

THE COURTS

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

[207 PA. CODE CH. 5]

Amendment to the Rules of Procedure of the
Court of Judicial Discipline; Doc. No. 1 JD 94

Order

Per Curiam

And Now, this 5th day of March, 1999, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted an amendment to Rule of Procedure No. 502(B)(4), as more specifically hereinafter set forth, *It Is Hereby Ordered*:

That Rule of Procedure No. 502(B)(4) shall become effective immediately.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

CHAPTER 5. TRIAL PROCEDURES

Rule 502. Trial. Stipulations of Fact. Conclusions of Law. Withdrawal of Complaints or Withdrawal of Counts.

* * * * *

(B) Conduct of Trial.

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(4) The trial shall be recorded verbatim. Requests and orders for transcripts shall be governed by Pa.R.J.A. 5000.5. Any party requesting notes of testimony shall bear the cost of transcription. When the notes of testimony have been transcribed, the court reporter shall first submit the transcript to the Clerk. Following receipt and review of the transcript, the [Court] Clerk shall lodge the transcript and shall inform the court reporter of said lodging. In no instance shall the court reporter provide a version of the transcript to a requesting party until the transcript is lodged, and the Clerk has informed the court reporter and the parties that the transcript has been lodged.

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[Pa.B. Doc. No. 99-447. Filed for public inspection March 19, 1999, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 39]

Promulgation of New Rule 3901; No. 118; Appellate
Court Rules Doc. No. 1

Order

Per Curiam:

And Now, this 3rd day of March, 1999, the Pennsylvania Rules of Appellate Procedure are amended to include new rule 3901 which is promulgated to read as follows.

This rule change is promulgated without prior publication in the interests of efficient administration. This Order shall be processed in accordance with Pa.R.J.A. No. 103(b) and shall be effective immediately.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

CHAPTER 39. APPEALS PURSUANT TO ADOPTION ACT

Rule 3901. Confidentiality.

All petitions, exhibits, reports, notes of testimony, and all other papers filed in an appellate court pertaining to any proceeding under the Adoption Act, 23 Pa.C.S. § 2101, et seq., shall not be disclosed to a non-party by the appellate court without an order of the appellate court upon cause shown.

Note:

See Rule 15.7 pertaining to confidentiality of Adoption Act matters in the Orphans' Court.

[Pa.B. Doc. No. 99-448. Filed for public inspection March 19, 1999, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

[RECOMMENDATION 50]

Proposed Amendments to the Rules Relating to the Establishment of Paternity and the Enforcement of Support Obligations

The Domestic Relations Procedural Rules Committee proposes the following amendments to the Rules of Civil Procedure governing the establishment of paternity and the enforcement of support obligations. These amendments implement Act 58-1997. The Committee solicits comments and suggestions from all interested persons prior to submission of the proposed rules for consideration and review by the Supreme Court.

Written comments relating to the proposed amendments must be received no later than April 16, 1999 and must be directed to: Sophia P. Paul, Esquire, Counsel, Domestic Relations Committee, 429 Forbes Avenue, Suite 300, Pittsburgh, PA 15219, FAX (412) 565-2336, or E-Mail to spaul@supreme.court.state.pa.us.

The notes and explanatory comments which appear in connection with the proposed amendments have been inserted by the Committee for the convenience of those using the rules. They will not constitute part of the rules and will not be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.1. Scope. **Definitions.**

* * * * *

(c) As used in this chapter, unless the context of a rule indicates otherwise, the following terms shall have the following meanings:

* * * * *

“Overdue support,” the amount of delinquent support equal to or greater than one month’s support obligation which accrues after entry or modification of a support order as the result of obligor’s nonpayment of that order.

“Past due support,” the amount of support which accrues prior to entry or modification of a support order as the result of retroactivity of that order. When nonpayment of the order causes overdue support to accrue, any and all amounts of past due support owing under the order shall convert immediately to overdue support and remain as such until paid in full.

* * * * *

Explanatory Comment to Rule 1910.1—1999

In December of 1998, Governor Ridge signed into law a series of technical amendments to Act 58-1997. One amendment was to define and differentiate between past due and overdue support to clarify that only overdue support constitutes a lien by operation of law against the obligor’s real or personal property. 23 Pa.C.S. § 4302 defines overdue support as “support which is delinquent under a payment schedule established by the court.” Past due support is defined as “support included in an order of support which has not been paid.”

