

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 81]

Interest on Lawyer Trust Account Board; Notice of Proposed Regulations Regarding Pro Hac Vice Admission

Request for Comments

The Pennsylvania Interest on Lawyer Trust Account Board drafted these Regulations that are being published for public comment. It requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Board through

Alfred J. Azen
Executive Director
Pennsylvania Interest on Lawyer Trust Account Board
115 State Street
P. O. Box 1025
Harrisburg, PA 17108-1025

no later than Thursday, December 15th, 2005. Comments must be submitted in writing and contain the name, address and telephone number of the person commenting and a concise statement of comments, objections or suggestions on this proposal. Comments submitted by facsimile will not be accepted.

Persons with a disability who require an alternative format of this document should contact Alfred J. Azen at the address provided above or call him at (717) 238-2001.

Note that an amendment to the Bar Examiners Rules would be necessary to effectuate these Regulations. The Pennsylvania Interest on Lawyer Trust Account Board will not put into effect these Regulations until the necessary amendments to the Bar Examiners Rules are authorized.

Introduction to Proposed Regulations

These Regulations are to be read and applied in connection with the Pennsylvania Rules of Bar Admission. Nothing in these regulations shall be construed to relieve a lawyer from complying with any other rules applicable to the practice of law in Pennsylvania, including but not limited to, the Pennsylvania Rules of Bar Admission and the Pennsylvania Rules of Professional Conduct. Where these regulations contain directives pertaining to pro hac vice admission before a court in the Commonwealth of Pennsylvania which are more specific than that set forth in the Pennsylvania Rules of Bar Admission, the provisions of these regulations shall control.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter D. PRO HAC VICE ADMISSION

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§ 81.501. Definitions.

(a) *Admission pro hac vice.* Special admission to the bar of this Commonwealth for purposes limited to a particular legal action before a court in this Commonwealth.

(b) *Applicant.* The lawyer seeking admission pro hac vice.

(c) *IOLTA Board.* The Pennsylvania Interest on Lawyer Trust Account Board.

(d) *Lawyer.* A member in good standing of the bar of the highest court of any state in the United States or admitted to practice law before any court in a foreign jurisdiction.

§ 81.502. Scope.

(a) An attorney, barrister or advocate who is qualified to practice in the courts of another state or of a foreign jurisdiction may be specially admitted to the bar of this Commonwealth for purposes limited to a particular matter.

(b) An attorney admitted pro hac vice shall not be authorized to act as attorney of record for any action in this Commonwealth. The attorney should refer to the Pennsylvania Rules of Bar Admission.

§ 81.503. Requirements and Procedure for Admission Pro Hac Vice.

(a) No oath shall be required of an attorney seeking admission pro hac vice.

(b) Pro hac vice admission shall be only on motion of a member of the bar of the Commonwealth of Pennsylvania, and, unless waived or otherwise not required, by payment of the fee required by § 81.505.

(c) Except as otherwise prescribed by general rule, admission pro hac vice shall be by written motion of a member of the bar of the Commonwealth of Pennsylvania, and shall be signed by that member. The motion shall recite all relevant facts and shall be filed with the clerk of the court or with the magisterial district judge before which the matter is pending at least three days prior to any appearance by the attorney seeking pro hac vice admission.

(d) Each motion for pro hac vice admission shall aver that the fee required by § 81.505(a) has been paid, or include as an attachment a copy of a fee payment certification from the IOLTA Board, unless payment of the fee is not required pursuant to § 81.505(c).

(e) Each motion for pro hac vice admission shall aver that the information required by § 81.504 has been provided to the IOLTA Board.

§ 81.504. Information to be Provided to IOLTA Board.

(a) The following information shall be provided to the IOLTA Board with the fee required by § 81.505:

(i) The name, address, contact information, supreme court identification number of the active member of this Commonwealth who sponsors the applicant for pro hac vice admission.

(ii) The applicant's complete name, date of birth, residence address, law firm address and other contact information.

(iii) The name and address of each court and a full identification of the proceeding.

(iv) The courts before which the applicant has been admitted to practice, the respective period(s) of admission, and the applicant's identification number in the jurisdiction(s) admitted.

(v) An averment that the applicant is familiar with the Pennsylvania Rules of Professional Conduct, Pennsylvania Rules of Disciplinary Enforcement, and the rules and court procedures of the court before which the applicant seeks pro hac vice admission.

(b) Appendix A contains a form which may be used to provide the information required by subsection (a).

§ 81.505. Fees.

(a) An attorney seeking admission pro hac vice in any court in this Commonwealth shall pay a fee equal to the annual assessment paid by attorneys licensed to practice law in Pennsylvania. The fee shall be required for each case in which the attorney is seeking pro hac vice admission. Under no circumstances shall the fee required by this Section be refunded.

(b) An attorney seeking admission pro hac vice shall pay the fee required by section (a) to the IOLTA Board not later than the time of filing a motion requesting permission to participate in proceedings in a court in this Commonwealth.

(c) No fee for admission pro hac vice shall be required if the client being represented has been granted in forma pauperis status.

(d) Fees under this Regulation shall be paid by a check drawn on a United States bank, money order, or bank cashier's check payable in the full amount to the IOLTA Board.

(e) Fees collected under this Rule shall be used by the IOLTA Board to fund the expenses needed to administer this Rule, and to supplement the funding of non-profit organizations that provide civil legal services to the indigent and disadvantaged, or for similar purposes as authorized by the Supreme Court of Pennsylvania.

§ 81.506. Records Custodian.

The Pennsylvania IOLTA Board is considered the custodian of records for pro hac vice admission and does not approve or disapprove pro hac vice admission. Approval or disapproval shall be determined by the court before which the attorney wishes to appear.

Appendix A

PENNSYLVANIA IOLTA BOARD

FORM FOR PRO HAC VICE ADMISSION

(For all attorneys not licensed to practice law in Pennsylvania who are seeking special admission for purposes limited to a particular legal proceeding in a Court of the Commonwealth of Pennsylvania)

Use this form if you are an attorney who is qualified to practice in another state or in a foreign jurisdiction, is not admitted to practice law in Pennsylvania, and is seeking

to be specially admitted to the Bar of the Commonwealth of Pennsylvania in order to appear before a Pennsylvania Court in connection with a particular case.

Filing this form and fee is the mandatory first step in your request for permission to participate in proceedings in a Pennsylvania Court. The next step is to file a motion in the Pennsylvania Court before whom you are seeking to appear. The motion must aver payment of the fee or be accompanied by the acknowledgment letter you will receive from the Board. The decision to grant or deny your admission is ultimately made by the Court before whom you are seeking to appear. Proceedings filed under a new case number in any Court, including all appellate courts, are considered new proceedings and are subject to completion of a new form and fee.

Carefully follow these instructions and complete this form. Keep a copy of your completed form for future reference, as you may be charged for any copies you request from the Board's file.

No alterations may be made to the text or wording of this form. Before you file your form, verify that you have fully responded to all items and questions, leaving no blanks. If the item or question is inapplicable, write "N/A."

Your form will not be considered filed if incomplete. If incomplete, it may be returned to you. Failure to provide any of the following information will result in an incomplete form:

- a) failure to provide any information required, including names, complete addresses, telephone numbers, or zip/postal codes;
- b) failure to answer any question;
- c) failure to send in the required fee;
- d) alteration of any language of the form; and
- e) failure to sign any document requiring your signature.

1. *Filing Fees:* Make your check, money order, or bank cashier's check payable in the full amount due to the PA IOLTA Board. The filing fee is equal to the annual assessment paid by attorneys licensed to practice law in Pennsylvania, as in effect from time to time. If you have any questions about the fee, please contact the Pa IOLTA Board before submitting this form. Do not postdate your check. A form is not considered filed until all fees are received in the Board's office. If your check for fees is returned for insufficient funds or is otherwise dishonored by your bank, you will be assessed a returned check charge. All fees due after that time must be paid by bank cashier's check or money order. There is no refund of fees if you withdraw your application for pro hac vice admission or do not meet all requirements for admission. No fee is required if the applicant attorney is representing a person who has been granted in forma pauperis status.

2. *Filing of Application:* Mail or deliver your form and required fees to the Board as follows:

<i>Mailing Address:</i>	<i>Delivery Address:</i>
PA IOLTA Board P. O. Box 1025 Harrisburg, PA 17108-1025	PA IOLTA Board 115 State Street Harrisburg, PA 17101

Phone: (717) 238-2001 or 888-PA-IOLTA (724-6582)

Web address: www.paiolta.org

E-mail Address: paioltapa@courts.us

The Board will acknowledge receipt of your form and fee payment within three (3) working days of its receipt. The acknowledgment letter will serve as your proof of payment of the requisite fee and can be included with your written motion to the Court in Pennsylvania in which you are requesting permission to participate. If you do not receive such an acknowledgment by that time, please contact the Board's office.

3. *Case Number:* List only one (1) case number per form, as this crucial information will be included on the acknowledgment letter.

4. *Pennsylvania Court of Record:* List the Court in which the Motion for Admission Pro Hac Vice will be filed.

5. *Certificate of Good Standing:* Formal Certificates of Good Standing are not necessary.

6. *Forms from the Board web page:* If you are using an electronic version of this form, it is your responsibility to insure that it is printed with the same content and wording as the Board's printed version of this form.

7. *Regulations:* The Applicant should review the Rule 301 of the Pennsylvania Rules of Bar Admission as well as the regulations of the Pennsylvania Interest on Lawyers Trust Account Board for Pro Hac Vice admission for further guidance.

PENNSYLVANIA IOLTA BOARD
Form for PRO HAC VICE ADMISSION

(For all nonresident attorneys requesting permission to participate in proceedings in a Pennsylvania Court)

Applicant Name: [] Mr.
[] Ms. _____
Last First Middle

Date of Birth: _____

Your Firm's Name & Mailing Address: (All correspondence will be mailed to this address.)

