

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

NOTICE OF PROPOSED RULEMAKING

**Proposed amendment of Pa.R.C.P. No. 1910.11, 1910.16, 1910.16-1, 1910.16-2,
1910.16-3, 1910.16-3.1, 1910.16-4, 1910.18, and 1910.19**

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendments of Pa.R.C.P. No. 1910.11, 1910.16, 1910.16-1, 1910.16-2, 1910.16-3, 1910.16-3.1, 1910.16-4, 1910.18, and 1910.19 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, 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**

PUBLICATION REPORT

RECOMMENDATION 174

The Domestic Relations Procedural Rules Committee (Committee) is planning to propose to the Supreme Court of Pennsylvania amendments of Pa.R.C.P. No. 1910.11, 1910.16, 1910.16-1, 1910.16-2, 1910.16-3, 1910.16-3.1, 1910.16-4, 1910.18, and 1910.19. The basis for these amendments is the Tax Cuts and Jobs Act of 2017 (Pub. L. No. 115-97)(the Act) enacted on December 22, 2017, that amended the Internal Revenue Code in several ways that affect domestic relations law and the Rules of Civil Procedure. For purposes of the Committee's rulemaking, there are three primary rulemaking issues affected by the Act: (1) the tax treatment of spousal support and alimony *pendente lite* (Pa.R.C.P. No. 1910.16-4 Part IV); (2) the elimination of personal exemptions, including dependency exemptions (Pa.R.C.P. No. 1910.16-2); and (3) the distinction between allocated and unallocated support orders (Pa.R.C.P. Nos. 1910.16 and 1910.16-4(f)). Of course, the Act had other provisions (i.e. reduced tax rates) affecting net income and, as a result, support amounts.

The Committee began reviewing the issues prior to the Act being signed into law. Over the course of several months, the Committee reviewed numerous calculations illustrating the effects of the Act on support. Perhaps the single biggest issue affecting support is the tax treatment of alimony, which includes spousal support and alimony *pendente lite*. Alimony paid to a former spouse will no longer be deductible by the payor, and alimony payments will no longer be included in the payee's gross income. This effectively shifts the tax burden of alimony from the payee to the payor. This provision is effective for divorce and separation agreements and support orders signed after December 31, 2018. As the current tax treatment has been in place for nearly 100 years, the current spousal support methodology incorporates the tax effect on payors and payees.

Although most of the Act's provisions became effective January 1, 2018, the tax treatment of spousal support will become effective January 1, 2019, for orders or agreements entered into on or after that date. Spousal support orders and agreements entered into before January 1, 2019, may continue to utilize the current tax treatment of spousal support. If taxpayers have an existing (pre-2019) alimony order or agreement and the parties modify the order/agreement after January 1, 2019, the new tax law does not apply to that modified order or agreement unless the modification expressly provides that the new tax laws apply. However, as the previous tax laws may govern pre-2019 support orders subsequently modified, the added issue of maintaining two methodologies is necessary, further complicating rulemaking. With the Act's change to

the tax treatment of spousal support, one residual effect is eliminating the distinction between allocated and unallocated support orders for post-2018 orders since child support and spousal support will have the same tax treatment.

Based upon the complexity of the issues, the Supreme Court retained Jane Venohr, Ph.D., the economist that assists the Court and Committee with the quadrennial child support review, to perform an in depth analysis of the tax issues affecting the support rules, formulas, and methodology. Dr. Venohr's report to the Court and Committee provided expert analysis of the issues, and provided a basis for the Committee's recommendation. The Committee will post Dr. Venohr's report and an addendum to the final report on the Committee's website. As the report and addendum will be posted, the details of the report will not be included in this Publication Report.

The proposed Recommendation rescinds Pa.R.C.P. No. 1910.16-2(f), which has permitted courts to award the federal child dependency exemption to the non-custodial parent. As the Act eliminated those exemptions effective January 1, 2018, the provision in the rules is no longer necessary.

Similarly, the Recommendation proposes rescinding Pa.R.C.P. No. 1910.16 as that rule relates to allocation of child support and spousal support or child support and alimony *pendente lite* orders. With the change in the tax treatment of alimony, effective January 1, 2019, there is no distinction in the tax treatment of child support and spousal support/alimony *pendente lite* for new orders after that date. However, as support orders entered prior to January 1, 2019, which are subsequently modified after January 1, 2019, may retain the current laws tax treatment of alimony, the provisions related to allocation/unallocation are included in Pa.R.C.P. No. 1910.19(h).

Unquestionably, the Act's most significant impact from a domestic relations perspective is the tax treatment of alimony, and its effect on the parties' federal tax liability. The alimony tax change affects both parties. Generally, the tax change favors the payee since the spousal support received is not included as taxable income and disfavors payors by disallowing the alimony deduction. Unfortunately, in most cases, the tax change affects each party in different amounts due primarily to the parties having different federal tax rates. Payors are generally in higher tax brackets and payees in lower tax brackets. An additional complicating factor is the change in the tax rates, as well.

