

**IN THE  
SUPREME COURT OF PENNSYLVANIA**

**IN RE:** : **NO. 337**

**AMENDMENTS TO THE** :

**RULES OF CIVIL PROCEDURE** : **CIVIL PROCEDURAL RULES**

**RELATING TO DOMESTIC** :

**RELATIONS MATTERS** : **DOCKET NO. 5**

**ORDER**

**PER CURIAM**

**AND NOW**, this 27<sup>th</sup> day of October, 2000, Rules 1905, 1910.10, 1910.16-1, 1910.16-2, 1910.16-3, 1910.16-4 and 1910.16-6 of the Pennsylvania Rules of Civil Procedure are amended as attached hereto. New Rule 1940.9 of the Pennsylvania Rules of Civil Procedure is promulgated as attached hereto.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective immediately.

NOTE: New material is underlined.  
Deleted material is **bold** and **[bracketed]**.

**RULE 1905                      FORMS FOR USE IN PFA ACTIONS. NOTICE AND HEARING.  
PETITION. TEMPORARY PROTECTION ORDER. FINAL PROTECTION ORDER.**

\* \* \*

(c)            The Temporary Order of Court entered pursuant to the Act shall be substantially in the following form:

\* \* \*

[ ] 2. Defendant is evicted and excluded from the residence at (**NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EXCLUDED**) or any other permanent or temporary residence where Plaintiff or any other person protected under this Order may live. Plaintiff is granted exclusive possession of the residence. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this Order.

\* \* \*

(e)            The Final Order of Court entered pursuant to the Act shall be substantially in the following form:

\* \* \*

[ ] 2. Defendant is completely evicted and excluded from the residence at [NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EXCLUDED] or any other residence where Plaintiff or any other person protected under this Order may live. Exclusive possession of the residence is granted to Plaintiff. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this Order.

\* \* \*

**RULE 1910.10            ALTERNATIVE HEARING PROCEDURES.**

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**Explanatory Comment – 1995**

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Armstrong [1910.11] 1910.12

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Indiana [1910.11] 1910.12

\* \* \*

**RULE 1910.16-1 AMOUNT OF SUPPORT. SUPPORT GUIDELINES.**

\* \* \*

(b) The amount of support (child support, spousal support or alimony pendente lite) to be awarded pursuant to the procedures under Rules 1910.11 and 1910.12 shall be determined in accordance with the support guidelines which consist of the guidelines expressed as the child support schedule **[and the chart of proportional expenditures]** set forth in Rule 1910.16-3, the formula set forth in Rule 1910.16-4 and the operation of the guidelines as set forth in these rules.

\* \* \*

**Explanatory Comment — 1998**

\* \* \*

**A. Income Shares.**

\* \* \*

The basic support amounts reflected in the **[chart of proportional expenditures and]** child support schedule in Rule 1910.16-3 represent average marginal expenditures on children for food, housing, transportation, clothing and other miscellaneous items that are needed by children and provided by their parents, including the first \$250 of unreimbursed medical expenses incurred annually per child.

\* \* \*

**C. Four-Year Review.**

\* \* \*

2. *Calculation of Basic Child Support.* The amount of basic support was previously determined from either the grids or the chart of proportional expenditures in conjunction with the income shares formula. The grids and the chart of proportional expenditures have been eliminated. The Committee has chosen to **[retain**

**the chart and to]** use a basic child support schedule, which numerically reflects the amounts spent on children in intact families by combined income and number of children. The **[chart and the]** schedule appears in Rule 1910.6-3 and **[either one may be]** shall be used to find the parties' combined basic child support obligation. In turn, the obligor's share of this obligation is calculated using the income shares formula in Rule 1910.16-4. **[In cases where the obligor's monthly net income is \$550 or less, however, the schedule must be used to determine his or her basic support obligation.]**

The amounts of child support set forth in **[the chart and]** the schedule have been updated to reflect recent economic estimates of child-related spending in intact households. . . .

\* \* \*

3. *Computed Minimum Allowance in Low-Income Cases.* . . . Since the schedule reflects amounts of child support only, Rule 1910.16-2(e)(1)(B) provides for a similar adjustment in spousal support and APL cases so that the obligor retains at least \$550 per month in these cases as well.

