

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CH. 1910]

#### Support Guidelines Review; Recommendation 67

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 follows. 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 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 7, 2004, directed to:

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*By the Domestic Relations  
Procedural Rules Committee*

ROBERT C. CAPRISTO,  
*Chair*

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1910. ACTIONS FOR SUPPORT

##### Rule 1910.16-1. Amount of Support. Support Guidelines.

###### (a) *Applicability of the Support Guidelines.*

(1) Except as set forth in subdivision (2) below, the support guidelines set forth the amount of support which a spouse or parent should pay on the basis of both parties' net monthly incomes as defined in Rule 1910.16-2 and the number of persons being supported. **[ The support of a spouse or child is a priority obligation so that a party is expected to meet this obligation by adjusting his or her other expenditures. ]**

(2) In actions in which the plaintiff is a public body or private agency pursuant to Rule 1910.3, the amount of the order shall be calculated under the guidelines based upon each obligor's net monthly income as defined in Rule 1910.16-2, with the public or private entity's income as zero. In such cases, each parent shall be treated as a separate obligor and a parent's obligation will be based upon his or her own monthly net income without regard to the income of the other parent.

(i) The amount of basic child support owed to other children not in placement shall be deducted from each parent's net income before calculating support for the child or children in placement, including the amount of direct support the guidelines assume will be provided by the custodial parent.

*Example.* Mother and Father have three children and do not live in the same household. Mother has primary custody of two children and net monthly income of \$1,500 per month. Father's net monthly income is \$3,000. The parties' third child is in foster care placement. Pursuant to the schedule at Rule 1910.16-3, the basic child support amount for the two children with Mother is \$[ 1,235 ] 1,216. As Father's income is 67% of the parties' combined monthly net income, his basic support obligation to Mother is \$[ 827 ] 815 per month. The guidelines assume that Mother will provide \$[ 408 ] 401 per month in direct expenditures to the two children in her home. The agency/obligee brings an action against each parent for the support of the child in placement. Father/obligor's income will be \$[ 2,173 ] 2,185 for purposes of this calculation (\$3,000 net less \$[ 827 ] 815 in support for the children with Mother). Because the agency/obligee's income is zero, Father's support for the child in placement will be 100% of the schedule amount of basic support for one child at the \$[ 2,173 ] 2,185 income level, or \$[ 505 ] 545 per month. Mother/obligor's income will be \$[ 1,092 ] 1,099 for purposes of this calculation (\$1,500 net less \$[ 408 ] 401 in direct support to the children in her custody). Her support obligation will be 100% of the schedule amount for one child at that income level, or \$[ 268 ] 284 per month.

*Example.* Mother and Father have two children in placement. Father owes child support of \$500 per month for two children of a former marriage. At the same income levels as above, Father's income for determining his obligation to the children in placement would be \$2,500 (\$3,000 less \$500 support for two children of prior marriage). His obligation to the agency would be \$[ 842 ] 853 per month (100% of the schedule amount for two children at the \$2,500 per month income level). Mother's income would not be diminished as she owes no other child support. She would owe \$[ 521 ] 544 for the children in placement (100% of the schedule amount for two children at the \$1,500 income level).

(ii) If the parents reside in the same household, their respective obligations to the children who remain in the household and are not in placement shall be calculated according to the guidelines, with the parent having the higher income as the obligor, and that amount shall be deducted from the parents' net monthly incomes for purposes of calculating support for the child(ren) in placement.

*Example.* Mother and Father have four children, two of whom are in placement. Mother's net monthly income is \$4,000 and Father's is \$2,000. The basic support amount for the two children in the home is \$[ 1,532 ] 1,359, according to the schedule at Rule 1910.16-3. As Mother's income is 67% of the parties' combined net monthly incomes, her share would be \$[ 1,026 ] 911, and Father's 33% share would be \$[ 506 ] 448. Mother's income for purposes of calculating support for the two children in

placement would be \$[ 2,974 ] 3,089 (\$4,000 less \$[ 1,026 ] 911). She would pay 100% of the basic child support at that income level, or \$[ 961 ] 1,029, for the children in placement. Father's income would be \$[ 1,494 ] 1,552 (\$2,000 less \$[ 506 ] 448) and his obligation to the children in placement would be \$[ 521 ] 560.

(iii) In the event that the combined amount the parents are required to pay exceeds the cost of placement, the trier of fact shall deviate to reduce each parent's obligation in proportion to his or her share of the combined obligation.

#### Explanatory Comment—2003

New subdivision (2) is intended to clarify in particular the calculation of child support when a child is in a foster care or institutional placement and not in the custody of either parent.

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#### [ Explanatory Comment—1998

##### Introduction

Federal and state law require the use of guidelines to establish child and spousal support orders. Using the guidelines promotes (1) similar treatment of persons similarly situated, (2) a more equitable distribution of the financial responsibility for raising children, (3) settlement of support matters without court involvement, and (4) more efficient hearings where they are necessary. The Pennsylvania Rules of Civil Procedure governing actions for support set forth the basic child support schedule and formula as well as the explanatory text.

A. *Income Shares.* The child support guidelines are based on the Income Shares Model developed by the Child Support Guidelines Project of the National Center for State Courts. The model is based on the idea that the child of separated or divorced parents should receive the same proportion of parental income that she or he would have received if the parents lived together. A number of authoritative economic studies provide estimates of the average amount of household expenditures for children in intact households. These studies show that the proportion of household spending devoted to children is directly related to the level of household income and to the number and ages of the children. The basic support amounts reflected in the child support schedule in Rule 1910.16-3 represent average marginal expenditures on children for food, housing, transportation, clothing and other miscellaneous items that are needed by children and provided by their parents, including the first \$250 of unreimbursed medical expenses incurred annually per child.

B. *Statutory Considerations.* The federal statute, 42 U.S.C. § 467(a), requires that the guidelines be reviewed every four years. In addition, the Pennsylvania statute, 23 Pa.C.S. § 4322, states:

“... Child and spousal support shall be awarded pursuant to a Statewide guideline as established by general rule by the Supreme Court, so that persons similarly situated shall be treated similarly. The guidelines shall be based upon the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support. In determining the reasonable needs of the child or spouse seeking support

and the ability of the obligor to provide support, the guidelines shall place primary emphasis on the net incomes and earning capacities of the parties, with allowable deviations for unusual needs, extraordinary expenses and other factors, such as the parties' assets, as warrant special attention.”

1. *Reasonable Needs and Reasonable Ability to Provide Support.* The guidelines make financial support of a child a primary obligation. They assume that parties with similar net incomes will have similar reasonable and necessary expenses. After the basic needs of the parents have been met, the child's needs shall receive priority. The guidelines assume that if obligor's net income is less than \$550, he or she is barely able to provide for basic personal needs. In these cases, therefore, entry of a minimal order is appropriate after considering the party's living expenses. In some cases, it may not be appropriate to order support at all.

In most cases, however, a party's living expenses are not relevant in determining his or her support obligation. Rather, as the statute requires, the obligation is based on the reasonable needs of a dependent spouse or child and the reasonable ability of the obligor to pay. For example, in setting the amount of child support, it should be of no concern to the court that one obligor chooses to live in a one-room apartment and rely solely on public transportation, while another obligor, earning the same salary, chooses to live in a five-bedroom apartment and drive a new car. Both are obligated to give priority to the needs of their children. What they choose to do with their remaining income is not relevant to a support claim.

2. *Net Income.* The guidelines use the net incomes of the parties, and are based on the assumption that a child's reasonable needs increase as the combined net income of the child's parents increases. Each parent is required to contribute a share of the child's reasonable needs proportional to that parent's share of the combined net incomes. The custodial parent makes these contributions entirely through direct expenditures for food, shelter, clothing, transportation and other reasonable needs. In addition to any direct expenditures on the child's behalf, the non-custodial parent makes contributions through periodic support payments.

3. *Allowable Deviations.* The guidelines are designed to treat similarly situated parents, spouses, and children in the same manner. However, when there are unavoidable differences, deviations must be made from the guidelines. Failure to deviate from these guidelines by considering a party's actual expenditures where there are special needs and special circumstances constitutes a misapplication of the guidelines.

C. *Four-Year Review.* The Family Support Act of 1988 (P. L. 100-485, 102 Stat. 2343 (1988)) requires that the child support guidelines be reviewed every four years to ensure that their application results in a determination of an appropriate child support award. With the assistance of Dr. Robert Williams, the developer of the Income Shares model, the Committee reviewed the most recent economic studies on child-related expenditures in intact households and assessed state guideline adjustments for low income, additional dependents,

shared custody, child care, medical expenses and other factors which are considered in establishing or modifying a support award. Based on this review, Rules of Civil Procedure 1910.16-1 through 1910.16-5 relating to the guidelines have been amended and new Rules 1910.16-6 and 1910.16-7 have been added as follows.

**1. Reorganization of the Rules.** The rules have been reorganized so that they more logically follow the sequence for calculating the overall support obligation. Since the calculation begins with the computation of the parties' net incomes, new Rule 1910.16-2 consolidates all of the income provisions that formerly appeared throughout Rule 1910.16-5. Rule 1910.16-2 is followed by Rule 1910.16-3, the basic child support schedule; Rule 1910.16-4, the formula used in conjunction with the Schedule to arrive at obligor's basic support obligation; Rule 1910.16-5, which sets forth the factors the court must consider in determining whether to deviate from the basic support obligation; and Rule 1910.16-6, which consolidates all of the provisions for additional expenses that are typically added to the basic support obligation. Rule 1910.16-7 addresses the special treatment of child support obligations in the context of multiple families.

**2. Calculation of Basic Child Support.** The amount of basic support was previously determined from either the grids or the chart of proportional expenditures in conjunction with the income shares formula. The grids and the chart of proportional expenditures have been eliminated. The Committee has chosen to use a basic child support schedule, which numerically reflects the amounts spent on children in intact families by combined income and number of children. The schedule appears in Rule 1910.16-3 and shall be used to find the parties' combined basic child support obligation. In turn, the obligor's share of this obligation is calculated using the income shares formula in Rule 1910.16-4.

The amounts of child support set forth in the schedule have been updated to reflect recent economic estimates of child-related spending in intact households. Pursuant to federal and state law, these estimates must be adopted to ensure that children continue to receive adequate levels of support. Since the studies now consider households of up to six children, the guidelines have been expanded from four to six children. The newer studies also consider households with combined monthly net income of up to \$12,600. Allowing for inflation, the model can be extended to combined monthly net income of up to \$15,000. The Committee has chosen to do this so that the support guidelines will apply to more cases.

**3. Computed Minimum Allowance in Low-Income Cases.** The amended rules incorporate a Computed Allowance Minimum (CAM) into the support guidelines so that low-income obligors retain sufficient income to meet their basic needs and to maintain the incentive to continue working so that support can be paid. The CAM is built into the schedule in Rule 1910.16-3 and adjusts the basic support obligation to prevent obligor's net income from falling below \$550 per month. Since the schedule reflects amounts of child support only, Rule 1910.16-2(e)(1)(B) provides for a similar adjustment in spou-

sal support and APL cases so that the obligor retains at least \$550 per month in these cases as well.

**4. Shared Custody.** Under the prior guidelines, there was no formula or procedure for deviating from the basic support guidelines when custody is shared equally or the non-custodial parent has substantial partial custody. The guidelines provided that the obligor's support obligation should be reduced only if he or she spent "an unusual amount of time with the children." Yet, there have been several decisions rejecting deviation even if the obligor spends almost 50% of the time with the children. See, e.g., *Anzalone v. Anzalone*, 449 Pa. Super. 201, 673 A.2d 377 (1996)(40% time was not "unusual"); *Dalton v. Dalton*, 409 Pa. Super. 258, 597 A.2d 1192 (1991)(43% time did not justify deviation).

It is generally agreed, however, that there should be some reduction in the support obligation in these cases to reflect the decrease in the obligee's variable expenses and the increase in obligor's fixed and variable expenses as a result of the children spending substantially more time with the obligor. As part of its four-year review of the guidelines, the Committee examined seven different methods being used by other states but found that none of them met these objectives without producing a substantial reduction in the support obligation at some income levels or income differentials for relatively small increases in custodial time. As a result, the Committee initially recommended the alternative solution of no reduction at all for time spent with the children. Based on the comments received, however, the Committee reconsidered this recommendation and ultimately selected a method which gives some recognition to the shift in child-related expenditures that occurs when the obligor spends a substantial amount of time with the children.

This method is set forth in Rule 1910.16-4(c) and has been built into the formula used to calculate the presumptively correct amount of the support obligation. While not a perfect solution to the problem of establishing support obligations in the context of substantial or shared custody, it is better than the previous void and preferable to the many offset methods developed by local courts which effectively reduced the support obligation out of proportion to the increase in custody time. Its chief advantage is that there is no sharp reduction in the obligation at the 40% threshold. It also provides statewide uniformity. The method does not, however, result in \$0 when there is equal custody and equal income. In those cases, therefore, the Rule provides for a cap to reduce the obligation so that the obligee does not receive a larger portion of the combined income than the obligor. Although this cap may in some cases result in a substantial reduction between 45-50% time, the Committee is not aware of an existing model that does not create some "cliff effect" at some level at some point in time. This model was chosen over others because the cases which involve truly equal time-sharing and equal incomes continue to represent a very small percentage of support cases.

**5. Multiple Families.** The Committee has chosen to retain the existing approach for establishing multiple child and spousal support obligations.

New Rule 1910.16-7 sets forth the method for calculating child support obligations so that all of the obligor's children continue to have equal access to his or her resources and no child receives priority over the other children. Since calculation of multiple spousal support obligations is essentially a function of net income, it appears in new Rule 1910.16-2 governing the general calculation of net income. The provision continues to highlight the fact that the rules do not accord the same treatment to second and later spouses as they do to children in multiple family situations. Unlike children, who have no choice about the situation into which they are born, adults have the opportunity to investigate a potential spouse before committing themselves.

6. *Child Care Expenses.* Whereas the prior rules provided for equal sharing of these expenses, Rule 1910.16-6(a) now provides for proportionate sharing based on the parties' net incomes so that these expenses are allocated in the same manner as other expenses which are typically added to the basic support obligation. The Rule also reflects the availability and limitations of the federal child care tax credit which can be claimed by the custodial parent.

