

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed amendment of Pa.R.C.P. Nos. 1910.16-4 and 1910.16-6**

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania amendments to Pa.R.C.P. Nos. 1910.16-4 and 1910.16-6 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **November 2, 2018**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Domestic Relations Procedural Rules  
Committee



Walter J. McHugh, Esq.  
Chair

**SUPREME COURT OF PENNSYLVANIA  
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE  
RECOMMENDATION 171**

**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 basic child support, either from the schedule in Rule 1910.16-3 or the formula in Rule 1910.16-3.1(a), as well as spousal support and alimony pendente lite obligations. In high income cases, Part IV shall be used as a preliminary analysis in the calculation of spousal support or alimony pendente lite obligations:

*PART I. BASIC CHILD SUPPORT*

	OBLIGOR	OBLIGEE
1. Total Gross Income Per Pay Period	_____	_____
2. Less Deductions	( _____ )	( _____ )
3. Net Income	_____	_____
4. Conversion to Monthly Amount (if pay period is other than monthly) Include amount of child's monthly Social Security derivative benefit, if any, in the income of the party receiving it pursuant to Rule 1910.16-2(b)(2)(A) or (B).	_____	_____
5. Combined Total Monthly Net Income	_____	_____
6. BASIC CHILD SUPPORT OBLIGATION (determined from schedule at Rule 1910.16-3 based on number of children and line 5 combined monthly net income)	_____	_____
7. Net Income Expressed as a Percentage Share of Income (divide line 4 by line 5 and multiply by 100)	_____ %	_____ %
8. Each Party's Preliminary Monthly Share of the Basic Child Support Obligation		

- (multiply line 6 and 7) \_\_\_\_\_
9. Subtract Child's Social Security Derivative Disability or Retirement Benefit from the Monthly Share of Basic Child Support of the Party whose Retirement or Disability Created the Child's Benefits if the Benefits are Paid to the Obligee \_\_\_\_\_
10. Each Party's Adjusted Monthly Share of the Basic Child Support Obligation (Not less than 0) \_\_\_\_\_

***PART II. SUBSTANTIAL OR SHARED PHYSICAL CUSTODY ADJUSTMENT, IF APPLICABLE*** (See subdivision (c) of this rule)

11. a. Percentage of Time Obligor Spends with Children (divide number of overnights with obligor by 365 and multiply by 100) \_\_\_\_\_
- b. Subtract 30% (      30%      )
- c. Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation (subtract result of calculation in line 11b from line 7) \_\_\_\_\_%
- d. Obligor's Preliminary Adjusted Share of the Basic Monthly Support Obligation (multiply line 11c and line 6) \_\_\_\_\_
- e. Further adjustment, if necessary under subdivision (c)(2) of this rule \_\_\_\_\_
- f. Obligor's Adjusted Share of the Basic Child Support Amount. \_\_\_\_\_

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

12. a. Obligor's Share of Child Care Expenses \_\_\_\_\_
- b. Obligor's Share of Health Insurance Premium (if the obligee is paying the premium) \_\_\_\_\_
- c. Less Obligees Share of the Health Insurance \_\_\_\_\_

	Premium (if the obligor is paying the premium)	( _____ )
d.	Obligor's Share of Unreimbursed Medical Expenses	_____
e.	Other Additional Expenses	_____
f.	Total Additional Expenses	_____
13.	OBLIGOR'S TOTAL MONTHLY SUPPORT OBLIGATION (add line 10 or 11f, if applicable, and line 12f)	_____

*PART IV. SPOUSAL SUPPORT OR APL*

With Dependent Children

14.	Obligor's Monthly Net Income (line 4)	_____
15.	Less Obligor's Support, Alimony Pendente Lite or Alimony Obligations, if any, to Children or Former Spouses who are not part of this action (see Rule 1910.16-2(c)(2))	( _____ )
16.	Less Obligees' Monthly Net Income (line 4)	( _____ )
17.	Difference	_____
18.	Less Obligor's <b>[Total]Adjusted</b> Monthly Child Support Obligation Without Part II Substantial or Shared Custody Adjustment (Obligor's line 10 <b>[ plus line 12f]</b> )	( _____ )
19.	Difference	_____
20.	Multiply by 30%	x _____ .30
21.	AMOUNT OF MONTHLY SPOUSAL SUPPORT	_____

Without Dependent Children

22.	Obligor's Monthly Net Income (line 4)	_____
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23.	Less Obligor's Support, Alimony Pendente Lite or Alimony Obligations, if any, to Children or Former Spouses who are not part of this action (see Rule 1910.16-2(c)(2))	( _____ )
24.	Less Obligee's Monthly Net Income (line 4)	( _____ )
25.	Difference	_____
26.	Multiply by 40%	x _____ .40
27.	PRELIMINARY AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL	_____
28.	Adjustments for Other Expenses (see Rule 1910.16-6)	_____
29.	TOTAL AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL	_____

