

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION [204 PA. CODE CH. 29]

Promulgation of Financial Regulations Pursuant to Act 30 of 2011; No. 369 Judicial Administration Doc.

Order

Per Curiam

And Now, this 26th day of August, 2011, it is *Ordered* pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate the following Financial Regulations.

To the extent that notice of proposed rulemaking may be required by Pa.R.J.A. No. 103, the immediate promulgation of the regulations is hereby found to be in the interest of efficient administration.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b) and shall be effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

CHAPTER 29. MISCELLANEOUS PROVISIONS

Subchapter I. BUDGET AND FINANCE

§ 29.351. Definitions.

* * * * *

(g) *Temporary Surcharge.*

i. Until December 31, 2014, a temporary surcharge of eleven dollars and twenty-five cents (\$11.25) shall be collected by all collectors of the JCS/ATJ/CJEA fee to supplement the twelve dollars and twenty-five cents (\$12.25) statutory fee described above.

ii. The temporary surcharge may not be imposed upon a conviction or guilty plea based upon the filing of a traffic citation charging a Title 75 (relating to vehicles) offense classified as summary under a state statute or local ordinance as provided in the Pennsylvania Rules of Criminal Procedure.

[Pa.B. Doc. No. 11-1542. Filed for public inspection September 9, 2011, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Proposed Amendments to Rule of Disciplinary Enforcement 214

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania ("Board") is consider-

ing recommending to the Pennsylvania Supreme Court that the Court amend Pennsylvania Rule of Disciplinary Enforcement 214 as set forth in Annex A. The primary intent of the revisions is twofold: first, to provide uniformity between those crimes that an attorney must report to the Board, and those crimes that the Board must report to the Supreme Court; and second, to streamline the process of prosecuting conviction matters by eliminating the procedural stage in which the Supreme Court refers a conviction matter to the Board.

Courts and criminal prosecutors do not always report a Pennsylvania attorney's conviction to the Board. Consequently, the reporting requirement of subdivision (a) of Rule 214, which imposes upon attorneys a duty to self-report a criminal conviction to the Board, is integral to an effective system of attorney discipline.

Under current subdivision (a), however, only some attorneys are obligated to self-report a conviction. A self-report is required only if the conviction is for a "serious crime," which is defined in subdivision (i) as "a crime that is punishable by imprisonment for one year or upward in this or any other jurisdiction."

This limited duty to self-report is not compatible with subdivisions (c) and (g) of Rule 214. Under the provisions of those subdivisions, Disciplinary Counsel must notify the Court of any conviction that comes to Disciplinary Counsel's attention, and the Court is obligated to review all conviction matters to determine whether or not disciplinary action is warranted.

The limited duty to self-report also means that only some attorneys who are convicted of a non-"serious" crime are subjected to the disciplinary process, namely, those attorneys who report their conviction to the Board even though they are not required to do so, and those attorneys whose conviction otherwise comes to the attention of Disciplinary Counsel. It is not uncommon for Disciplinary Counsel to learn of an attorney's conviction for a non-"serious" crime years after the fact, when the salutary effect of discipline is diminished.

The disparity between reportable crimes (i.e., serious crimes) and actionable crimes (i.e., serious crimes and non-"serious" crimes) can also lead to reporting anomalies when the legislature makes changes in the criminal law. Under prior Pennsylvania law, for example, the maximum term of imprisonment for the crime of driving under the influence of alcohol or controlled substance (DUI) was not less than two years, 75 Pa.C.S. § 3731(e) (repealed), and therefore all DUI offenses satisfied the definition of a "serious crime" and were reportable under Rule 214. Effective February 1, 2004, the General Assembly replaced 75 Pa.C.S. § 3731 with 75 Pa.C.S. § 3802, which created new substantive definitions for DUI, and with § 3803, which classified or reclassified some DUI offenses as an ungraded misdemeanor carrying a term of imprisonment of not more than six months. Consequently, not all DUI offenses are currently reportable, even though all DUI offenses remain actionable under Rule 214 and typically result in discipline.