7. *Health Insurance Premiums.* Under the prior rules, the portion of the cost of health insurance premiums which benefit the other party or the children was deducted from the party's net income. This provided little incentive for either party to obtain or maintain health insurance coverage for the benefit of the other family members. If the obligor was paying the premium, it reduced the basic support award only marginally. If the obligee was paying the premium, he or she received virtually no financial credit at all in terms of a higher support award.

To maximize the value for the party carrying the health insurance in most cases, new Rule 1910.16-6(b), in general, treats the cost of the premium as an additional expense subject to allocation between the parties in proportion to their net incomes. In the majority of cases, this more accurately reflects the costs of carrying such insurance and also ensures that the obligee receives some financial credit for carrying the insurance. However, in cases in which the obligee has no income or minimal income, and the obligor would otherwise bear the entire burden of paying the health insurance premiums with no other adjustment to his or her support obligation, the trier of fact may deduct part or all of the cost of the premium from the obligor's income for support purposes. The new Rule also permits allocation of the entire premium, including the party's portion of the premium, when the insurance benefits the other party or the children. This change provides further incentive for parties to obtain health insurance for the benefit of the other party and the children.

8. *Unreimbursed Medical Expenses.* There are three changes to the treatment of unreimbursed medical expenses. First, since the first \$250 per year per child of these expenses is already built into the basic child support obligation reflected in the schedule, only medical expenses which exceed this amount are subject to allocation between the parties as an additional expense to be added to the

basic support obligation. Rule 1910.16-6(c) reflects this distinction. The Committee has also chosen to draw this same distinction with respect to spousal support so that the obligee-spouse is expected to meet the first \$250 per year of his or her own unreimbursed expenses before seeking contribution from the obligor for any additional expenses.

Second, the Rule distinguishes between those expenses which are predictable and recurring and those which are not. When the expenses are predictable and recurring, the court may establish a monthly amount for those expenses and add it to the basic support obligation. This permits the monthly amount to be collected more easily through wage attachment. When the expenses are variable and unanticipated, and thus not conducive to routine wage attachment, the court may nonetheless order the defendant to pay his or her percentage share of these expenses.

Third, the definition of medical expenses is amended to include insurance co-payments, deductibles, and orthodontia and to exclude chiropractic services. ]

#### Explanatory Comment—2004

*Introduction.* Pennsylvania law requires that child and spousal support be awarded pursuant to a statewide guideline. 23 Pa.C.S. § 4322(a). That statute further provides that the guideline shall be "established by general rule by the Supreme Court, so that persons similarly situated shall be treated similarly." *Id.*

Pursuant to federal law, The Family Support Act of 1988 (P.L. 100-485, 102 Stat. 2343 (1988)), 42 U.S.C. § 467(a), statewide support guidelines must "be reviewed at least once every four years to ensure that their application results in the determination of appropriate child support award amounts." Federal regulations, 45 CFR 302.56, further require that such reviews include an assessment of the most recent economic data on child-rearing costs and a review of data from case files to assure that deviations from the guidelines are limited. The Pennsylvania statute also requires a review of the support guidelines every four years. 23 Pa.C.S. § 4322(a).

The Domestic Relations Procedural Rules Committee of the Supreme Court of Pennsylvania began the mandated review process in early 2003. The committee was assisted in its work by Jane Venohr, Ph.D., an economist with Policy Studies, Inc., under contract with the Pennsylvania Department of Public Welfare. As a result of the review, the committee recommended to the Supreme Court several amendments to the statewide guidelines.

A. *Income Shares Model.* Pennsylvania's child support guidelines are based upon the Income Shares Model. That model was developed under the Child Support Guidelines Project funded by the U.S. Office of Child Support Enforcement and administered by the National Center for State Courts. The Guidelines Project Advisory Group recommended the Income Shares Model for state guidelines. At present, 33 states use the Income Shares Model as a basis for their child support guidelines.

The Income Shares Model is based upon the concept that the child of separated, divorced or

never-married parents should receive the same proportion of parental income that she or he would have received if the parents lived together. A number of authoritative economic studies provide estimates of the average amount of household expenditures for children in intact households. These studies show that the proportion of household spending devoted to children is directly related to the level of household income and to the number of the children. The basic support amounts reflected in the schedule at Pa. R.C.P. 1910.16-3 represent average marginal expenditures on children for food, housing, transportation, clothing and other miscellaneous items that are needed by children and provided by their parents, including the first \$250 of unreimbursed medical expenses incurred annually per child.

**1. Economic Measures.** The support schedule at Pa. R.C.P. 1910.16-3 is based upon child-rearing expenditures measured by David M. Betson, Ph.D., Professor of Economics, University of Notre Dame. Dr. Betson's measurements were developed for the U.S. Department of Health and Human Services for the explicit purpose of assisting states with the development and revision of child support guidelines. Dr. Betson's research was also used in developing the prior schedule, effective in April 1999. In 2001, Dr. Betson updated his estimates using data from the 1996-98 Consumer Expenditure Survey conducted by the U.S. Bureau of Labor Statistics. In the current schedule, those figures were converted to 2003 price levels using the Consumer Price Index.

**2. Source of Data.** The estimates used to develop the schedule are based upon national data. The specific sources of the data are the periodic Consumer Expenditure Surveys. Those national surveys are used because they are the most detailed available source of data on household expenditures. The depth and quality of this information is simply not available at the state level and would be prohibitively costly to gather. However, according to the 2000 Census conducted by the U.S. Census Bureau, the median Pennsylvania family income in 1999 was \$49,184, while the national median family income was \$50,046. Thus, using national data continues to be appropriate.

The U. S. Department of Agriculture's Center for Nutrition Policy and Promotion ("CNPP") also develops economic estimates for the major categories of child-rearing expenditures. Although the committee reviewed these estimates, it is not aware of any state that relies upon the CNPP estimates as a basis for its child support schedule.

**B. Statutory Considerations.** The Pennsylvania statute, 23 Pa.C.S. § 4322(a) provides:

Child and spousal support shall be awarded pursuant to a Statewide guideline as established by general rule by the Supreme Court, so that persons similarly situated shall be treated similarly. The guideline shall be based upon the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support. In determining the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support, the guideline shall place primary emphasis on the net incomes and earning capacities of the par-

ties, with allowable deviations for unusual needs, extraordinary expenses and other factors, such as the parties' assets, as warrant special attention. The guideline so developed shall be reviewed at least once every four years.

**1. Reasonable Needs and Reasonable Ability to Provide Support.** The guidelines make financial support of a child a primary obligation. They assume that parties with similar net incomes will have similar reasonable and necessary expenses. After the basic needs of the parents have been met, the child's needs shall receive priority. The guidelines assume that if the obligor's net income is at the poverty level, he or she is barely able to provide for his or her own basic needs. In those cases, therefore, the entry of a minimal order may be appropriate after considering the party's living expenses. In some cases, it may not be appropriate to enter a support order at all.

In most cases, however, a party's living expenses are not relevant in determining his or her support obligation. Rather, as the statute requires, the obligation is based upon the reasonable needs of a dependent spouse or child and the reasonable ability of the obligor to pay. For example, in setting the amount of child support, it should be of no concern to the court that one obligor chooses to live in a one-room apartment and rely solely on public transportation, while another obligor, earning the same salary, chooses to live in a five-bedroom apartment and drive a new car. Both are obligated to give priority to the needs of their children. What they choose to do with their remaining income is not relevant to a support claim.

**2. Net Income.** The guidelines use the net incomes of the parties and are based on the assumption that a child's reasonable needs increase as the combined net income of the child's parents increases. Each parent is required to contribute a share of the child's reasonable needs in proportion to that parent's share of the combined net incomes. The custodial parent makes these contributions entirely through direct expenditures for food, shelter, clothing, transportation and other reasonable needs. In addition to any direct expenditures during custodial periods with the child, the non-custodial parent makes contributions through periodic support payments to the custodial parent. Rule 1910.16-2(d) has been amended to clarify the provisions relating to fluctuating income and earning capacity.

**3. Allowable Deviations.** The guidelines are designed to treat similarly situated parents, spouses, and children in the same manner. However, when there are unavoidable differences, deviations must be made from the guidelines. Failure to deviate from these guidelines by considering a party's actual expenditures where there are special needs and special circumstances constitutes a misapplication of the guidelines.

**C. Child Support Schedule.** The child support schedule at Pa. R.C.P. 1910.16-3 has been amended to reflect updated economic data, as required by federal and state law, to ensure that children continue to receive adequate levels of support. At some income levels the presumptive amount of support has increased from the previous schedule, and at some income levels it has decreased. The economic data support the revised schedule. The support

amounts in the schedule have been expanded to apply to a combined net monthly income of \$20,000 and remain statistically valid.

**D. Self-Support Reserve ("SSR").** The amended schedule also incorporates an increase in the "Self-Support Reserve" or "SSR" from \$550 per month to \$748 per month, the 2003 federal poverty level for one person. Formerly designated as the "Computed Allowance Minimum" or "CAM," the Self-Support Reserve, as it is termed in most other states' guidelines, is intended to assure that low-income obligors retain sufficient income to meet their own basic needs, as well as to maintain the incentive to continue employment. The SSR is built into the schedule in Rule 1910.16-3 and adjusts the basic support obligation to prevent the obligor's net income from falling below \$748 per month. Because the schedule at Rule 1910.16-3 applies to child support only, Rule 1910.16-2(e)(1)(B) provides for a similar adjustment in spousal support and alimony pendente lite cases to assure that the obligor retains a minimum of \$748 per month.

**E. Shared Custody.** Prior to the amendments effective in April of 1999, there was no formula or procedure for deviating from the basic support guidelines when custody was shared equally or the non-custodial parent has substantial partial custody. The former guidelines provided that the obligor's support obligation should be reduced only if he or she spent "an unusual amount of time with the children."

As part of the review process that resulted in the 1999 amendments, the committee considered the practices of several other jurisdictions and ultimately selected a method which gave some recognition to the shift in child-related expenditures that occurs when the obligor spends a substantial amount of time with the children. While recognizing that it was not a perfect solution to the problem of establishing support obligations in the context of substantial or shared custody, it was preferable to the diverse offset methods which had been developed by local courts. Its chief advantage was that it provided statewide uniformity and avoided a sharp reduction in the obligation at certain thresholds. At that time, the committee was unaware of any existing model that did not create some "cliff effect" at some level of income.

Nevertheless, there were many critics of the method and the committee listened carefully to their concerns. The committee continued to study the issue and examine other models. The committee learned that Pennsylvania's guidelines gave less credit to obligors for increased time with the children than other states. As a result, the committee recommended the adoption of a model similar to one that has been used in other states for several years.

The basic child support schedule at Pa.R.C.P. 1910.16-3 is based upon studies of expenditures on children in intact households; therefore, there is no consideration of the costs the obligor assumes when he or she exercises visitation or partial or shared custody. The amendments to Pa.R.C.P. 1910.16-4(c) assume that there will be no reduction in the basic amount of support if the obligor spends less than four days per year with the child. However, there will be incremental reductions in the

basic support obligation when the obligor is with the child four or more days per year, up to a maximum reduction of just under 50%. Because the reduction in the support obligation is in numerous increments, there is no sharp drop in the amount of support as a result of any particular custodial schedule.

Finally, in terms of calculating the obligor's custodial time, the reliance solely on overnights provided uniformity and expediency, but did not account for varying employment schedules or other reasons why a non-custodial parent may, for example, have custody of a child for fifty percent of the time, but only twenty percent of the overnights. The expanded definition of "days" for purposes of calculating custodial time is intended to achieve a more realistic determination of the time a child actually spends with each parent. The model also uses "net" rather than "gross" custodial time, excluding time that the children are in school or child care.

**F. Varying Custodial Schedules.** New provisions at Rule 1910.16-4(d)(4) address situations in which the parties have more than one child and the children spend different amounts of time with the obligor. For example, the parties may share custody of one child equally, but another child sees the obligor only on weekends. The rules previously did not address the calculation of support in such cases. Pursuant to the amendments, the different shared parenting adjustments will be averaged.

**G. Child Care Expenses.** Rule 1910.16-6(a) has been amended to provide that child care expenses incurred by both parties shall be apportioned between the parties in recognition of the fact that a non-custodial parent may also incur such expenses during his or her custodial periods with the children.

**H. Other Amendments.** All of the examples in the guidelines have been updated to reflect the changes to the basic child support schedule. Prior explanatory comments have been deleted or revised and incorporated into new comments.

**Rule 1910.16-2. Support Guidelines. Calculation of Net Income.**

The amount of support to be awarded is based in large part upon the parties' monthly net income.

(a) *Monthly Gross Income.* Monthly gross income is ordinarily based upon at least a six-month average of all of a party's income. The term "income" is defined by the support law, 23 Pa.C.S. § 4302, and includes income from any source. The statute lists many types of income including, but not limited to:

\* \* \* \* \*

(6) [social security] Social Security disability benefits, [social security] Social Security retirement benefits, temporary and permanent disability benefits, workers' compensation and unemployment compensation;

\* \* \* \* \*

(b) *Treatment of Public Assistance, SSI Benefits and Social Security Payments to a Child Due to a Parent's Disability or Retirement.*

\* \* \* \* \*

(2) If a child for whom support is sought is receiving [ **social security** ] **Social Security** retirement or disability derivative benefits as a result of a parent's age or disability, the benefits the child receives shall be added to the combined monthly net incomes of the obligor and obligee to calculate the income available for support on the vertical axis of the basic child support schedule set forth in Rule 1910.16-3. The presumptive amount of support as set forth on the schedule at the combined income of obligee, obligor and child's benefits shall then be reduced by the amount of the child's [ **social security** ] **Social Security** or disability derivative benefits before apportioning the remaining support obligation between the parties pursuant to Rule 1910.16-4.