Firm Name

Street Address/P. O. Box Ste. No. City State Zip Code

Your Firm's Physical Address: _____ Check here if same as above

Street Address Ste. No. City State Zip Code

Office Phone: _____ Office Fax: _____ E-Mail Address: _____

Acknowledgment Letter should be faxed to: Name: _____ Fax: _____

Name & Office Address of Attorney of Record in the Pennsylvania Proceeding who is filing the Motion for your admission Pro Hac Vice:

Name Firm Name (if applicable)

Street Address/P. O. Box Ste. No. City State Zip Code

Office Phone: _____ Office Fax: _____ PA I.D. Number: _____

Case Number: _____

Case Name: _____

Pennsylvania Court of Record: _____

1. List all foreign, state and federal jurisdictions in which you have been qualified, licensed or admitted to practice law and are currently active and in good standing, the date and year of licensure, and your license or bar card numbers, if applicable. Use the *Continuation Form* if additional space is needed.

2. If you have every practiced law under another name, please state that name here. List also all jurisdictions in which you practiced law under that name(s), and the time period involved. Use the *Continuation Form* if additional space is needed.

3. Are you familiar with the Pennsylvania Rules of Professional Conduct, Pennsylvania Rules of Disciplinary Enforcement, and the rules and court procedures of the court before which you seek to appear, and will you at all times abide by and comply with the same so long as such Pennsylvania proceeding is pending and you have not withdrawn as counsel therein? Yes No

I certify that the information provided on this form is true. If any statements are false, I realize I am subject to discipline by the Supreme Court of Pennsylvania. I hereby agree that any action brought against me by the Supreme Court of Pennsylvania or any of its boards or instrumentalities may be brought in the Court of Common Pleas of Allegheny, Dauphin or Philadelphia County, Pennsylvania.

Signature of Pro Hac Vice Applicant

CONTINUATION FORM

(Use a separate form for each statement requiring a *Continuation Form*. Make additional copies of this form as needed.)

For Question: _____

Name: _____
Last First Middle

[Pa.B. Doc. No. 05-1891. Filed for public inspection October 14, 2005, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 75

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The Committee solicits 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, December 16, 2005 directed to:

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

*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 1910.19. Support. Modification. Termination. Guidelines as Substantial Change in Circumstances.

* * * * *

(f) Upon notice to the obligee, with a copy to the obligor, the court may modify or terminate a charging order for support when it appears to the court that:

(1) the order is no longer able to be enforced under state law; or

(2) the obligor is unable to pay and there is no reasonable prospect that the obligor will be able to pay in the foreseeable future.

The notice shall advise the obligee to contact the domestic relations section within 60 days of the date of the mailing of the notice if the obligee wishes to contest the proposed modification or termination. If the obligee objects, the domestic relations section shall schedule a conference to provide the obligee the opportunity to contest the proposed action. If the obligee does not respond to the notice or object to the proposed action, the

court shall have the authority to administratively modify or terminate the order. Any such modification or termination shall be without prejudice, including as to arrears vacated pursuant to this subdivision.

Explanatory Comment—1993

Existence of Guidelines as Substantial Change in Circumstances. In its opinion in *Newman v. Newman*, 597 A.2d 684 (Pa. Super. 1991), the Superior Court held that enactment of the guidelines does not constitute a substantial change in circumstance which could serve as the basis for modification of a support order. The amended rule allows the trier of fact to consider new or revised rules as a change in circumstances where the change in the guidelines, either by itself or in combination with other factors, is material and substantial.

Explanatory Comment—2000

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

While identification of income sources or assets provides a basis for modification, this rule is not intended to prevent a court from ordering that the income or assets be frozen and seized under Rule 1910.26 pending the hearing on the petition for modification. Such relief remains available under Rule 1910.26 governing appropriate interim or special relief. See Rule 1910.1 Explanatory Comment. Nor is this rule intended to affect the court's ability to seize income or assets under Rule 1910.20 to secure an overdue support obligation.

Explanatory Comment—2002

Although support orders do not terminate automatically, many obligors are unaware of the necessity of filing a petition to terminate a child support order when the child becomes emancipated. As a result, old orders have continued to charge long after the subject child has become an adult. New subdivision (e) is intended to address this problem by giving the obligee notice of a proposed modification or termination of the order and the opportunity to object. If no objection is made, or if the obligee fails to respond with a reason to continue the order, the rule gives the court the authority to terminate or modify the charging order, depending upon whether or not other children are covered under the order.

Explanatory Comment—2005

New subdivision (f) addresses an increasing multiplicity of circumstances in which the continued existence of a court-ordered obligation of support is inconsistent with rules or law. An obligor with no known assets whose sole source of income is Supplemental Security Income or cash assistance cannot be ordered to pay support under Rule 1910.16-2. Likewise, an obligor with no verifiable income or assets whose institutionalization, incarceration or long-term disability precludes the payment of support throughout the duration of the child's minority renders the support order unenforceable and uncollectible, diminishing the percep-

tion of the court as a source of redress and relief. Often, the obligor is unaware of the need to file for a modification or termination, or, over time, the parties abandon the action. In those circumstances, the courts are charged with managing dockets with no viable outcomes. Both the rules and the federal guidelines for child support under Title IV-D of the Social Security Act provide for circumstances under which a support order shall not be entered or under which a child support case may be closed. Subdivision (f) expands the authority of the courts to respond to case management issues brought about by changes in circumstances of the parties of which the courts become aware through the expansion of automated interfaces and data exchanges.

[Pa.B. Doc. No. 05-1892. Filed for public inspection October 14, 2005, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1910]

Order Amending Rules 1910.16-1, 1910.16-2, 1910.16-3, 1910.16-4, 1910.16-5, 1910.16-6 and 1910.16-7; No. 442 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 27th day of September, 2005, Rules 1910.16-1, 1910.16-2, 1910.16-3, 1910.16-4, 1910.16-5, 1910.16-6 and 1910.16-7 of the Pennsylvania Rules of Civil Procedure are amended as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective four months from the date of this order.

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 1. 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 2. 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.

(3) 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.

(b) **Amount of Support.** The amount of support (child support, spousal support or alimony pendente lite) to be awarded pursuant to the procedures under Rules 1910.11 and 1910.12 shall be determined in accordance with the support guidelines which consist of the guidelines expressed as the child support schedule set forth in Rule 1910.16-3, the formula set forth in Rule 1910.16-4 and the operation of the guidelines as set forth in these rules.

(c) **Spousal Support and Alimony Pendente Lite.** Orders for spousal support and alimony pendente lite shall not be in effect simultaneously.

(d) **Rebuttable Presumption.** If it has been determined that there is an obligation to pay support, there shall be a rebuttable presumption that the amount of the award determined from the guidelines is the correct amount of support to be awarded. The support guidelines are a rebuttable presumption and must be applied taking into consideration the special needs and obligations of the parties. The trier of fact must consider the factors set forth in Rule 1910.16-5. The presumption shall be rebutted if the trier of fact makes a written finding, or a specific finding on the record, that an award in the amount determined from the guidelines would be unjust or inappropriate.

(e) **Guidelines Review.** The guidelines shall be reviewed at least once every four years to insure that [their] application results in the determination of appropriate amounts of support.

[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 spousal 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—2005

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. § 667(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.A. § 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 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.

1. Economic Measures. The support schedule in Rule 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 de-

velops 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.A. § 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 parties, 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 and 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.

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 income. The custodial parent makes these contributions through direct expenditures for food, shelter, clothing, transportation and other reasonable needs. 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 in Rule 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 in 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. Prior to 1999, 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."

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. These amendments do not change that rule.

F. 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.

G. 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] Generally, 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.A. § 4302, and includes income from any source. The statute lists many types of income including, but not limited to:

* * * * *

(7) alimony if, in the discretion of the trier of fact, inclusion of part or all of it is appropriate; and

Official Note: Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's gross income must also vary. For example, if the obligor is paying \$1,000 per month in [rehabilitative] alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.

* * * * *

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

* * * * *

(2) If a child for whom support is sought is receiving Social Security benefits as a result of a parent's retirement, death or disability, the benefits the child receives shall be added to the combined monthly net incomes of the obligor and the 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 the obligee, obligor and child's benefits shall then be reduced by the amount of the child's benefits before apportioning the remaining support obligation between the parties pursuant to Rule 1910.16-4. For purposes of determining the support obligation of a surviving parent when the child is receiving benefits as the result of the other parent's death, the income of a non-parent obligee who is caring for a child but has no support obligation to that child shall include only those funds the obligee is receiving on behalf of the child.

Example 1. If the obligor has net [monthly] income of \$1,200 per month; the obligee has net monthly income of \$800; and the child receives 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 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] The obligor's \$1,200 net income per month is

60% of the total of the obligor's and the obligee's combined net monthly income. Thus, the obligor's support obligation would be 60% of \$[239] 268, or \$[143.40] 161, per month.

Example 2. Two children live with [grandmother] Grandmother who receives \$400 per month in Social Security death benefits for the children as a result of their father's death. Grandmother also receives \$500 per month from a trust established by [father] Father for the benefit of the children. Grandmother is employed and earns \$2,000 net per month. Grandmother seeks support from the children's mother, who earns \$1,500 net per month. For purposes of calculating [mother's] Mother's support obligation, [grandmother's] Grandmother's income will be \$500, the amount she receives on behalf of the children from the trust. Therefore, the obligee's and the obligor's combined net monthly incomes total \$2,000. Add to that the \$400 in Social Security benefits [grandmother] Grandmother receives for the children to find the basic child support amount in Rule 1910.16-3. The basic support amount at the \$2,400 income level for two children is \$[811] 820. Subtracting from that amount the \$400 in Social Security derivative benefits [grandmother] Grandmother receives for the children, results in a basic support amount of \$[411] 420 to be apportioned between the parties. As [mother's] Mother's income is 75% of the parties' combined income of \$2,000, her support obligation to [grandmother] Grandmother is \$[308] 315 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.