The definitions being proposed by the Committee do not substantively change the legislative definitions. They merely elaborate on them by using terms which are more familiar and helpful to the bench and bar. Specifically, past due support consists of the purely retroactive arrearages which accumulate between the date of filing of the complaint (or petition for modification) and the date of hearing and entry of the initial (or modified) support order. Overdue support refers to the delinquent arrearages which accrue because of obligor’s failure to pay support pursuant to the order.

The definitions are important for determining the remedies available for collecting support arrearages. Pursuant to 23 Pa.C.S. § 4352(d), only overdue support, i.e., the delinquent arrearages, constitutes a lien by operation of law against obligor’s real and personal property. Past

due support does not operate as a lien against obligor’s property as long as obligor remains current on the support order.

Pursuant to Rule 1910.20, the Committee proposes to extend the distinction between overdue and past due support to the following other remedies: (1) consumer agency reporting under 23 Pa.C.S. § 4303, (2) suspension of licenses under 23 Pa.C.S. § 4355; and (3) the full range of new collection remedies under 23 Pa.C.S. § 4305(b)(10). If, therefore, overdue support accrues under the order, the obligor is subject to credit bureau reporting, possible license suspension and the remedies in § 4305(b)(10) until the overdue support is collected in full. Conversely, an obligor who owes past due support only will not be subject to these remedies as long as he or she remains current on the support order. If, however, the obligor subsequently defaults on the support order and causes overdue support to accrue, any past due support still owing under the order immediately becomes overdue support subject to the full panoply of collection remedies. It remains overdue support until collected in full.

Pursuant to proposed Rule 1910.20(c), all overdue support, including past due support which has converted to overdue support, remains subject to Act 58 remedies until paid in full. Any repayment plan subsequently agreed to by the parties, or ordered by the court pursuant to a contempt proceeding (including any arrearage component), does not preclude the use of these remedies for collecting overdue support more quickly, whenever feasible.

Rule 1910.5. Complaint. Order of Court.

* * * * *

(c) An order shall be attached at the front of the complaint directing the defendant to appear before an officer for a conference at the time and place directed by the court. The order shall be substantially in the form [provided] prescribed by Rule 1910.26(b).

Official Note: For service of original process in support matters, see Rule 1930.4.

Rule 1910.6. [Service. Proof of Service (Rescinded)] Notification.

Parties to a support proceeding shall be notified of all proceedings in which support obligations might be established or modified and shall be provided with a copy of any order issued in a case within 14 days after issuance of such order.

Explanatory Comment to Rule 1910.6—1999

Existing Rules 1910.11 and 1910.12 require the court to provide copies of the support order to the parties. Proposed Rule 1910.6 follows the statutory language in 23 Pa.C.S. § 4352(b)(2) to require the court to notify the parties of the support or modification proceedings and also to furnish copies of all orders entered in those proceedings within 14 days after issuance.

Rule 1910.15. Paternity.

(a) **Acknowledgment of Paternity.** If the action seeks support for a child born out of wedlock and the alleged father is named as defendant, the defendant may acknowledge paternity in a verified writing [**substantially in the form provided by Rule 1910.28(a)**]. **The conference officer shall advise the parties that the acknowledgment constitutes conclusive evidence of defendant’s paternity without further judicial ratification in any action to establish support. [In that**

event] Upon defendant's execution of the acknowledgment, the action shall proceed as in other actions for support.

[(b) If defendant fails to appear as ordered for a conference, hearing or trial, or for genetic tests, the court shall enter an order establishing paternity, and the matter shall proceed as in other actions for support.]

