

**IN THE
SUPREME COURT OF PENNSYLVANIA**

IN RE: : **NO. 332**
MISCELLANEOUS TECHNICAL :
AMENDMENTS OF THE RULES : **CIVIL PROCEDURAL RULES**
OF CIVIL PROCEDURE RELATING :
TO DOMESTIC RELATIONS : **DOCKET NO. 5**

ORDER

PER CURIAM:

AND NOW, this 2nd day of March 2000, the Pennsylvania Rules of Civil Procedure 1905, 1910.3, 1910.9, 1910.16-4, 1915.15, 1920.42, 1920.72, 1920.73 and the Explanatory Comments to Rules 1910.10, 1910.11 and 1930.5 are amended as attached hereto.

Whereas prior publication of proposed rulemaking would otherwise be required, it has been determined under Rule of Judicial Administration 103(a)(3) that the amendments are of a perfunctory nature and that the immediate promulgation of this Order is required in the interests of justice and efficient administration.

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

(a) The Notice of Hearing and Order required by Rule 1901.3 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 herein. 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 in the Petition. In particular, you may be evicted from your residence and lose other important rights. Any protection order granted by a court may be considered in subsequent proceedings under Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, including child custody proceedings under Chapter 53 (relating to custody).

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

[] 3. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this Order, Defendant is prohibited from having **ANY CONTACT** with Plaintiff, or any other person protected under this Order, at any location, including but not limited to any contact at Plaintiff's school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this Order:

[] 4. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this Order, Defendant shall not contact Plaintiff, or any other person protected under this Order, by telephone or by any other means, including through third persons.

10. THIS ORDER APPLIES IMMEDIATELY TO DEFENDANT AND SHALL REMAIN IN EFFECT UNTIL [insert expiration date] OR UNTIL OTHERWISE MODIFIED OR TERMINATED BY THIS COURT AFTER NOTICE AND HEARING.

NOTICE TO LAW ENFORCEMENT OFFICIALS

This Order shall be enforced by the police who have jurisdiction over the plaintiff's residence OR any location where a violation of this order occurs OR where the defendant may be located. If defendant violates Paragraphs 1 through 6 of this Order, defendant **[may]** shall be arrested on the charge of Indirect Criminal Contempt. An arrest for violation of this Order may be made without warrant, based solely on probable cause, whether or not the violation is committed in the presence of law enforcement.

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

(Caption)

FINAL ORDER OF COURT

[] 3. Except as provided in Paragraph 5 of this Order, Defendant is prohibited from having **ANY CONTACT** with the Plaintiff, or any other person protected under this Order, at any location, including but not limited to any contact at the Plaintiff's

school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this Order:

[] 4. Except as provided in Paragraph 5 of this Order, Defendant shall not contact the Plaintiff, or any other person protected under this Order, by telephone or by any other means, including through third persons.

[] 12. BRADY INDICATOR.

1. [] The Plaintiff or protected person(s) is a spouse, former spouse, a person who **[cohabitates]** cohabits or has cohabited with the Defendant, a parent of a common child, a child of that person, or a child of the Defendant.

RULE 1910.3 PARTIES

An action shall be brought

[(1)] (a) by a person, including a minor spouse, to whom a duty of support is owing,
or

[(2)] (b) on behalf of a minor child by a person having custody of the **[minor]** child,
without appointment as guardian ad litem, or

[(3)] (c) on behalf of a minor child by a person caring for the child regardless of whether a court order has been issued granting that person custody of the child, or

[(4)] (d) by a public body or private agency having an interest in the case, maintenance or assistance of a person to whom a duty of support is owing, or

(e) by a parent, guardian or public or private agency on behalf of **[a]** an unemancipated child over eighteen years of age to whom a duty of support is owing.
[with the written consent of the child].

Explanatory Comment -- 1999

New subdivision (c) incorporates 23 Pa.C.S. § 4341(b) to confer standing on any person who is caring for a child to seek support on behalf of that child even though there is no court order granting legal or physical custody to that person. The statutory provision effectively overrules *Larson v. Diveglia*, 700 A.2d 931 (Pa. 1997), which held to the contrary.

Subdivision (e) is amended to eliminate the requirement of consent when the child is over 18 years of age. This requirement was originally intended only for applicable child support actions for higher educational support, which actions were abolished by *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995). This rule also is intended to apply to children who are unemancipated by reason of physical or mental disability, consistent with 23 Pa. C. S. §4321(3) as interpreted by case law.

RULE 1910.9 DISCOVERY

(a) Except as provided in Rule 1910.11(j) and Rule 1910.12(c), [T]there shall be no discovery in an action for support unless authorized by special order of court[, except as provided in Rule 1910.11(j) and Rule 1910.12(c)].