In summary, abolishing the distinction between "serious" and non-"serious" crimes, and expanding the self-reporting requirement to require attorneys to report when convicted of any crime, will enhance Rule 214's effectiveness, make the Rule more evenhanded in its application, and eliminate reporting anomalies that result from legislative action. The practical effect of the proposed Rule is

that attorneys would be obligated to report to Disciplinary Counsel those crimes that Disciplinary Counsel is obligated to report to the Court.

Under proposed subdivision (d)(1), Disciplinary Counsel would have the discretion to ask the Court to issue a rule to show cause based upon a conviction for any crime. While the Board anticipates that such a request in a non-felony matter will be rare, it may be appropriate for Disciplinary Counsel to request a rule to show cause, for example, when the respondent-attorney is taken into custody or remains incarcerated at the time of the conviction or sentence, or where the conviction is part of a pattern of criminality or disciplinary violations. The amendments to the Note after subdivision (d)(5) would eliminate any question that the Court has the discretion to consider mitigating or aggravating circumstances.

Another procedural change, which is set forth in subdivision (f)(1) of the proposed Rule, would allow Disciplinary Counsel to commence an informal or formal proceeding under Enforcement Rule 208 immediately after filing the certificate of conviction with the Court. By eliminating the Rule's current requirement, as set forth in subdivision (f)(1) and the Note to subdivision (g), that Disciplinary Counsel take no action unless and until the Court refers the matter to the Board or to the Office of Disciplinary Counsel, the proposed change will accelerate the time from conviction to disciplinary disposition primarily in matters involving the less serious and minor offenses. In those cases where Disciplinary Counsel requests a rule to show cause because removal from practice is indicated by the nature of the criminal offense or surrounding circumstances, no disposition will occur prior to the Court's issuing a rule or entering an order declining to do so.

Consistent with the restriction in the current Rule, new subdivision (f)(1) provides that in those instances in which Disciplinary Counsel files a petition for discipline, a hearing on the petition shall be deferred until sentencing and all appeals from the conviction have been concluded. Consistent with precedent, new subdivision (f)(1) limits the deferral to the conclusion of the "direct" appeal process. *See In re Anonymous No. 69 DB 1985*, 50 Pa. D.&C.3d 297, 306-307 (1988).

Interested persons are invited to submit written comments by mail or facsimile regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106-2625, Facsimile number (717-231-3382) on or before October 12, 2011.

*By The Disciplinary Board of the
Supreme Court of Pennsylvania*

ELAINE M. BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 214. Attorneys convicted of crimes.

(a) An attorney convicted of [a serious] any crime shall report the fact of such conviction within 20 days to

the [Secretary of the Board] Office of Disciplinary Counsel. The responsibility of the attorney to make such report shall not be abated because the conviction is under appeal or the clerk of the court has transmitted a certificate to Disciplinary Counsel pursuant to subdivision (b).

(b) The clerk of any court within the Commonwealth in which an attorney is convicted of any crime, or in which any such conviction is reversed, shall within 20 days after such disposition transmit a certificate thereof to Disciplinary Counsel, who shall file such certificate with the Supreme Court.

(c) Upon being advised that an attorney has been convicted of a crime [within this Commonwealth], Disciplinary Counsel shall secure and file [a certificate in accordance with the provisions of subdivision (b). If the conviction occurred in another jurisdiction, it shall be the responsibility of Disciplinary Counsel to secure and file] a certificate of such conviction with the Supreme Court.

(d)(1) Upon the filing with the Supreme Court of a certified copy of an order demonstrating that an attorney has been convicted of a [serious] crime, the Court may enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be placed on temporary suspension, which rule shall be returnable within ten days.

* * * * *

(5) At any time before a plea or verdict or after a guilty plea or verdict of guilt in the criminal proceeding, Disciplinary Counsel and the respondent-attorney may file with the Court a joint petition for temporary suspension of the [respondent-attorney's] respondent-attorney on the ground that the respondent-attorney's temporary suspension is in the best interest of the respondent and the legal system.

