

# THE COURTS

## 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 109

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

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

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Monday May 23, 2011 directed to:

Patricia A. Miles, Esquire  
 Counsel, Domestic Relations Procedural Rules Committee  
 Pennsylvania Judicial Center  
 601 Commonwealth Avenue, Suite 6200  
 P. O. Box 62635  
 Harrisburg, PA 17106-2635

Fax: 717 231-9531  
 E-mail: domesticrules@pacourts.us

Deleted material is bold and bracketed. New material is bold.

*By the Domestic Relations  
 Procedural Rules Committee*

CAROL A. BEHERS, Esq.,  
*Chair*

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1910. ACTIONS FOR SUPPORT

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

Generally, the amount of support to be awarded is based upon the parties' monthly net income.

\* \* \* \* \*

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

(1) **Public Assistance and SSI Benefits.** Neither public assistance nor Supplemental Security Income (SSI) benefits shall be counted as income for purposes of determining support.

(2) **Social Security Payments for a Child.** 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. **This calculation presumes that the primary custodial parent is receiving the child's benefits. In cases in which the parties share custody equally and the obligor is receiving the child's benefits, the amount of the child's benefit shall be added to the obligor's income and support shall be calculated as in any other case without deduction of the amount of the benefit from the presumptive amount of support set forth in the basic support schedule.** 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.

(3) **Foster Care Payments.** If either party to a support action is a foster parent and/or is receiving payments from a public or private agency for the care of a child who is not his or her biological or adoptive child, those payments shall not be included in the income of the foster parent or other caretaker for purposes of calculating child support for the foster parent's or other caretaker's biological or adoptive child.

\* \* \* \* \*

#### 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 basic child support, either from the schedule in Rule 1910.16-3 or the formula in Rule 1910.16-3.1(a), as well as spousal support and alimony pendente lite obligations. In high income cases, Part IV shall be used as a preliminary analysis in the calculation of spousal support or alimony pendente lite obligations:

#### PART I. BASIC CHILD SUPPORT

	OBLIGOR	OBLIGEE
1. Total Gross Income Per Pay Period	_____	_____
2. Less Deductions	( _____ )	( _____ )
3. Net Income	_____	_____

	<i>OBLIGOR</i>	<i>OBLIGEE</i>
	_____	_____
4. Conversion to Monthly Amount (if pay period is other than monthly) <b>Include in the obligor's income the child's monthly Social Security retirement or disability benefit if the parties share custody equally and the obligor is receiving the child's benefit. (See Rule 1910.16-2(b)(2))</b>		
5. Combined Total Monthly Net Income	_____	
6. Plus Child's Monthly Social Security, Death, Retirement or Disability Derivative Benefit, if any. <b>Do not add child's benefit if included in the obligor's income in line 4.</b> (See Rule 1910.16-2(b)(2))	+ _____	
7. Adjusted Combined Monthly Net Income	_____	
8. PRELIMINARY BASIC CHILD SUPPORT OBLIGATION (determined from 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 ( <b>Do not deduct the child's benefit if the parties share custody equally and the obligor is receiving the child's benefit.</b> )	( _____ )	
10. BASIC CHILD SUPPORT OBLIGATION	_____	
11. Net Income Expressed as a Percentage Share of Income (divide line 4 by line 5 and multiply by 100)	_____ %	_____ %
12. Each Parent's Monthly Share of the Basic Child Support Obligation (multiply line 10 and 11)	_____	_____

\* \* \* \* \*

[Pa.B. Doc. No. 11-501. Filed for public inspection March 25, 2011, 9:00 a.m.]

**PART I. GENERAL**

**[ 231 PA. CODE CH. 1910 ]**

**Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 110**

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.

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*By the Domestic Relations  
Procedural Rules Committee*

CAROL A. BEHERS, Esq.,  
*Chair*

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 1910. ACTIONS FOR SUPPORT**

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

\* \* \* \* \*

**(d) Divided or Split Physical Custody. Varied Custodial Schedules.**

\* \* \* \* \*

(4) When the parties have more than one child and each child spends different amounts of time with the parties, add the percentage of time each child spends with a party and divide by the number of children to determine each party's percentage of custodial time. For example, if the parties have two children and one child spends 50% of the time with the obligor and another spends 20% of the time with the obligor, add those percentages together and divide by the number of children (50% plus 20% = 70% divided by 2 children = 35% of the time with the obligor). If the average percentage of time the children spend with the obligor is 40% or more, the provisions of subdivision (c) above apply.

**Official Note:** In cases with more than one child and varied custodial schedules, it is not appropriate to do a separate calculation for each child and offset support amounts as that method does not consider the incremental increases in support for more than one child built into the schedule of basic child support.

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[Pa.B. Doc. No. 11-502. Filed for public inspection March 25, 2011, 9:00 a.m.]

**PART I. GENERAL**

**[ 231 PA. CODE CH. 1910 ]**

**Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 111**

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.