The Committee proposes not only a change in the percent of the parties' net income used to determine spousal support, but also, the Committee is proposing a change in the methodology. The proposed methodology is calculating spousal support, adjusting the parties' net incomes by the support amount paid or received, and then calculating child support based on the adjusted net incomes. The Committee has adopted this methodology based on a review of numerous other states' methodologies.

Pennsylvania is the only state that calculates child support first. Moreover, this change in methodology will bring consistency in the calculation of support across the rules since this methodology is currently used in determining support when the custodial parent owes spousal support (Pa.R.C.P. No. 1910.16-4(e), and the parties' incomes are adjusted by the alimony paid to the other party (Pa.R.C.P. No. 1910.16-2(a)(7), Pa.R.C.P. Nos. and (c)(1) and (c)(2)).

As to the percent of the party's net income used in the formula for spousal support, the current formula provides that the parties equally contribute 40%, or 30% if there is a child support claim. The basic current formula is:

| Spousal support only | Spousal support and child support |
|-----------------------------|--|
| Obligor's net income | Obligor's net income |
| - Obligee's net income | - child support amount |
| X <u>40%</u> | - Obligee's net income |
| Spousal support amount | X <u>30%</u> |
| | Spousal support amount |

These formulas can be rewritten as:

| | |
|-------------------------------------|-------------------------------------|
| Obligor's net income X 40% | Obligor's net income X 30% |
| - <u>Obligee's net income X 40%</u> | - child support amount |
| Spousal support amount | - <u>Obligee's net income X 30%</u> |
| | Spousal support amount |

As noted, Pennsylvania's current spousal support formula utilizes the same percentage of net income from both parties to determine the spousal support amount. Because of the tax law changes, the proposed formula acknowledges the more detrimental effect on the obligor's income by reducing the percent of obligor's net income used in calculating support to 33% in spousal support only cases and 25% in spousal support cases with child support.

| Spousal support only | Spousal support and child support |
|-------------------------------------|-------------------------------------|
| Obligor's net income X 33% | Obligor's net income X 25% |
| - <u>Obligee's net income X 40%</u> | - <u>Obligee's net income X 30%</u> |
| - Spousal support amount | Spousal support amount |

In the case of spousal support and child support, the parties' net incomes are adjusted by the spousal support amount and child support is calculated based on these newly adjusted net incomes.

As has been stated, the current tax law regarding deductibility of alimony for pre-2019 is orders may be retained for modifications after January 1, 2019. As a result, the current methodology and formula percentages are also retained. New formula and methodology have been included in Pa.R.C.P. No 1910.16-4(a) prior to the current formula and methodology.

The published Recommendation does not include many of the corollary or grammatical changes the Committee has made to the rules that will be included in the Recommendation proposed to the Court. These changes are not included in the Recommendation to focus on the relative tax law changes affecting the rules and to reduce the length of the Recommendation.

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE
RECOMMENDATION 174**

[Rule 1910.16. Support Order. Allocation.]

(a) In an order awarding child support and spousal support or child support and alimony *pendente lite*, the court may on its own motion or upon the motion of either party:

(1) Make an unallocated award in favor of the spouse and one or more children; or

(2) State the amount of support allocable to the spouse and the amount allocable to each child.

Note: See 23 Pa.C.S. § 4348(d) for additional matters that must be specified in an order of support if arrearages exist when the order is entered.

(b) An unallocated order for child support and spousal support or child support and alimony *pendente lite* shall be a final order as to all claims covered in the order. Motions for post-trial relief may not be filed to the final order.

Note: The procedure relating to Motions for Reconsideration is set forth in Pa.R.C.P. No. 1930.2.

Explanatory Comment--1994

The decision to allocate a support order has federal income tax consequences and an effect upon subsequent modification of an order. Allocation of an order, as well as other factors, will determine which party pays the federal income tax, and thus the actual cost of the support to the payor and the amount of money available to the payee. Allocation of the order permits the court to determine more easily whether modification of the order is warranted.

Explanatory Comment - 2018

Subdivision (b) resolves the question of the appealability of an unallocated order and any other claims adjudicated in that order. The rule declares the orders are final and appealable. Not only is the unallocated support order final and appealable, so are the other claims covered in the order, irrespective of whether those would be final and appealable had the claims not been a part of the order awarding unallocated support.]

Rule 1910.16-2. Support Guidelines. Calculation of Monthly Net Income

Generally, the amount of support to be awarded is based upon the parties' monthly net income.

(a) *Monthly Gross Income.* Monthly gross income is ordinarily based upon at least a six-month average of all of a party's income. The term "income" is defined by the support law, 23 Pa.C.S.[A.] § 4302, and includes income from any source. The statute lists many types of income including, but not limited to:

- (1) wages, salaries, bonuses, fees and commissions;
- (2) net income from business or dealings in property;
- (3) interest, rents, royalties, and dividends;
- (4) pensions and all forms of retirement;
- (5) income from an interest in an estate or trust;
- (6) Social Security disability benefits, Social Security retirement benefits, temporary and permanent disability benefits, workers' compensation and unemployment compensation;
- (7) alimony if, in the discretion of the **[trier of fact]court**, inclusion of part or all of it is appropriate; and

Note: In determining the appropriateness of including alimony into gross income, the court should consider whether the party receiving the alimony must include the amount received as gross income when filing his or her federal income taxes. If the alimony is not includable in the party's gross income for federal income tax purposes, the court should include the amount received in the party's monthly net income, as appropriate. See Pa.R.C.P. No. 1910.16-2(c)(2)(ii).

Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's gross income must also vary. For example, if the obligor is paying \$1,000 per month in alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.

(8) other entitlements to money or lump sum awards, without regard to source, including lottery winnings, income tax refunds, insurance compensation or settlements; awards and verdicts; and any form of payment due to and collectible by an individual regardless of source.

Note: The trial court has discretion to determine the most appropriate method for imputing lump sum awards as income for purposes of establishing or modifying the party's support obligation. These awards may be annualized or they may be averaged over a shorter or longer period **[of time]** depending on the circumstances of the case. They may also be escrowed in an amount sufficient to secure the support obligation during that period **[of time]**.

Income tax refunds should not be included as income to the extent they were already factored into the party's actual tax obligation for purposes of arriving at his or her **monthly** net income.

(b) *Treatment of Public Assistance, SSI Benefits, Social Security Payments to a Child Due to a Parent's Death, Disability or Retirement and Foster Care Payments.*

(1) *Public Assistance and SSI Benefits.* Neither public assistance nor Supplemental Security Income (SSI) benefits shall be **[counted]included** as income for purposes of determining support.

(2) *Social Security Derivative Benefits for a Child.*

[(A)i] This subdivision **[(A)]** shall be applied if a child for whom support is sought is receiving Social Security derivative benefits as a result of either parent's retirement or disability.

[(i)A] If a child for whom support is sought is receiving Social Security benefits as a result of a parent's retirement or disability, the amount of the benefit shall be added to the income of the party receiving the benefit on behalf of the child to calculate child support. Next, apportion the amount of basic child support set forth in the schedule in **[Rule]Pa.R.C.P. No.** 1910.16-3 between the parties based upon each party's percentage share of their combined net monthly income, including the child's benefit in the income of the party receiving it.

[(ii)B] If the child's benefit is being paid to the obligee, the amount of the child's benefit shall be deducted from the basic support obligation of the party whose retirement or

disability created the child's benefit. If the child's benefit is being paid to the obligor, the child's benefit shall not be deducted from the obligor's obligation, even if the obligor's retirement or disability created the child's benefit. In cases of equally shared custody, first determine which party has the higher income without the benefit, and thus is the obligor, before adding the child's benefit to the income of the party receiving it.

(iii)C) In cases in which the obligor is receiving the child's benefits, the domestic relations sections shall provide the parties with two calculations theoretically assigning the benefit to each household.

(iv)D) In allocating additional expenses pursuant to **[Rule]Pa.R.C.P. No.** 1910.16-6, the allocation shall be based upon the parties' **monthly net** incomes before the addition of the child's benefit to the **monthly net** income of the party receiving it.

(B)ii) This subdivision **(B)** shall be applied when determining the support obligation of a surviving parent when the child for whom support is sought is receiving Social Security derivative benefits as a result of the other parent's death. The income of a non-parent obligee who is caring for a child but has no support obligation to that child shall include only those funds the obligee is receiving on behalf of the child, including the Social Security derivative benefits if they are being paid to the obligee. If the benefits are being paid to the surviving parent, the amount of the benefit shall be added to that parent's income to calculate child support.

* * *

(c) *Monthly Net Income.*

(1) Unless otherwise provided in these rules, the court shall deduct only the following items from monthly gross income to arrive at net income:

(A)i) federal, state, and local income taxes;

(B)ii) unemployment compensation taxes and Local Services Taxes (LST);

(~~C~~)iii) F.I.C.A. payments (Social Security, Medicare and Self-Employment taxes) and non-voluntary retirement payments;

(~~D~~)iv) mandatory union dues; and

(~~E~~)v) alimony paid to the other party.

(2) In computing a spousal support or alimony [~~pendente lite~~]pendente lite obligation, the court shall:

(i) deduct from the obligor's monthly net income [~~all of his or her child support obligations and any amounts of~~]child support, spousal support, alimony [~~pendente lite~~]pendente lite, or alimony amounts being paid to children and former spouses[.]
not part of this action; and

(ii) include in a party's monthly net income alimony pendente lite or alimony received from former spouses, but not included in the party's gross income as provided in subdivision (a).

Note: Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's monthly net income must also vary. For example, if the obligor is paying \$1,000 per month in alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.