\* \* \*

**Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation. Allocation of Additional Expenses.**

The **[trier of fact]court** may allocate between the parties the additional expenses identified in subdivisions (a) - (e). **[If]However, if** under the facts of the case an order for basic support is not appropriate, the **[trier of fact]court** may allocate between the parties the additional expenses. **Except as set forth in subdivisions (b)(4) and (e), when allocating the expenses in this rule, the court shall calculate the party's proportionate share of the expenses after adjusting the party's monthly net income by the monthly support amount received or paid and then dividing each party's adjusted monthly net income by the parties' combined monthly net income.**

(a) *Child care expenses.* **[Reasonable]The court shall allocate reasonable** child care expenses paid by the parties, if necessary to maintain employment or appropriate education in pursuit of income**[, shall be allocated between the parties in proportion to their monthly net incomes].** The court may order that the obligor's share **of the expense** is added to his or her basic support obligation, paid directly to the service provider, or paid directly to the obligee. When a party is receiving a child care subsidy through the Department of Human Services, the **[expenses to be]expense**

allocated between the parties **[shall be]**is the amount actually paid by the party receiving the subsidy.

*Example.* Mother has primary custody of the parties' two children and Father has partial custody. Mother's monthly net income is \$2,000 and Father's is \$3,500. At their combined income level of \$5,500, the basic monthly child support from the schedule in Pa.R.C.P. No. 1910.16-3 is \$1,463 for two children. As Father's income is 64% of the parties' combined income, his share is \$936. Mother incurs child care expenses of \$400 per month and Father incurs \$100 of such expenses each month. The total amount of child care expenses, \$500, will be apportioned between the parties**[, with Father paying 64] after adjusting the parties' respective monthly net incomes by the child support amount paid by Father and received by Mother. For purposes of apportioning the total child care expenses, Father's adjusted monthly net income is \$2,564 (\$3,500 - \$936) and Mother's adjusted monthly net income is \$2,936 (\$2,000 + \$936). Father will pay 47%, or \$[320]235 of the total child care expenses.** As he is already paying \$100 for child care while the children are in his partial custody, he would pay the remaining \$**[220]135** to Mother for a total child support obligation of \$**[1,156]1,071** ( $\$936 + \$[220]135 = \$[1,156]1,071$ ).

\* \* \*

(b) *Health Insurance Premiums.*

**[(1) A party's payment of a premium to provide health insurance coverage on behalf of the other party and/or the children shall be allocated between the parties in proportion to their net incomes, including the portion of the premium attributable to the party who is paying it, as long as a statutory duty of support is owed to the party. If there is no statutory duty of support owed to the party who is paying the premium, the portion attributable to that person must be deducted from the premium as set forth in subdivision (2) below. If, prior to the entry of a divorce decree, a party's policy covers that party, a child, and a spouse and the spouse has separate additional coverage not needed to cover the child and/or the other party, the cost of the spouse's insurance premium shall not be allocated between the parties. If, prior to the entry of a divorce decree, a party provides coverage for that party and a child, but not the spouse, and the spouse has separate coverage, both parties' premiums shall be allocated between the parties in proportion to their net incomes. If, prior to the entry of a divorce decree, each spouse has his or her own health insurance that does not cover the other party, and there are no children subject to the order, the cost of both parties' premiums shall be allocated between the parties in proportion to their net incomes. If health insurance coverage for a child who is the subject of the support proceeding is being provided and paid for by a third party resident of**

either party's household, the cost shall be allocated between the parties in proportion to their net incomes. If the obligor is paying the premium, then the obligee's share is deducted from the obligor's basic support obligation. If the obligee is paying the premium, then the obligor's share is added to his or her basic support obligation. Employer-paid premiums are not subject to allocation.

(2) When the health insurance covers a party to whom no statutory duty of support is owed, even if that person is paying the premium as set forth in subdivision (1) above, or other persons who are not parties to the support action or children who are not the subjects of the support action, the portion of the premium attributable to them must be excluded from allocation. In the event that evidence as to this portion is not submitted by either party, it shall be calculated as follows. First, determine the cost per person by dividing the total cost of the premium by the number of persons covered under the policy. Second, multiply the cost per person by the number of persons who are not owed a statutory duty of support, or are not parties to, or the subject of the support action. The resulting amount is excluded from allocation.

(2.1) The actual incremental amount of the premium which provides coverage for the subjects of the support order, if submitted by either party, shall be used in determining the amount of the premium to be allocated between the parties. If not submitted by either party, then the amount of the premium shall be divided by the number of persons covered to calculate the portion of the premium that provides coverage to each person.]

(1) The court shall allocate between the parties the health insurance premiums paid by the parties, including the portion of the premium attributable to the party paying the premium, provided that a statutory duty of support is owed to the parties or child covered by the health insurance. If the party paying the health insurance premium is the obligor, then the obligee's share is deducted from the obligor's basic support obligation, and if the obligee is paying the health insurance premium, then the obligor's share is added to his or her basic support obligation. An allocation of health insurance premiums between the parties shall also include health insurance that is provided and paid by a third-party resident of either party's household (e.g., step-parent) for a child who is the subject of the support order.