*Example.* If the obligor has net monthly income of \$1200 per month; the obligee has net monthly income of \$800; and the child receives [ **social security** ] **Social Security** derivative benefits of \$300 per month as a result of either the obligor's or obligee's retirement or disability, then the total combined monthly net income is \$2,300. Using the schedule at Rule 1910.16-3 for one child, the amount of support is \$[ **539** ] **568** per month. From that amount, subtract the amount the child is receiving in [ **social security** ] **Social Security** derivative benefits (\$[ **539** ] **568** minus \$300 equals \$[ **239** ] **268**). Then, apply the formula at Rule 1910.16-4 to apportion the remaining child support amount of \$[ **239** ] **268** between the obligor and the obligee in proportion to their respective incomes. Obligor's \$1200 net income per month is 60% of the total of obligor's and obligee's combined net monthly income. Thus, obligor's support obligation would be 60% of \$[ **239** ] **268**, or \$[ **143.40** ] **161**, per month.

**Official Note:** Care must be taken to distinguish Social Security from Supplemental Security Income (SSI) benefits. Social Security benefits are income pursuant to subdivision (a) of this [ **Rule** ] **rule**.

(c) *Monthly Net Income.*

(1) Unless otherwise provided in these [ **Rules** ] **rules**, the court shall deduct only the following items from monthly gross income to arrive at net income:

\* \* \* \* \*

(d) *Reduced or Fluctuating Income.*

(1) *Voluntary Reduction of Income.* [ **Where a** ] **When either party voluntarily assumes a lower paying job, quits a job, leaves employment, changes occupations or changes employment status to pursue an education, or is fired for cause**, there generally will be no effect on the support obligation. [ **A party will ordinarily not be relieved of a support obligation by voluntarily quitting work or by being fired for cause.** ]

**Official Note:** This provision applies to the establishment as well as modification of a support obligation. To the extent that *Klahold v. Kroh*, 437 Pa. Super. 150, 649 A.2d 701 (1994) implies otherwise, it is overruled. ]

(2) *Involuntary Reduction of, and Fluctuations in, Income.* No adjustments in support payments will be made for normal fluctuations in earnings. However, appropriate adjustments will be made for substantial continuing involuntary decreases in income, **including but not limited to the result of illness, lay-off, termina-**

**tion, job elimination or some other employment situation over which the party has no control.**

\* \* \* \* \*

(4) [ **Income Potential** ] **Earning Capacity.** Ordinarily, a party who [ **wilfully** ] **willfully** fails to obtain appropriate employment **when the opportunity is available** will be considered to have an income equal to the party's earning capacity. Age, education, training, health, work experience, earnings history and child care responsibilities are factors which shall be considered in determining earning capacity.

(e) *Net Income Affecting Application of the Child Support Guidelines.*

(1) *Low Income Cases.*

(A) When the obligor's monthly net income and corresponding number of children fall into the shaded area of the schedule set forth in Rule 1910.16-3, the basic child support obligation shall be calculated using the obligor's income only. For example, where obligor has monthly net income of \$[ **750** ] **850**, the presumptively correct amount of support for three children is \$[ **184** ] **94** per month. This amount is determined directly from the schedule in Rule 1910.16-3.

(B) In computing a basic spousal support or alimony pendente lite obligation, the presumptively correct amount of support shall not reduce the obligor's net income below \$[ **550** ] **748** per month. For example, if the obligor earns \$[ **600** ] **800** per month and the obligee earns \$300 per month, the formula in Part IV of Rule 1910.16-4 would result in a support obligation of \$[ **120** ] **200** per month. Since this amount leaves the obligor with only \$[ **480** ] **600** per month, it must be adjusted so that obligor retains at least \$[ **550** ] **748** per month. The presumptively correct minimum amount of spousal support, therefore, is \$[ **50** ] **52** per month in this case.

(C) When the obligor's monthly net income is \$[ **550** ] **748** or less, the court may award support only after consideration of the obligor's actual living expenses.

(2) *High Income Child Support Cases.* When the parties' combined net income exceeds \$[ **15,000** ] **20,000** per month, child support shall be calculated pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984). The presumptive minimum amount of child support shall be the obligor's percentage share of the highest amount of support which can be derived from the schedule for the appropriate number of children and using the parties' actual combined income to determine the obligor's percentage share of this amount. The court may award an additional amount of child support based on the parties' combined income and the factors set forth in *Melzer*. The *Melzer* analysis in high income child support cases shall be applied to all of the parties' income, not just to the amount of income exceeding \$[ **15,000** ] **20,000** per month. In a *Melzer* analysis case, the presumptive minimum remains applicable.

For example, where the obligor and the obligee have monthly net incomes of \$17,000 and \$4,000 respectively, the presumptive minimum amount of child support for three children is calculated as follows: using the formula in Rule 1910.16-4, determine the parties' percentage shares of income based on their actual combined income—81% and 19% respectively of \$21,000. Using the schedule in Rule 1910.16-3, find the highest possible combined

child support obligation for three children—\$[ 3,480 ] 3,018. [ Obligor's ] The obligor's percentage share of the combined obligation is 81% of \$[ 3,480 ] 3,018, or \$[ 2,818 ] 2,445. This is the presumptive minimum amount of child support that he or she must pay for three children. Since this amount is derived from the schedule in Rule 1910.16-3, which is limited to combined household income of \$[ 15,000 ] 20,000, the court may award an additional amount of support based on the factors set forth in *Melzer*.

\* \* \* \* \*

#### [ Explanatory Comment—1998

This new Rule consolidates all of the income provisions which formerly appeared throughout Rule 1910.16-5. Subdivision (a) specifies what is gross income for purposes of calculating the support obligation. In conformity with the recently expanded definition of income under 23 Pa.C.S. § 4322, income includes bonuses, lottery winnings, income tax refunds, insurance compensation or settlements, awards or verdicts and any form of payment due and collectible regardless of source.

Subdivision (c) sets forth the exclusive list of the deductions that may be taken from gross income in arriving at a party's net income. When the cost of health insurance premiums is treated as an additional expense subject to allocation between the parties under Rule 1910.16-6, it is no longer deductible from gross income. However, part or all of the cost of health insurance premiums may be deducted from the obligor's gross income pursuant to Rule 1910.16-6(b) in cases in which the obligor is paying the premiums and the obligee has no income or minimal income. Subdivision (c) also incorporates former Rule 1910.16-5(o) relating to awards of spousal support or APL when there are multiple families. In these cases, a party's net income must be reduced further to account for his or her child support obligations as well as any pre-existing spousal support, APL or alimony obligations being paid to former spouses who are not the subject of the support action.

Subdivision (e) reflects the Computed Allowance Minimum (CAM) in low-income child support cases. When the obligor's net monthly income or earning capacity falls into the shaded area of the schedule, the basic child support obligation can be derived directly from the schedule in Rule 1910.16-3. There is no need to use the formula in Rule 1910.16-4 to calculate obligor's support obligation because the CAM keeps the amount of the obligation the same regardless of obligee's income. Obligee's income may be a relevant factor, however, in determining whether to deviate from the basic guideline obligation pursuant to Rule 1910.16-5 and in considering whether to require the obligor to contribute to any additional expenses under Rule 1910.16-6.

Since the schedule in Rule 1910.16-3 reflects child support only, subdivision (e)(1)(B) is necessary to reflect the operation of CAM in spousal support and alimony pendente lite cases. It adjusts the basic guideline obligation which would otherwise be calculated under the formula in Rule 1910.16-4 so that the obligor does not fall below \$550 per month in these cases.

When the obligor's monthly net income is less than \$550, subsection (1)(C) provides that the court

must consider the parties' actual living expenses before awarding support. The guidelines assume that at this income level the obligor is barely able to meet basic personal needs. In these cases, therefore, entry of a minimal order is appropriate. In some cases, it may not be appropriate to order support at all.

The CAM amount is only the presumptively correct amount of basic support to be awarded. If the circumstances warrant, the court may deviate from that amount under Rule 1910.16-5 and may also consider the party's contribution to the additional expenses, which are typically added to the basic amount of support under Rule 1910.16-6. If, for example, the obligor earns only \$600 per month but is living with his or her parents, or has remarried and is living with a fully-employed spouse, the court may consider an upward deviation under Rule 1910.16-5(b)(3) and/or may order the party to contribute to the additional expenses under Rule 1910.16-6. Consistent with the goals of CAM, however, the court should ensure that the overall support obligation leaves obligor with sufficient income to meet basic personal needs and to maintain the incentive to continue working so that support can be paid.

Subdivision (e) also reflects the limited application of *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984) to cases in which the guidelines cannot be used to establish the child support obligation because the parties' combined income exceeds \$15,000 per month. The court must establish a presumptive minimum amount of child support using the guidelines to arrive at that amount. The formula for calculating the presumptive minimum amount has been modified slightly to clarify that the parties' percentage shares should be calculated using their actual combined income rather than theoretical combined income of only \$15,000. This change eliminates many of the inequities and inconsistencies that arose under the previous formula for determining this amount. In considering whether to award an additional amount of child support, the court must use the factors set forth in *Melzer*. It would be improper to apply the formula in Rule 1910.16-4 to the amount of the parties' combined income which exceeds \$15,000 per month and award the obligor's percentage share as additional support. Additional support, if any, may be more or less than the percentage share and must be determined, therefore, in accordance with the factors set forth in *Melzer*.

#### Explanatory Comment—2000

This rule has been amended to reflect the fact that the chart of proportional expenditures formerly set forth at Rule 1910.16-3(b) has been rescinded. In addition, the rule and Explanatory Comment have been revised to clarify that the factors set forth in *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), must be applied by considering all of the parties' combined income, not just the amount over \$15,000 per month. The presumptive minimum shall apply even if the *Melzer* analysis results in a figure lower than the presumptive minimum. ]

#### Explanatory Comment—2004

Subdivision (a) addresses gross income for purposes of calculating the support obligation by refer-

ence to the statutory definition at 23 Pa.C.S. § 4322. Subdivision (b) provides for the treatment of public assistance, SSI benefits and Social Security derivative benefits.

Subdivision (c) sets forth the exclusive list of the deductions that may be taken from gross income in arriving at a party's net income. When the cost of health insurance premiums is treated as an additional expense subject to allocation between the parties under Rule 1910.16-6, it is not deductible from gross income. However, part or all of the cost of health insurance premiums may be deducted from the obligor's gross income pursuant to Rule 1910.16-6(b) in cases in which the obligor is paying the premiums and the obligee has no income or minimal income. Subdivision (c) relates to awards of spousal support or alimony pendente lite when there are multiple families. In these cases, a party's net income must be reduced to account for his or her child support obligations, as well as any pre-existing spousal support, alimony pendente lite or alimony obligations being paid to former spouses who are not the subject of the support action.

Subdivision (d) has been amended to clarify the distinction between voluntary and involuntary changes in income. Since the payment of support is a priority, subsection (1) reflects current case law which, for example, holds that a party's decision to forego current employment in order to further his or her education should be treated no differently than a decision to change jobs or occupations which results in a lower income. *Kersey v. Jefferson*, 791 A.2d 419 (Pa. Super. 2002); *Grimes v. Grimes*, 596 A.2d 240 (Pa. Super. 1991).

Subdivision (e) has been amended to reflect the updated schedule in Rule 1910.16-3 and the increase in the Self-Support Reserve ("SSR"), formerly referred to as the Computed Allowance Minimum ("CAM"). The schedule now applies to all cases in which the parties' combined net monthly income is \$20,000 or less. The upper income limit of the prior schedule was only \$15,000. The amount of support at each income level of the schedule also has changed, so the examples in Rule 1910.16-2 were revised to be consistent with the new support amounts.

The SSR is intended to assure that obligors with low incomes retain sufficient income to meet their basic needs and to maintain the incentive to continue employment. When the obligor's net monthly income or earning capacity falls into the shaded area of the schedule, the basic child support obligation can be derived directly from the schedule in Rule 1910.16-3. There is no need to use the formula in Rule 1910.16-4 to calculate the obligor's support obligation because the SSR keeps the amount of the obligation the same regardless of the obligee's income. The obligee's income may be a relevant factor, however, in determining whether to deviate from the basic guideline obligation pursuant to Rule 1910.16-5 and in considering whether to require the obligor to contribute to any additional expenses under Rule 1910.16-6.

Since the schedule in Rule 1910.16-3 sets forth basic child support only, subdivision (e)(1)(B) is necessary to reflect the operation of the SSR in spousal support and alimony pendente lite cases. It adjusts the basic guideline obligation, which would

otherwise be calculated under the formula in Rule 1910.16-4, so that the obligor's income does not fall below the SSR amount in these cases.

Previously, the CAM required that the obligor retain at least \$550 per month. The SSR now requires that the obligor retain income of at least \$748 per month, an amount equal to the 2003 federal poverty level for one person. When the obligor's monthly net income is less than \$748, subsection (e)(1)(C) provides that the court must consider the parties' actual living expenses before awarding support. The guidelines assume that at this income level the obligor is barely able to meet basic personal needs. In these cases, therefore, entry of a minimal order may be appropriate. In some cases, it may not be appropriate to order support at all.

The schedule at Rule 1910.16-3 sets forth the presumptive amount of basic child support to be awarded. If the circumstances warrant, the court may deviate from that amount under Rule 1910.16-5 and may also consider a party's contribution to additional expenses, which are typically added to the basic amount of support under Rule 1910.16-6. If, for example, the obligor earns only \$800 per month but is living with his or her parents, or has remarried and is living with a fully-employed spouse, the court may consider an upward deviation under Rule 1910.16-5(b)(3) and/or may order the party to contribute to the additional expenses under Rule 1910.16-6. Consistent with the goals of the SSR, however, the court should ensure that the overall support obligation leaves the obligor with sufficient income to meet basic personal needs and to maintain the incentive to continue working so that support can be paid.

Subdivision (e) also reflects the limited application of *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), to cases in which the guidelines cannot be used to establish the child support obligation because the parties' combined income exceeds \$20,000 per month. The court must establish a presumptive minimum amount of child support using the guidelines to arrive at that amount. The formula for calculating the presumptive minimum amount provides that the parties' percentage shares should be calculated using their actual combined income rather than the theoretical combined income of only \$20,000. In considering whether to award an additional amount of child support, the court must apply the factors set forth in *Melzer* to all of the parties' combined income, not just the amount over \$20,000 per month. It would be improper to apply the formula in Rule 1910.16-4 to the amount of the parties' combined income which exceeds \$20,000 per month and award the obligor's percentage share as additional support. Additional support, if any, may be more or less than the percentage share and must be determined, therefore, in accordance with the factors set forth in *Melzer*. The presumptive minimum shall apply even if the *Melzer* analysis results in a lower amount.