\* \* \*

7. *Health Insurance Premiums.* Under the prior rules, the portion of the cost of health insurance premiums which benefit the other party or the children was deducted from the party's net income. This provided little incentive for either party to obtain or maintain health insurance coverage for the benefit of the other family members. If the obligor was paying the premium, it reduced the basic support award only marginally. If the obligee was paying the premium, he or she received virtually no financial credit at all in terms of a higher support award.

To maximize the value for the party carrying the health insurance in most cases, new Rule 1910.16-6(b), in general, treats the cost of the premium as an additional expense subject to allocation between the parties in proportion to their net incomes. In the majority of cases, **[T]** this more accurately reflects the costs of carrying such insurance and also ensures that the obligee receives some financial credit for carrying the insurance. However, in cases in which the obligee has no income or minimal income, and the obligor would otherwise bear the entire burden of paying the health insurance premiums with no other adjustment to his or her support obligation, the trier of fact may deduct part or all of the cost of the premium from the obligor's income for support purposes. The new Rule also permits allocation of the entire premium, including the party's portion of the premium, when the insurance benefits the other party or the children. This change provides further incentive for parties to obtain health insurance for the benefit of the other party and the children.

8. *Unreimbursed Medical Expenses.* There are three changes to the treatment of unreimbursed medical expenses. First, since the first \$250 per year per child of these expenses is already built into the basic child support obligation reflected in **[the chart and]** the schedule, only medical expenses which exceed this amount are subject to allocation between the parties as an additional expense to be added to the basic support obligation. Rule 1910.16-6(c) reflects this distinction. The Committee has also chosen to draw this same distinction with respect to spousal support so that the obligee-spouse is expected to meet the first \$250 per year of his or her own unreimbursed expenses before seeking contribution from the obligor for any additional expenses.

\* \* \*

\* \* \*

**(b) Treatment of Public Assistance, [and] SSI Benefits and Social Security Payments to a Child Due to a Parent’s Disability or Retirement.**

(1) Neither public assistance nor Supplemental Security Income (SSI) benefits shall be counted as income for purposes of determining support.

(2) If a child for whom support is sought is receiving social security retirement or disability derivative benefits as a result of a parent’s age or disability, the benefits the child receives shall be added to the combined monthly net incomes of the obligor and obligee to calculate the income available for support on the vertical axis of the basic child support schedule set forth in Rule 1910.16-3. The presumptive amount of support as set forth on the schedule at the combined income of obligee, obligor and child’s benefits shall then be reduced by the amount of the child’s social security or disability derivative benefits before apportioning the remaining support obligation between the parties pursuant to Rule 1910.16-4.

Example. If the obligor has net monthly income of \$1200 per month; the obligee has net monthly income of \$800; and the child receives social security derivative benefits of \$300 per month as a result of either the obligor’s or obligee’s retirement or disability, then the total combined monthly net income is \$2,300. Using the schedule at Rule 1910.16-3 for one child, the amount of support is \$539 per month. From that amount, subtract the amount the child is receiving in social security derivative benefits (\$539 minus \$300 equals \$239). Then, apply the formula at Rule 1910.16-4 to apportion the remaining child support amount of \$239 between the obligor and the obligee in proportion to their respective incomes. Obligor’s \$1200 net income per month is 60% of the total of obligor’s and obligee’s combined net monthly income. Thus, obligor’s support obligation would be 60% of \$239, or \$143.40, per month.

\* \* \*

**(c) Monthly Net Income.**

(1) Unless otherwise provided in **[this Rule]** these rules, the court shall deduct only the following items from monthly gross income to arrive at net income:

\* \* \*

**(e) Net Income Affecting Application of the Child Support Guidelines.**

\* \* \*

(2) *High Income Child Support Cases.*

When the parties' combined net income exceeds \$15,000 per month, child support shall be calculated pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984). The presumptive minimum amount of child support shall be obligor's percentage share of the highest amount of support which can be derived from the schedule **[or the chart]** for the appropriate number of children and using the parties' actual combined income to determine obligor's percentage share of this amount. The court may award an additional amount of child support based on the **[remaining]** parties' combined income and the factors set forth in *Melzer*. The *Melzer* analysis in high income child support cases shall be applied to all of the parties' income, not just to the amount of income exceeding \$15,000 per month. In a *Melzer* analysis case, the presumptive minimum remains applicable.