Official Note: The subject of the summary proceedings authorized by subdivision (d) [is] will ordinarily be limited to whether the [conditions] condition triggering the application of subdivision (d) [exist] exists, i.e., proof that the respondent-attorney is the same person as the individual convicted of the offense charged [and that the offense is a serious crime, and will not include], although the Court has the discretion to consider such subjects as mitigating or aggravating circumstances. The provision of subdivision (d)(3) permitting the respondent-attorney to continue representing existing clients for 30 days is intended to avoid undue hardship to clients and to permit a winding down of matters being handled by the respondent-attorney, and the permissible activities of the respondent-attorney are intended to be limited to only those necessary to accomplish those purposes.

(e) A certificate of conviction of an attorney for a crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction.

(f)(1) Upon the [receipt] filing of a certificate of conviction of an attorney for a [serious] crime, [the Court shall, in addition to any order of suspension it may enter in accordance with the provisions of

subdivision (d), also refer the matter to the Board for the institution of a formal proceeding before a hearing committee in the appropriate disciplinary district in which the sole issue to be determined shall be the extent of the final discipline to be imposed, except that a disciplinary proceeding so instituted shall not be brought to hearing until sentencing and all appeals from the conviction are concluded.] Disciplinary Counsel may commence either an informal or formal proceeding under Enforcement Rule 208, except that Disciplinary Counsel may institute a formal proceeding before a hearing committee or special master by filing a petition for discipline with the Board without seeking approval for the prosecution of formal charges under Enforcement Rule 208(a)(3). If a petition for discipline is filed, a hearing on the petition shall be deferred until sentencing and all direct appeals from the conviction have been concluded. The sole issue at the hearing shall be the extent of the discipline or, where the Court has temporarily suspended the attorney under subdivision (d) of this rule, the final discipline to be imposed.

Official Note: Subdivision (f)(1) authorizes Disciplinary Counsel to proceed under Rule 208 concurrently with the Court's exercise of jurisdiction under subdivision (d) of this Rule.

* * * * *

(g) [Upon receipt of a certificate of conviction of any attorney for a crime other than a serious crime, the Court shall take such action as it deems warranted. The Court may in its discretion take no action with respect to convictions for minor offenses.

Official Note: The actions the Court may take under subdivision (g) include reference of the matter to the Office of Disciplinary Counsel for investigation and possible commencement of either a formal or informal proceeding, or reference of the matter to the Board with direction that it institute a formal proceeding.

(h) [An attorney suspended under the provisions of subdivision (d) may be reinstated immediately upon the filing by the Board with the Court of a certificate demonstrating that the underlying conviction has been reversed, but the reinstatement will not terminate any formal proceeding then pending against the attorney.

[(i) As used in this rule, the term "serious crime" means a crime that is punishable by imprisonment for one year or upward in this or any other jurisdiction.

(j) [(h) For the purposes of this rule, **Enforcement** Rule 203(b)(1) and **Enforcement** Rule 402, "conviction" means any guilty verdict, whether after trial by judge or jury, or finding of guilt, and any plea of guilty or *nolo contendere* that has been accepted by the court, whether or not sentence has been imposed.

[Pa.B. Doc. No. 11-1543. Filed for public inspection September 9, 2011, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendment of Rules 1910.3, 1910.5, 1910.11, 1910.12, 1910.17, 1910.19 and 1910.27 of the Rules of Civil Procedure; No. 550 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 26th day of August, 2011, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 40 Pa.Bull. 7025 (December 11, 2010) and West's *Pennsylvania Reporter*, 6 A.3d No. 4, Ct.R-17-22 (December 17, 2010):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1910.3, 1910.5, 1910.11, 1910.12, 1910.17, 1910.19 and 1910.27 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on November 1, 2011.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.3. Parties. **Obligor. Obligee.**

(a) An action [shall] may be brought

[(a)] (1) by a person, including a minor parent or a minor spouse, to whom a duty of support is owing, or

[(b)] (2) on behalf of a minor child by a person having custody of the child, without appointment as guardian ad litem, or

[(c)] (3) on behalf of a minor child by a person caring for the child regardless of whether a court order has been issued granting that person custody of the child, or

[(d)] (4) by a public body or private agency having an interest in the case, maintenance or assistance of a person to whom a duty of support is owing, or

[(e)] (5) by a parent, guardian or public or private agency on behalf of an unemancipated child over eighteen years of age to whom a duty of support is owing, or

(6) by any person who may owe a duty of support to a child or spouse.