Explanatory Comment -- 1997

Subdivision (a) is amended to permit discovery in accordance with R.C.P. 4001 et seq. in any support matter **[which has been designated complex]** where a separate listing has been obtained under Rules 1910.11(j) and 1910.12(c). In all other support matters, discovery is permitted only by leave of court. Cases should

a hearing before the court where an order was not entered within five days of the conference. It is eliminated accordingly.

Pursuant to subdivision (g), support payments are due and owing under the interim order which continues in effect until the court enters a final order after the hearing de novo. The provision for an interim order serves two purposes. First, it ensures that the obligee will receive needed support for the period during which the judicial determination is sought. Second, it eliminates the motive of delay in seeking a judicial determination. Therefore, the plaintiff and the dependent children are not prejudiced by allowing the court sixty days, rather than the original forty-five, in which to enter its final order.

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

(a) ****

PART III. ADDITIONAL EXPENSES (See Rule 1910.16-6)

11. OBLIGOR'S TOTAL MONTHLY SUPPORT OBLIGATION

(Add line 8 (or 9(d) if applicable) and line 10f)

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)

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: _____

**RULE 1920.42 AFFIDAVIT AND DECREE UNDER § 3301(c) OR § 3301(d)(1)
OF THE DIVORCE CODE. NOTICE OF INTENTION TO
REQUEST ENTRY OF DIVORCE DECREE IN § 3301(c) AND
§ 3301(d)(1)(I) DIVORCES. COUNTER-AFFIDAVIT**

(e) Notice of intention to request entry of divorce decree shall not be required prior to entry of a divorce decree (1) **[under § 3301(c)]** where the parties have executed and filed with the prothonotary a waiver of notice substantially in the form set forth in Rule 1920.72(c); or (2) under § 3301(d) where the court finds that no appearance has been entered on defendant's behalf and that defendant cannot be located after diligent search.

**RULE 1920.72 FORM OF COMPLAINT. AFFIDAVIT UNDER § 3301(c) OR
3301(d) OF THE DIVORCE CODE. COUNTER-AFFIDAVIT.
WAIVER OF NOTICE OF INTENTION TO REQUEST
DECREE UNDER § 3301(c) AND § 3301(d)**

(c) The waiver permitted by Rule 1920.42(e) shall be substantially in the following form:

(Caption)

WAIVER OF NOTICE OF INTENTION
TO REQUEST ENTRY OF A DIVORCE DECREE
UNDER § 3301(c) AND §3301(d) OF THE DIVORCE CODE

(e)(1) ****

(2) The counter-affidavit prescribed by Rule 1920.42(d)(2) shall be substantially in the following form in a § 3301(d) divorce:

(Caption)

COUNTER-AFFIDAVIT UNDER § 3301(d)
OF THE DIVORCE CODE

1. Check either (a) or (b):
 - (a) I do not oppose the entry of a divorce decree.
 - (b) I oppose the entry of a divorce decree because (Check (i), (ii), or both):
 - (i) The parties to this action have not lived separate and apart for a period of at least two years.

(ii) The marriage is not irretrievably broken.

2. Check either (a) or (b):

(a) I do not wish to make any claims for economic relief. I understand that I may lose rights concerning alimony, division of property, lawyer's fees or expenses if I do not claim them before a divorce is granted.

(b) I wish to claim economic relief which may include alimony, division of property, lawyer's fees or expenses or other important rights.

I understand that in addition to checking (b) above, I must also file all of my economic claims with the prothonotary in writing and serve them on the other party. If I fail to do so before the date set forth on the Notice of Intention to Request Divorce Decree, the divorce decree may be entered without further **[delay]** notice to me, and I shall be unable thereafter to file any economic claims.

RULE 1920.73 NOTICE OF INTENTION TO REQUEST ENTRY OF DIVORCE DECREE. PRAECIPE TO TRANSMIT RECORD. FORMS

(b) The praecipe to transmit the record prescribed by Rule 1920.42 shall be in substantially the following form:

(Caption)

PRAECIPE TO TRANSMIT RECORD

To the Prothonotary:

5. (Complete either (a) or (b).)

(a) Date and manner of service of the notice of intention to file praecipe

a copy of which is attached: _____

(b) Date plaintiff's Waiver of Notice **[in § 3301(c) Divorce]** was filed with the prothonotary: _____

(c) Date defendant's Waiver of Notice **[in § 3301(c) Divorce]** was filed with the prothonotary: _____

RULE 1930.5 DISCOVERY IN DOMESTIC RELATIONS MATTERS

Explanatory Comment -- 1997

Whether a support case is complex is to be determined by motion before the court for a separate listing pursuant to Rules 1910.11(j)(1) and 1910.12(c)(1). It is not necessary, however, to have a case **[designated complex]** listed separately on grounds of complexity of factual or legal issues in order to engage in discovery. If discovery is needed in a **[simple]** support case which does not require a **[complex designation]** separate listing, the court should grant leave to engage in it.