

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

NOTICE OF PROPOSED RULEMAKING

Proposed amendment of Pa.R.C.P. No. 1910.16-4

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. No. 1910.16-4 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 9, 2017**. 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

David J. Slesnick, Esq.
Chair

SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE
RECOMMENDATION 167

Rule 1910.3. Parties. Obligor. Obligee.

(a) An action may be brought:

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(b) The trier of fact shall enter an appropriate order based upon the evidence presented, without regard to which party initiated the support action, filed a modification petition, or filed a petition for recovery of support overpayment. The **[determination of which party will be the obligee and which will be the obligor will be made by the]** trier of fact **shall determine the party that is the obligee and the party that is the obligor** based upon the respective **monthly net** incomes of the parties, consistent with the support guidelines and existing law, and the custodial arrangements at the time of the initial or subsequent conference, hearing or trial. If supported by the evidence, the party named as the defendant in the initial pleading may be deemed to be the obligee, even if that party did not file a complaint for support. The provisions of this subdivision do not apply to parties seeking spousal support or alimony **[pendente lite]pendente lite**. Parties seeking spousal support or alimony **[pendente lite]pendente lite** must assert a claim in an appropriate pleading with proper notice served upon the other party.

(1) In general, the party who has primary custody of the children shall be the obligee of a child support order.

(2) **[When]if** the parties share custody of the children equally, the party with the higher income shall be the obligor as provided in **[Rule]Pa.R.C.P. No. 1910.16-4(c)([2]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 basic child support, either from the schedule in **[Rule]Pa.R.C.P. No. 1910.16-3** or the formula in **[Rule]Pa.R.C.P. No. 1910.16-3.1(a)**, as well as spousal support and alimony **[pendente lite]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]pendente lite** obligations[.].

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(c) **Substantial or Shared Physical Custody.** For purposes of this subdivision, the trier of fact shall calculate a party's percentage of time with the children by the number of overnights the children spend with the party during the year.

(1) **[When]if** the children spend 40% or more of their time during the year with the obligor, a rebuttable presumption arises that the obligor is entitled to a reduction in the basic support obligation to reflect this time. This rebuttable presumption also applies in high-income cases decided pursuant to **[Rule]Pa.R.C.P. No. 1910.16-3.1**. Except as provided in subsection (2) below, the reduction shall be calculated pursuant to the formula set forth in Part II of subdivision (a) of this rule. **[For purposes of this provision, the time spent with the children shall be determined by the number of overnights they spend during the year with the obligor.]**

Example. If the obligor and the obligee have monthly net incomes of \$5,000 and \$2,300, respectively, their combined child support obligation is \$1,701 for two children. Using the income shares formula in Part I, the obligor's share of this obligation is 68%, or \$1,157. If the children spend 40% of their time with the obligor, the formula in Part II applies to reduce his or her percentage share of the combined support obligation to 58%, or \$987. If the children spend 45% of their time with the obligor, his or her percentage share of the combined obligation is reduced to 53%, or \$902. If the children spend equal time with both parents, the obligor's percentage share is reduced to 48%, or \$816.

(2) If the obligor has little or no contact with the children, which for purposes of this rule is 10% or less of the children's time annually with the obligor, the trier of fact shall consider an upward deviation that increases the obligor's basic support obligation. In determining the amount of the upward deviation, the trier of fact shall consider substantial expenditures (e.g., meals, clothing, activities) incurred by the obligor for the benefit of the children. An upward deviation provided by this subdivision shall comply with Pa.R.C.P. No. 1910.16-5(a).

~~(2)~~**3** Without regard to which parent initiated the support action, **[when]if** the children spend equal time with their parents, the Part II formula cannot be applied unless the obligor is the parent with the higher income. An order shall not be entered requiring the parent with the lower income to pay basic child support to the parent with the higher income. However, this subdivision shall not preclude the entry of an order requiring the parent with less income to contribute to additional expenses pursuant to Pa.R.C.P. No. 1910.16-6. Based upon the evidence presented, the trier of fact may enter an order against either party without regard to which party initiated the action. If

the parties share custody equally and the support calculation results in the obligee receiving a larger share of the parties' combined monthly net income, then the court shall adjust the support obligation so that the combined monthly net income is allocated equally between the two households. In those cases, spousal support or alimony *pendente lite* shall not be awarded.

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

PUBLICATION REPORT

RECOMMENDATION 167

The Domestic Relations Procedural Rules Committee (Committee) is proposing an amendment to Pa.R.C.P. No. 1910.16-4 as the rule relates to the calculation of child support. Specifically, the proposed amendment will provide for an upward deviation in the amount of child support when an obligor has little or no contact with the child, which the proposed rule text defines.

Currently, the Explanatory Comment to Pa.R.C.P. No. 1910.16-4 suggests that an upward deviation is appropriate in certain circumstances; however, the rule text is silent on this issue. As a result, the practice of awarding an upward deviation is inconsistent across the Commonwealth. The support schedule includes the basic assumptions that the obligor has 30% of the overnights with the child and during the custodial time, the obligor makes direct expenditures on behalf of the child. The Committee proposes requiring an upward deviation if the trier of fact makes a finding that (1) an obligor has 10% or less custody of the child; and (2) the obligor does not provide direct expenditures on behalf of the child.

The Committee's proposed rule provides that the trier of fact shall have the discretion to award an appropriate amount for an upward deviation based on the facts of the case rather than including a formulaic method for determining the amount of the deviation. As with other deviations, the trier of fact would be required to state the reasons for and identify the facts justifying the deviation in writing consistent with Pa.R.C.P. No. 1910.16-5.