(b) The trier of fact shall enter an appropriate child support order based upon the evidence presented, without regard to which party initiated the support action or filed a modification petition. The determination of which party will be the obligee and which will be the obligor will be made by the trier of fact based upon the respective incomes of the parties, consistent with the support guidelines and existing law, and the custodial arrangements at the time of the initial or subsequent conference, hearing or trial. If supported by the evidence, the

party named as the defendant in the initial pleading may be deemed to be the obligee, even if that party did not file a complaint for support. The provisions of this subdivision do not apply to parties seeking spousal support or alimony pendente lite. Parties seeking spousal support or alimony pendente lite must assert a claim in an appropriate pleading with proper notice served upon the other party.

(1) In general, the party who has primary custody of the children shall be the obligee of a child support order.

(2) When the parties share custody of the children equally, the party with the higher income shall be the obligor as provided in Rule 1910.16-4(c)(2).

Explanatory Comment—1999

New subdivision (c) incorporates 23 Pa.C.S. § 4341(b) to confer standing on any person who is caring for a child to seek support on behalf of that child even though there is no court order granting legal or physical custody to that person. The statutory provision effectively overrules *Larson v. Diveglia*, 549 Pa. 118, 700 A.2d 931 (1997), which held to the contrary.

Subdivision (e) is amended to eliminate the requirement of consent when the child is over 18 years of age. This requirement was originally intended only for applicable child support actions for higher educational support, which actions were abolished by *Curtis v. Kline*, 542 Pa. 249, 666 A.2d 265 (1995). This rule also is intended to apply to children who are unemancipated by reason of physical or mental disability, consistent with 23 Pa.C.S. § 4321(3) as interpreted by case law.

Explanatory Comment—2011

A new category has been added in subdivision (a) to allow a party who may not have primary custody of the parties' child or who may owe a duty of support to a spouse to initiate a support action in which an appropriate order may be entered. In some cases, the obligor may want to start paying spousal support or alimony pendente lite to the obligee as soon as possible to avoid the accumulation of retroactive arrears, but § 71 of the Internal Revenue Code provides that payments to a spouse or ex-spouse must be pursuant to an order or a divorce or separation instrument to receive alimony tax treatment. Thus, any payments made prior to the entry of a support order will not be deductible by the obligor. This provision is intended to allow an obligor to commence the process by which he or she may pay support earlier.

A new subdivision (b) has been added to clarify that in all initial and subsequent child support actions, the trier of fact may enter a support order against either party, without regard to which party filed the complaint or petition for modification. This facilitates judicial economy, and relieves the parties from incurring additional filing fees, losing time from work or family, losing retroactivity and having to wait for a new proceeding to be scheduled. It enables the trier of fact to base the order on the facts and circumstances at the time of the proceeding, which may be different than at the time of filing.

Rule 1910.5. Complaint. Order of Court.

* * * * *

(c) An order shall be attached at the front of the complaint directing the defendant to appear before an officer for a conference at the time and place directed by the court. The order shall be substantially in the form provided by Rule 1910.27(b) and must include notice that a child support order may be entered against either party without regard to which party initiated the action.

* * * * *

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

* * * * *

(b) If [the defendant] either party fails to appear at the conference before the officer as directed by the court, the conference may proceed [without the defendant].

* * * * *

Rule 1910.12. Office Conference. Hearing. Record. Exceptions. Order.

* * * * *

(b)(1) At the conclusion of a conference attended by both parties, if an agreement for support has not been reached, and the conference and hearing are not scheduled on the same day, the court, without hearing the parties, shall enter an interim order calculated in accordance with the guidelines and substantially in the form set forth in Rule 1910.27(e), and the parties shall be given notice of the date, time and place of a hearing. A record hearing shall be conducted by a hearing officer who must be a lawyer.