(c) *Monthly Net Income.*

* * * * *

(2) In computing a spousal support or alimony pendente lite obligation, the court shall deduct from the obligor's monthly net income all of his or her child support obligations and any amounts of spousal support, alimony pendente lite or alimony being paid to former spouses.

(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.

(3) *Seasonal Employees.* Support orders for seasonal employees, such as construction workers, shall ordinarily be based upon a yearly average.

(4) [*Income Potential*] *Earning Capacity.* Ordinarily, [a] either party to a support action who [wilfully] wilfully fails to obtain appropriate employment 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 the obligor has monthly net income of \$[750] 850, the [presumptively correct] presumptive 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] presumptive 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 the obligor retains at least \$[550] 748 per month. The [presumptively correct] presumptive 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*.

(f) *Dependency Tax Exemption*. In order to maximize the total income available to the parties and children, the court may, as justice and fairness require, award the federal child dependency tax exemption to the non-custodial parent, or to either parent in cases of equally shared custody, and order the other party to execute the waiver required by the Internal Revenue Code, 26 U.S.C.A. § 152(e). The tax consequences resulting from an award of the child dependency exemption must be considered in calculating each party's income available for support.

[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 obliga-

tion 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 for-

merly 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—2005

Subdivision (a) addresses gross income for purposes of calculating the support obligation by reference to the statutory definition at 23 Pa.C.S.A. § 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. Ct. 2002); *Grimes v. Grimes*, 596 A.2d 240 (Pa. Super. Ct. 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.

COMBINED NET MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
[0-600	50	55	60	65	70	75
650	90	91	92	93	94	95
700	135	137	138	140	141	143
750	180	182	184	186	188	190
800	196	228	230	233	235	238
850	208	255	276	279	282	285
900	220	273	304	325	329	333
950	232	291	325	348	369	380
1000	244	308	346	371	394	414
1050	256	326	367	394	419	441
1100	268	391	463	511	54	593
1150	279	407	482	532	577	617
1200	291	423	501	553	600	642
1250	302	440	520	575	623	667
1300	313	456	539	596	646	691
1350	325	472	558	617	669	716
1400	336	489	578	638	692	740
1450	347	505	597	659	715	765
1500	359	521	616	681	738	789
1550	370	538	635	702	761	814
1600	381	554	654	723	784	839
1650	393	571	674	744	807	863
1700	404	587	693	766	830	888
1750	415	603	712	787	853	913
1800	427	620	731	808	876	937
1850	438	636	751	829	899	962
1900	449	652	770	851	922	987
1950	461	668	788	871	944	1010
2000	472	684	807	891	966	1034
2050	483	700	825	911	988	1057
2100	494	716	843	932	1010	1081
2150	505	732	862	952	1032	1104
2200	516	748	880	972	1054	1128
2250	528	763	898	993	1076	1151
2300	539	779	917	1013	1098	1175
2350	550	795	935	1033	1120	1198

<i>COMBINED NET MONTHLY 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>
2400	560	811	954	1054	1143	1223
2450	571	827	973	1075	1165	1247
2500	582	842	991	1095	1187	1271
2550	593	858	1010	1116	1210	1295
2600	603	874	1029	1137	1232	1319
2650	614	889	1048	1158	1255	1343
2700	625	905	1066	1178	1277	1367
2750	635	921	1085	1199	1300	1391
2800	641	929	1095	1209	1311	1403
2850	647	937	1104	1220	1322	1415
2900	653	945	1113	1230	1333	1427
2950	658	953	1122	1240	1345	1439
3000	664	961	1132	1251	1356	1451
3050	670	969	1141	1261	1367	1463
3100	676	977	1150	1271	1378	1474
3150	681	986	1160	1282	1389	1486
3200	686	993	1167	1289	1398	1496
3250	690	998	1172	1295	1404	1502
3300	693	1004	1177	1301	1410	1509
3350	697	1010	1182	1306	1416	1515
3400	700	1016	1187	1312	1422	1522
3450	704	1022	1192	1318	1428	1528
3500	708	1028	1197	1323	1434	1535
3550	711	1034	1203	1329	1440	1541
3600	715	1040	1208	1335	1447	1548
3650	724	1052	1223	1351	1465	1567
3700	733	1063	1238	1368	1483	1586
3750	742	1075	1252	1384	1500	1605
3800	750	1086	1267	1400	1518	1624
3850	759	1098	1282	1417	1536	1643
3900	768	1109	1297	1433	1553	1662
3950	777	1121	1311	1449	1571	1681
4000	786	1132	1326	1465	1588	1700
4050	794	1143	1339	1480	1604	1717
4100	801	1153	1351	1493	1619	1732
4150	808	1163	1363	1506	1633	1747
4200	815	1174	1375	1520	1647	1763
4250	822	1184	1387	1533	1662	1778
4300	829	1194	1399	1546	1676	1793
4350	836	1204	1411	1559	1690	1809
4400	843	1215	1423	1573	1705	1824
4450	850	1225	1435	1586	1719	1840
4500	857	1235	1447	1599	1734	1855
4550	864	1245	1459	1612	1748	1870
4600	872	1255	1471	1626	1762	1886
4650	879	1266	1483	1639	1777	1901

<i>COMBINED NET MONTHLY 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>
4700	886	1276	1495	1652	1790	1916
4750	892	1285	1506	1664	1804	1930
4800	899	1295	1518	1677	1818	1945
4850	906	1305	1529	1690	1832	1960
4900	913	1315	1541	1702	1845	1975
4950	920	1325	1552	1715	1859	1989
5000	927	1335	1564	1728	1873	2004
5050	934	1344	1575	1740	1887	2019
5100	941	1354	1586	1753	1900	2033
5150	948	1364	1598	1766	1914	2048
5200	954	1374	1609	1778	1928	2063
5250	961	1384	1621	1791	1941	2077
5300	968	1394	1632	1804	1955	2092
5350	975	1404	1644	1816	1969	2107
5400	982	1413	1655	1829	1983	2121
5450	989	1423	1667	1842	1996	2136
5500	996	1433	1678	1854	2010	2151
5550	1003	1443	1690	1867	2024	2166
5600	1010	1453	1701	1880	2038	2180
5650	1016	1463	1713	1893	2052	2195
5700	1023	1473	1724	1905	2065	2210
5750	1030	1483	1736	1918	2079	2225
5800	1037	1492	1747	1931	2093	2240
5850	1044	1502	1759	1944	2107	2254
5900	1051	1512	1771	1956	2121	2269
5950	1058	1522	1782	1969	2135	2284
6000	1065	1532	1794	1982	2148	2299
6050	1071	1542	1805	1995	2162	2314
6100	1078	1552	1817	2008	2176	2328
6150	1085	1561	1828	2020	2190	2343
6200	1092	1571	1840	2033	2204	2358
6250	1099	1581	1851	2046	2218	2373
6300	1106	1591	1863	2059	2232	2388
6350	1113	1601	1875	2071	2245	2403
6400	1120	1611	1887	2085	2260	2418
6450	1126	1621	1899	2099	2275	2434
6500	1133	1632	1912	2112	2290	2450
6550	1140	1642	1924	2126	2305	2466
6600	1147	1652	1937	2140	2320	2482
6650	1153	1662	1949	2154	2334	2498
6700	1160	1672	1961	2167	2349	2514
6750	1167	1682	1974	2181	2364	2530
6800	1174	1693	1986	2195	2379	2546
6850	1181	1703	1998	2208	2394	2561
6900	1187	1713	2011	2222	2409	2577
6950	1194	1723	2023	236	2424	2593

<i>COMBINED NET MONTHLY 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>
7000	1201	1733	2036	2249	2438	2609
7050	1208	1744	2048	2263	2453	2625
7100	1215	1754	2060	2277	2468	2641
7150	1221	1764	2073	2290	2483	2657
7200	1228	1774	2085	2304	2497	2672
7250	1231	1779	2091	2311	2505	2680
7300	1235	1784	2098	2318	2513	2689
7350	1238	1790	2104	2325	2521	2697
7400	1242	1795	2111	2333	2529	2706
7450	1245	1800	2117	2340	2536	2714
7500	1249	1806	2124	2347	2544	2722
7550	1252	1811	2131	2354	2552	2731
7600	1256	1816	2137	2362	2560	2739
7650	1260	1822	2144	2369	2568	2748
7700	1263	1827	2150	2376	2576	2756
7750	1267	1832	2157	2383	2584	2764
7800	1270	1838	2163	2391	2591	2773
7850	1274	1843	2170	2398	2599	2781
7900	1277	1848	2177	2405	2607	2790
7950	1281	1854	2183	2412	2615	2798
8000	1284	1859	2190	2420	2623	2806
8050	1288	1865	2197	2428	2632	2816
8100	1296	1877	2211	2443	2648	2834
8150	1304	1888	2224	2458	2664	2851
8200	1312	1900	2238	2473	2680	2868
8250	1320	1911	2251	2487	2696	2885
8300	1328	1923	2265	2502	2712	2902
8350	1336	1934	2278	2517	2729	2920
8400	1344	1945	2291	2532	2745	2937
8450	1352	1957	2305	2547	2761	2954
8500	1360	1968	2318	2562	2777	2971
8550	1368	1980	2332	2576	2793	2988
8600	1376	1991	2345	2591	2809	3006
8650	1384	2003	2358	2606	2825	3023
8700	1392	2014	2372	2621	2841	3040
8750	1400	2026	2385	2636	2857	3057
8800	1408	2037	2399	2651	2873	3074
8850	1416	2049	2412	2665	2889	3092
8900	1424	2060	2426	2680	2905	3109
8950	1432	2072	2439	2695	2921	3126
9000	1440	2083	2452	2710	2937	3143
9050	1448	2095	2466	2725	2954	3160
9100	1456	2106	2479	2739	2970	3177
9150	1464	2117	2493	2754	2986	3195
9200	1472	2129	2506	2769	3002	3212
9250	1480	2140	2519	2784	3018	3229