* * *

(e) *Net Income Affecting Application of the Support Guidelines.*

(1) *Low-Income Cases.*

(~~A~~)j) If the obligor's monthly net income and corresponding number of children fall into the shaded area of the schedule set forth in Pa.R.C.P. No. 1910.16-3, the basic child support obligation shall be calculated initially by using the obligor's **monthly net** income only. For example, if the obligor has monthly net income of \$1,100, the presumptive amount of support for three children is \$110 per month. This amount is determined directly from the schedule in Pa.R.C.P. No. 1910.16-3. Next, calculate the obligor's

child support obligation by using the parties' combined monthly net incomes and the formula in Pa.R.C.P. No. 1910.16-4. The lower of the two calculated amounts shall be the obligor's basic child support obligation.

* * *

(B)ii) In computing a basic spousal support or alimony *pendente lite* obligation, the presumptive amount of support shall not reduce the obligor's monthly net income below the Self-Support Reserve of \$981 per month.

Example 2: If the obligor earns \$1,000 per month and the obligee earns \$300 per month, the formula in **[Part IV of]**Pa.R.C.P. No. 1910.16-4**(a)(1 - Part B)** would result in a support obligation of **[\$280]213** per month **([\$1,000 - \$300 = \$700 x 40%](\$1,000 x 33%) or \$333 minus (\$300 x 40%) or \$120 for a total of \$213)**. Since this amount leaves the obligor with only **[\$720]787** per month, it must be adjusted so that the obligor retains at least \$981 per month. The presumptive minimum amount of spousal support, therefore, is \$19 per month in this case.

(C)iii) **[When]If** the obligor's monthly net income is \$981 or less, the court may award support only after consideration of the parties' actual financial resources and living expenses.

(2) *High-Income Cases.* **[When]If** the parties' combined net income exceeds \$30,000 per month, calculation of child support, spousal support, and alimony **[pendente lite]pendente lite** shall be pursuant to **[Rule]Pa.R.C.P. No. 1910.16-3.1.**

Note: See Hanrahan v. Bakker, 186 A.3d 958 (Pa. 2018)

[(f) Dependency Tax Exemption. In order to maximize the total income available to the parties and children, the court may, as justice and fairness require, award the federal child dependency tax exemption to the non-custodial parent, or to either parent in cases of equally shared custody, and order the other party to execute the waiver required by the Internal Revenue Code, 26 U.S.C.A. § 152(e). The tax consequences resulting from an award of the child dependency exemption must be considered in calculating each party's income available for support.]

* * *

Rule 1910.16-3. Support Guidelines. Basic Child Support Schedule.

The following schedule represents the amounts spent on children of intact families by combined monthly net income and number of children. Combined monthly net income is on the vertical axis of the schedule and number of children is on the horizontal axis of the schedule. This schedule is used to find the basic child support obligation. Unless otherwise provided in these rules, the obligor's share of the basic support obligation shall be computed using the formula set forth in **[Part I of]Pa.R.C.P. No. 1910.16-4(a)(1 - Part C) or (2 - Part 1)**.

* * *

Rule 1910.16-3.1. Support Guidelines. High-Income Cases

(a) *Child Support Formula.* If the parties' combined monthly net income exceeds \$30,000, the following three-step process shall be applied to calculate the parties' respective child support obligations. The amount of support calculated pursuant to this three-step process shall not be less than the amount of support that would have been awarded if the parties' combined monthly net income was \$30,000. The calculated amount shall be the presumptive minimum amount of support.

(1) **[First, the]The** following formula shall be applied as a preliminary analysis in calculating the amount of basic child support to be apportioned between the parties according to their respective monthly net incomes:

One child: \$2,839 + 8.6% of combined monthly net income above \$30,000.

Two children: \$3,902 + 11.8% of combined monthly net income above \$30,000.

Three children: \$4,365 + 12.9% of combined monthly net income above \$30,000.

Four children: \$4,824 + 14.6% of combined monthly net income above \$30,000.

Five children: \$5,306 + 16.1% of combined monthly net income above \$30,000.

Six children: \$5,768 + 17.5% of combined monthly net income above \$30,000;

(2) **[And second, the trier of fact]The** court shall apply **[Part II and Part III of the formula at Rule 1910.16-4(a)]the formulas in Pa.R.C.P. No. 1910.16-4(a)(1 - Part D and Part E) or (2 - Part II and Part III), as appropriate**, making any applicable adjustments for substantial or shared custody pursuant to **[Rule]Pa.R.C.P. No. 1910.16-4(c)** and allocations of additional expenses pursuant to **[Rule]Pa.R.C.P. No. 1910.16-6**;

(3) **[Then, third, the trier of fact]**The court shall consider the factors in **[Rule]Pa.R.C.P. No.** 1910.16-5 in making a final child support award and shall make findings of fact on the record or in writing. After considering all of the factors in **[Rule]Pa.R.C.P. No.** 1910.16-5, the **[trier of fact]**court may adjust the amount calculated pursuant to subdivisions (1) and (2)**[above upward or downward]**, subject to the presumptive minimum.