(2) The court shall not allocate employer-paid premiums or premiums paid for a party, person, or child to whom no statutory duty of support is owed. If the parties present evidence of the actual amount of the excluded premium attributable to that party, person, or child, the court shall deduct from the total premium the actual amount excluded before allocation of the health insurance premium between the parties. If the parties do not submit evidence as

**to the actual amount of the excluded premium, the court shall calculate the excluded amount as follows:**

**(i) determine the premium's cost per person by dividing the total premium by the number of persons covered under the policy;**

**(ii) multiply the cost per person by the number of persons who are not owed a statutory duty of support, or are not parties to, or the subject of the support action; and**

**(iii) the resulting amount is excluded from allocation.**

\* \* \*

*Example 3.* The parties are divorced and Mother is the obligee of a child support order. Father, the obligor, pays \$200 per month toward the cost of a health insurance policy provided by his employer that covers himself and the parties' child. Mother pays \$400 per month for her employer-sponsored health insurance that covers only herself. The amount of the premium Father pays to cover the parties' child, \$100 (\$200 premium divided between two covered persons, Father and the child), will be allocated between the parties in proportion to their respective **adjusted monthly net** incomes. The portion of the premium that covers Father will not be allocated because the parties are no longer married and he is not owed a duty of support by Mother. The premium Mother pays to provide her own coverage will not be allocated because the parties are no longer married and she is not owed a duty of support by Father.

(c) *Unreimbursed Medical Expenses.* **[Unreimbursed]The court shall allocate unreimbursed** medical expenses of the obligee or the children**[ shall be allocated]** between the parties**[ in proportion to their respective net incomes].** **[Notwithstanding the prior sentence, there shall be no apportionment of]However, the court shall not allocate** unreimbursed medical expenses incurred by a party who is not owed a statutory duty of support by the other party. The court may **[direct]order** that the obligor's share **[be]of the expense is** added to his or her basic support obligation, **[or paid directly to the obligee or ]paid directly** to the health care provider, **or paid directly to the obligee.**

\* \* \*

**[(5) In cases involving only spousal support or alimony pendente lite, the parties' respective net incomes for purposes of allocating unreimbursed medical expenses shall be calculated after the amount of spousal support or**

**alimony pendente lite is deducted from the obligor's income and added to the obligee's income.]**

\* \* \*

(d) *Private School Tuition. Summer Camp. Other Needs.* Expenditures for needs outside the scope of typical child-rearing expenses, e.g., private school tuition, summer camps, have not been factored into the Basic Child Support Schedule.

(1) If a party incurs an expense for a need not factored into the Basic Child Support Schedule and the court determines the need and expense are reasonable, the court shall allocate the expense between the parties[ **in proportion to the parties' monthly net incomes**]. The court may order that the obligor's share **of the expense** is added to his or her basic support obligation, paid directly to the service provider, or paid directly to the obligee.

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

**PUBLICATION REPORT**

**RECOMMENDATION 171**

The Domestic Relations Procedural Rules Committee (Committee) is planning to propose to the Supreme Court of Pennsylvania amendments to Pa.R.C.P. Nos. 1910.16-4 and 1910.16-6 as those rules relate to the apportionment of expenses in support actions, including alimony *pendente lite* (APL). Specifically, the proposed amendments provide for an adjustment to the parties' monthly net incomes prior to determining the percentage each party pays toward the expenses set forth in Pa.R.C.P. No. 1910.16-6. The Committee proposes that the parties' monthly net incomes should be adjusted, upward or downward, by the total child or spousal support/APL amount paid or received by that party prior to apportioning those expenses.

Currently, the Rules of Civil Procedure apportion the enumerated expenses in Pa.R.C.P. No. 1910.16-6(a)-(d), with the exception of (c)(5), between the parties based on the parties' respective monthly net incomes as calculated pursuant to Pa.R.C.P. No. 1910.16-2. This apportionment does not consider the amount of support paid by the obligor or received by the obligee. The Committee believes the current methodology for apportioning those expenses ignores the economic realities of the parties' circumstances.

Instead, the Committee believes a more appropriate and equitable methodology is adjusting the parties' monthly net incomes prior to the apportionment by subtracting the total amount of support paid from the obligor's monthly net income and adding the total amount of support received to the obligee's monthly net income. This methodology is not new to the Rules of Civil Procedure. In Pa.R.C.P. No. 1910.16-6(c)(5), the parties' monthly net incomes in spousal support/APL-only cases are similarly adjusted prior to the apportionment of unreimbursed medical expenses. Likewise, Pa.R.C.P. No. 1910.16-6(e) considers the parties' monthly net income after the receipt or payment of the total support obligation for purposes of determining a mortgage deviation. The Committee's proposed amendments would utilize this methodology for all support cases (child support, spousal support, APL) and for all of the Pa.R.C.P. No. 1910.16-6 expenses. As a result, the Recommendation proposes rescinding Pa.R.C.P. No. 1910.16-6(c)(5) since that subdivision would be redundant if the amendments are adopted by the Supreme Court.

Finally, the Committee proposes consolidating Pa.R.C.P. No. 1910.16-6(b)(1), (2), and (2.1), revising the Example in Pa.R.C.P. No. 1910.16-6(a) to correspond with proposed apportionment methodology, and other stylistic changes.