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*By the Domestic Relations  
Procedural Rules Committee*

CAROL A. BEHERS, Esq.,  
*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. **Overpayments.**

\* \* \* \* \*

(e) [ **Within one year of** ] **Six months prior to** the date a child who is the subject of a child support order reaches eighteen (18) years of age, the domestic relations section shall issue an emancipation inquiry and notice to the obligee, with a copy to the obligor, seeking the following information:

\* \* \* \* \*

The notice shall advise the obligee that if the inquiry is not returned within thirty (30) days of mailing or if there is no agreement or the child does not have any special needs, the charging order may be modified or terminated by the court. [ **When** ] **In order to avoid overpayment, when** no other children are subjects of the child support order and the obligee either does not return the emancipation inquiry within thirty (30) days of its mailing or does not assert grounds for continuing support for the child, then the [ **court shall have the authority to** ] **domestic relations section shall** administratively terminate the child support charging order without further proceedings [ **at any time on or after** ] **on** the last to occur of the date the last child reaches age eighteen (18) or graduates from high school. Termination of the charging order shall not affect any arrears accrued through the date of termination. The court shall have the authority to enter an order requiring the obligor to pay on arrears in an amount equal to the amount of the charging order until all arrears are paid.

If the order applies to another child or children and/or the obligee asserts that there is an agreement between the parties or that a child has special needs requiring continued support, then the domestic relations section [ **may** ] shall schedule a conference **prior to the child's attaining age 18 or graduating from high school** to determine if the charging order should be modified.

\* \* \* \* \*

**(g) Overpayments.**

(1) **If there is an overpayment and a charging order remains in effect, the domestic relations section shall reduce the charging order by 20% or an amount sufficient to retire the overpayment by the time the charging order is terminated unless the court determines it would create an undue hardship to the obligee.**

(2) **If there is an overpayment and there is no charging order in effect, within one year of the termination of the charging order, the former obligor may file a petition with the domestic relations section seeking recovery of the overpayment. A copy shall be served upon the former obligee as original process. The domestic relations section shall schedule a conference on the petition, which shall be conducted consistent with the rules governing support actions. The domestic relations section shall have the authority to enter an order against the former obligee for the amount of the**

**overpayment in a monthly amount to be determined by the trier of fact after consideration of the former obligee's ability to pay.**

[Pa.B. Doc. No. 11-503. Filed for public inspection March 25, 2011, 9:00 a.m.]

**Title 255—LOCAL  
COURT RULES**

**LACKAWANNA COUNTY**

**Repeal and Adoption of Rules of Civil Procedure;  
No. 94 CV 102**

**Order**

*And Now*, this 17th day of February, 2011, it is hereby *Ordered and Decreed* that the following Lackawanna County Rule of Civil Procedure is amended as follows:

1. Lacka. Co. R.C.P. 4000.1(b) is amended as reflected in the following Rule.

2. Pursuant to Pa.R.C.P. 239(c)(2)—(6), the following Local Rule shall be disseminated and published in the following manner:

(a) Seven (7) certified copies of the following Local Rule shall be filed with the Administrative Office of the Pennsylvania Courts;

(b) Two (2) certified copies of the following Local Rule and a computer diskette containing the text of the following Local Rule in Microsoft Word format and labeled with the court's name and address and computer file name shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(c) One (1) certified copy of the following Local Rule shall be filed with the Civil Procedural Rules Committee;

(d) The following Local Rule shall be kept continuously available for public inspection and copying in the Office of the Clerk of Judicial Records, Civil Division, and upon request and payment of reasonable costs of reproduction and mailing, the Clerk of Judicial Records shall furnish to any requesting person a copy of the requested Local Rule(s); and

(e) A computer diskette containing the text of the following Local Rule in Microsoft Word format and la-

beled with the court's name and address and computer file name shall be distributed to the Lackawanna Bar Association for publication on the website of the Lackawanna Bar Association.

3. The amendment of Lackawanna County R.C.P. No. 4000.1(b) shall become effective thirty (30) days after the date of its publication in the *Pennsylvania Bulletin* pursuant to Pa.R.C.P. 239(d).

*By the Court*

THOMAS J. MUNLEY,  
*President Judge*

**Rule 4000.1 Motion for Presentation Before A Special Trial Master.**

(b) An order of the Special Trial Master may be appealed de novo by presentation of an appeal motion to the designated Motions Court Judge in accordance with Lacka. Co. R.C.P. 206.4(c), together with proof of payment to the Clerk of Judicial Records of an appeal cost in an amount to be set by the court from time to time. The appeal motion shall be filed within ten days of the order of the Special Trial Master and shall be considered by the court pursuant to Lacka. Co. R.C.P. 4000.

[Pa.B. Doc. No. 11-504. Filed for public inspection March 25, 2011, 9:00 a.m.]

**DISCIPLINARY BOARD OF  
THE SUPREME COURT**

**Notice of Suspension**

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated March 11, 2011, Richard H. Cline is suspended from the Bar of this Commonwealth for a period of five years retroactive to October 15, 2009. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 11-505. Filed for public inspection March 25, 2011, 9:00 a.m.]