**Rule 1910.16-3. Support Guidelines. Basic Child Support Schedule.**

The following schedule sets forth the amounts spent on children in intact families by combined income and number of children. Combined income is on the vertical axis of the schedule and number of children is on the

horizontal axis of the schedule. This schedule is used to find the basic child support obligation. Unless otherwise provided in these [ **Rules** ] rules, the obligor's share of the basic support obligation shall be computed using the formula set forth in Part I of Rule 1910.16-4.

(*Editor's Note:* As part of this proposed rulemaking, the chart in Rule 1910.16-3 is proposed to be replaced with the following chart. It currently appears in 231 Pa. Code pages 1910-20—1910-38, serial pages (285536), (251729) to (251744) and (270817) to (270818).)

<b>Monthly Basic Child Support Schedule</b>						
<b>COMBINED ADJUSTED NET INCOME</b>	<b>ONE CHILD</b>	<b>TWO CHILDREN</b>	<b>THREE CHILDREN</b>	<b>FOUR CHILDREN</b>	<b>FIVE CHILDREN</b>	<b>SIX CHILDREN</b>
0-800	50	50	50	50	50	50
850	92	93	94	95	96	97
900	137	138	140	141	143	144
950	182	184	186	188	190	192
1000	227	229	232	234	237	239
1050	271	275	278	281	284	287
1100	284	320	324	327	331	334
1150	296	366	370	374	378	382
1200	309	411	416	420	425	429
1250	322	455	462	467	472	477
1300	335	472	508	513	519	524
1350	348	490	554	560	566	572
1400	360	508	589	606	613	619
1450	373	526	610	653	660	667
1500	386	544	630	699	707	714
1550	397	560	648	723	754	762
1600	409	575	666	743	801	809
1650	421	591	684	763	839	857
1700	432	607	702	783	861	904
1750	444	623	720	803	883	952
1800	455	638	738	822	905	984
1850	467	654	756	842	927	1008
1900	479	670	773	862	949	1032
1950	490	685	790	881	969	1055
2000	501	700	807	900	990	1077
2050	512	715	824	918	1010	1099
2100	523	729	840	937	1031	1121
2150	534	744	857	955	1051	1143
2200	545	759	873	974	1071	1166
2250	557	774	890	992	1092	1188
2300	568	789	907	1011	1112	1210
2350	579	804	924	1030	1133	1233
2400	591	820	942	1051	1156	1257
2450	603	837	961	1071	1179	1282
2500	615	853	979	1092	1201	1307
2550	626	869	998	1113	1224	1332
2600	638	886	1017	1134	1247	1357
2650	650	902	1035	1154	1270	1381
2700	662	918	1054	1175	1292	1406
2750	674	935	1072	1196	1315	1431
2800	684	949	1088	1213	1335	1452
2850	694	962	1103	1230	1353	1472

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
2900	704	976	1118	1246	1371	1492
2950	714	989	1133	1263	1389	1511
3000	724	1003	1147	1279	1407	1531
3050	734	1016	1162	1296	1425	1551
3100	744	1029	1177	1312	1443	1570
3150	754	1043	1192	1329	1461	1590
3200	763	1054	1204	1342	1477	1607
3250	767	1059	1207	1346	1481	1611
3300	772	1063	1211	1350	1485	1616
3350	776	1068	1214	1354	1489	1620
3400	781	1072	1218	1358	1494	1625
3450	785	1077	1221	1362	1498	1630
3500	790	1081	1225	1365	1502	1634
3550	794	1086	1228	1369	1506	1639
3600	798	1090	1231	1373	1510	1643
3650	804	1096	1237	1380	1518	1651
3700	809	1103	1245	1388	1526	1661
3750	815	1110	1252	1396	1535	1670
3800	820	1117	1259	1403	1544	1680
3850	826	1123	1266	1411	1552	1689
3900	831	1130	1273	1419	1561	1699
3950	837	1137	1280	1427	1570	1708
4000	843	1144	1287	1435	1579	1717
4050	848	1151	1294	1443	1587	1727
4100	854	1158	1302	1452	1597	1738
4150	860	1165	1310	1461	1607	1748
4200	866	1173	1318	1469	1616	1759
4250	872	1180	1326	1478	1626	1769
4300	878	1187	1334	1487	1636	1780
4350	884	1194	1341	1496	1645	1790
4400	890	1202	1349	1504	1655	1800
4450	896	1209	1357	1513	1665	1811
4500	902	1216	1365	1522	1674	1821
4550	908	1224	1373	1531	1684	1832
4600	914	1231	1381	1539	1693	1842
4650	920	1238	1389	1548	1703	1853
4700	924	1243	1394	1554	1709	1860
4750	925	1245	1395	1555	1711	1861
4800	927	1246	1396	1557	1713	1863
4850	928	1248	1398	1558	1714	1865
4900	930	1249	1399	1560	1716	1867
4950	931	1251	1400	1561	1717	1869
5000	933	1253	1402	1563	1719	1870
5050	934	1254	1403	1564	1721	1872
5100	936	1256	1404	1566	1722	1874
5150	937	1257	1406	1567	1724	1876

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
5200	939	1259	1407	1569	1726	1877
5250	940	1261	1408	1570	1727	1879
5300	942	1262	1410	1572	1729	1881
5350	943	1264	1411	1573	1731	1883
5400	945	1265	1412	1575	1732	1885
5450	946	1267	1414	1576	1734	1886
5500	948	1268	1415	1578	1735	1888
5550	952	1273	1420	1583	1742	1895
5600	959	1283	1431	1595	1755	1909
5650	966	1292	1441	1607	1768	1923
5700	973	1302	1452	1619	1780	1937
5750	980	1312	1462	1630	1793	1951
5800	988	1321	1473	1642	1806	1965
5850	995	1331	1483	1654	1819	1979
5900	1002	1340	1494	1666	1832	1993
5950	1009	1350	1504	1677	1845	2007
6000	1016	1359	1515	1689	1858	2021
6050	1023	1369	1525	1701	1871	2035
6100	1030	1379	1536	1712	1884	2049
6150	1038	1388	1546	1724	1897	2063
6200	1045	1398	1557	1736	1909	2077
6250	1052	1407	1567	1748	1922	2092
6300	1059	1417	1578	1759	1935	2106
6350	1066	1426	1588	1771	1948	2120
6400	1072	1435	1597	1781	1959	2132
6450	1077	1441	1604	1788	1967	2140
6500	1082	1447	1610	1796	1975	2149
6550	1087	1454	1617	1803	1983	2158
6600	1092	1460	1624	1810	1991	2167
6650	1097	1466	1630	1818	1999	2175
6700	1102	1473	1637	1825	2008	2184
6750	1107	1479	1643	1832	2016	2193
6800	1112	1485	1650	1840	2024	2202
6850	1117	1491	1657	1847	2032	2211
6900	1122	1498	1663	1854	2040	2219
6950	1127	1504	1670	1862	2048	2228
7000	1132	1510	1676	1869	2056	2237
7050	1137	1517	1683	1876	2064	2246
7100	1142	1523	1690	1884	2072	2255
7150	1147	1529	1696	1891	2080	2263
7200	1152	1536	1703	1898	2088	2272
7250	1157	1542	1709	1906	2096	2281
7300	1162	1548	1716	1913	2104	2290
7350	1167	1555	1722	1921	2113	2298
7400	1172	1561	1729	1928	2121	2307
7450	1177	1567	1736	1935	2129	2316

<i>Monthly Basic Child Support Schedule</i>						
<b>COMBINED ADJUSTED NET INCOME</b>	<b>ONE CHILD</b>	<b>TWO CHILDREN</b>	<b>THREE CHILDREN</b>	<b>FOUR CHILDREN</b>	<b>FIVE CHILDREN</b>	<b>SIX CHILDREN</b>
7500	1182	1573	1742	1943	2137	2325
7550	1187	1580	1749	1950	2145	2334
7600	1192	1586	1755	1957	2153	2342
7650	1197	1592	1762	1965	2161	2351
7700	1202	1598	1768	1971	2169	2359
7750	1206	1604	1774	1978	2176	2367
7800	1210	1609	1780	1985	2183	2375
7850	1214	1615	1786	1992	2191	2384
7900	1219	1620	1792	1998	2198	2392
7950	1223	1626	1798	2005	2206	2400
8000	1227	1631	1804	2012	2213	2408
8050	1231	1637	1810	2019	2220	2416
8100	1235	1642	1816	2025	2228	2424
8150	1240	1648	1822	2032	2235	2432
8200	1244	1653	1828	2039	2243	2440
8250	1248	1659	1835	2045	2250	2448
8300	1252	1664	1841	2052	2257	2456
8350	1257	1670	1847	2059	2265	2464
8400	1261	1675	1853	2066	2272	2472
8450	1265	1681	1859	2072	2280	2480
8500	1269	1686	1865	2079	2287	2488
8550	1273	1692	1871	2086	2295	2496
8600	1278	1697	1877	2093	2302	2504
8650	1282	1703	1883	2099	2309	2513
8700	1286	1708	1889	2106	2317	2521
8750	1290	1714	1895	2113	2324	2529
8800	1295	1719	1901	2120	2332	2537
8850	1299	1725	1907	2126	2339	2545
8900	1303	1730	1913	2133	2346	2553
8950	1307	1736	1919	2140	2354	2561
9000	1311	1741	1925	2147	2361	2569
9050	1316	1747	1931	2153	2369	2577
9100	1320	1752	1937	2160	2376	2585
9150	1324	1758	1943	2167	2383	2593
9200	1328	1763	1949	2173	2391	2601
9250	1333	1769	1955	2180	2398	2609
9300	1337	1775	1961	2187	2406	2617
9350	1341	1780	1967	2194	2413	2625
9400	1345	1786	1973	2200	2420	2633
9450	1349	1791	1980	2207	2428	2642
9500	1354	1797	1986	2214	2435	2650
9550	1358	1802	1992	2221	2443	2658
9600	1362	1807	1996	2226	2449	2664
9650	1365	1811	2001	2231	2454	2670
9700	1369	1815	2005	2235	2459	2675
9750	1372	1819	2009	2240	2464	2681

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
9800	1376	1823	2013	2244	2469	2686
9850	1379	1827	2017	2249	2474	2692
9900	1383	1832	2021	2253	2479	2697
9950	1386	1836	2025	2258	2484	2702
10000	1390	1840	2029	2263	2489	2708
10050	1393	1844	2033	2267	2494	2713
10100	1397	1848	2037	2272	2499	2719
10150	1400	1852	2042	2276	2504	2724
10200	1404	1856	2046	2281	2509	2730
10250	1407	1860	2050	2285	2514	2735
10300	1411	1865	2054	2290	2519	2741
10350	1414	1869	2058	2295	2524	2746
10400	1418	1873	2062	2299	2529	2752
10450	1421	1877	2066	2304	2534	2757
10500	1425	1881	2070	2308	2539	2763
10550	1428	1885	2074	2313	2544	2768
10600	1432	1889	2078	2317	2549	2774
10650	1435	1894	2083	2322	2554	2779
10700	1439	1898	2087	2327	2559	2784
10750	1442	1902	2091	2331	2564	2790
10800	1446	1906	2095	2336	2569	2795
10850	1449	1910	2099	2340	2574	2801
10900	1453	1914	2103	2345	2579	2806
10950	1456	1918	2107	2349	2584	2812
11000	1460	1922	2111	2354	2589	2817
11050	1464	1927	2115	2359	2594	2823
11100	1467	1931	2119	2363	2599	2828
11150	1471	1935	2124	2368	2604	2834
11200	1474	1939	2128	2372	2610	2839
11250	1478	1943	2132	2377	2615	2845
11300	1481	1947	2136	2381	2620	2850
11350	1485	1951	2140	2386	2625	2856
11400	1488	1956	2144	2391	2630	2861
11450	1492	1960	2148	2395	2635	2866
11500	1495	1964	2152	2400	2640	2872
11550	1499	1968	2156	2404	2645	2877
11600	1502	1972	2160	2409	2650	2883
11650	1506	1976	2164	2413	2655	2888
11700	1509	1980	2169	2418	2660	2894
11750	1513	1984	2173	2423	2665	2899
11800	1516	1989	2177	2427	2670	2905
11850	1520	1993	2181	2432	2675	2910
11900	1523	1997	2185	2436	2680	2916
11950	1527	2001	2189	2441	2685	2921
12000	1530	2005	2193	2445	2690	2927
12050	1534	2009	2197	2450	2695	2932

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
12100	1537	2013	2201	2455	2700	2938
12150	1541	2018	2205	2459	2705	2943
12200	1544	2022	2210	2464	2710	2948
12250	1548	2026	2214	2468	2715	2954
12300	1551	2030	2218	2473	2720	2959
12350	1555	2034	2222	2477	2725	2965
12400	1558	2038	2226	2482	2730	2970
12450	1562	2042	2230	2486	2735	2976
12500	1565	2046	2234	2491	2740	2981
12550	1569	2051	2238	2496	2745	2987
12600	1572	2055	2242	2500	2750	2992
12650	1576	2059	2246	2505	2755	2998
12700	1579	2063	2251	2509	2760	3003
12750	1583	2067	2255	2514	2765	3009
12800	1586	2071	2259	2518	2770	3014
12850	1590	2075	2263	2523	2775	3020
12900	1593	2080	2267	2528	2780	3025
12950	1597	2084	2271	2532	2785	3030
13000	1600	2088	2275	2537	2790	3036
13050	1604	2092	2279	2541	2795	3041
13100	1607	2096	2283	2546	2800	3047
13150	1611	2100	2287	2550	2805	3052
13200	1614	2104	2291	2555	2811	3058
13250	1618	2108	2296	2560	2816	3063
13300	1622	2113	2300	2564	2821	3069
13350	1625	2117	2304	2569	2826	3074
13400	1629	2121	2308	2573	2831	3080
13450	1632	2125	2312	2578	2836	3085
13500	1636	2129	2316	2582	2841	3091
13550	1639	2133	2320	2587	2846	3096
13600	1643	2137	2324	2592	2851	3102
13650	1646	2142	2328	2596	2856	3107
13700	1650	2146	2332	2601	2861	3113
13750	1653	2150	2337	2605	2866	3118
13800	1657	2154	2341	2610	2871	3123
13850	1660	2158	2345	2614	2876	3129
13900	1664	2162	2349	2619	2881	3134
13950	1667	2166	2353	2624	2886	3140
14000	1671	2170	2357	2628	2891	3145
14050	1674	2175	2361	2633	2896	3151
14100	1678	2179	2365	2637	2901	3156
14150	1681	2183	2369	2642	2906	3162
14200	1685	2187	2373	2646	2911	3167
14250	1688	2191	2378	2651	2916	3173
14300	1692	2195	2382	2656	2921	3178
14350	1695	2199	2386	2660	2926	3184

