

PROPOSED RULES

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

SUPREME COURT OF PENNSYLVANIA DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

RECOMMENDATION 106

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, February 11, 2011** directed to:

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

By the Domestic Relations Procedural Rules Committee

Carol A. Behers, Esquire
Chair

SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

RECOMMENDATION 106

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

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(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 who is paying the premium. 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. **Premiums paid by a party to whom no duty of support is owed to cover himself or herself only and that are not necessary to cover the other party or a child as part of a support order shall not be apportioned between the parties.** 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.

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Example 1. If the parties are separated, but not divorced, and Husband pays \$200 per month toward the cost of a health insurance policy provided through his employer which covers himself, Wife, the parties' child, and two additional children from a previous marriage, the portion of the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing \$200 by five persons and then multiplying the resulting amount of \$40 per person by the two additional children, for a total of \$80 to be excluded from allocation. Deduct this amount from the total cost of the premium to arrive at the portion of the premium to be allocated between the parties—\$120. Since Husband is paying the premium, and spouses have a statutory duty to support one another pursuant to 23 Pa.C.S.[A.] §4321, Wife's percentage share of the \$120 is deducted from Husband's

support obligation. If Wife had been providing the coverage, then Husband's percentage share would be added to his basic support obligation.

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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 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.

(3) Pursuant to 23 Pa.C.S.[A.] §4326(a), in every support proceeding, the court must ascertain each parent's ability to provide medical support for the parties' children and the support "order shall include a requirement for medical support to be provided by either or both parents, provided that such medical support is accessible to the children."

* * *

(ii) Unless health care coverage for the parties' children is provided by the obligee or a third party, the court shall issue the National Medical Support Notice required by 23 Pa.C.S.[A.] §4326(d.1) to the obligor's employer in response to notification that the obligor is employed. The notice shall direct the employer to enroll the children of the obligor who are the subject of the support proceeding if the coverage is available at a reasonable cost to the obligor. However, the notice shall direct that enrollment shall not occur earlier than 25 days from the date of the National Medical Support Notice to allow the obligor time to object. Concurrent with the issuance of the National Medical Support Notice, the court shall provide notice to the obligor setting forth the process to object to the enrollment based upon unreasonable cost, mistake of fact or availability of alternative health care coverage for the children. If there is more than one employer-provided health care coverage option, the obligor shall select the plan, subject to the obligee's right to seek a court order designating a different option.

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Note: Subdivision (b) of this rule does not apply to Medical Assistance. See 23 Pa.C.S.[A.] §4326(l). The 2005 amendments to Rule 1910.16-6(b)(1) and (2) clarify that the portion of the insurance premium covering the party carrying the insurance cannot be allocated between the parties if there is no statutory duty of support owed to that party by the other party. See *Maher v. Maher*, 575 Pa. 181, 835 A.2d 1281 (2003) and 23 Pa.C.S.[A.] §4321.

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