For example, where obligor and obligee have monthly net incomes of \$17,000 and \$4,000 respectively, the presumptive minimum amount of child support for three children is calculated as follows: using the formula in Rule 1910.16-4, determine the parties' percentage shares of income based on their actual combined income -- 81% and 19% respectively of \$21,000. Using the schedule **[or chart]** in Rule 1910.16-3, find the highest possible combined child support obligation for three children -- \$3,480. Obligor's percentage share of the combined obligation is 81% of \$3,480, or \$2,818. This is the presumptive minimum amount of child support that he or she must pay for three children. Since this amount is derived from the schedule **[or chart]** in Rule 1910.16-3, **[both of]** which **[are]** is limited to combined household income of \$15,000, the court may award an additional amount of support based on **[the parties' remaining income of \$6,000 and]** the factors set forth in *Melzer*.

\* \* \*

**Explanatory Comment — 1998**

\* \* \*

Subdivision (c) sets forth the exclusive list of the deductions that may be taken from gross income in arriving at a party's net income. **[Since] When** the cost of health insurance premiums is **[now]** treated as an additional expense subject to allocation between the parties under Rule 1910.16-6, it is no longer deductible from gross income. However, part or all of the cost of health insurance premiums may be deducted from the obligor's gross income pursuant to Rule 1910.16-6(b) in cases in which the obligor is paying the premiums and the obligee has no income or minimal income. Subdivision (c) also incorporates former Rule 1910.16-5(o) relating to awards of spousal support or APL when there are multiple families. In these cases, a party's net income must be reduced further to account for his or her child support obligations as well as any pre-existing spousal support, APL or alimony obligations being paid to former spouses who are not the subject of the support action.

\* \* \*

Subdivision (e) also reflects the limited application of *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), to cases in which the guidelines cannot be used to establish the child support obligation because the parties' combined income exceeds \$15,000 per month. The court must establish a presumptive minimum amount of child support using the guidelines to arrive at that amount. The formula for calculating the presumptive minimum amount has been modified slightly to clarify that the parties' percentage shares should be calculated using their actual combined income rather than theoretical combined income of only \$15,000. This change eliminates many of the inequities and inconsistencies that arose under the previous formula for determining this amount. In considering whether to award an additional amount of child support, [the parties' remaining income,] the court must use the factors set forth in *Melzer*. It would be improper to apply the formula in Rule 1910.16-4 to **[this]** the amount of the parties' combined income which exceeds \$15,000 per month and award the obligor's percentage share as additional support. Additional support, if any, may be more or less than the percentage share and must be determined, therefore, in accordance with the factors set forth in *Melzer*.

#### **Explanatory Comment to Rule 1910.16-2 – 2000**

This rule has been amended to reflect the fact that the chart of proportional expenditures formerly set forth at Rule 1910.16-3(b) has been rescinded. In addition, the rule and Explanatory Comment have been revised to clarify that the factors set forth in *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), must be applied by considering all of the parties' combined income, not just the amount over \$15,000 per month. The presumptive minimum shall apply even if the *Melzer* analysis results in a figure lower than the presumptive minimum.

#### **RULE 1910.16-3 SUPPORT GUIDELINES. BASIC CHILD SUPPORT SCHEDULE. [AND CHART OF PROPORTIONAL EXPENDITURES]**

**[(a) Basic Child Support Schedule.]** The following schedule sets forth the amounts spent on children in intact families by combined income and number of children. Combined income is on the vertical axis of the schedule and number of children is on the horizontal axis of the schedule. This schedule is used to find the basic child support obligation. Unless otherwise provided in these Rules, the obligor's share of the basic support obligation shall be computed using the formula set forth in Part I of Rule 1910.16-4.

\* \* \*

**[(b) Chart of Proportional Expenditures.]** The following chart sets forth the proportion of combined monthly net income spent on children by income level. It is used to find the parties' basic child support obligation. Unless otherwise provided in these Rules, the obligor's share of the basic support obligation shall be computed using the formula set forth in Part I of Rule 1910.16-4.

