

## PROPOSED RULES

---

### AMENDMENTS TO THE RULES OF CIVIL PROCEDURE RELATING TO DOMESTIC RELATIONS MATTERS

---

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

#### RECOMMENDATION 118

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than **Friday, August 10, 2012** directed to:

Patricia A. Miles, Esquire  
Counsel, Domestic Relations Procedural Rules Committee  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 6200  
P.O. Box 62635  
Harrisburg, PA 17106-2635  
Fax: 717 231-9531  
E-mail: domesticrules@pacourts.us

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

*By the Domestic Relations Procedural Rules Committee*

Carol S. Mills McCarthy, *Chair*

SUPREME COURT OF PENNSYLVANIA  
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE  
RECOMMENDATION 118

**Rule 1910.25. Enforcement. Support Order. Civil Contempt. Petition. Service. No Answer Required.**

\* \* \*

(b) The petition shall begin with an order of court in substantially the following form:

[CAPTION]

ORDER OF COURT

Legal proceedings have been brought against you alleging that you have disobeyed an order of court for support.

(1) **A critical issue in the contempt proceeding is your ability to pay and comply with the terms of the support order.** If you wish to defend against the claim set forth in the following pages, you may, but are not required to, file in writing with the court your defenses or objections.

(2) You, \_\_\_\_\_, Respondent, must appear in person in court on \_\_\_\_\_ (day and date) at \_\_\_\_\_ (a.m./p.m.) in (court) room \_\_\_\_\_, \_\_\_\_\_ (address).

**IF YOU DO NOT APPEAR IN PERSON, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST AND YOU MAY BE COMMITTED TO JAIL.**

(3) If the court finds that you have willfully failed to comply with its order for support, you may be found to be in contempt of court and committed to jail, fined or both.

**You will have the opportunity to disclose income, other financial information and any relevant personal information at the conference/hearing so that the court can determine if you have the ability to pay. You may also tell the court about any unusual expenses that may affect your ability to pay. You may fill out the enclosed Income Statement and Expense Statement forms and submit them to the court.**

At the conference/hearing, the contempt petition may be dismissed, new and/or modified purge conditions may be imposed, or the judge may order you to jail. If the obligee fails to appear, the court will proceed with the case and enter an appropriate order.

YOU ARE REQUIRED TO BRING:

Your most recent pay stub for any and all employers

Payroll address, phone number, fax number and contact person

Proof of medical coverage

Any other documentation relevant to your case and the issue of contempt as stated in the petition, including the completed Income Statement and Expense Statement forms. For example, documentation related to claims for unemployment compensation, workers' compensation and Social Security benefits.

\* \* \*

(f) The obligor shall be advised in the Order/Notice to Appear that his or her present ability to pay is a critical issue in the contempt proceeding. The obligor shall be provided with Income and Expense Statements to demonstrate financial ability to pay. At hearing, the obligor shall be provided the opportunity to respond to any questions about his or her financial status. The trier of fact shall issue an express finding that the defendant does or does not have the present ability to pay.

Explanatory Comment--2012

The amendments to the form in subdivision (b) and new subdivision (f) are intended to assure compliance with the U.S. Supreme Court's decision in *Turner v. Rogers*, 131 S. Ct. 2507 (June 20, 2011). In that case, the Court held that counsel need not automatically be appointed for indigent support obligors facing incarceration in civil contempt proceedings. The Court held that the due process clause of the Fourteenth Amendment to the U.S. Constitution does not require that counsel be provided where the obligee is not represented by counsel and the state provides alternative procedural safeguards including adequate notice of the importance of the ability to pay, a fair opportunity to present, and to dispute, relevant information, and express court findings as to the obligor's ability to pay.

\* \* \*

Rule 1910.25-5. Civil Contempt. Contempt Order. Incarceration.

(a) No respondent may be incarcerated as a sanction for contempt without an evidentiary hearing before a judge.

**(b) The court shall make a finding, on the record, as to whether the respondent, based upon the evidence presented at the hearing, does or does not have the present ability to pay the court-ordered amount of support.**

**[(b)] (c)** An order committing a respondent to jail for civil contempt of a support order shall specify the conditions the fulfillment of which will result in the release of the respondent.

\* \* \*