[(c)] (b) *Genetic Testing.* If the [alleged father] defendant appears but does not execute an acknowledgment of paternity at the conference[,]:

[(2)] (1) the court shall enter an order [substantially in the form required by Rule 1910.28(c)] directing the parties to appear for genetic testing[; and]. The order must advise the defendant that his failure to appear for the testing will result in entry of an order finding that he is the father of the child. The order must also advise the plaintiff that her failure to appear for testing may result in entry of an order dismissing the paternity action; and

[(1)] (2) the conference officer shall advise [the parties that there will be a trial without jury on the issue of paternity unless within ten days after the conference either party demands a trial by jury. The parties shall be provided with the form set forth in Rule 1910.28(b);] and provide written notice to the parties that they may enter into a written stipulation whereby both agree to submit to genetic testing for the purpose of resolving finally the issue of paternity. If the test results indicate a 99% or higher probability of paternity, the defendant shall be stipulated to be the biological father of the child and the case referred for a child support conference. If the test results indicate an exclusion, the action shall be dismissed. The written stipulation constitutes a waiver of the right to a hearing or trial on the issue of paternity.

(3) [the court shall make available to the parties a stipulation substantially in the form required by Rule 1910.28(d)] the conference officer shall advise and provide written notice to the parties that if they do not enter into a written stipulation and the test results do not indicate an exclusion, there will be a hearing or trial before a judge without a jury on the issue of paternity in accordance with the procedures set forth in subdivision (d) of this Rule.

[(d)] (c) *Estoppel.* ***

[(e)] (d) *Post-Testing Procedures.*

(1) The results of the genetic tests shall be provided in writing to counsel for the parties or, if unrepresented, to the parties themselves.

[(f)(1)] (2) If the results of the genetic tests resolve the issue of paternity pursuant to the stipulation of the parties, a paternity order [substantially in the form set forth in Rule 1910.28(e)] shall be entered and served on the parties.

[(i)] If the defendant is excluded, the action shall be dismissed[;].

[(iii)] If the defendant is stipulated to be the biological father, the action shall proceed as in other actions for support.

[(2)] (3) If the results of the genetic tests do not resolve the issue of paternity pursuant to the stipulation of the parties [the case shall be listed promptly for expedited trial] but the test results indicate a 99% or more probability of paternity, the court shall issue a rule against the defendant to show cause why an order should not be entered finding him to be the father. The rule shall advise the defendant that pursuant to 23 Pa.C.S. § 4343(c)(2) his defense is limited to a showing by clear and convincing evidence that the results of the genetic tests are not reliable. The rule shall direct that an answer be filed within 20 days after service of the rule on the defendant. The answer shall state the material facts which constitute this defense. Any allegation of fact which does not appear of record must be verified.

If an answer is not timely filed, the court shall enter an order finding paternity and refer the action to conference and hearing as in other actions for support. If an answer is filed raising a disputed issue of material fact relating to the reliability of the genetic testing, the case shall be listed promptly for expedited hearing before a judge. The burden of proof at the hearing is on the defendant and is limited to proof by clear and convincing evidence that the results of the genetic tests are not reliable.

(4) If the results of the genetic tests do not resolve the issue of paternity and the test results indicate less than a 99% probability of paternity, the case shall be promptly listed for expedited trial before a judge.

[(g)(1)] (5) If, after a hearing or trial, the [verdict or] decision is for the defendant on the issue of paternity, a final order shall be entered by the court dismissing the action as to the child.

[(2)] If the [verdict or] decision is against the defendant on the issue of paternity, an interlocutory order shall be entered by the court[,] finding paternity. The court may enter an interim order for child support at that time and shall refer the action to conference and hearing as in other actions for support.

(e) *Failure to Appear.* If defendant fails to appear as ordered for a conference, hearing or trial, or for genetic tests, the court shall, upon proof of service on the defendant, enter an order establishing paternity. The court may also enter an interim order for child support at that time and shall refer the action to conference and hearing as in other actions for support.

(f) *Appealability of Paternity Order.* An order establishing paternity is not an appealable order. The issue of paternity may be included in an appeal from the final order of child support.

[(h) After an interlocutory order is entered finding that the defendant is the father of the child, the court shall either refer the case to a conference as in other actions for support or as expeditiously as possible hold a hearing and enter a final order of support.

(i) An order establishing paternity is not an appealable order. Any issue of paternity may be included in an appeal from the final order of support. If paternity is tried before a jury, and only then, all issues of paternity raised on appeal must first be

raised in timely post-trial motions in accordance with Rule of Civil Procedure 227.1.]