(b) *Spousal Support and Alimony Pendente Lite.* In cases in which the parties' combined monthly net income exceeds \$30,000, the **[trier of fact]**court shall apply the formula in **[Part IV of Rule]Pa.R.C.P. No.** 1910.16-4(a)**(1 - Part B) or (2 - Part IV)** as a preliminary analysis in calculating spousal support or alimony **[pendente lite]**pendente lite. In determining the amount and duration of the final spousal support or alimony **[pendente lite]**pendente lite award, the **[trier of fact]**court shall consider the factors in **[Rule]Pa.R.C.P. No.** 1910.16-5 and shall make findings of fact on the record or in writing.

[Explanatory Comment--2010

New Rule 1910.16-3.1 is intended to bring all child support cases under the guidelines and treat similarly situated parties similarly. Thus, high income child support cases no longer will be decided pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984). Economic data support the amounts in the basic child support schedule up to combined net incomes of \$30,000 per month. Above that amount, economic data are not readily available. Thus, for cases in which the parties' combined net monthly income is above \$30,000, the formula first applies a fixed percentage to calculate the amount of support. The formula is an extrapolation of the available economic data to higher income cases. Spousal support and alimony pendente lite awards in high income cases are preliminarily calculated pursuant to the formula in Part IV of Rule 1910.16-4(a). However, in both high income child support and spousal support/alimony pendente lite cases, the trier of fact is required to consider the factors in Rule 1910.16-5 before entering a final order and to make findings of fact on the record or in writing. Pursuant to Rule 1910.11(c)(2), in all high income cases, the parties must submit an Income Statement and the Expense Statement at Rule 1910.27(c)(2)(B) to enable the trier of fact to consider the factors in Rule 1910.16-5.

Explanatory Comment—2011

The rule has been amended to clarify that the provisions of Rule 1910.16-4(c), regarding adjustments to support when the obligor has substantial or shared custody, apply in high income cases. Previously, when high income cases were decided pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984),

case law held that because the time and resources each parent provided to a child were factored into the *Melzer* formula, the reductions for substantial or shared parenting time did not apply to cases decided pursuant to *Melzer*. See, e.g., *Sirio v. Sirio*, 951 A.2d 1188 (Pa. Super. 2008), *Bulgarelli v. Bulgarelli*, 934 A.2d 107 (Pa. Super. 2007). As *Melzer* no longer applies to calculate support in high income cases, the prohibition against reductions for substantial or shared parenting time in such cases is no longer applicable.]

Explanatory Comment--2010

Pa.R.C.P. No. 1910.16-3.1 is intended to bring all child support cases under the guidelines and treat similarly situated parties similarly. Thus, high-income child support cases no longer will be decided pursuant to *Melzer v. Witsberger*, 480 A.2d 991 (Pa 1984). Economic data support the amounts in the basic child support schedule up to combined net incomes of \$30,000 per month. Above that amount, economic data are not readily available. Thus, for cases in which the parties' combined monthly net income is above \$30,000, the formula first applies a fixed percentage to calculate the amount of support. The formula is an extrapolation of the available economic data to higher income cases. Spousal support and alimony *pendente lite* awards in high-income cases are preliminarily calculated pursuant to the formulas in Pa.R.C.P. No. 1910.16-4(a)(1 - Part B) or (2 - Part IV). However, in both high-income child support and spousal support/alimony *pendente lite* cases, the court is required to consider the factors in Pa.R.C.P. No. 1910.16-5 before entering a final order and to make findings of fact on the record or in writing. Pursuant to Pa.R.C.P. No. 1910.11(c)(2), in all high-income cases, the parties must submit an Income Statement and the Expense Statement at Pa.R.C.P. No. 1910.27(c)(2)(B) to enable the court to consider the factors in Pa.R.C.P. No. 1910.16-5.

Explanatory Comment—2011

The rule has been amended to clarify that the provisions of Pa.R.C.P. No. 1910.16-4(c), regarding adjustments to support if the obligor has substantial or shared custody, apply in high-income cases. Previously, when high-income cases were decided pursuant to *Melzer v. Witsberger*, 480 A.2d 991 (Pa 1984), case law held that because the time and resources each parent provided to a child were factored into the *Melzer* formula, the reductions for substantial or shared parenting time did not apply to cases decided pursuant to *Melzer*. See, e.g., *Sirio v. Sirio*, 951 A.2d 1188 (Pa. Super. 2008), *Bulgarelli v. Bulgarelli*, 934 A.2d 107 (Pa. Super. 2007). As *Melzer* no longer applies to calculate support in high-income cases, the prohibition against reductions for substantial or shared parenting time in such cases is no longer applicable.

Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation, Formula

(a) The ~~[following formula]~~formulas in subdivisions (1) or (2) 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, subdivision (1 - Part B) or subdivision (2 - Part IV), as appropriate, shall be used as a preliminary analysis in the calculation of spousal support or alimony ~~[pendente lite]~~pendente lite obligations[:].

--- The following rule text is being added ---

(1) The formula in Parts A through E is for an order entered after January 1, 2019, or for a modification of an order entered before January 1, 2019, which includes spousal support or alimony *pendente lite*, in which the amendments to the Internal Revenue Code made by Section 11051 of the Tax Cuts and Jobs Act of 2017 (Pub. L. No. 115-97) expressly apply.