#### **PROPORTION OF NET INCOME SPENT ON CHILDREN BY COMBINED INCOME LEVEL**

<b>children</b>	<b>\$423- \$1,058</b>	<b>\$1,059- \$1,481</b>	<b>\$1,482- \$1,905</b>	<b>\$1,906- \$2,328</b>	<b>\$2,329- \$2,751</b>	<b>\$2,752- \$3,174</b>
<b>1</b>	<b>\$104, plus 24.32% above \$423</b>	<b>\$258, plus 22.67% above \$1,059</b>	<b>\$354, plus 22.72% above \$1,482</b>	<b>\$451, plus 22.32% above \$1,906</b>	<b>\$545, plus 21.39% above \$2,329</b>	<b>\$636, plus 11.47% above \$2,752</b>
<b>2</b>	<b>\$152, plus 35.44% above \$423</b>	<b>\$377, plus 32.68% above \$1,059</b>	<b>\$515, plus 32.77% above \$1,482</b>	<b>\$654, plus 31.70% above \$1,906</b>	<b>\$788, plus 31.41% above \$2,329</b>	<b>\$921, plus 16.16% above \$2,752</b>
<b>3</b>	<b>\$180, plus 41.93% above \$423</b>	<b>\$446, plus 38.34% above \$1,059</b>	<b>\$609, plus 38.47% above \$1,482</b>	<b>\$772, plus 36.69% above \$1,906</b>	<b>\$927, plus 37.49% above \$2,329</b>	<b>\$1,085, plus 18.62% above \$2,752</b>
<b>4</b>	<b>\$199, plus 46.33% above \$423</b>	<b>\$493, plus 42.37% above \$1,059</b>	<b>\$673, plus 42.50% above \$1,482</b>	<b>\$853, plus 40.54% above \$1,906</b>	<b>\$1,024, plus 41.42% above \$2,329</b>	<b>\$1,199, plus 20.58% above \$2,752</b>
<b>5</b>	<b>\$216, plus 50.22% above \$423</b>	<b>\$535, plus 45.92% above \$1,059</b>	<b>\$729, plus 46.08% above \$1,482</b>	<b>\$924, plus 43.94% above \$1,906</b>	<b>\$1,110, plus 44.90% above \$2,329</b>	<b>\$1,300, plus 22.30% above \$2,752</b>
<b>6</b>	<b>\$231, plus 53.74% above \$423</b>	<b>\$572, plus 49.14% above \$1,059</b>	<b>\$780, plus 49.30% above \$1,482</b>	<b>\$989, plus 47.02% above \$1,906</b>	<b>\$1,188, plus 48.04% above \$2,329</b>	<b>\$1,391, plus 23.87% above \$2,752</b>

<b>children</b>	<b>\$3,175- \$3,598</b>	<b>\$3,599- \$4,021</b>	<b>\$4,022- \$4,656</b>	<b>\$4,657- \$5,502</b>	<b>\$5,503- \$6,349</b>
<b>1</b>	<b>\$684, plus 7.20% above \$3,175</b>	<b>\$715, plus 17.74% above \$3,599</b>	<b>\$790, plus 14.14% above \$4,022</b>	<b>\$879, plus 13.79% above \$4,657</b>	<b>\$996, plus 13.75% above \$5,503</b>

<b>2</b>	<b>\$989, plus 11.89% above \$3,175</b>	<b>\$1,040, plus 22.97% above \$3,599</b>	<b>\$1,137, plus 20.44% above \$4,022</b>	<b>\$1,267, plus 19.70% above \$4,657</b>	<b>\$1,434, plus 19.74% above \$5,503</b>
<b>3</b>	<b>\$1,164, plus 10.21% above \$3,175</b>	<b>\$1,207, plus 29.49% above \$3,599</b>	<b>\$1,332, plus 23.99% above \$4,022</b>	<b>\$1,485, plus 22.92% above \$4,657</b>	<b>\$1,679, plus 23.11% above \$5,503</b>
<b>4</b>	<b>\$1,286, plus 11.28% above \$3,175</b>	<b>\$1,334, plus 32.59% above \$3,599</b>	<b>\$1,472, plus 26.51% above \$4,022</b>	<b>\$1,640, plus 25.32% above \$4,657</b>	<b>\$1,855, plus 25.54% above \$5,503</b>
<b>5</b>	<b>\$1,395, plus 12.22% above \$3,175</b>	<b>\$1,446, plus 35.33% above \$3,599</b>	<b>\$1,596, plus 28.74% above \$4,022</b>	<b>\$1,778, plus 27.45% above \$4,657</b>	<b>\$2,011, plus 27.68% above \$5,503</b>
<b>6</b>	<b>\$1,492, plus 13.08% above \$3,175</b>	<b>\$1,548, plus 37.80% above \$3,599</b>	<b>\$1,708, plus 30.75% above \$4,022</b>	<b>\$1,903, plus 29.37% above \$4,657</b>	<b>\$2,151, plus 29.62% above \$5,503</b>

