

PROPOSED RULES

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

SUPREME COURT OF PENNSYLVANIA DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

RECOMMENDATION 97

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 13, 2009** directed to:

Patricia A. Miles, Esquire
Counsel, Domestic Relations Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055
FAX (717) 795-2175
E-mail: patricia.miles@pacourts.us

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

By the Domestic Relations Procedural Rules Committee

Kevin M. Dougherty
Vice-Chair

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

RECOMMENDATION 97

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

* * *

(e) *Support Obligations When Custodial Parent Owes Spousal Support.*

Where children are residing with the spouse obligated to pay spousal support or alimony 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 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, and awarding the net difference either to the non-custodial parent as spousal support/alimony pendente lite or to the custodial parent as child support as the circumstances warrant.

[The following example uses the formula to show the steps followed to determine the amount of the non-custodial parent's support obligation to the children and the effect of that obligation upon the custodial parent's spousal support obligation. The example assumes that the parties have two children and the non-custodial parent's net monthly income is \$1,000 and the custodial parent's net monthly income is \$2,600.] 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[, i.e., **\$640**]. Second, recompute the net income of the parties assuming the payment of the spousal support [**so that \$640 is deducted from the custodial parent's net income, now \$1,960, and added to the non-custodial parent's net income, now \$1,640**]. Third, determine the child support obligation of the non-custodial parent for two children[, i.e., **\$501**]. 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 [**(\$501)**] from the original support obligation determined in Step 1 [**(\$640)**]. **The recomputed spousal support is \$139.** 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 custodial parent against the spousal support or alimony pendente lite owed by the custodial parent, only that reduced amount will be taxable. Therefore, the trier of fact may consider as a deviation factor the ultimate tax effect of the calculation and modify the amount accordingly in favor of the non-custodial recipient parent.

* * *

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

* * *

(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. 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 **[the] 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.

(2) When the health insurance covers a party to whom no statutory duty of support is owed, even if that person is paying the premium as set forth in subdivision (1) above, or other persons who are not parties to the support action or children who are not the subjects of the support action, the portion of the premium attributable to them must be excluded from allocation. In the event that evidence as to this portion is not submitted by either party, **[known or cannot be verified]** it shall be calculated as follows. First, determine the cost per person by dividing the total cost of the premium by the number of persons covered under the policy. Second, multiply the cost per person by the number of persons who are not owed a statutory duty of support, or are not parties to, or the subject of the support action. The resulting amount is excluded from allocation.

(2.1) The actual incremental amount of the premium which provides coverage for the subjects of the support order, if submitted by either party, shall be used in determining the amount of the premium to be allocated between the parties. If not submitted by either party, then the amount of the premium shall be divided by the number of persons covered to calculate the portion of the premium that provides coverage to each person.

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.

* * *

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

* * *

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

* * *

(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. Unless otherwise provided in the order, both the obligor and obligee shall be given notice of the court's intent to increase the order for income withholding or to increase the amount of periodic payments on arrears. The notice shall advise the obligor that he or she may object to the proposed increase in writing or by personal appearance before the county domestic relations office within 20 days from the date of the notice. If the obligor objects, a conference or hearing shall be scheduled. No order increasing the amount of income withholding or the amount of periodic payments on arrears may be entered unless the obligor fails to object within 20 days of the date of the notice or, if an objection is made, until the trier of fact has ruled on the objection. The court also 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.

* * *

Explanatory Comment—2000

1. Rule 1910.21 continues to implement the requirements of mandatory income withholding under 23 Pa.C.S.A. §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.A. §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.A. §4302.

3. The term "employer" is broadly defined in 23 Pa.C.S.A. §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 the 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—2009

In some jurisdictions, orders are being increased in an effort to increase the amount collected on arrears with no prior notice to the obligor, no opportunity for the obligor to object and no assessment of the obligor's ability to pay an increased amount. The amendments to subdivision (f)(2) require notice and an opportunity to be heard before an income withholding order or an order for periodic payment on arrears may be increased, unless the order provides otherwise.

* * *

Rule 1910.27. Form of Complaint. Order. Income Statements and Expense Statements. Health Insurance Coverage Information Form. Form of Support Order. Form Petition for Modification.