(2) If [the defendant] either party, having been properly served, fails to attend the conference, the court [shall] may enter an interim order calculated in accordance with the guidelines and substantially in the form set forth in Rule 1910.27(e). Within twenty days after the date of receipt or the date of mailing of the interim order, whichever occurs first, either party may demand a hearing before a hearing officer. If no hearing is requested, the order shall become final.

* * * * *

Rule 1910.17. Support Order. Effective Date. Change of Circumstances. Copies of Order. Priority of Distribution of Payments.

(a) An order of support shall be effective from the date of the filing of the complaint or petition for modification unless the order specifies otherwise. In a child support case, if a change in custody occurs after the date of filing, but before a domestic relations conference is held, the trier of fact shall enter a charging order going forward in favor of the primary custodian that shall be effective from the date of the change in custody. The trier of fact also may enter a retroactive arrears order in favor of the party who was the primary custodian at the time of filing. Such an order may address the period from the date of filing to the date of the change in custody. However, a modification of an existing support order may be retroactive to a date preceding the date of filing if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition.

Example: Mother has primary custody of the children and files for child support. Two months later, Father becomes the primary custodian. One month after the change in custody, a support conference is held. Father will be the obligee on a charging order that is retroactive to the date he became the primary custodian. However, an order also may be entered with Mother as the obligee for the two-month period from the date of filing to the date of the change in custody.

Official Note: The order must direct payment to be made payable to or payment to be made to the State Collection and Disbursement Unit for transmission to the obligee. See 23 Pa.C.S. § 4325.

Subdivision (a) was amended in 2005 to include the statutory provision at 23 [Pa.C.S.A.] Pa.C.S § 4352(e) that authorizes the court to enter a modified order that is effective to a date prior to the date on which the petition for modification was filed in certain circumstances. To the effect that the holding in *Kelleher v. Bush*, 832 A.2d 483 (Pa. Super. Ct. 2003), is inconsistent, it is superseded. See 23 [Pa.C.S.A.] Pa.C.S. § 4352(e) for additional provisions. Every order of support must contain an immediate or conditional order for the attachment of income. See Rule 1910.21.

* * * * *

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

* * * * *

(b) The procedure upon the petition shall be in accordance with Rule 1910.10 et seq. **After a party has filed a petition for modification of a child support order, the petition may not be withdrawn unless both parties consent or with leave of court. A petition for modification of spousal support or alimony pendente lite may be withdrawn without the consent of the other party or leave of court.**

(c) Pursuant to a petition for modification, the trier of fact may modify or terminate the existing support order in any appropriate manner based upon the evidence presented **without regard to which party filed the petition for modification. If the trier of fact finds that there has been a material and substantial change in circumstances, the order may be increased or decreased depending upon the respective incomes of the parties, consistent with the support guidelines and existing law, and each party's custodial time with the child at the time the modification petition is heard.**

* * * * *

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

* * * * *

(b) The order to be attached at the front of the complaint set forth in subdivision (a) shall be in substantially the following form:

(Caption)

ORDER OF COURT

* * * * *

[THE APPROPRIATE COURT OFFICER MAY ENTER AN ORDER AGAINST EITHER PARTY BASED UPON THE EVIDENCE PRESENTED WITHOUT REGARD TO WHICH PARTY INITIATED THE SUPPORT ACTION.] THE TRIER OF FACT SHALL ENTER AN APPROPRIATE CHILD SUPPORT ORDER BASED UPON THE EVIDENCE PRESENTED, WITHOUT REGARD TO WHICH PARTY INITIATED THE SUPPORT ACTION. THE DETERMINATION OF WHICH PARTY WILL BE THE OBLIGEE AND WHICH WILL BE THE OBLIGOR WILL BE MADE BY THE TRIER OF FACT BASED UPON THE RESPECTIVE INCOMES OF THE PARTIES, CONSISTENT WITH THE SUPPORT GUIDELINES AND EXISTING LAW, AND THE CUSTODIAL ARRANGEMENTS AT THE TIME OF THE INITIAL OR SUBSEQUENT CONFERENCE, HEARING, OR TRIAL. IF SUPPORTED BY THE EVIDENCE, THE PARTY NAMED AS THE DEFENDANT IN THE INITIAL PLEADING MAY BE DEEMED TO BE THE OBLIGEE, EVEN IF THAT PARTY DID NOT FILE A COMPLAINT FOR SUPPORT.