The existing Explanatory Comments to Rule 1910.15 are replaced by the following:

Explanatory Comment to Rule 1910.15—1999

Rule 1910.15 is amended generally to reflect the elimination of jury trials in paternity actions. It also reflects the Committee's decision to propose to the Court that many of the standard forms currently required by rule to be used in paternity and support actions be rescinded in light of the statewide implementation of the Pennsylvania Child Support Enforcement System (PACSES). Prior to PACSES, statewide uniformity was possible only through the rule-making authority of the Supreme Court. PACSES now provides this same uniformity and eliminates the need for the Court to prescribe the actual forms which must be used in these actions. Standard forms will now be developed by the Department of Public Welfare working in conjunction with this Committee and the individual county domestic relations sections in Pennsylvania. To the extent any forms require inclusion of certain provisions, the Committee will propose to the Court that those provisions be prescribed by rule.

Rule 1910.15 has also been reorganized so that the entire rule more logically follows the four ways in which paternity may be established: 1) by voluntary acknowledgment under subdivision (a); 2) in the absence of an acknowledgment, by stipulation of the parties to be bound by the genetic test results under subdivision (b); 3) in the absence of either an acknowledgment or stipulation, by a hearing or trial before a judge upon receipt of the test results under subdivision (d); or 4) by failing to appear for the initial conference, genetic testing, trial or hearing, which results in entry of a default order establishing paternity under subdivision (e).

Subdivision (d)(3) is new. In cases where there is no voluntary acknowledgment or stipulation by the parties, but the genetic test results reveal a 99% or higher probability of paternity, the Committee proposes expedited hearing procedures for resolving paternity prior to a full evidentiary trial before a judge. These procedures borrow heavily from the rule to show cause procedures set forth in Pa.R.C.P 206.1 through 206.7 except that 1) plaintiff is not required to petition the court to have the rule issued and 2) the court is required to issue the rule if the test results indicate a 99% or higher probability of paternity. The burden is on the defendant to return the rule by filing an answer within 20 days of service. Pursuant to 23 Pa.C.S. § 4343(c)(2), his defense is limited to showing by clear and convincing evidence that the results are not reliable.

Rule 1910.17. Support Order. Effective Date. Change of Circumstances. Copies of Order.

* * * * *

(b) The order shall notify the obligee and the obligor that each is under a continuing obligation to inform the domestic relations section **in writing or by personal appearance** and all other parties in writing within seven days of any material change in circumstances relevant to the level of support or the administration of the support order, including but not limited to, loss or change of income or employment and change of personal address or change of address of any child receiving support. The order shall also notify the parties that if a party wilfully fails to inform the domestic relations section of the required information, the court may adjudge the party to

be in contempt of court pursuant to [**Rule 1910.21-1 through 1910.21-7**] **Rules 1910.24-1 through 1910.24-7** and may order the party to be punished by one or more of the following: jail, fine or probation.

* * * * *

Rule 1910.19. Support [.] Modification. Termination. Guidelines as Substantial Change of Circumstances.

(a) A petition for modification or termination of an existing support order shall specifically aver the material and substantial change in circumstances upon which the petition is based.

(b) A new guideline amount resulting from new or revised support guidelines may constitute a material and substantial change in circumstances. **The existence of additional income, income sources or assets identified through automated methods or otherwise may also constitute a material and substantial change in circumstances.**

[(b)] (c) ***

[(c)] (d) ***

Explanatory Comment to Rule 1910.19—1999

The Pennsylvania Child Support Enforcement System (PACSES) is electronically linked to a variety of governmental and private agencies and institutions. This linkage essentially enables PACSES to immediately locate and identify an obligor's income, income sources and assets. To the extent the income and assets materially affect the amount of support being paid, Rule 1910.19 is amended to provide that identification through these automated methods provides a basis for modifying both the current support obligation and the rate of repayment on either past due or overdue support. Identification through means other than PACSES may also provide the same basis for modification.

Rule 1910.20. [Support Order.] Enforcement. General.

[A support order shall be enforced by income attachment as required by law in the manner provided by Rule 1910.22. A support order also may be enforced by contempt proceedings pursuant to Rule 1910.21-1 through 1910.21-7, execution upon a judgment for arrearages pursuant to Rules 1910.23-1 and 1910.23-2 and posting of bond.