* * *

(e) The form of a support order shall be substantially as follows:

(Caption)
(FINAL) (TEMPORARY) (MODIFIED)
ORDER OF COURT

AND NOW, _____, based upon the Court's determination that Payee's monthly net income is \$_____, and Payor's monthly net income is \$_____, it is hereby ordered that the Payor pay to the Domestic Relations Section, Court of Common Pleas, _____ Dollars (\$_____) a month payable (WEEKLY/BI-WEEKLY/SEMI-MONTHLY/MONTHLY) as follows:

_____. Arrears set at \$_____ as of _____ are due in full IMMEDIATELY. Contempt proceedings, credit bureau reporting and tax refund offset certification will not be initiated, and judgment will not be entered, as long as payor pays \$_____ on arrears on each payment date. Failure to make each payment on time and in full will cause all arrears to become subject to immediate collection by all of the means listed above.

* * *

IT IS FURTHER ORDERED that, upon payor's failure to comply with this order, payor may be arrested and brought before the Court for a Contempt hearing; payor's wages, salary, commissions, and/or income may be attached in accordance with law[;]. [t]This Order [will] may be increased by no more than ten percent a month without further hearing to \$_____ a month until all arrearages are paid in full. Payor is responsible for court costs and fees.

Copies delivered to parties _____(INDICATE DATE DELIVERED).

Consented:

_____ Plaintiff	_____ Plaintiff's Attorney
_____ Defendant	_____ Defendant's Attorney BY THE COURT
	_____ J.

* * *

Rule 1915.4. Prompt Disposition of Custody Cases.

* * *

(b) *Listing Trials Before the Court.* Depending upon the procedure in the judicial district, within 180 days of the filing of the complaint either the court shall automatically enter an order scheduling a trial before a judge or a party shall file a praecipe, motion or request for trial, except as otherwise provided in this subdivision. If it is not the practice of the court to automatically schedule trials and neither party files a

praecipe, motion or request for trial within 180 days of filing of the pleading, the court shall dismiss the matter unless the moving party has been granted an extension for good cause shown, which extension shall not exceed 60 days beyond the 180 day limit. A further reasonable extension may be granted by the court upon agreement of the parties or when the court finds, on the record, compelling circumstances for a further reasonable extension.

* * *

Explanatory Comment—2000

A new rule requiring prompt custody trials was recommended by a special committee established by the Pennsylvania Superior Court. That committee concluded that the interests of children who are the subjects of custody litigation would best be served by a requirement that the litigation be concluded within specific time frames.

* * *

Rule 1920.51. Hearing by the Court. Appointment of Master. Notice of Hearing.

(a) (1) The court may hear the testimony or, upon its own motion or the motion of either party, may appoint a master with respect to all or any of the matters specified in subdivision (a)(2)(i) to consider same and issue a report and recommendation. The order of appointment shall specify the matters which are referred to the master.

(2) (i) The court may appoint a master in an action of divorce under Section 3301(a), (b) and (d)(1)(ii) of the Divorce Code, an action for annulment, and the claims for alimony, alimony pendente lite, equitable distribution of marital property, child support, partial custody or visitation, or counsel fees, costs and expenses, or any aspect thereof.

(ii) If there are no claims other than divorce, [N]no master may be appointed [as to the claim] to determine grounds for divorce [in an action under] if either party has asserted grounds for divorce pursuant to [Section] §3301(c) or §3301(d)(1)(i) of the Divorce Code. A master may be appointed to hear ancillary economic claims in a divorce action pursuant to §3301(c) or §3301(d) of the Divorce Code. The master may be appointed to hear ancillary economic claims prior to the entry of a divorce decree if grounds for divorce have been established.

(iii) No master may be appointed in a claim for legal, physical or shared custody or paternity.

Note: Section 3321 of the Divorce Code, 23 Pa.C.S.A. §3321, prohibits the appointment of a master as to the claims of custody and paternity.

(3) The motion for the appointment of a master and the order shall be substantially in the form prescribed by Rule 1920.74.

(4) A permanent or standing master employed by a judicial district shall not practice family law before a conference officer, hearing officer or permanent or standing master employed by the same judicial district.

Note: Hearing conference officers preside at office conferences under **[Support]** Rule 1910.11. Hearing officers preside at hearings under **[Support]** Rule 1910.12. The appointment of masters to hear actions in divorce or for annulment of marriage is authorized by **[Divorce]** Rule 1920.51.

(b) Written notice of the hearing shall be given to each attorney of record by the master. If a master has not been appointed, the prothonotary, clerk or other officer designated by the court shall give the notice.

(c) If no attorney has appeared of record for a party, notice of the hearing shall be given to the party by the master, or if a master has not been appointed, by the prothonotary, clerk or other officer designated by the court, as follows:

(1) to the plaintiff, by ordinary mail to the address on the complaint;

(2) to the defendant,

(i) if service of the complaint was made other than pursuant to special order of court, by ordinary mail to the defendant's last known address; or

(ii) if service of the complaint was made pursuant to special order of court, (a) by sending a copy of the notice by ordinary mail to the persons, if any, named in the investigation affidavit, likely to know the present whereabouts of the defendant; and (b) by sending a copy by registered mail to the defendant's last known address.