* * * * *

(g) The order to be attached at the front of the petition for modification set forth in subdivision (f) shall be in substantially the following form:

(Caption)

ORDER OF COURT

* * * * *

[THE APPROPRIATE COURT OFFICER MAY MODIFY OR TERMINATE THE EXISTING ORDER IN ANY MANNER BASED UPON THE EVIDENCE PRESENTED.] THE TRIER OF FACT MAY INCREASE, DECREASE OR TERMINATE THE EXISTING ORDER BASED UPON THE EVIDENCE PRESENTED. AN ORDER MAY BE ENTERED AGAINST EITHER PARTY WITHOUT REGARD TO WHICH PARTY FILED THE MODIFICATION PETITION.

* * * * *

[Pa.B. Doc. No. 11-1544. Filed for public inspection September 9, 2011, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendment of Rules 1910.16-2 and 1910.16-4 of the Rules of Civil Procedure; No. 549 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 26th day of August, 2011, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 41 Pa.Bull. 1617 (March 26, 2011) and *West's Pennsylvania Reporter*, 13 A.3d No. 2 (April 1, 2011):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1910.16-2 and Rule 1910.16-4 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on September 30, 2011.

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, or the shared custodial parent who is the obligee, is receiving the child's benefits. In cases in which 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
* * * * *		
4. Conversion to Monthly Amount (if pay period is other than monthly) Include in the obligor's income the child's monthly Social Security retirement or disability benefit if the obligor is receiving the child's benefit. (See Rule 1910.16-2(b)(2))	_____	_____
5. Combined Total Monthly Net Income		_____
6. Plus Child's Monthly Social Security, Death, Retirement or Disability Derivative Benefit, if any. Do not add child's benefit if included in the obligor's income in line 4. (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 (Do not deduct the child's benefit if the obligor is receiving the child's benefit.)		_____
* * * * *		

[Pa.B. Doc. No. 11-1545. Filed for public inspection September 9, 2011, 9:00 a.m.]

PART I. GENERAL
[231 PA. CODE CH. 1910]

Amendment of Rules 1910.16-3.1 and 1910.16-4 of the Rules of Civil Procedure; No. 551 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 26th day of August, 2011, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 40 Pa.Bull. 7028 (December 11, 2010) and *West's Pennsylvania Reporter*, 6 A.3d No. 4, Ct.R-27-29 (December 17, 2010):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1910.16-3.1 and 1910.16-4 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on September 30, 2011.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-3.1. Support Guidelines. High Income Cases.

(a) *Child Support Formula.* When the parties' combined monthly net income is above \$30,000, the following three-step process shall be applied to calculate the parties' respective child support obligations. The amount of support calculated pursuant to this three-step process shall in no event be less than the amount of support that would have been awarded if the parties' combined net monthly income were \$30,000. That amount shall be a presumptive minimum.

* * * * *

(2) And second, the trier of fact shall [**make**] apply **Part II and Part III of the formula at Rule 1910.16-4(a), making any applicable adjustments for substantial or shared custody pursuant to Rule 1910.16-4(c)** and allocations of additional expenses pursuant to Rule 1910.16-6;

* * * * *

Explanatory Comment—2011

The rule has been amended to clarify that the provisions of Rule 1910.16-4(c), regarding adjustments to support when the obligor has substantial or shared custody, apply in high income cases. Previously, when high income cases were decided pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), case law held that because the time and resources each parent provided to a child were factored into the *Melzer* formula, the reductions for substantial or shared parenting time did not apply to cases decided pursuant to *Melzer*. See, e.g., *Sirio v. Sirio*, 951 A.2d 1188 (Pa. Super. 2008), *Bulgarelli v. Bulgarelli*, 934 A.2d 107 (Pa. Super. 2007). As *Melzer* no longer applies to calculate support in high income cases, the prohibition against reductions for substantial or shared parenting time in such cases is no longer applicable.