<i>COMBINED NET MONTHLY 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>
9300	1488	2152	2533	2799	3034	3246
9350	1496	2163	2546	2814	3050	3263
9400	1504	2175	2560	2828	3066	3281
9450	1512	2186	2573	2843	3082	3298
9500	1520	2198	2586	2858	3098	3315
9550	1528	2209	2600	2873	3114	3332
9600	1536	2221	2613	2888	3130	3349
9650	1544	2232	2627	2903	3146	3367
9700	1552	2244	2640	2917	3162	3384
9750	1560	2255	2654	2932	3179	3401
9800	1568	2267	2667	2947	3195	3418
9850	1576	2278	2680	2962	3211	3435
9900	1584	2289	2694	2977	3227	3453
9950	1592	2301	2707	2991	3243	3470
10000	1600	2312	2721	3006	3259	3487
10050	1608	2324	2734	3021	3275	3504
10100	1616	2335	2747	3036	3291	3521
10150	1624	2347	2761	3051	3307	3539
10200	1632	2358	2774	3066	3323	3556
10250	1640	2370	2788	3080	3339	3573
10300	1648	2381	2801	3095	3355	3590
10350	1656	2393	2815	3110	3371	3607
10400	1664	2404	2828	3125	3387	3625
10450	1672	2416	2841	3140	3403	3642
10500	1680	2427	2855	3155	3420	3659
10550	1688	2439	2868	3169	3436	3676
10600	1695	2448	2879	3181	3449	3690
10650	1698	2453	2886	3188	3456	3698
10700	1702	2459	2892	3196	3464	3707
10750	1706	2464	2899	3203	3472	3715
10800	1710	2470	2905	3210	3480	3723
10850	1713	2475	2912	3217	3487	3732
10900	1717	2481	2918	3224	3495	3740
10950	1721	2486	2925	3232	3503	3748
11000	1725	2492	2931	3239	3511	3757
11050	1728	2497	2938	3246	3519	3765
11100	1732	2503	2944	3253	3526	3773
11150	1736	2508	2951	3260	3534	3782
11200	1740	2513	2957	3268	3542	3790
11250	1743	2519	2964	3275	3550	3798
11300	1747	2524	2970	3282	3558	3807
11350	1751	2530	2977	3289	3565	3815
11400	1755	2535	2983	3296	3573	3823
11450	1758	2541	2990	3303	3581	3832
11500	1762	2546	2996	3311	3589	3840
11550	1766	2552	3003	3318	3597	3848

<i>COMBINED NET MONTHLY 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>
11600	1770	2557	3009	3325	3604	3857
11650	1773	2563	3016	3332	3612	3865
11700	1777	2568	3022	3339	3620	3873
11750	1781	2574	3029	3347	3628	3882
11800	1785	2579	3035	3354	3635	3890
11850	1788	2585	3042	3361	3643	3898
11900	1792	2590	3048	3368	3651	3907
11950	1796	2596	3055	3375	3659	3915
12000	1800	2601	3061	3382	3667	3923
12050	1803	2607	3068	3390	3674	3932
12100	1807	2612	3074	3397	3682	3940
12150	1811	2618	3081	3404	3690	3948
12200	1815	2623	3087	3411	3698	3957
12250	1818	2628	3094	3418	3706	3965
12300	1822	2634	3100	3426	3713	3973
12350	1826	2639	3107	3433	3721	3982
12400	1830	2645	3113	3440	3729	3990
12450	1833	2650	3120	3447	3737	3998
12500	1837	2656	3126	3454	3745	4007
12550	1841	2661	3133	3462	3752	4015
12600	1845	2667	3139	3469	3760	4023
12650	1848	2672	3145	3475	3767	4031
12700	1852	2678	3152	3483	3776	4040
12750	1856	2684	3159	3491	3784	4049
12800	1860	2689	3166	3499	3793	4058
12850	1864	2695	3174	3507	3801	4067
12900	1868	2701	181	3515	3810	4077
12950	1872	2707	3188	3523	3818	4086
13000	1876	2713	3195	3530	3827	4095
13050	1880	2718	3202	3538	3835	4104
13100	1884	2724	3209	3546	3844	4113
13150	1888	2730	3216	3554	3853	4122
13200	1892	2736	3223	3562	3861	4131
13250	1896	2742	3231	3570	3870	4141
13300	1900	2747	3238	3578	3878	4150
13350	1904	2753	3245	3586	3887	4159
13400	1908	2759	3252	3593	3895	4168
13450	1912	2765	3259	3601	3904	4177
13500	1916	2771	3266	3609	3912	4186
13550	1920	2776	3273	3617	3921	4195
13600	1924	2782	3280	3625	3929	4205
13650	1928	2788	3288	3633	3938	214
13700	1932	2794	3295	3641	3947	4223
13750	1936	2800	3302	3649	3955	4232
13800	1940	2805	3309	3656	3964	4241
13850	1944	2811	3316	3664	3972	4250

<i>COMBINED NET MONTHLY 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>
13900	1948	2817	3323	3672	3981	4259
13950	1952	2823	3330	3680	3989	4268
14000	1956	2829	3338	3688	3998	4278
14050	1960	2834	3345	3696	4006	4287
14100	1964	2840	3352	3704	4015	4296
14150	1968	2846	3359	3712	4023	4305
14200	1972	2852	3366	3719	4032	4314
14250	1976	2858	3373	3727	4040	4323
14300	1980	2863	3380	3735	4049	4332
14350	1984	2869	3387	3743	4058	4342
14400	1988	2875	3395	3751	4066	4351
14450	1992	2881	3402	3759	4075	4360
14500	1996	2887	3409	3767	4083	4369
14550	2000	2892	3416	3775	4092	4378
14600	2004	2898	3423	3783	4100	4387
14650	2008	2904	3430	3790	4109	4396
14700	2012	2910	3437	3798	4117	4406
14750	2016	2916	3444	3806	4126	4415
14800	2020	2921	3452	3814	4134	4424
14850	2024	2927	3459	3822	4143	4433
14900	2028	2933	3466	3830	4152	4442
14950	2032	2939	3473	3838	4160	4451
15000	2036	2945	3480	3846	4169	4460]

Monthly Basic Child Support Schedule

COMBINED ADJUSTED NET INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
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

Monthly Basic Child Support Schedule						
COMBINED ADJUSTED NET INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
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
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

Monthly Basic Child Support Schedule						
COMBINED ADJUSTED NET INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
3900	31	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
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

Monthly Basic Child Support Schedule						
COMBINED ADJUSTED NET INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
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
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

Monthly Basic Child Support Schedule						
COMBINED ADJUSTED NET INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
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
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

Monthly Basic Child Support Schedule						
COMBINED ADJUSTED NET INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
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
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

Monthly Basic Child Support Schedule						
COMBINED ADJUSTED NET INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
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
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

Monthly Basic Child Support Schedule						
COMBINED ADJUSTED NET INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
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
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

Monthly Basic Child Support Schedule						
COMBINED ADJUSTED NET INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
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
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

Monthly Basic Child Support Schedule						
COMBINED ADJUSTED NET INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
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—2005

The schedule has been amended to reflect updated economic data. See Explanatory Comment—2005 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

	OBLIGOR	OBLIGEE
1. Total Gross Income [per pay period] Per Pay Period	_____	_____
* * * * *		
6. Plus Child's Monthly Social Security Death, Retirement or Disability Derivative Benefit, if any. (See Rule 1910.16-2(b)(2))	+ _____	
* * * * *		
8. PRELIMINARY BASIC CHILD SUPPORT OBLIGATION (determined from [Schedule] schedule at Rule 1910.16-3 based on number of children and line 7 adjusted combined monthly net income)	_____	
9. Less Child's Monthly Social Security Derivative Benefit	(_____)	
* * * * *		
11. Net Income Expressed as a Percentage Share of Income ([Divide] divide line 4 by line 5 and multiply by 100)	_____ %	_____ %
12. Each Parent's Monthly Share of the Basic Child Support Obligation ([Multiply] multiply line 10 and 11)	_____	_____

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] divide number of overnights with obligor by 365 and multiply by 100)	_____ %
b. Subtract 30%	(_____ 30%)
c. Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation ([Subtract] subtract line 13b from line 11)	_____ %

d. Obligor's Adjusted Share of the Basic Monthly Support Obligation (**[Multiply] multiply** line 13c and line 10) _____

e. Further adjustment, if necessary under subdivision (c)(2) of this **[Rule] rule** _____

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

14. a. Obligor's **[share of child care expenses] Share of Child Care Expenses** _____

b. Obligor's **[share of health insurance premium] Share of Health Insurance Premium** (if the obligee is paying the premium) _____

c. Less **[obligee's share of the health insurance premium] Obligee's Share of the Health Insurance Premium** (if the obligor is paying the premium) (_____)

d. Obligor's **[share of unreimbursed medical expenses] Share of Unreimbursed Medical Expenses** _____

e. Other **[additional expenses] Additional Expenses** _____

f. Total Additional Expenses _____

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

PART IV. SPOUSAL SUPPORT OR APL With Dependent Children

16. Obligor's Monthly Net Income (line 4) _____

17. Less Obligor's **[support, alimony pendente lite or alimony obligations] Support, Alimony Pendente Lite or Alimony Obligations**, if any, to **[children or former spouses] Children or Former Spouses** who are not part of this action (**[See] see** Rule 1910.16-2(c)(2)) (_____)

* * * * *

20. Less Obligor's Total **Monthly Child Support Obligation Without Part II Substantial or Shared Custody Adjustment** (Obligor's line **[15] 12 plus line 14f**) (_____)

* * * * *

Without Dependent Children

* * * * *

25. Less Obligor's **[support, alimony pendente lite or alimony obligations] Support, Alimony Pendente Lite or Alimony Obligations**, if any, to **[children or former spouses] Children or Former Spouses** who are not part of this action (**[See] see** Rule 1910.16-2(c)(2)) (_____)

* * * * *

30. Adjustments for **[other expenses] Other Expenses** (**[See] see** Rule 1910.16-6) _____

* * * * *

(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 **the** obligor, a rebuttable presumption **[exists]** **arises** 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]** **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 **the** obligor and **the** obligee have monthly net incomes of \$5,000 and \$2,300 respectively, their combined child support obligation is \$ **[1,784]** **1,548** for two children. Using the income shares formula in Part I, **the** obligor's share of this obligation is 68%, or \$ **[1,213]** **1,053**. 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]** **898**. 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]** **820**. If the children spend equal time with both parents, the obligor's percentage share is reduced to 48%, or \$ **[856]** **743**.