Official Note: Attachment of an obligor's income is mandatory under 23 Pa.C.S. § 4348(b) for all support orders unless the obligor is not in arrears in an amount equal to or greater than one month's support obligation, and the court finds that there is good cause not to require immediate income withholding or a written agreement is reached between the parties which provides for an alternative arrangement.

The remedy of posting of bond is set forth in 23 Pa.C.S. § 4348(n).

The remedies provided by this rule are cumulative and not alternative.]

(a) **A support order shall be enforced by income withholding as required by law in the manner provided by Rule 1910.21.**

(b) **When nonpayment of a support order causes overdue support to accrue, the order may also be enforced by any one of the following remedies:**

(1) pursuant to Rule 1910.21, and without further hearing or prior notice to the obligor, increasing the amount of monthly support payments for payment of the overdue support at a rate to be determined by the court; withholding or seizing periodic or lump sum payments of income from a government agency, including unemployment compensation, social security, retirement or disability benefits and any other benefits; withholding or seizing periodic or lump sum payments of income from insurance carriers or privately-insured employers, including workers' compensation benefits; withholding or seizing judgments or settlements; and withholding or seizing public and private retirement funds in pay status;

(2) pursuant to Rule 1910.22, imposing and executing on liens against real and personal property;

(3) pursuant to Rule 1910.23, attaching and seizing assets of the obligor held in financial institutions;

(4) pursuant to Rules 1910.24-1 through 1910.24-7, initiating contempt proceedings;

(5) reporting the amount of overdue support to consumer reporting agencies in the manner prescribed by 23 Pa.C.S. § 4303; and

(6) when the obligor owes overdue support in an amount of three months or more, suspending occupational, commercial/driver's and recreational licenses in the manner prescribed by 23 Pa.C.S. § 4355.

(c) For purposes of this Rule, overdue support remains subject to the remedies set forth in subdivision (b) of this Rule until paid in full. The remedies are cumulative and not alternative. Except as provided in 23 Pa.C.S. § 4355 for suspension of licenses, neither a repayment schedule subsequently agreed to by the parties nor an order of court establishing such a schedule precludes the use of these remedies for collecting overdue support more quickly, whenever feasible.

The existing Explanatory Comments to Rule 1910.20 are replaced by the following:

Explanatory Comment to Rule 1910.20—1999

Subdivision (a) continues to reflect the use of mandatory income withholding as the primary method of enforcing a support obligation. Withholding is applicable to all forms of income, not merely wages, as the term "income" is broadly defined in 23 Pa.C.S. § 4302. See Rule 1910.21 which prescribes the procedures for income withholding.

Subdivision (b) is new and reflects the availability of the new enforcement remedies set forth in 23 Pa.C.S. § 4305(b)(10). Consistent with the definitions of past due and overdue support, these remedies are restricted to cases involving overdue support, i.e., the delinquent support arrearages which accumulate as the result of nonpayment of a support order. They may not be used to collect past due support more quickly so long as the obligor remains current on the support order, including payment on the arrearages. If, however, the obligor subsequently defaults on the support order and causes overdue support to accrue, subdivision (c) of this Rule and the definitions in Rule 1910.1 make it clear that any past due support still owing under the order immediately converts to overdue support and remains overdue support subject to these remedies until collected in full.

Subdivision (b) also applies to restrict consumer agency reporting and suspension of licenses to cases involving overdue support. Actual procedures for consumer agency reporting and license suspension continue to be governed by statute rather than rule. Subdivision (b) does not purport to address IRS intercepts, which are governed almost exclusively by federal law. Nor does it address Pennsylvania state tax intercepts, lottery winnings or any other remedies which are not specifically listed in subdivision (b).

Rule 1910.21. [(Rescinded)] 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) 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 in the manner prescribed by Rules 400 through 406 governing service of original process or by registered mail, return receipt requested. Service by mail is complete upon the return of the registered mail receipt personally signed by the employer or other evidence of service satisfactory to the court.

(2) The employer shall pay to the domestic relations section 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.

(3) 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.

Official 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

domestic relations 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: When nonpayment of the support order 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 defendant in addition to regular income until further order of court.

(g) Priority of Income Withholding. If there is more than one order [of attachment] for income withholding 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.

Official 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.