Note: Section 11051 of the Tax Cuts and Jobs Act of 2017 (Pub. L. No. 115-97) amended the Internal Revenue Code by repealing the alimony deduction from the payor’s gross income and the alimony inclusion into the payee’s gross income the amount of spousal support, alimony *pendente lite*, and alimony paid or received.

See subdivision (2) for a modification of an order entered before January 1, 2019, which includes spousal support or alimony *pendente lite*, in which the amendments to the Internal Revenue Code made by Tax Cuts and Jobs Act of 2017 (Pub. L. No. 115-97) do not apply to the modification.

PART A. CALCULATION OF MONTHLY NET INCOME

| | OBLIGOR | OBLIGEE |
|--|-----------|-----------|
| 1. Total Gross Income Per Pay Period (See Pa.R.C.P. No. 1910.16-2(a)) | _____ | _____ |
| 2. Less Deductions (See Pa.R.C.P. No. 1910.16-2(c)) | (_____) | (_____) |
| 3. Net Income | _____ | _____ |
| 4. Conversion to Monthly Net Income (if pay period is other than monthly) | _____ | _____ |

PART B. SPOUSAL SUPPORT OR ALIMONY PENDENTE LITE

| | <i>Without Dependent Children</i> | <i>With Dependent Children</i> |
|--|---|--|
| 5. Obligor's Monthly Net Income (line 4) | _____ | _____ |
| 6. Less Obligor's Child Support, Spousal Support, Alimony <i>Pendente Lite</i> or Alimony Obligations to Children or Former Spouses who are not part of this action, if any. (See Pa.R.C.P. No. 1910.16-2(c)(2)) | (_____) | (_____) |
| 7. Obligor's Net Income Available for Spousal Support or <i>Alimony Pendente Lite</i> | _____ | _____ |
| 8. Percent of Obligor's Net Income Available for Spousal Support or <i>Alimony Pendente Lite</i> | x _____ 33% | x _____ 25% |
| 9. Obligor's Proportionate Share for Spousal Support or Alimony <i>Pendente Lite</i> (line 7 x line 8) | _____ | _____ |
| 10. Obligee's Monthly Net Income (line 4) | _____ | _____ |
| 11. Percent of Obligee's Net Income Available for Spousal Support or <i>Alimony Pendente Lite</i> | x _____ .40 | x _____ .30 |
| 12. Obligee's Proportionate Share for Spousal Support or Alimony <i>Pendente Lite</i> (line 10 x line 11) | _____ | _____ |

13. Preliminary Monthly Spousal Support or Alimony *Pendente Lite* amount (line 9 minus line 12 - if less than zero enter a zero on line 13) _____
14. Adjustments for Other Expenses (See Pa.R.C.P. No. 1910.16-6) _____
15. Total Amount of Monthly Spousal Support or Alimony *Pendente Lite* (Add or subtract line 14 from line 13, as appropriate) _____

PART C - BASIC CHILD SUPPORT

| | OBLIGOR | OBLIGEE |
|---|-----------|---------|
| 16. Monthly Net Income (line 4 and include the amount of child's monthly Social Security derivative benefit, if any, in the Monthly Net Income of the party receiving the benefit pursuant to Pa.R.C.P. No. 1910.16-2(b)(2)(i) or (ii). | _____ | _____ |
| 17. Preliminary Monthly Spousal Support, or Alimony <i>Pendente Lite</i> amount, if any. (line 13) | (_____) | + _____ |
| 18. Adjusted Monthly Net Income | _____ | _____ |
| 19. Combined Monthly Net Income (Add Obligor's and Obligee's line 18) | | _____ |
| 20. Basic Child Support Obligation (determined from child support schedules in Pa.R.C.P. No. 1910.16-3 based on the number of children and line 19) | | _____ |
| 21. Net Income Expressed as a Percentage Share of Combined | _____ % | _____ % |

Monthly Net Income
(divide line 18 by line 19 and
multiply by 100)

22. Each Party's Preliminary Monthly Share of the Basic Child Support Obligation (multiply line 20 and line 21) _____
23. Child's Social Security Derivative Disability or Retirement Benefit. Subtract 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 Obligees _____
24. Each Party's Adjusted Monthly Share of the Basic Child Support Obligation (Line 22 minus Line 23 - if Line 23 is less than zero enter a zero on Line 23) _____

PART D. SUBSTANTIAL OR SHARED PHYSICAL CUSTODY ADJUSTMENT. IF APPLICABLE (See subdivision (c))

25. a. Percentage of Time Obligor Spends with Children (divide number of overnights with the obligor by 365 and multiply by 100) _____ %
- b. Subtract 30% (_____ 30%)
- c. Difference _____ %
- d. Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation (subtract line 25c from line 21) _____ %
- e. Obligor's Preliminary Adjusted Share of the Basic Monthly Support Obligation (multiply line 25d and line 24) _____
- f. Further adjustment, if necessary under _____

subdivision (c)(2)

g. Obligor's Adjusted Share of the Basic Child Support Amount _____

PART E. ADDITIONAL EXPENSES (see Pa.R.C.P. No. 1910.16-6)

26. 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 Obligee's 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 _____

27. Obligor's Total Monthly Support Obligation (add line 24 or 25g, if applicable, and line 26f) _____

(2) The formula in Parts I through IV is for a modification of an order entered before January 1, 2019, that includes spousal support or alimony *pendente lite*, in which the amendments to Section 11051 of the Internal Revenue Code made by Tax Cuts and Jobs Act of 2017 (Pub. L. No. 115-97) do not apply.