Note: Under **[Definition]** Rule 76, registered mail includes certified mail.

(d) Advertising of notice of the hearing shall not be required.

(e) Proof of notice shall be filed of record.

Note: Consistent with Section 3301(e) of the Divorce Code as amended, these rules contemplate that if a divorce decree may be entered under the no fault provisions of [Section] §§3301(c) or (d), a divorce decree will be entered on these grounds and no hearing shall be required on any other grounds.

Explanatory Comment—1994

While subdivision (a)(2)(ii) clearly prohibits appointment of a master to determine a divorce claim brought under §§3301(c) or 3301(d), the provision does permit a master to hear claims which are joined with the divorce action.

The rule is amended to conform with proposed new Rules 1915.4-1 and 1915.4-2, and to remove the implied prohibition against the use of hearing officers in partial custody or visitation cases.

Explanatory Comment—2009

The rule is amended to clarify the role of the master in a divorce case when either party has asserted grounds for divorce pursuant to §3301(c) or §3301(d) of the Divorce Code. The rule had been interpreted in some jurisdictions as requiring the entry of a bifurcated decree before a master could be appointed to hear economic claims.

Rule 1920.52. Hearing by the Court. Decision. No Post-trial Relief. Decree.

- (a) In claims involving
 - (1) marital property,
 - (2) enforcement of marital agreements,
 - (3) alimony, or
 - (4) a contested action of divorce, or annulment,

the order of the trial judge shall state the reasons therefor. No motion for post-trial relief may be filed to any order enumerated in this subdivision.

- (b) In claims involving
 - (1) child or spousal support,
 - (2) paternity when tried by a judge,

- (3) custody, partial custody, or visitation,
- (4) alimony pendente lite,
- (5) counsel fees, costs and expenses, or
- (6) an uncontested action of divorce or annulment, or
- (7) protection from abuse,

the order of the trial judge may set forth only general findings. No motion for post-trial relief may be filed to any order enumerated in this subdivision.

Note: The procedure relating to **[M]**otions for **[R]**econsideration is set forth in Rule 1930.2.

(c) The court need not determine all claims at one time but may enter a decree adjudicating a specific claim or claims. However, unless by agreement of the parties, no bifurcated decree of divorce shall be entered except as set forth in 23 Pa.C.S.A. §3323(c.1). In any bifurcated decree entered by the court without the agreement of the parties, the court shall state with specificity the compelling circumstances that exist for the entry of the decree and the economic provisions sufficient to protect the non-moving party.

(d) In all cases the court shall enter a decree separately adjudicating each claim raised.

Explanatory Comment—2009

The Divorce Code was amended in 2004 to make it more difficult for the court to enter a bifurcated divorce decree absent the agreement of the parties. Section 3323(c.1) became effective on January 28, 2005 and limits the circumstances in which the court may enter a bifurcated decree, requiring the establishment of grounds for divorce, compelling circumstances for the entry of the decree and sufficient economic protections for the non-moving party.

* * *

Rule 1920.73. Notice of Intention to Request Entry of Divorce Decree. Praecepto to Transmit Record Forms.

* * *

(b) The praecipe to transmit the record prescribed by Rule 1920.42 shall be in substantially the following form:

(Caption)

PRAECIPE TO TRANSMIT RECORD

To the Prothonotary:

Transmit the record, together with the following information, to the court for entry of a divorce decree:

1. Ground for divorce: irretrievable breakdown under §(3301(c)) §(3301(d)(1)) of the Divorce Code. (Strike out inapplicable section.)

2. Date and manner of service of the complaint: _____

3. Complete either paragraph (a) or (b).

(a) Date of execution of the affidavit of consent required by §3301(c) of the Divorce Code: by plaintiff _____; by defendant _____.

(b)(1) Date of execution of the affidavit required by §3301(d) of the Divorce Code: _____;

(2) Date of filing and service of the **[plaintiff's]** §3301(d) affidavit upon the **[respondent]** opposing party: _____

4. Related claim spending: _____

5. Complete either (a) or (b).

(a) Date and manner of service of the notice of intention to file praecipe to transmit record, a copy of which is attached: _____

(b) Date plaintiff's Waiver of Notice was filed with the prothonotary: _____

Date defendant's Waiver of Notice was filed with the prothonotary: _____

(Attorney for) (PLAINTIFF) (DEFENDANT)