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

* * * * *

(c) *Substantial or Shared Physical Custody.*

(1) When the children spend 40% or more of their time during the year with the obligor, a rebuttable presumption arises that the obligor is entitled to a reduction in the basic support obligation to reflect this time. **This rebuttable presumption also applies in high income cases decided pursuant to Rule 1910.16-3.1.** Except as provided in subsections (2) and (3) below, the reduction shall be calculated pursuant to the formula set forth in Part II of subdivision (a) of this rule. For purposes of this provision, the time spent with the children shall be determined by the number of overnights they spend during the year with the obligor.

* * * * *

(3) [**This subdivision**] **Reductions for substantial or shared custody** shall not apply when the obligor's income falls within the shaded area of the schedule in Rule 1910.16-3 or when the obligee's income is 10% or less of the parties' combined income.

* * * * *

[Pa.B. Doc. No. 11-1546. Filed for public inspection September 9, 2011, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendment of Rule 1910.16-6(b) of the Rules of Civil Procedure; No. 548 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 26th day of August, 2011, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 40 Pa.Bull. 7027 (December 11, 2010) and *West's Pennsylvania Reporter*, 6 A.3d No. 4, Ct.R-23-26 (December 17, 2010):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1910.16-6(b) of the Pennsylvania Rules of Civil Procedure is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on September 30, 2011.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

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

* * * * *

(b) *Health Insurance Premiums.*

(1) A party's payment of a premium to provide health insurance coverage on behalf of the other party and/or the

children shall be allocated between the parties in proportion to their net incomes, including the portion of the premium attributable to the party who is paying it, as long as a statutory duty of support is owed to the party who is paying the premium. If there is no statutory duty of support owed to the party who is paying the premium, the portion attributable to that person must be deducted from the premium as set forth in subdivision (2) below. **Premiums paid by a party to whom no duty of support is owed to cover himself or herself only and that are not necessary to cover the other party or a child as part of a support order shall not be apportioned between the parties.** If health insurance coverage for a child who is the subject of the support proceeding is being provided and paid for by a third party resident of either party's household, the cost shall be allocated between the parties in proportion to their net incomes. If the obligor is paying the premium, then the obligee's share is deducted from the obligor's basic support obligation. If the obligee is paying the premium, then the obligor's share is added to his or her basic support obligation. Employer-paid premiums are not subject to allocation.

* * * * *

Example 1. If the parties are separated, but not divorced, and Husband pays \$200 per month toward the cost of a health insurance policy provided through his employer which covers himself, Wife, the parties' child, and two additional children from a previous marriage, the portion of the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing \$200 by five persons and then multiplying the resulting amount of \$40 per person by the two additional children, for a total of \$80 to be excluded from allocation. Deduct this amount from the total cost of the premium to arrive at the portion of the premium to be allocated between the parties—\$120. Since Husband is paying the premium, and spouses have a statutory duty to support one another pursuant to 23 [Pa.C.S.A.] Pa.C.S. § 4321, Wife's percentage share of the \$120 is deducted from Husband's support obligation. If Wife had been providing the coverage, then Husband's percentage share would be added to his basic support obligation.

* * * * *

Example 3. The parties are divorced and Mother is the obligee of a child support order. Father, the obligor, pays \$200 per month toward the cost of a health insurance policy provided by his employer that covers himself and the parties' child. Mother pays \$400 per month for her employer-sponsored health insurance that covers only herself. The amount of the premium Father pays to cover the parties' child, \$100 (\$200 premium divided between two covered persons, Father and the child), will be allocated between the parties in proportion to their respective incomes. The portion of the premium that covers Father will not be allocated because the parties are no longer married and he is not owed a duty of support by Mother. The premium Mother pays to provide her own coverage will not be allocated because the parties are no longer married and she is not owed a duty of support by Father.

(3) Pursuant to 23 [Pa.C.S.A.] Pa.C.S. § 4326(a), in every support proceeding, the court must ascertain each parent's ability to provide medical support for the parties' children and the support "order shall include a require-

ment for medical support to be provided by either or both parents, provided that such medical support is accessible to the children."