Note: Section 11051 of the Tax Cuts and Jobs Act of 2017 (Pub. L. No. 115-97) amended the Internal Revenue Code by repealing the alimony deduction from the payor's gross income and the alimony inclusion into the payee's gross income the amount of spousal support, alimony *pendente lite*, and alimony paid or received.

See subdivision (1) for an order entered after January 1, 2019, or for a modification of an order entered before January 31, 2019, which includes spousal support or alimony *pendente lite*, in which the amendments to the Internal Revenue Code made by Tax Cuts and Jobs Act of 2017 (Pub. L. No. 115-97) expressly apply to the modification.

--- The preceding rule text is being added --

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]Pa.R.C.P. No. 1910.16-2(b)(2)([A]i) or ([B]ii). | _____ | _____ |
| 5. Combined Total Monthly Net Income | _____ | |
| 6. BASIC CHILD SUPPORT OBLIGATION (determined from schedule at [Rule]Pa.R.C.P. No. 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 the 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 Pa.R.C.P. No. 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**]**Pendente Lite** or Alimony Obligations, if any, to Children or Former Spouses who are not part of this action, if any (see Rule 1910.16-2(c)(2)) (_____)
- 16. Obligee's Monthly Net Income (line 4) (_____)
- 17. Difference _____
- 18. Less Obligor's Total Monthly Child Support Obligation Without Part II Substantial or Shared Custody Adjustment, if any (Obligor's line 10 plus line 12f) (_____)
- 19. Difference _____
- 20. Multiply by 30% x _____ .30
- 21. AMOUNT OF MONTHLY SPOUSAL SUPPORT or APL _____

Without Dependent Children

- 22. Obligor's Monthly Net Income (line 4) _____
- 23. Less Obligor's Support, Alimony [**Pendente Lite**]**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 | _____ |

* * *

(e) *Support Obligations When Custodial Parent Owes Spousal Support.* **[Where]**if children are residing with the spouse obligated to pay spousal support or alimony **[pendente lite]***pendente lite* (custodial parent) and the other spouse (non-custodial parent) has a legal obligation to support the children, the guideline amount of spousal support or alimony **[pendente lite]***pendente lite* shall be determined by offsetting the non-custodial parent's obligation for support of the children and the custodial parent's obligation of spousal support or alimony **[pendente lite]***pendente lite*, and awarding the net difference either to the non-custodial parent as spousal support/alimony **[pendente lite]***pendente lite* or to the custodial parent as child support as the circumstances warrant. **The calculation is a five-step process:**

[The calculation is a five-step process. First, determine the spousal support obligation of the custodial parent to the non-custodial parent based upon their net incomes from the formula for spousal support without dependent children. Second, recalculate the net income of the parties assuming the payment of the spousal support. Third, determine the child support obligation of the non-custodial parent for the children who are the subjects of the support action. Fourth, determine the recomputed support obligation of the custodial parent to the non-custodial parent by subtracting the non-custodial parent's child support obligation from Step 3 from the original support obligation determined in Step 1. Fifth, because the first step creates additional tax liability for the recipient non-custodial parent and additional tax deductions for the payor custodial parent and the third step involves an offset of the child support owed by the non-custodial parent against the spousal support or alimony pendente lite owed by the custodial parent, only that reduced amount will be taxable. Therefore, upon

application of either party, the trier of fact may consider as a deviation factor the ultimate tax effect of the calculation.]

(1) calculate the custodial parent's spousal support or alimony *pendente lite* obligation to the non-custodial parent based upon the parties' monthly net incomes and the formula in Pa.R.C.P. No. 1910.16-4(a)(1 - Part B) or (2 - Part IV), as appropriate;

(2) recalculate the parties' monthly net incomes adjusting for the payment or receipt of the spousal support or alimony *pendente lite* payment in (1);

(3) using the recomputed monthly net incomes from (2), calculate the non-custodial parent's child support obligation to the custodial parent;

(4) the final support obligation is the difference in the amounts calculated in (1) and (3):

(i) if the amount in (1) is greater than the amount in (3), the final amount is spousal support or alimony *pendente lite* payable to the non-custodial parent; and

(ii) if the amount in (1) is less than the amount in (3), the final amount is child support payable to the custodial parent.

(5) if the proceeding is a modification of an order entered before January 1, 2019 that has federal tax consequences associated with spousal support or alimony *pendente lite* payments and the final order results in an award of spousal support or alimony *pendente lite* as in (4)(i), the offset spousal support or alimony *pendente lite* amount, as derived in (4), is federally taxable, and the court may consider a deviation of the award's tax effect.