**Children**

	<b>\$6,350- \$7,195</b>	<b>\$7,196- \$8,042</b>	<b>\$8,043- \$10,581</b>	<b>\$10,582- \$12,697</b>	<b>\$12,698- \$15,000</b>
<b>1</b>	<b>\$1,113, plus 13.57% above \$6,350</b>	<b>\$1,227, plus 7.05% above \$7,196</b>	<b>\$1,287, plus 15.99% above \$8,043</b>	<b>\$1,693, plus 7.51% above \$10,582</b>	<b>\$1,852, plus 7.97% above \$12,698</b>
<b>2</b>	<b>\$1,601, plus 20.37% above \$6,350</b>	<b>\$1,773, plus 10.65% above \$7,196</b>	<b>\$1,863, plus 22.93% above \$8,043</b>	<b>\$2,446, plus 10.95% above \$10,582</b>	<b>\$2,677, plus 11.60% above \$12,698</b>
<b>3</b>	<b>\$1,874, plus 24.79% above \$6,350</b>	<b>\$2,084, plus 13.13% above \$7,196</b>	<b>\$2,195, plus 26.83% above \$8,043</b>	<b>\$2,877, plus 13.01% above \$10,582</b>	<b>\$3,152, plus 14.26% above \$12,698</b>
<b>4</b>	<b>\$2,071, plus 27.39% above \$6,350</b>	<b>\$2,303, plus 14.51% above \$7,196</b>	<b>\$2,426, plus 29.65% above \$8,043</b>	<b>\$3,179, plus 14.37% above \$10,582</b>	<b>\$3,483, plus 15.76% above \$12,698</b>
<b>5</b>	<b>\$2,245, plus 29.69% above \$6,350</b>	<b>\$2,496, plus 15.73% above \$7,196</b>	<b>\$2,629, plus 32.14% above \$8,043</b>	<b>\$3,446, plus 15.58% above \$10,582</b>	<b>\$3,775, plus 17.08% above \$12,698</b>
<b>6</b>	<b>\$2,402, plus 31.77% above \$6,350</b>	<b>\$2,671, plus 16.83% above \$7,196</b>	<b>\$2,813, plus 34.39% above \$8,043</b>	<b>\$3,687, plus 16.67% above \$10,582</b>	<b>\$4,039, plus 18.28% above \$12,698]</b>

## Explanatory Comment – 2000

The chart of proportional expenditures, formerly Rule 1910.16-3(b), was duplicative and is rescinded. The basic child support schedule, formerly Rule 1910.16-3(a), is now Rule 1910.16-3.

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

**(a)** The following formula shall be used to calculate the obligor's share of the basic guideline child support, spousal support and/or alimony pendente lite obligation:

#### **PART I. BASIC CHILD SUPPORT.**

\* \* \*

6. BASIC CHILD SUPPORT OBLIGATION  
(Determine **[either]** from Schedule based on number of children and line 5 combined monthly net income) **[OR from Chart by finding proportion of combined income spent on the children)]**

\* \* \*

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

\* \* \*

(3) This subdivision shall not apply when the obligor's income falls within the shaded area of the schedule in Rule 1910.16-3**[(a)]** or when the obligee's income is 10% or less of the parties' combined income.

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

(1) When calculating a child support obligation, and one or more children reside with each party, the court shall offset the parties' respective child support obligations and award the net difference to the obligee as child support. For example, if the parties have three children, one of whom resides with Husband and two of whom reside with Wife, and their net monthly incomes are \$1,500 and \$800 respectively, Husband's child support obligation is calculated as follows. Using the formula with **[either]** the schedule **[or the chart]** in Rule 1910.16-3 for two children, Husband's support obligation for the two children living with Wife is \$508. Using the formula with the schedule **[or chart]** in Rule

1910.16-3 for one child, Wife's support obligation for the child living with Husband is \$188. Subtracting \$188 from \$508 produces a net support amount of \$320 payable to Wife as child support.