* * * * *

(ii) Unless health care coverage for the parties' children is provided by the obligee or a third party, the court shall issue the National Medical Support Notice required by 23 [Pa.C.S.A.] Pa.C.S. § 4326(d.1) to the obligor's employer in response to notification that the obligor is employed. The notice shall direct the employer to enroll the children of the obligor who are the subject of the support proceeding if the coverage is available at a reasonable cost to the obligor. However, the notice shall direct that enrollment shall not occur earlier than 25 days from the date of the National Medical Support Notice to allow the obligor time to object. Concurrent with the issuance of the National Medical Support Notice, the court shall provide notice to the obligor setting forth the process to object to the enrollment based upon unreasonable cost, mistake of fact or availability of alternative health care coverage for the children. If there is more than one employer-provided health care coverage option, the obligor shall select the plan, subject to the obligee's right to seek a court order designating a different option.

* * * * *

Official Note: Subdivision (b) of this rule does not apply to Medical Assistance. See 23 [Pa.C.S.A.] Pa.C.S. § 4326(l). The 2005 amendments to Rule 1910.16-6(b)(1) and (2) clarify that the portion of the insurance premium covering the party carrying the insurance cannot be allocated between the parties if there is no statutory duty of support owed to that party by the other party. See *Maier v. Maier*, 575 Pa. 181, 835 A.2d 1281 (2003) and 23 [Pa.C.S.A.] Pa.C.S. § 4321.

(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.

* * * * *

[Pa.B. Doc. No. 11-1547. Filed for public inspection September 9, 2011, 9:00 a.m.]

Title 25—LOCAL COURT RULES

LEHIGH COUNTY

Administrative Order Establishing Uniform Costs for Supervision by the Adult Probation/Parole Office; No. AD 10-2011

Order

And Now, this 23rd day of August, 2011, the following Administrative Order establishing uniform costs in criminal cases for supervision by the Adult Probation/Parole Office of Lehigh County is promulgated and is effective for all such services rendered in any criminal case thirty

(30) days or more after publication of this Order in the *Pennsylvania Bulletin*. Seven (7) certified copies shall be filed with the Administrative Office of the Pennsylvania Courts; that two (2) certified copies shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Criminal Procedural Rules Committee; and that one (1) copy shall be filed with the Clerk of Judicial Records of the Court of Common Pleas of Lehigh County.

SUPERVISION FEE

In accordance with the Act of November 24, 1998, P. L. 882, No. 111, § 1102, 18 P. S. § 1102, every person placed on probation, parole, accelerated rehabilitative disposition, probation without verdict, or intermediate punishment, shall pay, in addition to the costs of prosecution, fines and restitution, and other costs, a monthly supervision fee of \$50.00.

By the Court

KELLY L. BANACH,
Administrative Judge

[Pa.B. Doc. No. 11-1548. Filed for public inspection September 9, 2011, 9:00 a.m.]

WESTMORELAND COUNTY

Rescinding Rule W1272; Adopting New Rule W1272; No. 3 of 2011

Order

And Now, this 24th day of August, 2011 *It Is Hereby Ordered* that current Rule W1272 is rescinded and that new Rule W1272 is adopted.

By the Court

JOHN E. BLAHOVEC,
President Judge

Rule W1272. Appeals of Proceedings under the Eminent Domain Code.

Upon the filing of an appeal to the Court under 26 Pa.C.S.A. § 517 where there are objections raised by the appeal other than to the amount of the award, the court upon motion of any party shall set a date for a hearing, briefing schedule, and a date for oral argument for preliminary disposition of the appeal in accordance with 26 Pa.C.S.A. § 518. This provision shall pertain to all proceedings under the Eminent Domain Code and to proceedings in which the procedure provided under the Eminent Domain Code applies.

[Pa.B. Doc. No. 11-1549. Filed for public inspection September 9, 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 August 25, 2011, Bernard Lambert is Suspended on Consent from the Bar of this Commonwealth for a period of 3 years retroactive to May 23, 2011. 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. 11-1550. Filed for public inspection September 9, 2011, 9:00 a.m.]