

PROPOSED RULES

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

SUPREME COURT OF PENNSYLVANIA DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

RECOMMENDATION 107

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:

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 A. Behers, Esquire
Chair

SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

RECOMMENDATION 107

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

(a) *Child Support Formula.* When the parties' combined monthly net income is above \$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 in no event be less than the amount of support that would have been awarded if the parties' combined net monthly income were \$30,000. That amount shall be a presumptive minimum.

* * *

(2) And second, the trier of fact shall apply Part II and Part III of the formula at Rule 1910.16-4(a), **[make] making any applicable adjustments for substantial or shared custody pursuant to Rule 1910.16-4(c) and** allocations of additional expenses pursuant to Rule 1910.16-6;

* * *

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.

* * *

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

* * *

(c) *Substantial or Shared Physical Custody.*

(1) When 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 1910.16-3.1.** Except as provided in subsections (2) and (3) 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.

* * *

(3) **[This subdivision] Reductions for substantial or shared custody** shall not apply when the obligor's income falls within the shaded area of the schedule in Rule 1910.16-3 or when the obligee's income is 10% or less of the parties' combined income. **Income equalization, as provided in subparagraph (2) above, applies even if the obligor's income falls within the shaded area of the schedule of basic child support.**

* * *