

## PROPOSED RULES

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

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

#### RECOMMENDATION 94

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, May 16, 2008** directed to:

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

*By the Domestic Relations Procedural Rules Committee*

NANCY P. WALLITSCH, ESQUIRE  
*Chair*

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

**RECOMMENDATION 94**

**Rule 1910.21. Support Order. Enforcement. Withholding of Income.**

(a) *Immediate Income Withholding.* Every order of court shall contain an immediate order for the withholding of income unless (1) there is no overdue support owing under the order and (2) either the court finds there is good cause not to require immediate income withholding or the parties agree in writing to an alternative arrangement.

(b) *Initiated Income Withholding.* If there is no immediate income withholding pursuant to subdivision (a), and nonpayment of the support order causes overdue support to accrue, the court shall enter an order for the immediate withholding of income.

(c) *Order for Withholding.* An order for income withholding must include a provision directing that no commutation or compromise and release of worker's compensation benefits, severance pay or any payment in lieu thereof shall be paid to the defendant until the order for withholding is dissolved by further order of court.

(d) *Service on Employer.*

(1) The order for income withholding shall be served upon the obligor's employer. The employer shall pay to the State Collection and Disbursement Unit the full amount set forth in the order and may deduct from the balance due the obligor an amount authorized by law for clerical work and expense involved in complying with the order. Upon termination of the obligor's employment, the employer shall notify the domestic relations section of the termination, the obligor's last known address, and the name and address of the obligor's new employer, if known.

(2) Upon willful failure to obey an order for income withholding, the employer, or an officer or employee of the employer, may be held in contempt and subject to other remedies provided by law.

*Note:* 23 Pa.C.S. §4348(k)(1) provides that contempt is punishable by jail or fine. 23 Pa.C.S. §4348(k)(2) provides that the employer is liable for any amount which the employer willfully fails to withhold or for any amount withheld but not forwarded to the domestic relations section. 23 Pa.C.S. §4348(k)(3) provides that the court may attach funds or property of an employer.

(e) *Notice to Obligor. Objections.* A notice of entry of an order for income withholding shall be served on the obligor. The obligor may object to the order in writing or by personal appearance before the county domestic relations section within ten days after issuance of the notice. The grounds for an objection are limited to the following mistakes of fact: (i) no overdue support exists under the order or there is a mistake in the amount of overdue support; (ii) there is a mistake in the identity of the obligor; or (iii) the amount being withheld exceeds the maximum amount which may be withheld under the federal Consumer Credit Protection Act, 15 U.S.C. §1673. If a mistake of fact has occurred, the order shall be modified accordingly.

(f) *Income Withholding When the Obligor Defaults on Support Order.*

(1) When an obligor is subject to an order for income withholding and payment is made by the employer within 15 days from the date upon which the obligor's obligation would be considered overdue (i.e. the date upon which delinquent support is equal to one month's support obligation), the payment shall be considered timely and any past due support shall not be converted to overdue support or subject to automated enforcement mechanisms.

(2) When nonpayment of the support order by the obligor causes overdue support to accrue, the court may increase the order for income withholding until the overdue support is paid in full. The court may also direct the employer to withhold any periodic or lump sum distributions of income which may be payable to the obligor in addition to regular income until further order of court.

(g) *Priority of Income Withholding.* If there are multiple support obligations in effect against the income of the obligor, the court shall allocate among the obligees the amount of income available for withholding, giving priority to current child support to the limit provided by law and stating the priority of payment to the obligee.

(h) *Termination of Order for Income Withholding.* An order for income withholding shall continue until dissolved by the court as provided by law.

*Note:* Pursuant to 23 Pa.C.S. §4348(h), an order for income withholding may be terminated when (1) the support obligation has terminated and the total arrears are paid; (2) the payee cannot be located and it becomes impossible to forward payments; or (3) the result would be unconscionable. The order may also be terminated administratively by the domestic relations section.

#### **Explanatory Comment--2000**

1. Rule 1910.21 continues to implement the requirements of mandatory income withholding under 23 Pa.C.S. §4348(b) in all support cases except those in which there is no

overdue support and either the parties agree to an alternative arrangement or the court finds good cause for not requiring such withholding. Consistent with Act 1997-58, advance notice to the obligor is no longer required before the court may issue an order for income withholding. Notice is now provided concurrently with issuance of the order to the obligor's employer under subdivision (e).

2. This rule continues to apply to the withholding of "income," not merely wages. Income is broadly defined in 23 Pa.C.S. §4302 as including "compensation for services, including, but not limited to, wages, salaries, bonuses, fees, compensation in kind, commissions and similar items; income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; all forms of retirement; pensions; income from discharge of indebtedness; distributive share of partnership gross income; income with respect of a decedent; income from an interest in an estate or trust; military retirement benefits; railroad employment retirement benefits; social security benefits; temporary and permanent disability benefits; worker's compensation; unemployment compensation; other entitlements to money or lump sum awards, without regard to source, including lottery winnings, income tax refunds, insurance compensation or settlements; awards or verdicts; and any form of payment due to and collectible by an individual regardless of source."

The Consumer Credit Protection Act, 15 U.S.C. §1673, sets forth the limitations on monetary withholding. It is important to note, however, that these federal limitations apply only to an obligor's wages or earnings, as those terms are defined in the Consumer Credit Protection Act, and do not apply to any additional forms of income set forth in 23 Pa.C.S. §4302.

3. The term "employer" is broadly defined in 23 Pa.C.S. §4302 as including an individual, partnership, association, corporation, trust, federal agency, commonwealth agency or political subdivision paying or obligated to pay income.

4. Subdivision (c) requires all orders for income withholding to include a provision directing the employer to withhold any income which may be payable to the obligor at the end of the employment relationship. This provision contemplates forms of income payable to obligor "in lieu of" regular income as a direct result of the end of the employment relationship--e.g., lump-sum commutations of workers' compensation benefits, severance pay, golden parachutes, or any form of income payable in lieu of the regular stream of income which had been used during the course of employment to secure the monthly support obligation.

5. Subdivision (f) differs in scope and purpose from subdivision (c). Subdivision (f) applies only in cases involving overdue support, and permits the court to increase the rate of income withholding until the overdue support is paid in full. It also allows the court to order the employer to withhold all forms of income which may be owing and payable to the obligor "in addition to" regular income--e.g., bonuses, proceeds from the exercise of stock options or any other kinds of income which are periodically payable during the course of employment.

6. Subdivision (g) incorporates former Rule 1910.22(e) relating to income withholding for multiple support obligations. The provision is amended only to establish the priority of collecting child support before spousal support in cases where the maximum amount of income which can be withheld under the Consumer Credit Protection Act is not sufficient to cover all of the obligor's support obligations in full. In those cases, the income must be allocated first to meet all of the obligor's child support obligations before it may be used to satisfy any of the obligor's spousal support obligations. The portion of the obligation which cannot be satisfied through income withholding will have to be collected through other available means of enforcement.

#### Explanatory Comment--2008

New subdivision 1910.21(f)(1) is intended to address circumstances in which an employer timely withholds income from an obligor pursuant to an income withholding order, but a delay occurs in receipt of the funds by the State Collection and Disbursement Unit. In those cases, it would be inappropriate to consider the obligor's payment as untimely and convert past due support to overdue support because an obligor subject to an income withholding order has no control over the timing of the transmission of the funds from the employer. This new rule addresses solely timing issues by providing a 15-day grace period. It does not apply to obligors who are not subject to an order for income withholding.