has the financial resources to contribute to the actual costs of child care. Nor is it appropriate to order the obligee to seek a child care subsidy in order to reduce the obligor's share of child care expenses if obligor has the financial ability to contribute to those expenses. While public policy requires that parents, rather than taxpayers, pay for their children's child care when they are able to do so, allocation of the full unsubsidized cost of child care may result in a support order that is overly burdensome to the obligor. In those circumstances, in addition to

considering deviation to relieve the burden on the obligor, the trier of fact also has the discretion to determine whether or not to include in the order other adjustments under Rule 1910.16-6, such as a mortgage contribution, which are not mandatory. No adjustment to the basic support amount shall be permitted if such would cause the obligor's remaining net monthly income to fall below the Computed Allowance Minimum (CAM) of \$550. Implicit in the rule requiring apportionment of the unsubsidized cost of child care is recognition of the duty of the subsidy recipient to report any additional income pursuant to Department of Public Welfare regulations so that adjustments can be made to entitlements accordingly.

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**RULE 1910.19 SUPPORT MODIFICATION. TERMINATION. GUIDELINES AS  
SUBSTANTIAL CHANGE IN CIRCUMSTANCE**

\* \* \*

(d) All charging orders for spousal support and alimony pendente lite shall terminate upon the death of the payee spouse.

\* \* \*

**RULE 1910.27 FORM OF COMPLAINT. ORDER. INCOME AND EXPENSE  
STATEMENT. HEALTH INSURANCE COVERAGE INFORMATION FORM.  
FORM OF SUPPORT ORDER. FORM PETITION FOR MODIFICATION**

\* \* \*

**(b)** The order to be attached at the front of the complaint set forth in subdivision (a) shall be in substantially the following form:

\* \* \*

If you fail to appear for the conference or to bring the required documents, the court may issue a warrant for your arrest and/or enter an interim support order. If paternity is an issue, the court shall enter an order establishing paternity.

**THE HEARING OFFICER MAY ENTER AN APPROPRIATE ORDER AGAINST  
EITHER PARTY BASED UPON THE EVIDENCE PRESENTED WITHOUT REGARD  
TO WHICH PARTY INITIATED THE SUPPORT ACTION.**

Date of Order: \_\_\_\_\_

J.

\* \* \*

(e) The form of a support order shall be substantially as follows:

\* \* \*

#### IMPORTANT LEGAL NOTICE

\* \* \*

PENNSYLVANIA LAW PROVIDES THAT ALL SUPPORT ORDERS SHALL BE REVIEWED AT LEAST ONCE EVERY THREE (3) YEARS IF SUCH A REVIEW IS REQUESTED BY ONE OF THE PARTIES. IF YOU WISH TO REQUEST A REVIEW AND ADJUSTMENT OF YOUR ORDER, YOU MUST DO THE FOLLOWING: AN UNREPRESENTED PERSON WHO WANTS TO MODIFY (ADJUST) A SUPPORT ORDER SHOULD (insert instructions for local domestic relations section).

ALL CHARGING ORDERS FOR SPOUSAL SUPPORT AND ALIMONY PENDENTE LITE, INCLUDING UNALLOCATED ORDERS FOR CHILD AND SPOUSAL SUPPORT OR CHILD SUPPORT AND ALIMONY PENDENTE LITE, SHALL TERMINATE UPON THE DEATH OF THE PAYEE.

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#### **RULE 1930.5 DISCOVERY IN DOMESTIC RELATIONS MATTERS**

\* \* \*

(b) Discovery shall be available without leave of court in accordance with R. C. P. 4001 et seq. in **[complex support]** alimony, equitable distribution, counsel fee and expense **[applications]** and complex support proceedings.

\* \* \*

#### **Explanatory Comment – 2000**

Subdivision (b) has been amended to clarify that the adjective “complex” applies only to a support proceeding.

**RULE 1930.6 PATERNITY ACTIONS**

**(a) Scope.** This rule shall govern the procedure by which a putative father may initiate a civil action to establish paternity and seek genetic testing. Such an action shall not be permitted if an order already has been entered as to the paternity, custody or support of the child, or if a support or custody action to which the putative father is a party is pending.

**Explanatory Comment**

Where the paternity of a child born out-of-wedlock is disputed, 23 Pa. C.S. §4343 provides that the court shall make the determination of paternity in a civil action without a jury. That statutory provision also states, "A putative father may not be prohibited from initiating a civil action to establish paternity." Rule 1930.6 governs the procedures by which a putative father may initiate a civil action to establish paternity outside the context of a support or custody proceeding.

**(b) Venue.** An action may be brought only in the county in which the plaintiff or the child(ren) reside.

**(c) Commencement of Action.** An action shall be initiated by filing a verified complaint to establish paternity and for genetic testing substantially in the form set forth in subdivision (1) below. The complaint shall have as its first page the Notice of Hearing and Order set forth in subdivision (2) below.

(1) The complaint filed in a civil action to establish paternity shall be substantially in the following form:

**(Caption)**

**COMPLAINT TO ESTABLISH PATERNITY AND FOR GENETIC TESTING**

Plaintiff, \_\_\_\_\_, requests genetic testing to establish paternity pursuant to 23 Pa. C.S. §4343 and in support of that request states that:

1. Plaintiff is an adult individual who resides at \_\_\_\_\_  
\_\_\_\_\_.

2. Defendant is an adult individual who resides at \_\_\_\_\_  
\_\_\_\_\_.

3. Defendant is the natural mother and Plaintiff believes that he may be the natural father of the following child(ren):

Child's Name

Date of Birth

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4. The above-named children reside at the following address with the following individuals:

Address

Person(s) Living with Child

Relationship to Child

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5. Defendant was/was not married at the time the child(ren) was/were conceived or born.

6. Defendant is/is not now married. If married, spouse's name: \_\_\_\_\_

7. There is/is not a custody, support or other action involving the paternity of the above-named child(ren) now pending in any jurisdiction. Identify any such actions by caption and docket number \_\_\_\_\_

8. There has/has not been a determination by any court as to the paternity of the child(ren) in any prior support, custody, divorce or any other action. If so, identify the action by caption and docket number \_\_\_\_\_

9. Plaintiff agrees to pay all costs associated with genetic testing directly to the testing facility in accordance with the procedures established by that facility.

Wherefore, Plaintiff requests that the court order Defendant to submit to genetic testing and to make the child(ren) available for genetic testing.

I verify that the statements made in this complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Petitioner

(2) The Notice of Hearing and Order required by this rule shall be substantially in the following form:

**(Caption)**

**NOTICE OF HEARING AND ORDER**

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following papers, you must appear at the hearing scheduled below. If you fail to do so, the case may proceed against you and a final order may be entered against you granting the relief requested by the plaintiff.

Plaintiff and Defendant are directed to appear on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ .m. in courtroom \_\_\_\_\_ for a hearing on Plaintiff's request for genetic testing. If you fail to appear as ordered, the court may enter an order in your absence requiring you and your child(ren) to submit to genetic tests.

YOU SHOULD TAKE THIS PAPER 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.

(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.

**(d) Service.** Service of original process and proof of service in a civil action to establish paternity shall be in accordance with Rule 1930.4.

**(e) Hearing and Order.** At the hearing, the judge will determine whether or not the plaintiff is legally entitled to genetic testing and, if so, will issue an order directing the defendant and the child(ren) to submit to genetic testing, the cost of which shall be borne by the plaintiff.