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
14400	1699	2203	2390	2665	2931	3189
14450	1702	2208	2394	2669	2936	3195
14500	1706	2212	2398	2674	2941	3200
14550	1709	2216	2402	2678	2946	3205
14600	1713	2220	2406	2683	2951	3211
14650	1716	2224	2410	2687	2956	3216
14700	1720	2228	2414	2692	2961	3222
14750	1723	2232	2418	2697	2966	3227
14800	1727	2237	2423	2701	2971	3233
14850	1730	2241	2427	2706	2976	3238
14900	1734	2245	2431	2710	2981	3244
14950	1737	2249	2435	2715	2986	3249
15000	1741	2253	2439	2719	2991	3255
15050	1806	2319	2493	2780	3058	3327
15100	1811	2325	2498	2785	3064	3334
15150	1816	2330	2503	2791	3071	3341
15200	1821	2336	2509	2797	3077	3348
15250	1826	2342	2514	2803	3084	3355
15300	1831	2347	2519	2809	3090	3362
15350	1836	2353	2525	2815	3097	3369
15400	1841	2359	2530	2821	3103	3376
15450	1846	2364	2535	2827	3110	3383
15500	1851	2370	2541	2833	3116	3390
15550	1856	2375	2546	2839	3123	3397
15600	1861	2381	2551	2845	3129	3404
15650	1866	2387	2557	2851	3136	3411
15700	1871	2392	2562	2856	3142	3419
15750	1876	2398	2567	2862	3149	3426
15800	1881	2404	2572	2868	3155	3433
15850	1886	2409	2578	2874	3162	3440
15900	1891	2415	2583	2880	3168	3447
15950	1896	2420	2588	2886	3175	3454
16000	1901	2426	2594	2892	3181	3461
16050	1906	2432	2599	2898	3188	3468
16100	1911	2437	2604	2904	3194	3475
16150	1916	2443	2610	2910	3201	3482
16200	1921	2449	2615	2916	3207	3489
16250	1926	2454	2620	2921	3214	3496
16300	1931	2460	2625	2927	3220	3503
16350	1936	2466	2631	2933	3227	3511
16400	1941	2471	2636	2939	3233	3518
16450	1946	2477	2641	2945	3240	3525
16500	1951	2482	2647	2951	3246	3532
16550	1956	2488	2652	2957	3253	3539
16600	1961	2494	2657	2963	3259	3546
16650	1966	2499	2663	2969	3266	3553

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
16700	1971	2505	2668	2975	3272	3560
16750	1976	2511	2673	2981	3279	3567
16800	1981	2516	2678	2986	3285	3574
16850	1986	2522	2684	2992	3292	3581
16900	1991	2527	2689	2998	3298	3588
16950	1996	2533	2694	3004	3305	3595
17000	2001	2539	2700	3010	3311	3603
17050	2006	2544	2705	3016	3318	3610
17100	2011	2550	2710	3022	3324	3617
17150	2016	2556	2716	3028	3331	3624
17200	2021	2561	2721	3034	3337	3631
17250	2026	2567	2726	3040	3344	3638
17300	2031	2572	2731	3046	3350	3645
17350	2036	2578	2737	3052	3357	3652
17400	2041	2584	2742	3057	3363	3659
17450	2046	2589	2747	3063	3370	3666
17500	2051	2595	2753	3069	3376	3673
17550	2056	2601	2758	3075	3383	3680
17600	2061	2606	2763	3081	3389	3687
17650	2066	2612	2769	3087	3396	3694
17700	2071	2618	2774	3093	3402	3702
17750	2076	2623	2779	3099	3409	3709
17800	2081	2629	2784	3105	3415	3716
17850	2086	2634	2790	3111	3422	3723
17900	2091	2640	2795	3117	3428	3730
17950	2096	2646	2800	3122	3435	3737
18000	2101	2651	2806	3128	3441	3744
18050	2106	2657	2811	3134	3448	3751
18100	2111	2663	2816	3140	3454	3758
18150	2116	2668	2822	3146	3461	3765
18200	2121	2674	2827	3152	3467	3772
18250	2126	2679	2832	3158	3474	3779
18300	2131	2685	2838	3164	3480	3786
18350	2136	2691	2843	3170	3487	3794
18400	2141	2696	2848	3176	3493	3801
18450	2146	2702	2853	3182	3500	3808
18500	2151	2708	2859	3187	3506	3815
18550	2156	2713	2864	3193	3513	3822
18600	2161	2719	2869	3199	3519	3829
18650	2166	2725	2875	3205	3526	3836
18700	2171	2730	2880	3211	3532	3843
18750	2176	2736	2885	3217	3539	3850
18800	2181	2741	2891	3223	3545	3857
18850	2186	2747	2896	3229	3552	3864
18900	2191	2753	2901	3235	3558	3871
18950	2196	2758	2906	3241	3565	3878

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
19000	2201	2764	2912	3247	3571	3886
19050	2206	2770	2917	3253	3578	3893
19100	2211	2775	2922	3258	3584	3900
19150	2216	2781	2928	3264	3591	3907
19200	2221	2786	2933	3270	3597	3914
19250	2226	2792	2938	3276	3604	3921
19300	2231	2798	2944	3282	3610	3928
19350	2236	2803	2949	3288	3617	3935
19400	2241	2809	2954	3294	3623	3942
19450	2246	2815	2959	3300	3630	3949
19500	2251	2820	2965	3306	3636	3956
19550	2256	2826	2970	3312	3643	3963
19600	2261	2831	2975	3318	3649	3970
19650	2266	2837	2981	3323	3656	3977
19700	2271	2843	2986	3329	3662	3985
19750	2276	2848	2991	3335	3669	3992
19800	2281	2854	2997	3341	3675	3999
19850	2286	2860	3002	3347	3682	4006
19900	2291	2865	3007	3353	3688	4013
19950	2296	2871	3012	3359	3695	4020
20000	2301	2877	3018	3365	3701	4027

[ Explanatory Comment—2000

The chart of proportional expenditures, formerly Rule 1910.16-3(b), was duplicative and is rescinded. The basic child support schedule, formerly Rule 1910.16-3(a), is now Rule 1910.16-3. ]

Explanatory Comment—2004

The schedule has been amended to reflect updated economic data. See Explanatory Comment—2004 following Rule 1910.16-1.

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

(a) The following formula shall be used to calculate the obligor's share of the basic guideline child support, spousal support and/or alimony pendente lite obligation:

*PART I. BASIC CHILD SUPPORT*

$$\begin{array}{r}
 \text{10. BASIC CHILD SUPPORT OBLIGATION} \\
 \text{OBLIGOR} \\
 * * * * * \\
 \text{[ _____ ]} \\
 \text{OBLIGEE} \\
 * * * * *
 \end{array}$$

*PART II. [ SUBSTANTIAL or ] SHARED PHYSICAL CUSTODY ADJUSTMENT, IF APPLICABLE (See subdivision (c) of this [ Rule ] rule)*

- 13. a. [ Percentage of Time Spent with Children (Divide number of overnights with obligor by 365 and multiply by 100) ] Total basic child support amount (line 10) \_\_\_\_\_ [ % ]
- b. [ Subtract 30% ] Insert and multiply by appropriate adjustment percentage from Table A or Table B in subdivision (c) of this rule × \_\_\_\_\_ [ % ]
- c. [ Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation (Subtract line 13b from line 11) ] Shared Custody Adjustment \_\_\_\_\_ [ % ]

d. [ Obligor's Adjusted Share of the Basic Monthly Support Obligation (Multiply line 13c and line 10) ] Obligor's share of basic child support obligation (line 12)

e. [ Further adjustment, if necessary under subdivision (c)(2) of this Rule ] Less shared custody adjustment (line 13c)

f. Obligor's adjusted share of the basic child support amount.

PART III. ADDITIONAL EXPENSES (See Rule 1910.16-6)

\* \* \* \* \*

15. OBLIGOR'S TOTAL MONTHLY SUPPORT OBLIGATION (Add line 12) or 13 [ (d) ] (f) or (e) if applicable) and line 14f)

PART IV. SPOUSAL SUPPORT OR APL With Dependent Children

\* \* \* \* \*

20. Less Obligor's [ Total Child Support Obligation ] unadjusted monthly share of the basic child support obligation (line [ 15 ] 12) ( )

\* \* \* \* \*

(c) Substantial or Shared Physical Custody.

[ (1) The support guidelines contemplate that the obligor has regular contact, including vacation time, with his or her children, and that he or she makes direct expenditures on behalf of the children. When, however, the children spend 40% or more of their time during the year with obligor, a rebuttable presumption exists that the obligor is entitled to a reduction in the basic support obligation to reflect this additional time. 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 obligor.

Example. Where obligor and obligee have monthly net incomes of \$5,000 and \$2,300 respectively, their combined child support obligation is \$1,784 for two children. Using the income shares formula in Part I, obligor's share of this obligation is 68%, or \$1,213. If the children spend 40% of their time with the obligor, the formula in Part II applies to reduce his or her percentage share of the combined support obligation to 58%, or \$1,034. If the children spend 45% of their time with the obligor, his or her percentage share of the combined obligation is reduced to 53%, or \$945. If the children spend equal time with both parents, the obligor's percentage share is reduced to 48%, or \$856. ]

(1) The Basic Child Support Schedule set forth in Rule 1910.16-3 is based upon expenditures for children in intact households and does not take into consideration the costs associated with shared custody and visitation. When the children are with the non-custodial parent, a portion of the costs normally expended for them by the custodial parent shifts to the non-custodial parent. Accordingly, when the evidence establishes that the obligor is exercising his or her shared or partial custodial rights or visitation, an adjustment shall be made to the obligor's proportional share of the total child support obligation as follows:

(A) First, determine the total amount of time the child spends with the obligor pursuant to court order, historical practice or agreement of the parents. Using the definitions below, add together each period of custodial time with the obligor within twenty-four hours to calculate the total number of days per year the child spends with the obligor. For purposes of this calculation, only the time spent in the care, custody and control of the obligor is considered. Time that the child is in school or child care is not considered.

(i) "One day" means more than 12 continuous and consecutive hours or an overnight.

(ii) "One-half day" means greater than four and up to and including 12 continuous and consecutive hours.

(iii) "One-quarter day" means up to and including four continuous and consecutive hours.

Example. The obligee is the primary custodian of the parties' two children. The obligor has partial custody of the children as follows:

Every other week from Thursday at 6 p.m. to Sunday at 8 p.m., except for the two weeks the children are on vacation with the obligee and the four weeks they are on vacation with the obligor. This totals three days every other week. Even though the children are in school for 6 hours on Friday, the obligor still has 3 overnights which each meets the definition of a day. Subtract six weeks vacation from 52 weeks in a year = 46 weeks. Divide by two to account for alternating weeks = 23 weeks. Multiply by three days per custodial period = 69 days per year.

Alternate Wednesdays from 4 p.m. to 9 p.m. Each period is more than four hours and counts as one-half day. 23 weeks x 1/2 day = 11 1/2 days per year.

Four weeks in the summer. Seven overnights per week x four weeks = 28 days per year.

Four overnights during the Christmas holiday from school = four days per year.

Alternating holidays from 10 a.m. to 8 p.m. One year: Easter, Fourth of July and Halloween. Next year: Memorial Day, Labor Day and Thanksgiving = three one-half days each year.

Total: 114 days per year and a .161 adjustment percentage from Table A.

(B) If there is no custody order or agreement between the parties as to the current or future custodial schedule, the provisions of this subdivision (c) shall not apply.

(C) After determining the total number of days that the child spends with the obligor, refer to Table A below. Select the range of number of days the child spends with the obligor and select the adjustment percentage from the adjacent column. Multiply the total basic child support obligation by the adjustment percentage in Table A. Then subtract the resulting product from the obligor's monthly share of the basic child support obligation.

TABLE A

<i>Number of Days Per Year With Obligor</i>	<i>Monthly Adjustment Percentage</i>
0 to 3	0
4 to 20	.012
21 to 38	.031
39 to 57	.050
58 to 72	.085
73 to 87	.105
88 to 115	.161
116 to 129	.195
130 to 142	.253
143 to 152	.307
153 to 162	.362
163 to 172	.422
173 to 182	.486

*Example.* The basic child support obligation at line 10 in the formula at Rule 1910.16-6(a) is \$500 for two children. The obligor's income is 60% of the combined incomes of the parties. Thus, the obligor's monthly share of the basic child support obligation (line 12) would be \$300 (60% of \$500). The obligor has partial custody of the children for a total of 100 days per year. In Table A, the range in this case would be 88 days to 115 days, with an adjustment percentage of .161. Multiply the total obligation by the adjustment percentage ( $\$500 \times .161 = \$80.50$ ). Then subtract the result from the obligor's share of the total obligation ( $\$300 - \$80.50 = \$219.50$ ). The obligor's share of the basic child support obligation is now \$219.50.

(D) As the number of days the child spends with the obligor approaches equal time sharing (143 days and above), certain costs usually incurred in the custodial household are assumed to be substantially or equally shared by both parents. These costs include the child's clothing, personal care items and entertainment. If this assumption is rebutted, Table B must be used to calculate the reduction in the obligor's support obligation. For example, the assumption would be rebutted if it is shown that such costs are not substantially or equally shared in each household. In Table B, locate the range of time the children spend with the obligor, and its accompanying adjustment percentage, and multiply the total child support obligation by the adjustment percentage. Subtract the result-

ing product from the obligor's proportionate share of the total child support obligation.