Note: See Pa.R.C.P. No. 1910.16-4.

[(f) *Allocation. Consequences.*

(1) An order awarding child support and spousal support or child support and alimony *pendente lite* may be unallocated or may state the amount of support allocable to the spouse and the amount allocable to each child. The order shall clearly state whether it is allocated or unallocated even if the amounts calculated for child support and spousal support or child support and alimony *pendente lite* are delineated in the order. However, Part IV of the formula provided by these rules assumes that an order will be unallocated. Therefore, if

the order is allocated, the formula set forth in this rule shall be utilized to determine the amount of support allocable to the spouse. If the allocation of an order utilizing the formula would be inequitable, the court shall make an appropriate adjustment. Also, if an order is allocated, an adjustment shall be made to the award giving consideration to the federal income tax consequences of an allocated order as may be appropriate under the circumstances. The federal income tax consequences shall not be considered if the order is unallocated or the order is for spousal support or alimony *pendente lite* only.]

* * *

Rule 1910.18. Support Order. Subsequent Proceedings. Modification of Spousal Support or Alimony Pendente Lite Orders Entered Before January 1, 2019.

(a) Subsequent proceedings to modify or terminate a support order pursuant to [Rule]Pa.R.C.P. No. 1910.19 shall be brought in the court [which]that entered the order. If the action has been transferred pursuant to [Rule]Pa.R.C.P. No. 1910.2 following the entry of a support order, subsequent proceedings shall be brought in the court to which the action was transferred.

(b) Subsequent proceedings to enforce an order pursuant to [Rule]Pa.R.C.P. No. 1910.20 may be brought in the court [which]that entered the support order or the court of a county to which the order has been transferred.

(c) Subdivision (a) shall not limit the right of the plaintiff to institute additional proceedings for support in any county of proper venue.

(d) Unless a modification provides that the amendments to the Internal Revenue Code as amended by the Tax Cuts and Jobs Act of 2017 (Pub. L. No. 115-97) expressly apply, an order entered before January 1, 2019, which includes spousal support or alimony *pendente lite*, is governed by the formula in Pa.R.C.P. No. 1910.16-4(a)(2 - Part IV).

Note: See Pa.R.C.P. No. 1910.16-4(a)(1 - Part B) or (2 - Part IV), as relevant.

* * *

Rule 1910.19. Support. Modification. Termination. Guidelines as Substantial Change in Circumstances. Overpayments.

* * *

(c) Pursuant to a petition for modification, the [trier of fact]court may modify

or terminate the existing support order in any appropriate manner based upon the evidence presented without regard to which party filed the petition for modification. If the **[trier of fact]court** finds that there has been a material and substantial change in circumstances, the order may be increased or decreased depending upon the respective **monthly net** incomes of the parties, consistent with the support guidelines and existing law, **except as set forth in Pa.R.C.P. No. 1910.18(d)**, and **[each]the** party's custodial time with the child at the time the modification petition is heard.

* * *

(h) Modification of a Support Order with Child Support and Spousal Support or Child Support and Alimony Pendente Lite Entered Before January 1, 2019.

(1) In a subsequent proceeding for the modification of an order awarding child support and spousal support or child support and alimony pendente lite, as provided in Pa.R.C.P. No. 1910.18(d), the court may on its own motion or upon the motion of a party:

(i) Make an unallocated award in favor of the spouse and one or more children; or

(ii) State the amount of support allocable to the spouse and the amount allocable to each child.

(A) The court shall clearly state whether the order is allocated or unallocated even if the amounts calculated for child support and spousal support or child support and alimony pendente lite are delineated in the order.

(B) If the order is allocated, the formula set forth in Pa.R.C.P. No. 1910-16.4(a)(2 - Part IV) shall be utilized to determine the amount of support allocable to the spouse; however, the formula assumes that an order will be unallocated and if the allocation of an order utilizing the formula would be inequitable, the court shall make an appropriate adjustment.

(C) An adjustment made to an allocated order giving consideration to the federal income tax consequences of an allocated order as may be appropriate under the circumstances.

(D) The federal income tax consequences shall not be considered if the order is unallocated or the order is for spousal support or alimony *pendente lite* only.

Note: See 23 Pa.C.S. § 4348(d) for additional matters that must be specified in an order of support if arrearages exist when the order is entered.

(2) An unallocated order for child support and spousal support or child support and alimony *pendente lite* shall be a final order as to all claims covered in the order. Motions for post-trial relief may not be filed to the final order.

Note: The procedure relating to Motions for Reconsideration is set forth in Pa.R.C.P. No. 1930.2.

The relevant portion of the rule formerly numbered as Pa.R.C.P. No. 1910.16 (rescinded), has been incorporated into this rule as subdivision (h) for subsequent proceedings due to the enactment of the Tax Cuts and Jobs Act of 2017 (Pub. L. No. 115-97).