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### **Explanatory Comment — 1998**

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Subdivision (b) incorporates former Rule 1910.16-5(e) relating to orders for more than four children. It has been changed only to reflect the expansion of the guidelines from four to six children and the use of the **[chart and]** schedule in lieu of the grids.

\* \* \*

Subdivision (d) is derived from previous Rule 1910.16-5(h) relating to divided or split custody cases. The new provision has been rewritten to update the examples in conformity with the new levels of child support reflected in the **[chart and]** schedule. It retains the existing method for offsetting the parties' respective support obligations when one or more of the children reside with each party, but eliminates the exception which previously existed in cases where one party's income was minimal and the other party's income was significantly greater. This exception was confusing as well as erroneous in its suggestion that offsetting should not be used because it would result in less than the full guideline amount of child support being paid to the party with minimal income. To the contrary, the offset method actually works to protect against this result and therefore should be used in these cases.

\* \* \*

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

\* \* \*

#### **(b) Health Insurance Premiums.**

\* \* \*

(4) In cases in which the obligor is paying the cost of health insurance coverage and the obligee has no income or minimal income such that the obligor will bear 90% or more of the proportional share of the cost of the health insurance premiums, the trier of fact may, as fairness requires, deduct part or all of the cost of the premiums actually paid by the obligor to provide coverage for the other party or the children from the obligor's gross income to determine net income for support purposes. If such a deduction is taken from the obligor's gross income, then the allocation of premium costs as

set forth in (b)(1) above shall not be applied.

**Note**

Subdivision (b) of this Rule does not apply to Medical Assistance. See 23 Pa.C.S. §4326(l).

\* \* \*

**(e) Mortgage Payment.** The guidelines assume that the spouse occupying the marital residence will be solely responsible for the mortgage payment, real estate taxes, and homeowners' insurance. Similarly, the court will assume that the party occupying the marital residence will be paying the items listed unless the recommendation specifically provides otherwise. If the obligee is living in the marital residence and the mortgage payment exceeds 25% of the obligee's net income (including amounts of spousal support, APL and child support), the court may direct the obligor to assume up to 50% of the excess amount as part of the total support award. For purposes of this subdivision, the term "mortgage" shall include[s] first [and subsequent] mortgages, real estate taxes and homeowners' insurance and may include any subsequent mortgages, home equity loans and any other obligations incurred during the marriage which are secured by the marital residence.

**Explanatory Comment -- 1998**

\* \* \*

Subdivision (b) reflects a major change in the treatment of health insurance premiums. Under the old rules, the cost of health insurance was deducted from the party's gross income to determine net income. Under the new Rule, this cost is now generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. In addition, subsection (1) of the new Rule permits allocation of the entire premium, including the party's portion of the premium, when the insurance benefits the other party or the children. Subsection (2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action.

\* \* \*

**Explanatory Comment to Rule 1910.16-6 – 2000**

Subdivision (b) has been amended to permit an alternative method for dealing with the cost of health insurance premiums in certain circumstances. In general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes. However, in cases in which the obligee has no income or minimal income, new subsection (4) authorizes the trier of fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. Under this subdivision (b) as originally promulgated, the entire cost of health insurance would have been borne by the obligor when the obligee had little or no income, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of the amendment to this subdivision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (e) has been amended to correct a drafting error in the definition of "mortgage". It always was

the intention of the Committee to include in the definition the real estate taxes and homeowners' insurance referenced in the first sentence of the rule. In addition, while real estate taxes and homeowners' insurance must now be included if the trier of fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by the marital residence is within the discretion of the trier of fact based upon the circumstances of the case.

\* \* \*

### **RULE 1940.9**

These rules shall not affect any existing mediation program established in any judicial district pursuant to local rule prior to October 29, 1999. However, any changes or amendments to any existing program shall be consistent with these rules.

#### **Explanatory Comment – 2000**

This new rule is consistent with 23 Pa. C.S. §3904.