TABLE B

<i>Number of Days Per Year With Obligor</i>	<i>Monthly Adjustment Percentage</i>
143 to 152	.275
153 to 162	.293
163 to 172	.312
173 to 182	.331

(E) If the time spent with each parent is essentially equal, the expenses for the children are equally shared and the net monthly incomes of the parties are essentially equal, no support shall be awarded. If the parent's incomes are not equal, the total child support amount shall be divided equally between the two households and the parent with the greater income shall pay support to the other parent in an amount necessary to equalize the share of the support obligation in both households.

*Example.* Mother's income is \$1,400 per month and Father's income is \$2,600 per month. With a combined monthly net income of \$4,000, the basic child support amount from the schedule at Rule 1910.16-3 for their two children is \$1,144. Based upon their respective incomes, Mother's 35% share of the basic obligation would be \$400. Father's 65% share would be \$744. However, the parents share custody of their children equally. Subtract the lower amount of support from the higher amount ( $\$744 \text{ less } \$400 = \$344$ ), and divide the balance in half ( $\$344 \times 50\% = \$172$ ). The result, \$172, would be paid by Father to Mother such that each household would have \$572 of the total child support obligation of \$1,144.

(2) [ Without regard to which parent initiated the support action, when the children spend equal time with both parents, the Part II formula cannot be applied unless the obligor is the parent with the higher income. ] In no event shall an order be entered requiring the parent with the lower income to pay basic child support to the parent with the higher income. However, nothing in this subdivision shall prevent the entry of an order requiring the parent with less income to contribute to additional expenses pursuant to Rule 1910.16-6. Pursuant to either [ party's ] party initiating a support action, the trier of fact may enter an order against either party based upon the evidence presented without regard to which party initiated the action. [ If application of the formula in Part II results in obligee receiving a larger share of the parties' combined income in cases in which the parties share custody equally, then the court shall adjust the support obligation so that the combined income is allocated equally between the two households.

*Example.* Mother and Father have monthly net incomes of \$3,000 and \$2,000 respectively. Mother has filed for support for the parties' two children with whom they share time equally. Pursuant to the Basic Child Support Schedule at Rule 1910.16-3, the support amount for two children at their parents' combined net income level is \$1,335 per month. Mother's share is 60% of that amount, or \$801. Father's share is 40%, or \$534. Application of subdivisions a. and b. of the Part II formula results in a 20% reduction in support when each parent spends 50% of the time with the children. Because the

parties share custody equally, Mother cannot be the obligee for purposes of the Part II calculation because she has the higher income of the two parents. In these circumstances, although Mother initiated the support action, she would become the obligor even if Father has not filed for support. Father cannot be an obligor in the Part II calculations nor can the amount of support Mother is obligated to pay to Father be offset by calculating Father's adjusted amount of support under Part II because a support order cannot be entered against the parent with the lesser income. Using Mother as the obligor, her adjusted percentage share of the basic support amount is 40% ( $60\% - 20\% = 40\%$ ). Her adjusted share of the basic support amount is \$534 (40% of \$1,335). However, instead of \$534 per month, Mother's support obligation would be adjusted to \$500 per month to allocate the parties' combined income equally between the two households. This is the presumptively correct amount of basic support payable to Father under these circumstances.

*Example.* Where the obligor and obligee have monthly net incomes of \$3,000 and \$2,500 respectively, their combined child support obligation for two children is \$1,433. Obligor's share of this obligation is 55%, or \$788. If the children spend equal time with both parents, the formula in Part II results in a support obligation of \$501 payable to obligee. Since this amount gives obligee \$3,001 of the combined income, and leaves obligor with only \$2,499 of the combined income, the obligor's support obligation must be adjusted to \$250 to equalize the combined income between the parties' households. This is the presumptively correct amount of basic support payable to obligee under these circumstances.

(3) This subdivision 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. ]

(d) *Divided or Split Physical Custody and More than One Custodial Schedule.*

(1) When calculating a child support obligation, and one or more of the children [reside] resides with each party, the court shall offset the parties' respective child support obligations and award the net difference to the obligee as child support. For example, if the parties have three children, one of whom resides with [Husband] Father and two of whom reside with [Wife] Mother, and their net monthly incomes are \$1,500 and \$800 respectively, [Husband's] Father's child support obligation is calculated as follows. Using the formula with the schedule in Rule 1910.16-3 for two children, [Husband's] Father's support obligation for the two children living with [Wife] Mother is \$[508] 506. Using the formula with the schedule in Rule 1910.16-3 for one child, [Wife's] Mother's support obligation for the child living with [Husband] Father is \$[188] 273. Subtracting \$[188] 273 from \$[508] 506 produces a net basic support amount of \$[320] 233 payable to [Wife] Mother as child support.

(2) When calculating a combined child support and spousal or [APL] alimony pendente lite obligation, and one or more children reside with each party, the court

shall, except as set forth in subdivision (3) below, offset the obligor's spousal and child support obligation with the obligee's child support obligation and award the net difference to the obligee as spousal and child support.

(3) When one or more of the children resides with each party and the obligee's net income is 10% or less of the parties' combined net monthly income, then, in calculating the spousal support or [APL] alimony pendente lite obligation, the court shall deduct from the obligor's income both the support owed for the child or children residing with the obligee, as well as the direct support the obligor provides to the child or children living with the obligor, calculated in accordance with the guidelines as if the child or children were not living with the obligor.

(4) When one parent is the primary custodian, but the parties have two or more children who do not follow the same schedule with the non-custodial parent, calculate the total amount of time each schedule affords the obligor with the child, pursuant to subdivision (c) above, and locate the corresponding monthly adjustment percentage in Table A or Table B. If the different custodial schedules do not result in the same monthly adjustment percentage, then an average of the monthly adjustment percentages will apply.

*Example.* Mother is the primary custodian of the parties' two children. Father has partial custody of one child on 130 days per year, and the other 73 days per year. Mother's net monthly income is \$2,000 net per month and Father's is \$4,500 net per month. At a combined net monthly income of \$6,500, the basic child support amount for two children is \$1,447. Based upon the parties' respective incomes, Father's share is 69%, or \$998. Referring to Table A in subdivision (c) above, Father's 130 days per year with one child would result in a monthly adjustment percentage of .253 and his 73 days with the other child would result in a monthly adjustment percentage of .105. Add the monthly percentages together ( $.253 + .105 = .358$ ) and divide by the number of children ( $.358$  divided by 2 children =  $.179$ ). Multiply the total basic child support obligation by the averaged monthly adjustment percentage ( $\$1,447 \times .179 = \$259$ ). Then subtract the resulting product from Father's share of the basic child support amount ( $\$998 - \$259 = \$739$ ). Father's share of the basic child support obligation is \$739 per month.

*Example.* Mother is the primary custodian of the parties' three children. Father has partial custody of the first child 120 days per year, the second child 120 days per year and the third child for only for 30 days per year. At the same incomes as in the above example, the basic child support amount for three children from the schedule at Rule 1910.16-3 is \$1,610. Father's 69% share is \$1,111 per month. Referring to Table A in subdivision (c) above, Father's 120 days per year with the first child results in a monthly adjustment percentage of .195 and the same adjustment for the second child who also spends 120 days per year with Father. The monthly adjustment percentage for the third child with whom Father spends 30 days per year is .031. Add the monthly percentage adjustments together ( $.195 + .195 + .031 = .421$ ) and divide by the number of children ( $.421$  divided by 3 children =  $.140$ ). Multiply the total basic child support obligation by the averaged monthly adjustment percentage ( $\$1,610 \times$

.140 = \$225). Then subtract the resulting product from Father's share of the basic monthly support amount (\$1,111 - \$225 = \$886). Father's support obligation is \$886 per month.

**Example.** Mother and Father have two children. Each parent has net monthly income of \$2,000. The parties share custody of their younger child equally, but their older child is in Father's primary custody with Mother having partial custody for a total of 63 days per year. Because the parties' incomes are the same and they share custody of the younger child equally, pursuant to Rule 1910.16-4(c)(1)(E), no support would be awarded for the younger child. At the parties' combined net income of \$4,000 per month, the basic support amount for the older child from the schedule at Rule 1910.16-3 is \$843 per month. Mother's share would be 50%, or \$422. Because Mother has partial custody of the older child for 63 days per year, the monthly adjustment percentage from Table A is .085. Multiply the total basic child support obligation by the monthly adjustment percentage (\$843 × .085 = \$72). Then subtract the resulting product from Mother's share of the basic child support obligation (\$422 - \$72 = \$350). Mother's support obligation to Father for the parties' older child is \$350 per month.

(e) *Support Obligations When Custodial Parent Owes Spousal Support.* Where children are residing with the spouse obligated to pay spousal support (custodial parent) and the other spouse (non-custodial parent) has a legal obligation to support these children, the guideline amount of spousal support 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, and awarding the net difference to the non-custodial parent as spousal support.

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 to the non-custodial] parent's net monthly income is \$2,600. 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., \$[ 468 ] 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 (\$[ 468 ] 501) from the original support obligation determined in Step 1 (\$640). The recomputed spousal support is \$[ 172 ] 139.

(f) *Allocation. Consequences.*

(1) An order awarding both spousal and child support may be unallocated or state the amount of support allocable to the spouse and the amount allocable to each child. However, the formula provided by these rules [ assume ] assumes that an order will be unallocated. Therefore, if the order is to be allocated, the formula set

forth in this [ Rule ] rule shall be utilized to determine the amount of support allocable to the spouse. If allocation of an order utilizing the formula would be inequitable, the court shall make an appropriate [ allocation ] adjustment. Also, if an order is to be allocated, an adjustment shall be made to the award giving consideration to the federal income tax consequences of an allocated order as may be appropriate under the circumstances. No consideration of federal income tax consequences shall be applied if the order is unallocated or the order is for the spousal support or alimony pendente lite only.

**Official Note:** The 2004 amendment overrules *Diamant v. Diamant*, 816 A.2d 256 (Pa. Super. 2003), to the extent that it held that the tax savings from payments for the benefit of a spouse alone or from an unallocated order for the benefit of a spouse and child must be considered in determining the obligor's available net income for support purposes. Rule 1910.16-4(f)(1) states that the guidelines formula assumes that the order will be unallocated. The tax consequences of an order for a spouse alone or an unallocated order for the benefit of a spouse and child have already been built into the formula.

\* \* \* \* \*

(4) In the event that the obligor defaults on an unallocated order, the court shall allocate the order for collection of child support pursuant to the Internal Revenue Service income tax refund intercept program or for registration and enforcement of the order in another jurisdiction under the Uniform Interstate Family Support Act, 23 Pa.C.S. § 7101 et seq. The court shall provide notice of allocation to the parties.

\* \* \* \* \*

#### [ Explanatory Comment—1998

Former Rule 1910.16-4 listed the factors for deviation from the support guidelines. Those factors now appear in Rule 1910.16-5. New Rule 1910.16-4(a) sets forth the income shares formula used to establish the support obligation and consolidates the provisions which formerly appeared in Rule 1910.16-5 relating to use of the formula in special situations. The formula itself has been revised only to conform to the new schedule in Rule 1910.16-3.

Subdivision (b) incorporates former Rule 1910.16-5(e) relating to orders for more than four children. It has been changed only to reflect the expansion of the guidelines from four to six children and the use of the schedule in lieu of the grids.

Subdivision (c) sets forth the method for calculating the presumptively correct amount of support in cases where the obligor spends a substantial amount of time with the children. The method is essentially this: when the obligor spends 40% or more time with the children, his or her percentage share of the combined basic support obligation is reduced by the percentage of time spent over and above the routine partial custody/visitation arrangement. For purposes of applying this method, the Committee has designated 30% time as the routine arrangement and 40% time as the level at which the parties' expenses begin to change significantly enough to warrant a reduction in the basic support obligation. When there is equal time sharing, subsection (2) reduces the support obligation

further so that the obligor does not pay more than what is necessary to spread the parties' combined income equally between the two households. Subsection (3) expressly excludes CAM cases from application of this rule. Since the CAM already reduces support to a minimal level, no further reduction should be given for the amount of time spent with the children.

Subdivision (d) is derived from previous Rule 1910.16-5(h) relating to divided or split custody cases. The new provision has been rewritten to update the examples in conformity with the new levels of child support reflected in the schedule. It retains the existing method for offsetting the parties' respective support obligations when one or more of the children reside with each party, but eliminates the exception which previously existed in cases where one party's income was minimal and the other party's income was significantly greater. This exception was confusing as well as erroneous in its suggestion that offsetting should not be used because it would result in less than the full guideline amount of child support being paid to the party with minimal income. To the contrary, the offset method actually works to protect against this result and therefore should be used in these cases.

Subdivision (e) incorporates the substance of former Rule 1910.16-5(j) governing spousal support obligations when the custodial parent owes spousal support. It has been rewritten for greater clarity and the examples have been updated to reflect the new levels of child support and the use of the new schedule.

Subdivision (f)(1) and (2) incorporate verbatim the provisions which formerly appeared in Rule 1910.16-5(f). The guidelines continue to presume that the order will be unallocated for tax purposes. Subsection (3) is new, however, and provides for administrative allocation of the order in two instances: 1) when the obligor defaults on the order and it becomes necessary to collect support by intercepting any income tax refunds that may be due and payable to obligor and 2) when the obligor defaults and the order must be registered in another state under the Uniform Interstate Family Support Act (UIFSA). As the note indicates, this administrative allocation is not intended to affect the tax consequences of the unallocated order.

#### Explanatory Comment—2000

Subdivision (3) is new and the former subdivision (3) has been renumbered as subdivision (4). The new language is intended to insure alimony tax treatment of unallocated orders pursuant to § 71 of the Internal Revenue Code. A similar change has been made to the form order at Rule 1910.27(e). New Rule 1910.19(d) provides that all spousal support and alimony pendente lite orders terminate upon the death of the payee. Termination of a charging order does not affect arrears existing at that time.

#### Explanatory Comment—2002

The amendments to this rule add lines in the formula to facilitate calculation of child support pursuant to Rule 1910.16-2(b)(2) when the child is receiving Social Security derivative benefits due to a parent's retirement or disability. A new line also

was added to include additional expenses authorized by Rule 1910.16-6 in cases involving spouses only.]