(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 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 1. Mother and Father have monthly net incomes of \$3,000 and \$ **[2,000]** **2,700** 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]** **1,302** per month. Mother's share is **[60%]** **53%** of that amount, or \$ **[801]** **690**. Father's share is **[40%]** **47%**, or \$ **[534]** **612**. 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 was

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%]** **33%** (**[60%]** **53%** - 20% = **[40%]** **33%**). Her adjusted share of the basic support amount is \$ **[534]** **430** (**[40%]** **33%** of \$ **[1,335]** **1,302**). However, instead of \$ **[534]** **430** per month, Mother's support obligation would be adjusted to \$ **[500]** **150** per month to allocate the parties' combined income equally between the two households. This is the **[presumptively correct]** **presumptive** amount of basic support payable to Father under these circumstances.

Example 2. Where **the** obligor and **the** obligee have monthly net incomes of \$3,000 and \$2,500 respectively, their combined child support obligation for two children is \$1,268. The obligor's share of this obligation is 55%, or \$697. If the children spend equal time with both parents, the formula in Part II results in a support obligation of \$444 payable to the obligee. Since this amount gives the obligee \$2,944 of the combined income, and leaves the obligor with only \$2,556 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 **presumptive** amount of basic support payable to obligee under these circumstances.

* * * * *

(d) *Divided or Split Physical Custody.*

(1) When calculating a child support obligation, and one or more **of the** children reside 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]** **513**. 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]** **199**. Subtracting \$ **[188]** **199** from \$ **[508]** **513** produces a net **basic** support amount of \$ **[320]** **314** 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.

(e) *Support Obligations When Custodial Parent Owes Spousal Support.* Where children are residing with the spouse obligated to pay spousal support or alimony pendente lite (custodial parent) and the other spouse (non-custodial parent) has a legal obligation to support [these] the children, the guideline amount of spousal support or alimony pendente lite shall be determined by offsetting the non-custodial parent's obligation for support of the children and the custodial parent's obligation of spousal support or alimony pendente lite, and awarding the net difference either to the non-custodial parent as spousal support/alimony pendente lite or to the custodial parent as child support as the circumstances warrant.

The following example uses the formula to show the steps followed to determine the amount of the non-custodial parent's support obligation to the children and the effect of that obligation upon the custodial parent's spousal support obligation. The example assumes that the parties have two children and the non-custodial parent's net monthly income is \$1,000 and the custodial [parent 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 2005 amendment supersedes *Diament v. Diament*, 816 A.2d 256 (Pa. Super. Ct. 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.A. § 7101 et seq. The court shall provide notice of allocation to the parties.

Official Note: This provision is necessary to comply with various state and federal laws relating to the enforcement of child support. It is not intended to affect the tax consequences of an unallocated order.

[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—2005

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 presumptive amount of support for only up to six children.

Subdivision (c) sets forth the method for calculating the presumptive amount of support in cases where the children spend 40% or more of their time during the year with the obligor. When there is equal time sharing, subsection (2) reduces the support obligation further so that the obligor does not pay more than is necessary to equalize the parties'

combined income between the two households. Subsection (3) expressly excludes SSR cases from application of this rule. Since the SSR already reduces support to a minimal level, no further reduction should be given for the amount of time spent with the children.

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.

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.

(a) **Deviation.** If the amount of support deviates from the amount of support determined by the guidelines, the trier of fact shall specify, in writing, the guideline amount of support, and the reasons for, and findings of fact justifying, the amount of the deviation.

* * * * *

(b) **Factors.** In deciding whether to deviate from the amount of support determined by the guidelines, the trier of fact shall consider:

* * * * *

(c) **Duration.** In determining the duration of an award for spousal support or alimony pendente lite, the trier of fact shall consider the period of time during which the parties lived together from the date of marriage to the date of final separation.

Explanatory Comment—[1998] 2005

[As part of the overall reorganization of the support rules, the provisions which formerly appeared 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. 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. 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 \$1,032 (\$812 + \$220 = \$1,032).

(1) Except as provided in subsection (2), the total child care expenses shall be reduced to reflect the amount of the federal child care tax credit available to the [custodial] eligible parent, whether or not the credit is actually claimed by that parent, up to the maximum annual cost allowable under the Internal Revenue Code.

(2) The federal child care tax credit shall not be used to reduce the child care expenses subject to allocation between the parties if the [custodial] eligible parent is not qualified to receive the credit.

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 [basicsupport] **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. Notwithstanding the prior sentence, there shall be no apportionment of unreimbursed medical expenses incurred by a party who is not owed a statutory duty of support by the other party. 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 [maydirect] **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—2005

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. Subdivision (a) 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 (a)(1), relating to the federal child care tax credit, [has been] was amended in 2004 to reflect recent amendments to the Internal Revenue Code. 26 U.S.C.A. § 21. By referring to the tax code in general, rather than incorporating current code provisions in the rule, any further amendments will be incorporated into the support calculation. Since the tax credit may be taken only against taxes owed, it cannot be used when the eligible 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 eligible parent does not qualify to receive the credit.

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 portion of the premium covering the party carrying the insurance, 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, so long as there is a statutory duty of support owed to that party, 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 or owed a statutory duty of support. 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 additional 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 the 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 the obligor's children among the households in which those children live.

Example 1. [Obligor] The obligor is sued for support of an out of wedlock child. [Obligor] The 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 2. [Obligor] The 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 the 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 3. [**Obligor**] **The 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 the obligor's basic support [**obligations**] **obligation**, the court should ensure that **the obligor** retains at least \$[**550**] **748** per month consistent with Rule 1910.16-2(e).

Example 1. 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**] **The 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**] **The 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 2. Assume that **the obligor** is paying \$[**244**] **227** per month support for one child of the first marriage. [**Obligor**] **The 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**] **presump-**

tive 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.

(d) When an obligor is subject to more than one order for child support, spousal support and/or alimony pendente lite, the priority for distribution of payments and/or collections from the obligor, without regard to the source of the funds or method of collection, are as follows unless the court specifically orders a different distribution priority:

* * * * *

Explanatory Comment—[**1998**] **2005**

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.

Subdivision (d) addresses the priority of the distribution of payments and collections. However, collections realized through the interception of federal tax returns by the Internal Revenue Service are subject to federal distribution priorities. See 45 CFR 303.72(h).

[Pa.B. Doc. No. 05-1893. Filed for public inspection October 14, 2005, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Proposed Amendments to Pa.R.Crim.P. 107

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 107 (Contents of Subpoena) to clarify the procedures for issuance of subpoenas by the judges of the courts of common pleas, the Philadelphia Municipal Court, and the minor judiciary. This supplemental proposal, which modifies the original proposal published in 35 Pa.B. 1556 (3/5/05) and in the *Atlantic Reporter* advanced sheets at 865 A.2d (3/4/05), resulted from the Committee's further review of the proposed rule changes in response to the extensive correspondence received after publication of our original explanatory Report. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Supplemental Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Supplemental Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Supplemental Reports.

The text of the proposed amendments precedes the Supplemental Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
5035 Ritter Road, Suite 100
Mechanicsburg, PA 17055
fax: (717) 795-2106
e-mail: criminal.rules@pacourts.us

no later than Friday, November 18, 2005.

By the Criminal Procedural Rules Committee

NICHOLAS J. NASTASI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART A. Business of the Courts

Rule 107. Issuance of Subpoena; Contents of Subpoena.

(A) Court of Common Pleas

(1) Upon the request of a party, the clerk of courts shall issue a subpoena. The subpoena shall be signed and under the seal of the court, but otherwise blank. The party requesting the subpoena shall fill in the contents of the subpoena required in paragraph (C) before the subpoena is served.

(2) The subpoena shall be served as provided in paragraph (B)(3) in the same manner as notices are served on parties pursuant to Rule 576(B)(2).

(B) Minor Judiciary

(1) The attorney for the Commonwealth or the attorney for the defendant, as officers of the court, may sign and issue a subpoena on behalf of the magisterial district court in which the proceeding is pending.

(a) The subpoena shall be in the form designated for use in magisterial district courts.

(b) The attorney must complete the subpoena with the information required in paragraph (C) before the subpoena is served. The subpoena also shall include notice to the individual subpoenaed to contact the issuing attorney with any questions about or challenges to the subpoena.

(c) A copy of the subpoena shall be filed in the magisterial district court in which the proceeding is pending within 48 hours of service, and in no event later than the commencement of the hearing. Filing pursuant to this paragraph may be accomplished by sending a copy by facsimile transmission.

(2) Upon the request of a defendant proceeding pro se, a law enforcement officer, a private criminal complainant, or an attorney who elects to proceed under this paragraph, the issuing authority may issue a subpoena.

