

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE
RECOMMENDATION 146**

Proposed Amendment to Pa.R.C.P. No. 1910.16-4(d)

PUBLICATION REPORT

The Committee is proposing an amendment to Pa.R.C.P. No. 1910.16-4(d), *Divided or Split Physical Custody. When Each Party Has Primary Custody of One or More of the Children*. The Committee received input from several county Domestic Relations Hearing Officers and members of the bar that the current rule is confusing and is not clear in some cases involving multiple children with divided or split custody.

Currently, Pa.R.C.P. No. 1910.16-4(d), in relevant part, states:

(d) *Divided or Split Physical Custody. When Each Party Has Primary Custody of One or More of the Children. Varied Custodial Schedules.*

(1) *Divided or Split Physical Custody. When Each Party Has Primary Custody of One or More of the Children.* When calculating a child support obligation, and one or more of the children reside primarily with each party, the court shall offset the parties' respective child support obligations and award the net difference to the obligee as child support.

* * *

(2) *Varied Custodial Schedules.* When the parties have more than one child and each child spends different amounts of partial or shared custodial time with the obligor, the trier of fact shall add the percentage of time each child spends with the obligor and divide by the number of children to determine the obligor's percentage of custodial time. If the average percentage of time the children spend with the obligor is 40% or more, the provisions of subdivision (c) above apply.

From the language of this rule, it is clear that when both parties have primary custody of one child, subdivision (d)(1) applies and the parties' support obligations to each other are offset with the higher income party as the obligor. Additionally, subdivision (d)(2) of the rule is applicable in determining if a shared parenting time

adjustment should be applied when an obligor has partial or shared custody of at least two children.

However, the scenario not clearly addressed by the rule is the situation involving multiple children with the higher income party having primary custody of at least one child and the parties equally sharing custody of at least one child. As subdivision (d)(1) requires that both parties have primary custody of at least one child, the current subdivision (d)(1) is inapplicable to these facts. Likewise, this scenario would not fall under subdivision (d)(2) as this subdivision is only applicable in determining the shared parenting time adjustment when an obligor has shared or partial custody of at least two children.

Under current subdivision (d)(1) of the rule, if the parties have primary custody of at least one child, each party has a duty of support to the other party and the support obligations are offset. The net difference of the two obligations would be paid to the party with the lower initial support obligation. With that said, the logical conclusion is that the primary custody and shared custody scenario best fits under subdivision (d)(1) as, typically, the higher income party would owe support to the lower income party for the equally shared child,¹ and the lower income party would owe support for the child primarily in the custody of the higher income party.²

The Committee proposes amending subdivision (d)(1) clarifying the applicability of the subdivision to cases involving multiple children when both parties would owe child support to the other party based on the custodial arrangement. The obligee would be determined after offsetting the support obligations and any net difference between the two obligations would be paid to the obligee. To further illustrate this scenario, an example of the application of the rule to these facts has been added following subdivision (d)(1).

Consequently, the Committee proposes amending subdivision (d)(2) clarifying the circumstances in which this subdivision is applicable in light of the proposed amendment to subdivision (d)(1) and modifying the heading to further illustrate the applicability of the subdivision. And, a third example has been added after subdivision

¹ As set forth in Pa.R.C.P. No. 1910.3(b)(2) and Pa.R.C.P. No. 1910.16-4(c)(2), the lower income party cannot be an obligor in a support case when a child spends equal time with both parties.

² This scenario is the typical case unless the trier-of-fact determines that *Colonna v. Colonna*, 855 A.2d 648 (Pa. 2004) applies to the facts of the case. If the trier-of-fact determines *Colonna* to be applicable to the case, then Pa.R.C.P. No. 1910.16-4(d) would not be applicable as the lower income party would not owe child support for the child in the primary custody of the higher income party; however, the higher income party would continue to owe support to the lower income party for the shared custody child and any other additional support the trier-of-fact determines appropriate under *Colonna* for the other child.

(d)(2) with a factual scenario illustrating the interplay between subdivisions (d)(1) and (d)(2).

The Committee considered other methods of calculating support for multiple children with varying custody schedules, including averaging the custody time of all the children. The obligee would be the party with the higher amount of average custodial time with the children. However, the Committee believed this method led to unfavorable results when it considered various custodial arrangements. For example, the parties have three children with one child with the higher income party 100% of the time and the other two children 50% custody with each party would result in the average custodial time of 67% for the higher income party, who would be the obligee. The lower income party would pay support without any reduction due to substantial custody despite having two children 50% of the time. The Committee believed this to be unfair and inequitable, instead, preferred the method set forth in the proposed amendment.

Finally, the rule recommendation reflects a decision by the Committee to use gender neutral terms in the rules. In the future, as rules are amended or added, gender neutral terms will be substituted for specific gender terms (e.g. mother, father, husband, wife). With that policy determination in mind, in certain factual circumstances relevant to Pa.R.C.P. No. 1910.16-4(d), identifying the party who is the obligee or obligor is not readily apparent until completion of the entire calculation. An amended Note provides the rationale for the use of the terms “higher income party” and “lower income party” rather than the more frequently used terms “obligor” and “obligee.”