Explanatory Comment to Rule 1910.21—1999

1. This Rule 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 58, advance notice to the obligor is no longer required before the court may issue an order for income withholding. Notice to the obligor 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 compen-

sation 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. Notably, however, these limitations apply only to an obligor's wages or earnings and not to other forms of income as defined 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 as a direct result of the end of that 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) applies only in cases in which there is overdue support. It 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 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. Subdivision (f) differs in purpose and scope from subdivision (c) insofar as the latter provision applies to all cases, including those involving past due support only, and restricts withholding to income payable "in lieu of" regular income at the end of employment.

6. Subdivision (g) incorporates existing 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 over spousal support in cases where the income withheld is not sufficient to cover all obligations in full. In those cases, the income must be allocated 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. Any portion of the obligations which remain unsatisfied must be collected through means other than income withholding.

(Editor's Note: The existing text of Rule 1910.22, as it appears at 231 Pa. Code pages 1910-74 to 1910-76, serial pages (200348) to (200350), is proposed to be deleted in its entirety and replaced by the following text.)

Rule 1910.22. Enforcement. Liens on Real and Personal Property.

(a) Overdue support obligations of this or any other state which are of public record at the county Domestic Relations Section shall constitute a lien by operation of law against all real property owned by the obligor within the county in which the lien is recorded. A lien of record shall also have the effect of a fully perfected security interest in personal property owned by the obligor in which a security interest can arise.

(b) *Certification and Recording of Liens.*

(1) A person seeking certification for payment of the amount of overdue support owed by an obligor shall

submit a written request for certification to the Domestic Relations Section. The request must include the obligor's full name, date of birth and social security number, if known. Within two business days, the Domestic Relations Section shall provide written certification of the amount of overdue support owed as of the date of certification.

Official Note: Rule 76 defines "person" as including a corporation, partnership and association as well as a natural person.

(2) The Domestic Relations Section shall provide a copy of the written certification to the parties. The obligor may object to the certification in writing or by personal appearance before the domestic relations section. The grounds for an objection are limited to the following mistakes of fact: (1) no overdue support exists under the support order or there is a mistake in the certified amount of overdue support; or (2) there is a mistake in the identity of the obligor. If a mistake of fact has occurred, the order shall be modified accordingly.

(c) Payment of the certified amount of overdue support shall constitute a satisfaction of the certified amount.

(d) *Enforcement of lien.* A lien of record may also be enforced as provided by Rules 3001 through 3011, governing transfer of judgments, and Rules 3101 through 3149, governing enforcement of judgments for the payment of money. A lien from another state shall be enforceable in the same manner in Pennsylvania provided it is forwarded to the Department of Public Welfare Central Registry. Upon receipt and verification of the amount owed, the Central Registry shall forward the lien to the domestic relations section in the county in which the property is located. The domestic relations section shall record the lien as a lien of public record.

Official Note: An out-of-state support lien is enforceable throughout Pennsylvania and not just in the county in which the arrears arose.

Rule 1910.23. [(Rescinded)] Enforcement. Attachment of Assets Held by Financial Institutions.

(a) Upon identification of an obligor's assets held by a financial institution, the court shall, upon certification of the overdue support owed by the obligor, enter an immediate order prohibiting the release of those assets until further order of court. The order shall be served on the financial institution in the manner prescribed by Rules 400 through 406 governing service of original process or by registered mail, return receipt requested. Service by mail is complete upon the return of the registered mail receipt personally signed by the financial institution or other evidence of service satisfactory to the court. Service of the order on the financial institution shall attach the asset up to the amount of the overdue support until further order of court.

(b) The Domestic Relations Section shall provide written notification of the attachment to the obligor. The obligor and/or any joint owner of the account who has been notified by the financial institution may object to the attachment in writing or by personal appearance before the domestic relations section within 30 days after issuance of the notice. The grounds for an objection are limited to the following mistakes of fact: (1) no overdue support exists under the support order or there is a mistake in the certified amount of overdue support; or (2) there is a mistake in the identity of the

obligor. If a mistake of fact has occurred, the order shall be modified accordingly.

(c) **If no objection is made within 30 days after notice was issued, the court shall, upon proof that obligor was properly served with notice of the attachment, enter an order seizing the assets up to the amount of overdue support owed. The order shall be served on the financial institution and a copy of the order provided to both parties.**

Official Note: A "financial institution" is defined in 23 Pa.C.S. § 4304.1(g) and includes any bank, federal or state credit union, insurer, safe deposit company and a money-market mutual fund authorized to do business in Pennsylvania.