#### Explanatory Comment—2004

Rule 1910.16-4(a) sets forth the income shares formula used to establish the support obligation. Subdivision (b) provides the method for calculating support for seven or more children as the basic support schedule in Rule 1910.16-3 sets forth the presumptively correct amount of support for only up to six children.

Subdivision (c) has been substantially changed. That subdivision now sets forth the method for calculating a reduction in the basic amount of support in cases in which the obligor has partial physical custody of the child(ren) for three or more days per year. Previously, obligors received no reduction unless they had partial physical custody of the child(ren) at least 40% of the time. See Explanatory Comment 2004 following Rule 1910.16-1 for an expanded explanation of these amendments.

Subdivision (d) relates to the calculation of support in divided or split custody cases. It retains the existing method for offsetting the parties' respective support obligations when one or more of the children resides with each party. However, subdivision (d)(4) is new and addresses the calculation of support when two or more children of the parties have different custodial schedules with the obligor.

Subdivision (e) governs spousal support obligations when the custodial parent owes spousal support. It has not been amended, other than to update the example to be consistent with the new schedule at Rule 1910.16-3.

In subdivision (f), the guidelines continue to presume that the order will be unallocated for tax purposes. However, new language has been added to subsection (f)(1), and a new Note has been inserted, to clarify that an obligor's tax savings from payment of a spousal support order or an unallocated order for a spouse and child should not be considered in calculating the obligor's available net income for support purposes. Subsection (3) is intended to insure alimony tax treatment of unallocated orders pursuant to § 71 of the Internal Revenue Code. Rule 1910.19(d) provides that all spousal support and alimony pendente lite orders terminate upon the death of the payee. Termination of a charging order does not affect arrears existing at that time. Subsection (4) provides for administrative allocation of the order in two instances: 1) when the obligor defaults on the order and it becomes necessary to collect support by intercepting any income tax refunds that may be due and payable to obligor; and 2) when the obligor defaults and the order must be registered in another state under the Uniform Interstate Family Support Act (UIFSA). As the Note indicates, this administrative allocation is not intended to affect the tax consequences of the unallocated order.

Rule 1910.16-5. Support Guidelines. Deviation.

\* \* \* \* \*

#### Explanatory Comment—[ 1998 ] 2004

[As part of the overall reorganization of the support rules, the provisions which formerly ap-

peared in Rule 1910.16-5 have been moved elsewhere. New Rule 1910.16-5 incorporates former Rule 1910.16-4 setting ] Rule 1910.16-5 sets forth the factors for deviation from the [ **presumptively correct** ] **presumptive** amount of support. Subdivision (c) and subsection (b)(8) [ **was added to** ] permit the court to consider the length of the marriage in **determining the amount and duration of** a spousal support or alimony pendente lite [ **case** ] award. The primary purpose of [ **this provision** ] **these provisions** is to prevent the unfairness that arises in a short-term marriage when the obligor is required to pay support over a substantially longer period of time than the parties were married and there is little or no opportunity for credit for these payments at the time of equitable distribution.

**Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation.**

(a) *Child care expenses.* Reasonable child care expenses paid by [ **the custodial** ] either parent, if necessary to maintain employment or appropriate education in pursuit of income, [ **are the responsibility of both parents. These expenses** ] shall be allocated between the parties in proportion to their net incomes and [ **obligor's share** ] added to his [ **or** ] and her basic support obligation. When [ **the custodial** ] a parent is receiving a child care subsidy through the Department of Public Welfare, the expenses to be allocated between the parties shall be the full unsubsidized cost of the child care, not just the amount actually paid by the [ **custodial** ] parent **receiving the subsidy**. However, if allocation of the unsubsidized amount would result in a support order that is overly burdensome to the obligor, deviation pursuant to Rule 1910.16-5 may be warranted.

**Example.** Mother has primary custody of the parties' two children and Father has partial custody of 130 days per year. Mother's monthly net income is \$2,000 and Father's is \$3,500. At their combined income level of \$5,500, the basic monthly child support from the schedule in Rule 1910.16-3 is \$1,268 for two children. As Father's income is 64% of the parties' combined income, his share is \$812. However, as Father has the children 130 days each year, his support obligation is reduced to \$491 (\$1,268 total basic obligation × .253 monthly adjustment percentage = \$321; Father's share of the total obligation \$812 - \$321 = \$491). Mother incurs child care expenses of \$400 per month and Father incurs \$100 of such expenses each month. The total amount of child care expenses, \$500, will be apportioned between the parties, with Father paying 64%, or \$320. As he is already paying \$100 for child care while the children are in his partial custody, he would pay the remaining \$220 to Mother for a total child support obligation of \$711 (\$491 + \$220 = \$711).

\* \* \* \* \*

**Official Note:** A child care subsidy provided by the Department of Public Welfare should not be used to reduce the child care expenses subject to allocation between the parties to the extent that the obligor has the financial resources to contribute to the actual costs of child care. Nor is it appropriate to order the obligee to seek a child care subsidy in order to reduce the obligor's share of child care expenses if the obligor has the financial ability to contribute to those expenses. While

public policy requires that parents, rather than taxpayers, pay for their children's child care when they are able to do so, allocation of the full unsubsidized cost of child care may result in a support order that is overly burdensome to the obligor. In those circumstances, in addition to considering deviation to relieve the burden on the obligor, the trier of fact also has the discretion to determine whether or not to include in the order other adjustments under Rule 1910.16-6, such as a mortgage contribution, which are not mandatory. No adjustment to the basic support amount shall be permitted if such would cause the obligor's remaining net monthly income to fall below the [ **Computed Allowance Minimum (CAM) of \$550** ] **Self-Support Reserve of \$748**. Implicit in the rule requiring apportionment of the unsubsidized cost of child care is recognition of the duty of the subsidy recipient to report any additional income pursuant to Department of Public Welfare regulations so that adjustments can be made to entitlements accordingly.

\* \* \* \* \*

(c) *Unreimbursed Medical Expenses.* Unreimbursed medical expenses of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes. The court may direct that the obligor's share be added to his or her basic support obligation, or paid directly to the obligee or to the health care provider.

(1) For purposes of this subdivision, medical expenses are annual unreimbursed medical expenses in excess of \$250 per person. Medical expenses include insurance co-payments and deductibles and all expenses incurred for reasonably necessary medical services and supplies, including but not limited to surgical, dental and optical services, and orthodontia. Medical expenses do not include cosmetic, chiropractic, psychiatric [ **or** ], psychological or other services unless specifically directed in the order of court.

**Official Note:** While cosmetic, chiropractic, psychiatric [ **and** ], psychological or other expenses are not required to be apportioned between the parties, the court may apportion such expenses that it determines to be reasonable and appropriate under the circumstances.

\* \* \* \* \*

(e) *Mortgage Payment.* The guidelines assume that the spouse occupying the marital residence will be solely responsible for the mortgage payment, real estate taxes, and homeowners' insurance. Similarly, the court will assume that the party occupying the marital residence will be paying the items listed unless the recommendation specifically provides otherwise. If the obligee is living in the marital residence and the mortgage payment exceeds 25% of the obligee's net income (including amounts of spousal support, [ **APL** ] **alimony pendente lite** and child support), the court may direct the obligor to assume up to 50% of the excess amount as part of the total support award. For purposes of this subdivision, the term "mortgage" shall include first mortgages, real estate taxes and homeowners' insurance and may include any subsequent mortgages, home equity loans and any other obligations incurred during the marriage which are secured by the marital residence.

[ **Explanatory Comment—1998**

**New Rule 1910.16-6 consolidates the provisions of former Rule 1910.16-5 governing the treatment of additional expenses that warrant an adjustment to the basic support obligation.**

Subdivision (a) relating child care expenses substantially incorporates former subdivision (i) of Rule 1910.16-5 with two substantive changes. First, it changes the method of allocation from one of equal shares to proportionate shares based on the parties' net incomes. Second, it reflects the federal child care tax credit that is available to the custodial parent. This credit essentially reduces the total expenses subject to allocation. For tax purposes, the actual credit can range anywhere from 20 to 30 percent depending on the custodial parent's income. For support purposes, however, the Rule assumes an average tax credit of 25 percent. Although the court may always look at the actual tax rate that applies in a particular case, it will have very little impact on the overall support award.

There are two important limitations on the use of this tax credit. First, it applies only to the first \$2,400 per year (\$200 per month) for one child or \$4,800 per year (\$400 per month) for two or more children. Only child care expenses incurred up to these amounts, therefore, are reduced by 25% before allocating them between the parties. Any remaining expenses are allocated between the parties without adjustment. Second, since the tax credit may be taken only against taxes owed, it cannot be used when the custodial parent does not incur sufficient tax liability to fully realize the credit. For this reason, subsection (2) provides that no adjustment to the total child care expenses may be made if the custodial parent's gross income falls below the thresholds set forth therein. The income thresholds are based on 1997 tax rates.

Subdivision (b) reflects a major change in the treatment of health insurance premiums. Under the old rules, the cost of health insurance was deducted from the party's gross income to determine net income. Under the new Rule, this cost is now generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. In addition, subsection (1) of the new Rule permits allocation of the entire premium, including the party's portion of the premium, when the insurance benefits the other party or the children. Subsection (2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action.

Subdivision (c) incorporates former Rule 1910.16-5(p) with four changes. First, since the first \$250 of medical expenses per year per child is built into the basic guideline amount in the child support schedule, only medical expenses in excess of \$250 per year per child are subject to allocation under this Rule as an additional expense to be added to the basic support obligation. Second, the Committee has chosen to draw this same line with respect to spousal support so that the obligee-spouse is expected to assume the first \$250 per year of these expenses and may seek contribution under this Rule only for unreimbursed expenses which exceed \$250 per year. The third change amends the definition of "medical expenses" to include insurance co-payments, deductibles and orthodontia and to exclude chiropractic services. The fourth change distinguishes between medical expenses which are recurring and predictable and those which are not. When the expenses are recurring and predictable, the court may establish a monthly amount for these

expenses and add it to the basic support obligation so that it is collectible through wage attachment.

Subdivision (d) governs apportionment of private school tuition, summer camp and other unusual needs not reflected in the basic guideline amounts of support. Whereas the old rule required these expenses to be borne by the parties in reasonable shares, the new Rule presumes allocation in proportion to the parties' net incomes consistent with the treatment of the other additional expenses.

#### Explanatory Comment—2000

Subdivision (b) has been amended to permit an alternative method for dealing with the cost of health insurance premiums in certain circumstances. In general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes. However, in cases in which the obligee has no income or minimal income, new subsection (4) authorizes the trier of fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. Under this subdivision (b) as originally promulgated, the entire cost of health insurance would have been borne by the obligor when the obligee had little or no income, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of the amendment to this subdivision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (e) has been amended to correct a drafting error in the definition of "mortgage." It always was the intention of the Committee to include in the definition the real estate taxes and homeowners' insurance referenced in the first sentence of the rule. In addition, while real estate taxes and homeowners' insurance must now be included if the trier of fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by the marital residence is within the discretion of the trier of fact based upon the circumstances of the case.

#### Explanatory Comment—2003

Subdivision (b)(2) has been amended to clarify that in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order. ]

#### Explanatory Comment—2004

Rule 1910.16-6 governs the treatment of additional expenses that warrant an adjustment to the basic support obligation.

Subdivision (a) relates to child care expenses. It has been amended to require that child care expenses incurred by either party are to be allocated between the parties in proportion to their respective net incomes. Subsection (1) reflects the federal child care tax credit that is available to the custo-

dial parent. This credit essentially reduces the total expenses subject to allocation. For tax purposes, the actual credit can range anywhere from 20 to 30 percent depending on the custodial parent's income. For support purposes, however, the rule assumes an average tax credit of 25 percent. Although the court may always look at the actual tax rate that applies in a particular case, it will have very little impact on the overall support award.

There are two important limitations on the use of this tax credit. First, it applies only to the first \$2,400 per year (\$200 per month) for one child or \$4,800 per year (\$400 per month) for two or more children. Only child care expenses incurred up to these amounts, therefore, are reduced by 25% before allocating them between the parties. Any remaining expenses are allocated between the parties without adjustment. Second, since the tax credit may be taken only against taxes owed, it cannot be used when the custodial parent does not incur sufficient tax liability to fully realize the credit. For this reason, subsection (2) provides that no adjustment to the total child care expenses may be made if the custodial parent's gross income falls below the thresholds set forth therein.

Subdivision (b) addresses health insurance premiums. The cost of the premiums is generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. Subsection (1) of the rule permits allocation of the entire premium, including the party's portion of the premium, when the insurance benefits the other party and/or the children. Subsection (2) clarifies that, in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order. Subsection (2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action. Subdivision (b) also permits an alternative method for dealing with the cost of health insurance premiums in certain circumstances. While, in general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes, in cases in which the obligee has no income or minimal income, subsection (4) authorizes the trier of fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. This is to avoid the result under a prior rule in which the entire cost of health insurance would have been borne by the obligor, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of this provision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (c) deals with unreimbursed medical expenses. Since the first \$250 of medical expenses per year per child is built into the basic guideline amount in the child support schedule, only medical expenses in excess of \$250 per year per child are subject to allocation under this rule as an addi-

tional expense to be added to the basic support obligation. The same is true with respect to spousal support so that the obligee-spouse is expected to assume the first \$250 per year of these expenses and may seek contribution under this rule only for unreimbursed expenses which exceed \$250 per year. The definition of "medical expenses" includes insurance co-payments, deductibles and orthodontia and excludes chiropractic services.

Subdivision (d) governs apportionment of private school tuition, summer camp and other unusual needs not reflected in the basic guideline amounts of support. The rule presumes allocation in proportion to the parties' net incomes consistent with the treatment of the other additional expenses.

Subdivision (e) provides for the apportionment of mortgage expenses. It defines "mortgage" to include the real estate taxes and homeowners' insurance. While real estate taxes and homeowners' insurance must be included if the trier of fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by the marital residence is within the discretion of the trier of fact based upon the circumstances of the case.