(a) The individual requesting the subpoena shall provide the issuing authority with the information required in paragraph (C).

(b) If the subpoena is to be issued, the issuing authority shall fill in the information provided.

(c) The subpoena shall be signed and under the seal of the issuing authority.

(3) All subpoenas shall be served upon any person within the Commonwealth by a competent adult

(a) by handing a copy to the person; or

(b) at the residence of the person, by handing a copy

(i) to an adult member of the family with whom the person resides; but if no adult member of the family is found, then to an adult in charge of such residence; or

(ii) to the clerk or manager of the hotel, inn, apartment house, boarding house, or other place of lodging where the person resides; or

(c) at any office or usual place of business of the person, by handing a copy to the person's agent or another person in charge.

(4) The person making service of a subpoena must file a certificate of service in the magisterial district court in which the hearing is pending within 48 hours of service, and in no event later

than the commencement of the hearing. Filing under this paragraph may be accomplished by sending a copy by facsimile transmission.

(C) Contents of Subpoena

A subpoena in a criminal case shall:

(1) order the witness named to appear before the common pleas court or magisterial district court at the date, time, and place specified, and to bring any items identified or described[. The subpoena shall also];

(2) state on whose behalf the witness is being ordered to testify [and];

(3) state the name and address for service on the person being subpoenaed; and

(4) state the [identity] name and attorney identification number, address, and phone number of the attorney, if any, who issued the subpoena pursuant to paragraph (B)(1) or applied for the subpoena pursuant to paragraph (B)(2).

Comment

[The form of subpoena was deleted in 1985 because it is no longer necessary to control the specific form of subpoena by rule.]

It is intended that the subpoena [shall] will be used not only for [trial] summary trials or trials in the courts of common pleas and the Philadelphia Municipal Court, but also for any other stage of the proceedings before the minor judiciary, Philadelphia Municipal Court, or common pleas court when a subpoena is issuable, including preliminary hearings, hearings in connection with pretrial and post-trial motions, etc.

The subpoenas issued by the judges of the Philadelphia Municipal Court should be issued pursuant to paragraph (A).

Paragraph (B)(1) authorizes an attorney for the Commonwealth or an attorney for the defendant to complete, sign, and issue subpoenas under the authority of the court in all cases in the magisterial district courts, and requires that subpoenas issued by an attorney on behalf of a magisterial district court be on a designated form. An attorney may not use a blank subpoena form from the court of common pleas. It is intended that the magisterial district court blank subpoena forms will be readily available for use by attorneys.

There is no provision for the court to review or approve prior to issuance a subpoena issued by an attorney under paragraph (B)(1). The authority to issue subpoenas given to attorneys under this paragraph carries with it the responsibility to use good judgment and to make every effort to limit the scope of subpoenas to persons, documents, or things that are relevant to the cause of action before the magisterial district judge.

For a suggested form of certificate of service to use as required in paragraph (B)(4), see Rule 576(B)(4) and Comment. The copy of the subpoena required to be filed under paragraph (B)(3) and the certificate of service required to be filed under paragraph (B)(4) may be filed simultaneously.

Nothing in this rule is intended to preclude the attorney from proceeding pursuant to paragraph

(B)(2) and requesting that the magisterial district judge complete, sign, and issue the subpoena.

When the subpoena is for the production of documents, records, or things, these should be specified.

When issuing a subpoena pursuant to paragraph (B)(2), the issuing authority may limit the scope of the subpoena to persons, documents, or things that are relevant to the cause of action before the issuing authority.

All subpoenas issued pursuant to paragraph (A) or paragraph (B)(2) must be signed by a judge of the court issuing the subpoena. The signature may be in any of the forms of signature authorized in the Rule 103 definition of "signature."

The requirements in paragraph (B)(3) for the service of the subpoena are the same as the requirements for service of a subpoena in a civil matter pursuant to Pa.R.C.P.M.D.J. No. 214(c) (Subpoena; Issuance; Service).

See 42 Pa.C.S. § 1725.1 concerning costs to be charged by the minor judiciary.

For the scope of the contempt powers of magisterial district judges, see 42 Pa.C.S. § 4137. See also Rules 140-142.

Official Note: Previous Rule 9016 adopted January 28, 1983, effective July 1, 1983; rescinded November 9, 1984, effective January 2, 1985. Present Rule 9016 adopted November 9, 1984, effective January 2, 1985; renumbered Rule 107 and amended March 1, 2000, effective April 1, 2001; amended , 2005, effective , 2005.

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Supplemental Report explaining the proposed changes concerning issuance of subpoenas by attorneys published at 35 Pa.B. 5677 (October 15, 2005).

SUPPLEMENTAL REPORT

Proposed Amendments to Pa.R.Crim.P. 107

Procedures for Issuance and Service of Subpoena

I. Introduction

The Criminal Procedural Rules Committee's original proposal¹ was for amendments to Rule 107 (Contents of Subpoena) that would distinguish between the procedures for issuance of subpoenas by the court of common pleas and issuance of subpoenas by the minor judiciary. In this Supplemental Report, the Committee is explaining several changes to the proposed Rule 107 amendments.²

The core of the proposal as published remains the same.³ The changes in this supplemental proposal address the major issues raised in the publication responses, and include some fine tuning by the Committee. Briefly, these changes:

¹ See 35 Pa.B. 1556 (3/5/05) and the *Atlantic Reporter* advanced sheets, 865 A.2d (3/4/05).

² As with the original proposal, a joint subcommittee of the Minor Court Rules Committee and Criminal Rules Committee was formed to assist the two Committees in addressing the issues raised by the publication responses, in particular the issue of blank subpoenas. The Joint Subcommittee's recommendations have been approved for publication by both Committees.

³ See the Committee's March 2005 explanatory Report, supra., for the explanation of the development and the contents of the proposal.

- permit an attorney, as an officer of the court, to sign and issue a subpoena on behalf of the magisterial district court;
- require that the subpoena issued by an attorney be in the form designated for use in magisterial district courts and these forms must be readily available;
- require the attorney-issued subpoena to include all the information required by paragraph (C) of Rule 107, and to include a statement advising the individual subpoenaed that any questions about or challenges to the subpoena must be directed to the attorney;
- require that a copy of the subpoena be filed with the proper magisterial district judge within 48 hours of service and in no event later than the commencement of the hearing;
- permit the attorney to elect to proceed pursuant to Rule 107(B)(2) and have the magisterial district judge complete, sign, and issue the subpoena;
- add to the Comment cross-references to 42 Pa.C.S. § 4137 and Pa.Rs.Crim. P. 140-142 concerning the magisterial district judge contempt powers;
- require that a written proof of service be filed; and
- because the rules will permit the attorneys to issue the subpoenas and the magisterial district court subpoena forms will be readily available, include in the Rule 107 Comment a prohibition on attorneys using the subpoena forms that are used in the court of common pleas for subpoenaing individuals to magisterial court proceedings.

II. Discussion of Proposed Rule Changes

Proposed Rule 107(A) provides the procedures for the issuance of a subpoena by the court of common pleas. This paragraph is the same as was originally published.

Paragraph (B) provides the procedures for the issuance of a subpoena in cases pending before the minor judiciary. Because of the concerns raised in the publication responses about the provision in the original proposal that required the magisterial district judges to issue subpoenas in blank when requested by an attorney, the Committee is proposing as new paragraph (B)(1) a completely new approach that permits an attorney as an officer of the court to sign and issue a subpoena on behalf of the magisterial district court in which the proceeding is pending.⁴ A cautionary provision has been added to the Comment explaining to these attorneys, when exercising their new authority to issue subpoenas in cases before the minor judiciary, that they should exercise good judgment.⁵

Paragraph (B)(1)(a) requires that, if the attorney is going to issue the subpoena, he or she must use the form of subpoena designated for use in magisterial district courts. The Comment explains that the attorney may no longer use a common pleas court form of subpoena in cases in the magisterial district courts.

Paragraph (B)(1)(b) addresses the contents of the attorney-issued subpoena. This paragraph includes a cross-reference to paragraph (C) for the mandatory contents of the subpoena. The provision also requires that the attorney-issued subpoena include notice to the subpoenaed individual that all questions about or challenges to the subpoena must be directed to the issuing attorney, not the magisterial district judge. This new provision

⁴ The authority of attorneys, as officers of the court, to issue subpoenas has been recognized for a number of years in the Federal Courts in paragraph (D)(3) of F.R.Civ.P. 45 (Subpoena).

⁵ This provision is reflective of the responsibilities imposed on attorneys by Rule 4.4 of the Rules of Profession Conduct.

recognizes that, when the attorney issues the subpoena, the attorney assumes all responsibility for that subpoena.

Paragraph (B)(1)(c) requires that a copy of the attorney-issued subpoena be filed in the magisterial district court in which the proceeding is pending within 48 hours of service, but in no event later than the commencement of the proceeding. This requirement was added to ensure the magisterial district judges have copies of all subpoenas for the court's records. To accommodate the attorneys and the magisterial district judges, the rule permits these filings to be accomplished by facsimile transmission.

Paragraph (B)(2) sets forth the procedures for the issuance of subpoenas by members of the minor judiciary. Agreeing that there may be cases in which an attorney would not want to issue a subpoena pursuant to paragraph (B)(1), the Committee has modified paragraph (B)(2) to accommodate these attorneys. In all other respects, this paragraph is the same as was published.