Rule [1910.21-1] 1910.24-1. Civil Contempt. Petition. Service. No Answer Required.

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Rule [1910.21-2] 1910.24-2. Hearing by Court. Conference by Officer.

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Rule [1910.21-3] 1910.24-3. Office Conference. Agreement. Alternative Procedures Upon Failure to Agree.

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Rule [1910.21-5] 1910.24-5. Alternative Procedure. Record Hearing. Report. Exceptions. Order.

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Rule [1910.21-6] 1910.24-6. Contempt Order. Incarceration.

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Rule [1910.21-7] 1910.24-7. No Post Trial Relief.

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Official Note: Existing Rules 1910.21-1 through 1910.21-7 governing civil contempt proceedings are moved after Rule 1910.24. No substantive changes to these rules are being proposed by the Committee. When the Committee sends its final recommendation to the Court, however, it will recommend insertion of a note in these rules stating that any order entered pursuant to a contempt proceeding which establishes a rate of repayment on overdue support does not preclude the use of other remedies under Title 23 or these Rules for collecting overdue support more quickly, whenever feasible. See Rule 1910.20(c).

Rule 1910.25. Stay of Proceedings. **Special Relief.**

(a) **An action for support or a support order may be stayed only by a special order of court upon a showing of compelling circumstances following notice and hearing or upon agreement of the parties in writing.**

(b) At any time after the filing of the complaint, the court may on application issue a preliminary or special injunction, appoint a temporary receiver, order the seizure of property, dispose of seized property or grant other appropriate interim or special relief.

Explanatory Comment—1999

Rule 1910.25 consolidates into one Rule the provisions which currently appear in Rules 1910.25 and 1910.26.

(Editor's Note: The existing text of Rule 1910.26, as it appears at 231 Pa. Code pages 1910-77 to 1910-88, serial

pages (228795) to (228806) is proposed to be deleted in its entirety and replaced by the following.)

Rule 1910.26. Conduct of Record Hearing. Evidence.

Except as provided in this Rule, the Pennsylvania Rules of Evidence shall be followed in all record hearings conducted in an action for support. A verified petition, affidavit or document, and any document incorporated by reference therein which would not be excluded under the hearsay rule if given in person shall be admitted into evidence if (1) at least 20 days' notice of the intention to offer them into evidence was given to the adverse party accompanied by a copy of each document to be offered; and (2) the other party does not object to their admission into evidence. An objection must be in writing and served on the proponent of the document within 10 days of the support hearing. In the event a timely objection is made, the Rules of Evidence apply to determine admissibility of the document into evidence.

Explanatory Comment to Rule 1910.26—1999

23 Pa.C.S. § 4342(f) creates a hearsay exception in support actions to permit a verified petition, affidavit or document and a document incorporated by reference in any of them to be admitted into evidence if it would not otherwise be excluded as hearsay if given in person and it is admitted under oath by a party or witness to the support action. The Committee proposes to limit the admissibility of hearsay evidence in record hearings to cases where prior notice has been given and there is no objection by the other party. If the requisite 20-day notice is given and there is no objection, this Rule applies to require that the document be admitted into evidence. In the event of an objection, the Rules of Evidence apply to govern the document's admissibility.

This Rule is not intended to affect 23 Pa.C.S. § 4342(g) and (h) relating to admissibility of payment records, billing statements and bills for genetic testing and prenatal and postnatal health care of the mother and child.

(Editor's Note: The existing text of Rules 1910.28—1910.31, as they appear at 231 Pa. Code pages 1910-92 to 1910-97, serial pages (228810) to (228814), (200369) to (200370) and (252117) are proposed to be deleted in their entirety and replaced by the following.)

Rule 1910.28. (Rescinded).

Official Note: Rules 1910.28 through 1910.30 prescribed various forms to be used in paternity actions. The Committee proposes to rescind these forms for the reasons set forth in the Explanatory Comment to Rule 1910.15.

Rule 1910.29. (Rescinded).