#### **Rule 1910.16-7. Support Guidelines. Awards of Child Support When There are Multiple Families.**

(a) When the total of the obligor's basic child support obligations equals fifty percent or less of his or her monthly net income, there will generally be no deviation from the guideline amount of support on the ground of the existence of a new family. For example, where the obligor requests a reduction of support for one child of the first marriage on the basis that there is a new child of the second intact marriage, and the relevant monthly net incomes are \$[ 1,500 ] 2,500 for the obligor, \$500 for the former spouse and \$1,300 for the current spouse, the request for a reduction will be denied because the total support obligation of \$[ 707 ] 1,142 (\$[ 354 ] 601 for the first child and \$[ 353 ] 541 for the second child) is less than half of the obligor's monthly net income.

(b) When the total of obligor's basic support obligations exceeds fifty percent of his or her monthly net income, the court may consider a proportional reduction of these obligations. Since, however, the goal of the guidelines is to treat each child equitably, in no event should either a first or later family receive preference. Nor shall the court divide the guideline amount for all of obligor's children among the households in which those children live.

*Example.* Obligor is sued for support of an out of wedlock child. Obligor is already paying support for two children of the first marriage, and has an intact second marriage with one child. The relevant monthly net incomes are \$1,500 for the obligor, \$1,100 for the former spouse, \$0 for the current spouse and \$1,500 for the parent of the new child. The guideline amounts for each family are \$[ 504 ] 514 for the two children of the first marriage, \$[ 359 ] 386 for the one child of the second marriage, and \$[ 332 ] 362 for the one child out of wedlock for a total support obligation of \$[ 1,195 ] 1,262. Since the total of these obligations exceeds fifty percent of the obligor's net monthly income of \$1,500 per month, the court may consider a proportional reduction of all of the orders.

*Example.* Obligor is sued for support of three children of a second marriage. There is already an order in effect

for two children of the first marriage. The relevant monthly net incomes are \$1,000 for **the** obligor, \$0 for the first spouse and \$500 for the second spouse. The guideline amounts for each family are \$[308] 229 for the two children of the first marriage and \$[347] 422 for the three children of the second marriage for a total support obligation of \$[655] 651. Since this total obligation leaves obligor with only \$[345] 349 on which to live, the order for the three children of the second family is too high. However, reducing the order for three children while leaving the existing order intact would give preference to the first family, contrary to the rule. Therefore, both orders must be reduced proportionally.

*Example.* Obligor is sued to establish orders for three children born out of wedlock. The net monthly incomes for **the** obligor and for each obligee is \$1,500. The court would determine that the guideline figure for each child is \$[322] 362 for a total obligation of \$[966] 1,086 for three children. It would be incorrect to determine the guideline amount for three children, in this case \$[664] 724, and then divide that amount among the three children.

(c) For purposes of this [Rule] rule, the [presumptively correct total] presumptive amount of the obligor's basic support [obligations] obligation is calculated using only the basic guideline amounts of support, as determined from the formula in Rule 1910.16-4, and does not include any additional expenses that may be added to these amounts pursuant to Rule 1910.16-6. In calculating the [presumptively correct total] presumptive amount of obligor's basic support [obligations] obligation, the court should ensure that obligor retains at least \$[550] 748 per month consistent with Rule 1910.16-2(e).

*Example.* Assume that **the** obligor is paying \$[291] 591 per month support for one child of the first marriage, plus an additional \$[50] 200 per month for child care expenses. Obligor requests a reduction in this support obligation on the basis that there is one new child of the second intact marriage. The relevant incomes are \$[1,200] 2,400 for **the** obligor and \$0 for both the former and current spouses. Obligor's request for a reduction should be denied because the total of the basic guideline obligations for both children is only \$[582] 1,182 (\$[291] 591 for each child) and this amount does not exceed 50% of the obligor's net monthly income. No reduction should be given on the basis that **the** obligor's contribution to child care expenses for the first child results in an overall support obligation of \$[632] 1,382 which exceeds 50% of the obligor's net monthly income. Thus, the [presumptively correct] presumptive amount of basic support for the two children is still \$[582] 1,182 (\$[291] 591 for each child). The court must then consider the deviation factors under Rule 1910.16-5 and the [parties's] parties' respective contributions to additional expenses under Rule 1910.16-6 in arriving at an appropriate amount of total support for each child.

*Example.* Assume that **the** obligor is paying \$[244] 227 per month support for one child of the first marriage. Obligor has one new child of the second intact marriage. The relevant incomes are \$1,000 for **the** obligor and \$0 for both the former and current spouses. No reduction should be given on the basis of **the** obligor's new child

because the total of the basic guideline obligations for both children is only \$[488] 454 (\$[244] 227 for each child) and this amount does not exceed 50% of the obligor's net monthly income. Since, however, this amount leaves **the** obligor with only \$[512] 546 per month, the court should proportionally reduce the support obligations so that **the** obligor retains \$[550] 748 per month. Thus, the [presumptively correct] presumptive amount of basic support for the two children is \$[450] 252 (\$[225] 126 for each child). The court must then consider the deviation factors under Rule 1910.16-5 and the parties' respective contributions to additional expenses under Rule 1910.16-6 in arriving at an appropriate amount of total support for each child.

\* \* \* \* \*

#### Explanatory Comment—[1998] 2004

**Rule 1910.16-7 has been amended to reflect the updated schedule at Rule 1910.16-3 and the increase in the Self-Support Reserve ("SSR"), formerly the CAM, to \$748 per month. This [new Rule replaces former Rule 1910.16-5(n) relating to] rule sets forth the calculation of child support obligations in the context of multiple families. [It has been rewritten for clarity and to update the examples used to illustrate the method for calculating these obligations.] Awards of spousal support in this context are [now] addressed in Rule 1910.16-2(c)(2).**

In determining whether the total support obligations exceed 50% of the obligor's net income to warrant a proportionate reduction of the child support orders, subdivision (c) [has been added to clarify] clarifies that the total consists only of the basic amounts of child support, as derived from the income shares formula in Rule 1910.16-4, and does not include additional expenses that may be added to these basic amounts under Rule 1910.16-6. As the first example illustrates, no reduction should be given if the basic support obligations do not exceed 50% of the obligor's net monthly income even though his or her contribution to additional expenses may result in an overall obligation exceeding this percentage of income. As the second example illustrates, however, in low income cases it may be necessary to adjust the child support obligations proportionally even though they do not exceed 50% of the obligor's net income. This is consistent with the goals of [CAM] the SSR to ensure that **the** obligor retains sufficient income to maintain the incentive to work so that he or she can support all of the children.

Subdivision (c) also emphasizes that the initial amounts which are calculated for purposes of determining whether a proportional reduction is warranted are only [presumptively correct] presumptive amounts of child support. They are subject to upward or downward adjustment under Rules 1910.16-5 and 1910.16-6 relating to deviation and additional child-related expenses which are typically added to the basic obligation. This is intended only to emphasize that the establishment of appropriate support obligations for children of different families involves the same considerations as the establishment of a support obligation for a child or children of a single family.

[Pa.B. Doc. No. 03-2353. Filed for public inspection December 12, 2003, 9:00 a.m.]

# Title 255—LOCAL COURT RULES

## ERIE COUNTY

### Register of Wills and Clerk of Orphans' Court Schedule of Fees and Costs; No. 3 of 2003

#### Order

And Now, this 21st day of November 2003, pursuant to 42 P. S. 21022.1 and 21032.1, it is hereby *Ordered, Adjudged* and *Decreed* that:

1. The fee schedule submitted by the Register of Wills and Clerk of the Orphans' Court, a copy of which follows and is incorporated herein, is hereby *Approved*.

2. A \$5.00 automation fee is established for any initiation of action or legal proceeding currently requiring a JCP/ATJ fee, including marriage licenses, which fee shall be deposited into a special Register of Wills automation fund and shall be used solely for the purpose of automation and continued automation updates of the Register of Wills and Clerk of the Orphans' Court offices.

3. This order shall become effective on January 1, 2004  
*By the Court*

WILLIAM R. CUNNINGHAM,  
*President Judge*

#### Register of Wills

##### Grant of Letters Testamentary/Administration:

(Based upon the Gross value of an estate\*\*)

Less than \$50,000	\$50.00
\$50,001 to \$100,000	150.00
\$100,001 to \$500,000	200.00
\$500,001 to \$1,000,000	250.00
\$1,000,001 to \$3,000,000	1,000.00
\$3,000,001 and up	1,500.00

\*\*Where the gross value of an estate has been underestimated on the Petition for Letters, Probate fees will be adjusted and an invoice rendered for the balance.

\*\*Additional probate fees will be due and payable within thirty (30) days from the date of the invoice. Any balances more than thirty (30) days in arrears will be charged interest at a rate of 1% per month.

\*\*All fees must be paid in full before any finalization/estate settlement will be accepted for filing.

\*\*Fee includes documents subsequently filed at the same number except for the following:

Automation fee	5.00*
*to be charged on all first filings requiring JCP fee & on all marriage license applications.	
Caveat (including bond)	50.00
Citation petitions	25.00
Issuing per respondent	5.00
Claim, filing and withdrawal	15.00
Commission to take oath	20.00
Certificate of appointment from other jurisdictions	10.00
Disclaimer/Assignment of Interest	20.00

Exemplification of record, filing or issuance	20.00
Family Settlement Agreement (no acct)	50.00
Inheritance tax return	10.00
Inventory	10.00
Judicial Computer Project (JCP) fee	10.00
Non resident Inheritance Tax Appraisalment and receipts	15.00
Photocopies, each	.50
If mailed, each	1.00
Probate of will or codicil without letters	25.00
Proof of Death or Death Certificate	10.00
Short Certificates, each	5.00
Tax Certificate on Realty, issuance & filing	10.00
All other documents and pleadings not specifically listed herein will be charged at a rate comparable to this schedule for a like instrument at the sole discretion of the Register of Wills/Clerk of the Orphans' Court.	

#### Appeals:

Notice of Appeal & appeal bond	25.00
Appeal from Register (includes certification of record to Orphans' Court)	75.00
Appeal to Appellate Court	50.00
Appeal to Superior or Supreme Court	
Prothonotary fee (State fee)	60.00

#### Clerk of Orphans' Court

##### Accounts:

##### of Guardians, Trustees, Executors & Administrators

Less than \$50,000	\$50.00
\$50,001 to \$100,000	150.00
\$100,001 to \$500,000	200.00
\$500,001 to \$1,000,000	250.00
\$1,000,001 to \$3,000,000	1,000.00
\$3,000,001 and up	1,500.00

Advertising of accounts	50.00
Amended Account	50.00
Amended Audit Statement	25.00
Continuance or re-advertising	25.00
Discharge of Fiduciary	25.00
Family Settlement Agreement (after an account has been filed)	25.00

##### Adoptions:

Adoption petition	50.00
Each additional child	5.00
Adoption certificates, each	5.00
Appeal to Appellate Court	50.00
Appeal to Superior or Supreme Court	
Prothonotary fee	60.00
Automation fee	5.00*
*to be charged on all first filings requiring JCP fee & on all marriage license applications	
Confirm Consent petition	25.00

Involuntary Termination petition & citation	30.00
Judicial Computer Project (JCP) fee	10.00
Report of intent to adopt*	25.00
*Counseling fees with every intent petition	75.00
Report of Intermediary	25.00
Recording a Foreign Adoption	25.00
Release of non identifying information	75.00
Release of Identifying information	150.00
Voluntary Relinquishment petitions	25.00
<i>Estates and Trusts:</i>	
Automation fee	5.00*
*to be charged on all first filings requiring JCP fee & on all marriage license applications	
Elections to take under or against will	25.00
Family Settlement agreement (after an account has been filed)	25.00
Judicial Computer Project (JCP) fee	10.00
Initial Petition:	50.00**
Includes, but not limited to:	
Letters after 21 years	
Citation petitions	
Per respondent, additional	5.00
Petition to settle small estate	
Petition for family exemption	
Petition to sell or mortgage realty	
Presumed decedent	
Receipt and Release	
Trusts InterVivos, recording	50.00
Trust Settlement agreement	50.00
**\$50.00 initiation fee includes documents subsequently filed at the same number unless the document requires additional processing other than docketing	
<i>Guardians and Trustees:</i>	
Automation fee	5.00*
*to be charged on all first filings requiring JCP fee & on all marriage license applications	
Initial Petition	50.00**
Includes but not limited to:	
Bond or reduction of bond petition	
Citation, petition	
Emergency Guardianship petition	
Guardianship of minor petition	
Each additional minor,	\$10.00
Guardianship of Incapacitated person,	
Guardian Ad Litem, petition	
Guardianship Review Hearing, petition	

Removal or resignation of Guardian or Trustee	
Release of funds from restricted accounts	
Sale of Property or Estate Planning	
Service of Guardianship petition	
Settlement of Minor's claim, petition	
Successor Guardian or Trustee Petition	
Certificate of Guardian, each	5.00
Judicial Computer Project (JCP) fee	10.00
Subpoena	5.00
**\$50.00 initiation fee includes documents subsequently filed at the same number unless the document requires additional processing other than docketing.	
<i>Marriage:</i>	
Application and License	40.00
Appointment of Guardian for consent to Marriage	10.00
Automation fee	5.00*
*to be charged on all first filings requiring JCP fee & on all marriage license applications.	
Certified copy of marriage record	10.00
Custodial parental consent	10.00
Judicial waiver of waiting period	10.00
Military waiver	n/c
Short form Marriage certificate	5.00
<i>Miscellaneous:</i>	
Genealogical research, per estate	20.00
Certificate of Birth OR Death Record (1893—1906)	10.00
Delayed Birth Record	10.00
Certified Copy of document, per page	2.00
Photocopy of document, per page	.50
If mailed, per page	1.00
NSF check charge	25.00*
*Plus original amount (cashiers check or cash only on replacements)	
<i>Please Note:</i> All other documents and pleadings not specifically listed herein will be charged at a rate comparable to this schedule for a like instrument as determined at the sole discretion of the Register of Wills and/or Clerk of the Orphans' Court.	

[Pa.B. Doc. No. 03-2354. Filed for public inspection December 12, 2003, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that Samuel A. Malat having been suspended from the practice of law in the State of

New Jersey for a period of three months, the Supreme Court of Pennsylvania issued an Order dated November 24, 2003 suspending Samuel A. Malat from the practice of law in this Commonwealth for a period of three months, effective December 24, 2003. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Executive Director and Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 03-2355. Filed for public inspection December 12, 2003, 9:00 a.m.]

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