Paragraphs (B)(3) and (B)(4) are new and address service of the subpoenas, whether the subpoena was issued by an attorney or a magisterial district judge. For the service procedures, the published version of Rule 107 had merely included a cross-reference to PA.R.C.P.D.J. NO. 214(C). On reflection, the Committee agreed listing the service requirements in Rule 107(B)(3) and including the cross-reference in the Comment to Rule 214(c) as the derivation of these requirements makes more sense and is more "user friendly." Paragraph (B)(4) requires that the person serving the subpoena also must file a certificate of service in the magisterial district court in which the hearing is pending.⁶ Tying the time for this filing to the filing requirement in paragraph (B)(1)(c), the certificate of service must be filed within 48 hours of service and in no event later than the commencement of the proceeding. The certificate of service may be filed by facsimile transmission. The Comment explains that the form of certificate of service that is set forth in the Rule 576 Comment is an example of the type of certificate of service that should be filed under paragraph (B)(4). The Comment also explains that the copy of the subpoena and the certificate of service may be filed simultaneously.

Finally, paragraph (C) has been amended from the published version by adding the requirement that the attorney issuing the subpoena or requesting a subpoena must include his or her attorney identification number on the subpoena.

[Pa.B. Doc. No. 05-1894. Filed for public inspection October 14, 2005, 9:00 a.m.]

[234 PA. CODE CH. 2]

Order Amending Rule 227; No. 328 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the September 30, 2005 changes to Rule of Criminal Procedure 227. The changes, which will be effective February 1, 2006, clarify that (1) when it is necessary to give constitutional warnings to a witness who will testify in an investigating grand jury proceeding, the warnings and the oath must be administered by the supervising judge, and (2) for all other witnesses in the investigating grand jury proceeding, a court representative, who is authorized to administer

⁶ Because the Criminal Rules provide a certificate of service requirement in Rule 576 (Filing and Service by Parties), we have used this terminology in paragraph (B)(4).

oaths, is permitted to administer the oath. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 30th day of September, 2005, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 33 Pa.B. 2163 (May 3, 2003), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 227 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective February 1, 2006.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 2. INVESTIGATIONS

PART B(1). Investigating Grand Juries

Rule 227. Administering Oath to Witness.

Each witness to be heard by the investigating grand jury shall be sworn [**by the court**] before testifying. The witness may elect to be sworn in camera or in open court.

Comment

* * * * *

When it is necessary to give constitutional warnings to a witness, the warnings and the oath must be administered by the court. As to warnings that the court may have to give to the witness when the witness is sworn, see, e.g., *Commonwealth v. McCloskey*, 443 Pa. 117, 277 A.2d 764 (Pa. 1971).

Official Note: Rule 259 adopted June 26, 1978, effective January 9, 1979; renumbered Rule 227 and Comment revised March 1, 2000, effective April 1, 2001; **amended September 30, 2005, effective February 1, 2006.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the September 30, 2005 amendments concerning administration of the oath published with the Court's Order at 35 Pa.B. 5679 (October 15, 2005).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 227

Administration of the Oath to Investigating Grand Jury Witnesses

On September 30, 2005, effective February 1, 2006, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 227 (Administering Oath to Witness) to make the rule clear that (1) when it is necessary to give constitutional warnings to a witness who will testify in an investigating grand jury proceeding, the warnings and the oath must be administered by the supervising judge, and (2) for all other witnesses in the investigating grand jury proceeding, a

¹ The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

court representative, who is authorized to administer oaths, is permitted to administer the oath.

When the Committee originally proposed Rule 227 in 1978, the impetus for the requirement that the court administer the oath to witnesses was concerns about the warnings and instructions that should be given to a witness prior to testifying. The decision to add to Rule 227 the requirement that the oath be administered by the court relied on *Commonwealth v. McCloskey*, 443 Pa. 117, 277 A.2d 764 (Pa. 1971), in which the Supreme Court stated, inter alia, that "the proper procedure is for the court supervising the investigating grand jury to instruct the witness when administering the oath" about the right to counsel.

In view of this history, the Committee concluded the "sworn by the court" requirement only applies to witnesses who also must be given warnings at the time the oath is administered. The Committee also noted the witnesses who do not require constitutional warnings in most cases are law enforcement officers or other individuals involved in the investigation, and to require them to appear before the supervising judge to be sworn, which is frequently hours before the witness is to testify, is inefficient, an inconvenience to the law enforcement officers, an economic and staffing burden on their departments, and serves no purpose.

Accordingly, in view of these considerations and the rule history, Rule 227 has been amended by deleting the phrase "by the court" to allow any court official who is authorized to administer oaths to administer the oath to the investigating grand jury witnesses who do not require constitutional warnings. This change promotes judicial economy and benefits these other witnesses who would be able to appear at the time scheduled for their testimony rather than at the time the supervising judge is available for the administration of oaths. In addition, a cautionary provision is added to the second paragraph of the Comment that explains when it is necessary to give constitutional warnings to a witness, the warnings and oath must be administered by the court.

[Pa.B. Doc. No. 05-1895. Filed for public inspection October 14, 2005, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 200]

Proposed Amendments to Rule 214 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 214 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges to provide, in certain circumstances, for the issuance of subpoenas by attorneys. The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Supplemental Report highlights the Committee's considerations in formulating this proposal. The Committee's Supplemental Report should

not be confused with the Committee's Official Notes to the rules. The Supreme Court does not adopt the Committee's Official Notes or the contents of the explanatory reports.

The text of the proposed changes precedes the Supplemental Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit written suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Michael F. Krimmel, Counsel
 Supreme Court of Pennsylvania
 Minor Court Rules Committee
 5035 Ritter Road, Suite 700
 Mechanicsburg, PA 17055
 Fax 717-795-2175

or e-mail to: minorrules@pacourts.us

no later than Friday, November 18, 2005.

By the Minor Court Rules Committee

THOMAS E. MARTIN, Jr.,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

**CHAPTER 200. RULES OF CONSTRUCTION;
 GENERAL PROVISIONS**

Rule 214. Subpoena; Issuance; Service.

* * * * *

B. (1) The attorney of record for a party, as an officer of the court, may issue a subpoena on behalf of the magisterial district court in which the hearing is pending.

(a) The subpoena must be in the form designated for use in magisterial district courts.

(b) The issuing attorney must complete the subpoena with the information required in paragraph B(3) before the subpoena is served. The subpoena also shall include notice to the individual subpoenaed to contact the issuing attorney with any questions about or challenges to the subpoena.

(c) A subpoena issued under this paragraph shall be signed by issuing attorney.

(d) The issuing attorney must file a copy of the subpoena in the magisterial district court in which the hearing is pending within 48 hours of service, and in no event later than the commencement of the hearing. Filing under this paragraph may be accomplished by sending a copy by facsimile transmission.

(2) Upon the request of a party proceeding pro se or an attorney of record who elects to proceed under this paragraph, the magisterial district judge may issue a subpoena [signed and under the seal of the magisterial district judge]. [The magisterial district judge shall specify in the subpoena the name and address for service of the person subpoenaed; the date, time, and place at which the person is to appear; and a description of the documents or things that the person is to produce, if any.]

(a) The party or attorney of record requesting the subpoena shall provide the magisterial district judge with the information required in paragraph B(3).

(b) If the subpoena is to be issued, the magisterial district judge shall fill in the information provided.

(c) A subpoena issued under this paragraph shall be signed by and under the seal of the magisterial district judge.

(3) In addition to the requirements of paragraphs (1) and (2), a subpoena shall specify:

(a) The name and address for service of the person being subpoenaed.

(b) The name of the party on whose behalf the person is being ordered to testify.

(c) The name, attorney identification number, address, and telephone number of the attorney of record, if any, who issued the subpoena under paragraph B(1) or applied for the subpoena under paragraph B(2).

(d) The date, time, and place at which the person is to appear.

(e) A description of the documents or things that the person is to produce, if any.

* * * * *

D. The person making service of a subpoena must file a return of service in the same manner provided under Rule 314A in the magisterial district court in which the hearing is pending within 48 hours of service, and in no event later than the commencement of the hearing. Filing under this paragraph may be accomplished by sending a copy by facsimile transmission.

Official Note: See Rule 202 for definition of "subpoena." Compare Pa.R.C.P. Nos. 234.2 and 402(a) and Pa.R.Crim.P. 107.

Paragraph (B)(1) authorizes an attorney of record for a party to complete, sign, and issue subpoenas under the authority of the court in all cases governed by these rules in the magisterial district courts. Subpoenas issued by an attorney on behalf of a magisterial district court must be on a designated form. An attorney may not use a blank subpoena form from the court of common pleas. It is intended that the magisterial district court blank subpoena forms will be readily available for use by attorneys.

There is no provision for the court to review or approve prior to issuance a subpoena issued by an attorney under paragraph B(1). The authority to issue subpoenas given to attorneys under this paragraph carries with it a responsibility to use good judgment and to make every effort to limit the scope of subpoenas to persons, documents, or things that are relevant to the cause of action before the magisterial district judge.

Nothing in this rule is intended to preclude the attorney from proceeding under paragraph B(2) and requesting that the magisterial district judge complete, sign, and issue the subpoena.

[The] When issuing a subpoena under paragraph B(2) the magisterial district judge has discretion to limit the scope of [subpoenas] the subpoena to persons, documents, or things that are relevant to the cause of action before the magisterial district judge.

[Magisterial district judges may not issue subpoenas in blank.]

The copy of the subpoena required to be filed under paragraph B(1)(d) and the return of service required to be filed under paragraph D may be filed simultaneously.

Paragraphs B(1)(d) and D provide for filing by facsimile transmission. It is the intent of these rules that filing documents by facsimile transmission is permitted only when expressly provided for in the rules.

See Pa.C.S. § 1725.1 concerning costs to be charged by magisterial district courts.

For the scope of the contempt powers of magisterial district judges, see 42 Pa.C.S. § 4137. See also Pa.R.Crim.P. 140-142.