Official Note: Rule 1910.29 prescribed 1) the form of the parties' agreement to waive income withholding and 2) the notice of income withholding that must be sent to the obligor. The Committee proposes to rescind these forms for the reasons set forth in the Explanatory Comment to Rule 1910.15.

Rule 1910.30. (Rescinded).

Official Note: Rule 1910.30 prescribed the form for notice of the decision upon objections to the issuance of an order for attachment. The Committee proposes to rescind this form for the reasons set forth in the Explanatory Comment to Rule 1910.15.

Rule 1910.31. (Rescinded).

Official Note: Rule 1910.31 prescribed the form order for attachment of income. The Committee

proposes to rescind this form for the reasons set forth in the Explanatory Comment to Rule 1910.15.

Rule 1910.50. Suspension of Acts of Assembly.

The following Acts or parts of Acts of Assembly are suspended insofar as they apply to the practice and procedure in an action for support:

* * * * *

(2) Section 4 of Act 1996-20, 23 Pa.C.S. § 4342, insofar as it provides that long arm jurisdiction shall be used in preference to proceedings under Part VIII-A relating to intrastate family support actions; [and]

(3) Section 4 of Act 1997-58, 23 Pa.C.S. § 4342(f), insofar as it is inconsistent with Rule 1910.26 as it relates to record hearings in support actions; and

Official Note: See Explanatory Comment to Rule 1910.26.

(4) All Acts or parts of Acts of Assembly inconsistent with these rules to the extent of such inconsistency.

CHAPTER 1930. RULES RELATING TO DOMESTIC RELATIONS MATTERS GENERALLY

Rule 1930.3. Use of Telephone Testimony.

With the approval of the court upon good cause shown, telephone testimony may be taken in all domestic relations matters. **The court may permit a party or witness to be deposed or to testify by telephone, audiovisual or other electronic means at a designated location.**

Explanatory Comment to Rule 1930.3—1999

This change incorporates verbatim the statutory provision in 23 Pa.C.S. § 4342(j) relating to actions for support. The Committee proposes extending the provision to all domestic relations matters.

[Pa.B. Doc. No. 99-449. Filed for public inspection March 19, 1999, 9:00 a.m.]

PART II. ORPHANS' COURT RULES

[231 PA. CODE PART II]

**Amendment of Orphans' Court Rule 15.7; No. 217
Supreme Court Rules Doc. No. 1**

Order

Per Curiam:

And Now, this 3rd day of March, 1999, Pennsylvania Orphans' Court Rule 15.7 is amended as follows.

This rule change is promulgated without prior publication in the interests of efficient administration. This Order shall be processed in accordance with Pa.R.J.A. No. 103(b) and shall be effective immediately.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

RULE 15. ADOPTIONS

Rule 15.7. Impounding; docket entries; reports; privacy.

(a) All proceedings shall be impounded, docket entries made, reports made to the Department of Public Welfare,

and certificates of adoption issued as provided in Sections 505, 506, 507 and 508, respectively, of the Adoption Act, **23 Pa.C.S. § 2101, et seq.**

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Note

For confidentiality requirements on appeal, see Pa.R.A.P. 3901.

[Pa.B. Doc. No. 99-450. Filed for public inspection March 19, 1999, 9:00 a.m.]

**Title 255—LOCAL
COURT RULES**

WESTMORELAND COUNTY

Rule WJ5000.13 Ownership of Notes; No. 3 of 1999

Order

And Now, this 5th day of March, 1999, It Is Hereby Ordered that current Westmoreland County Rule of Judi-

cial Administration WJ5000.13 is rescinded and that new Rule of Judicial Administration WJ5000.13 is adopted.

By the Court

CHARLES H. LOUGHRAN,
President Judge

Rule WJ5000.13. Ownership of Notes.

(a) In all cases, the court shall have the original transcript available for its own use. Except as otherwise provided by law, no person shall reproduce the original or a copy of the transcript by any method other than as provided in Westmoreland County Rule of Judicial Administration WJ5000.7. Any person making such an unauthorized reproduction is liable to the reporter for the cost.

(b) The prothonotary, register of wills, and clerk of courts shall not permit the original transcript or a copy thereof to leave its custody except either for use by a trial or appellate court, by order of court, or as otherwise provided by law.

[Pa.B. Doc. No. 99-451. Filed for public inspection March 19, 1999, 9:00 a.m.]