SUPPLEMENTAL REPORT

Proposed Amendments to Rule 214 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

Issuance of Blank Subpoenas

I. Background

The Minor Court Rules Committee (the Committee) undertook a review of the rules relating to subpoenas, and specifically the issue of whether magisterial district judges may issue subpoenas in blank, at the direction of the Supreme Court of Pennsylvania. In *In Re: District Justice Sandra L. Stevanus*, No. 60 WM 2003, the Supreme Court was asked to issue a writ of mandamus directing Judge Stevanus to issue blank subpoenas to a defense attorney in a criminal case that was pending in her court. Judge Stevanus refused to issue the blank subpoenas, contending that the party requesting a subpoena must provide the magisterial district court with the information needed to complete the subpoena before the subpoena is issued. In its November 12, 2003 order denying the petition for writ of mandamus, the Supreme Court ordered that “[t]he Criminal Rules Committee, in consultation with the Minor Rules Committee, is hereby directed to study the question of whether District Justices may issue subpoenas in blank.”

Initially, the Committee published a proposal that would have required a magisterial district judge to issue a blank subpoena upon the request of an attorney of record for a party.¹ Based on negative publication responses to that original proposal, the Committee has revised its proposal in an attempt to address the concerns raised in the publication responses. Upon further review of the relevant issues and authorities, and after additional consultation with the Criminal Procedural Rules Committee (CPRC), the Committee is again proposing that Rule 214 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges be amended to expressly allow, in certain circumstances described below, the issuance of subpoenas in blank.²

II. Discussion

Initially, prior to publication of the original proposal, the Committee had taken the position that magisterial district judges should not issue subpoenas in blank, at least in magisterial district court civil and landlord and tenant proceedings. The Committee noted that Pa.

R.C.P.M.D.J. Nos. 213 and 214 were adopted by the Supreme Court September 3, 2003, effective January 1, 2004.³ Rule 214 specifies what information must be contained in the subpoena, including the name and service address of the person being subpoenaed; the date, time, and place at which the person is to appear; and a description of any documents or things the person is to produce. This procedure differs from the usual practice in the courts of common pleas in that the specified information must be contained in the subpoena at the time of issuance. To further reinforce this, the Official Note to Rule 214 makes clear that “[m]agisterial district judges may not issue subpoenas in blank.”⁴ In drafting Rule 214, the Committee had thought it unadvisable that magisterial district judges issue subpoenas in blank because there is no pretrial motions practice in magisterial district court civil proceedings, and in particular, no procedural mechanism to quash a subpoena. Therefore, the Committee thought it important that, at the time of issuance, the magisterial district judge have “discretion to limit the scope of subpoenas to persons, documents, or things that are relevant to the cause of action before the magisterial district judge.”⁵ The Committee’s concerns centered around potential abuses if pro se parties are permitted to prepare and issue subpoenas without the court having any knowledge of who or what is being subpoenaed. For example, there were concerns that pro se parties may attempt to subpoena persons or things that are totally irrelevant to the proceedings, or may request such a large number of documents so as to make compliance with the subpoena extremely burdensome.

In discussions prior to formulating of the original proposal, the CPRC pointed out that in most criminal cases the concern about abuses by pro se litigants is less of an issue because there is a representative of the Commonwealth involved, and these individuals are less likely to abuse the subpoena process. For this and other reasons, the CPRC did not share the Committee’s concerns about blank subpoenas. Recognizing that the two committees had somewhat different positions on this issue, the two committees formed a joint subcommittee to address the Supreme Court’s directive.

When the joint subcommittee met for the first time, it became clear that the concerns about blank subpoenas in both civil and criminal cases centered almost exclusively around cases where no attorney is involved. After considerable discussion, the joint subcommittee agreed to a compromise proposal that would require a magisterial district judge to issue a blank subpoena when requested by an attorney. In cases in which a pro se party or a law enforcement officer requests a subpoena, however, the magisterial district judge will retain discretion whether to issue the subpoena, and the judge will fill in the contents of the subpoena before issuing it to the requesting party. This was the basis of the Committee’s original proposal.

Upon publication of the original proposal, however, many correspondents expressed concerns about a magisterial district judge being required to issue a blank subpoena, which would contain the magisterial district judge’s signature and seal, even if only to a member of the bar. The correspondents noted that with no ability for the court to review the content of these subpoenas prior to issuance, and no procedural mechanism in place to quash a subpoena, there was still potential for abuse. Of

¹ The Committee’s original proposal and explanatory Report was published at 35 Pa.B. 1560 (March 5, 2005).

² Like the original proposal, this revised proposal is being published for public comment in conjunction with a proposal from the CPRC to make similar amendments to the Rules of Criminal Procedure.

³ Recommendation No. 4 Minor Court Rules 2003, approved by Supreme Court of Pennsylvania Order No. 204, Magisterial Docket No. 1 (September 3, 2003), published along with the Committee’s explanatory Final Report at 33 Pa.B. 4663 (September 20, 2003).

⁴ Pa. R.C.P.M.D.J. No. 214, Official Note. The Supreme Court of Pennsylvania does not adopt the contents of the Committee’s Official Notes to the rules.

⁵ Id.

greatest concern was the possibility that a subpoenaed individual might get the impression that the magisterial district judge reviewed and approved an inappropriate subpoena prior to issuance, when in fact the judge would have had no opportunity to do so, and would have no knowledge of the contents of the subpoena.

In light of the negative responses to the original proposal, the Committee and the CPRC reconvened the joint subcommittee. In the joint subcommittee's second meeting, it focused on the sensitive issues involved with a magisterial district judge's signature appearing on a subpoena without the judge having had any opportunity to review or approve the content of the subpoena, and attempted to formulate a revised proposal that would still provide for the issuance of blank subpoenas to attorneys, but that would address the concerns of the correspondents. After considerable discussion, the joint subcommittee centered its attention on the idea of adopting a procedure similar to federal civil practice, where attorneys, as officers of the court, are given authority to sign and issue subpoenas on behalf of the court, but without the judge's signature or any indication that the subpoena has been reviewed or approved by the court.⁶ The judge's signature or seal does not appear on these federal attorney-issued subpoenas.

Adopting a subpoena procedure similar to the federal procedure was thought to be a reasonable compromise since attorneys would still have the ability to issue subpoenas without having to request the court to do so, but it would be clear that the subpoena was issued by an attorney, and not by the court.

III. Proposed Rule Changes

To implement the solution discussed above, the Committee is proposing that Pa. R.C.P.M.D.J. No. 214 be amended to establish different procedures when a subpoena is issued by an attorney of record for a party on behalf the court, and when a pro se party or an attorney requests that the court issue a subpoena. Specifically, Rule 214B would be divided into four subparagraphs. Paragraph B(1) would permit an attorney of record for a party, as an officer of the court, to sign and issue a subpoena, and would make clear that the attorney is to fill in the contents of the subpoena before service. This paragraph would also require the attorney to file a copy of the subpoena with the court within 48 hours of service, and in no event later than the commencement of the hearing. The Official Note would make clear that the authority "given to attorneys under this paragraph carries with it a responsibility to use good judgment and to make every effort to limit the scope of subpoenas to persons, documents, or things that are relevant to the cause of action before the magisterial district judge."

Paragraph B(2) would provide the procedure for issuing a subpoena to a pro se party or to an attorney of record

⁶ See Fed. R. Civ. P. 45, which provides in part, "[a]n attorney as officer of the court may also issue and sign a subpoena on behalf of (A) a court in which the attorney is authorized to practice." Fed. R. Civ. P. 45(a)(3), 28 U.S.C.A., FRCP Rule 45. See also *Practice Commentaries*, section C45-5, by David D. Siegel, which provides in part, "[i]n court order is necessary for the issuance of a subpoena, and under the 1991 amendment no request for a subpoena need even be made of the clerk: a significant achievement of the 1991 amendment is that it allows the attorney to issue the subpoena, without even a pro forma application to the court. Subdivision (a)(3). This merely carries to fruition a practice that had taken place for years in all but form. Under old Rule 45, it had to be the clerk that issued the subpoena, but the clerk would issue it "in blank" just about for the asking. The attorney would then fill it in and arrange for its service. Hence it was the attorney who was doing everything, with the clerk doing nothing more than furnishing the form. The 1991 amendment recognizes this by relieving the clerk of the issuance duty altogether, at least when the party seeking the subpoena has an attorney. . . . The attorney must "sign" the subpoena, but the seal of the court is no longer required. Under the mere signature of the attorney the subpoena acts as process of the court, fully backed by the sanction provisions of Rule 45, including the ultimate sanction of contempt now found in subdivision (e)." David D. Siegel, *Practice Commentaries*, section C45-5, available at Westlaw, Fed. Rules Civ. Proc. Rule 45, 28 U.S.C.A., FRCP Rule 45.

who chooses to proceed under this paragraph. This provision would give the magisterial district judge discretion to issue the subpoena, and would require the court to fill in the contents of the subpoena before issuance.

Paragraph B(3) would list the required contents of all subpoenas. A new paragraph D would require the person serving a subpoena to file a return of service in the same manner provided under Rule 314A (relating to return of service after service of a complaint) within 48 hours of service, and in no event later than the commencement of the hearing.

Paragraphs B(1)(d) and D provide for filing of the copy and return of service by facsimile transmission. The Official Note to the rule makes clear that filing documents by facsimile transmission is permitted only when expressly provided for in the rules.

Paragraphs A and C would not be amended under this proposal.

[Pa.B. Doc. No. 05-1896. Filed for public inspection October 14, 2005, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Steven Pasternak having been disbarred from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated February 24, 2005, the Supreme Court of Pennsylvania issued an Order on September 30, 2005, disbaring Steven Pasternak from the Bar of this Commonwealth, effective October 30, 2005. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,

Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 05-1897. Filed for public inspection October 14, 2005, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania issued September 30, 2005, Erling Rolf Krosby is suspended from the Bar of this Commonwealth for a period of five years. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,

Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 05-1898. Filed for public inspection October 14, 2005, 9:00 a.m.]