

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1900]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 120

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 Friday, August 10, 2012 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
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*By the Domestic Relations
Procedural Rules Committee*

CAROL S. MILLS McCARTHY,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1900. ACTIONS PURSUANT TO THE PROTECTION FROM ABUSE ACT

Rule 1901.8. Withdrawal, Modification or Discontinuance.

A petitioner who has a protection from abuse order against another party and wishes to withdraw, discontinue or modify the action shall file a petition with the court. The court shall enter an order granting or denying the petition following an appearance by the petitioner before the court.

Explanatory Comment—2012

Some jurisdictions have allowed the discontinuance of a protection from abuse action by praecipe, even after a temporary or final order has been entered. Rule 1901.8 requires that the plaintiff in a protection from abuse case must file a petition and appear before the court so that the court can make an informed decision as to whether or not to grant the requested relief.

[Pa.B. Doc. No. 12-1192. Filed for public inspection June 29, 2012, 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 117

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 Wednesday, August 15, 2012 directed to:

Patricia A. Miles, Esquire
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601 Commonwealth Avenue, Suite 6200
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*By the Domestic Relations
Procedural Rules Committee*

CAROL S. MILLS McCARTHY,
Chair

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 may be brought

* * * * *

(6) by any person who may owe a duty of support to a child or spouse. **If the person to whom a duty of support may be owed does not appear, the action may be dismissed without prejudice for the petitioner to seek further relief from the court.**

(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 **or filed a petition for recovery of support overpayment**. 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.

* * * * *

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.

* * * * *

(c) *Monthly Net Income.*

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

(A) **mandatory** federal, state, and local [**income**] payroll taxes;

(B) F.I.C.A. payments (Social Security, Medicare and Self-Employment taxes) and non-voluntary retirement payments;

(C) **mandatory** union dues; and

* * * * *

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

(g) *Overpayments.*

(1) **Order in Effect.** If there is an overpayment in an amount in excess of two months of the monthly support obligation and a charging order remains in effect, after notice to the parties as set forth below, the domestic relations section shall reduce the charging order by 20% of the obligor's share of the basic child support obligation or an amount sufficient to retire the overpayment by the time the charging order is terminated. The notice shall advise the [**obligee**] parties to contact the domestic relations section within [**60**] 30 days of the date of the mailing of the notice if [**the obligee**] either or both of them wishes to contest the proposed reduction of the charging order. If [**the obligee**] either party objects, the domestic relations section shall schedule a conference to provide the [**obligee**] objecting party the opportunity to contest the proposed action. If [**the obligee does not respond**] neither party responds to the notice or [**object**] objects to the proposed action, the domestic relations section shall have the authority to reduce the charging order.

(2) **Order Terminated.** If there is an overpayment in any amount 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.

* * * * *

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. Petition for Recovery of Support Overpayment.

(a) The complaint in an action for support shall be substantially in the following form:

(Caption)

COMPLAINT FOR SUPPORT

* * * * *

5. Plaintiff seeks to pay support or receive support for the following persons:

* * * * *

7. A previous support order was entered against the plaintiff defendant on _____ in an action at _____ in the amount of \$_____ (Court, term and docket number) for the support of _____.

(Name)

There are (no) arrearages in the amount of \$_____. The order has (not) been terminated.

8. Plaintiff Defendant last received support from the [**Defendant**] other party in the amount of \$_____ on _____.

(Date)

WHEREFORE, Plaintiff requests that an order be entered [**against Defendant and in favor of the Plaintiff and**] on behalf of the aforementioned child(ren) and or spouse for reasonable support and medical coverage.

* * * * *

(h) A petition for recovery of a support overpayment when a support order remains in effect shall be in substantially the following form:

(Caption)

Petition for Recovery of Support Overpayment in Active Case.

1. Obligor and Obligee are parties in a support action at the docket number captioned above.

2. There is an overpayment owing to Obligor in an amount in excess of two months of the monthly support obligation.

Wherefore, Obligor requests that, pursuant to Pa.R.C.P. 1910.19(g)(1), the charging order be reduced by 20% of Obligor's share of the basic child support amount or an amount sufficient to retire the overpayment by the time the charging order is terminated.

I verify that the statements in this petition are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

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 Friday, August 10, 2012 directed to:

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Counsel, Domestic Relations Procedural Rules Committee
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By the Domestic Relations
Procedural Rules Committee

CAROL S. MILLS McCARTHY,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.25. Enforcement. Support Order. Civil Contempt. Petition. Service. No Answer Required.

* * * * *

(b) The petition shall begin with an order of court in substantially the following form:

[CAPTION]

ORDER OF COURT

Legal proceedings have been brought against you alleging that you have disobeyed an order of court for support.

(1) A critical issue in the contempt proceeding is your ability to pay and comply with the terms of the support order. If you wish to defend against the claim set forth in the following pages, you may, but are not required to, file in writing with the court your defenses or objections.

(2) You, _____, Respondent, must appear in person in court on _____ at _____ (a.m./p.m.) (day and date) in (court) room _____, _____ (address),

IF YOU DO NOT APPEAR IN PERSON, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST AND YOU MAY BE COMMITTED TO JAIL.

(3) If the court finds that you have willfully failed to comply with its order for support, you may be found to be in contempt of court and committed to jail, fined or both.

You will have the opportunity to disclose income, other financial information and any relevant personal information at the conference/hearing so that the court can determine if you have the ability to pay. You may also tell the court about any unusual expenses that may affect your ability to pay. You may fill out the enclosed Income Statement and Expense Statement forms and submit them to the court.

At the conference/hearing, the contempt petition may be dismissed, new and/or modified purge conditions may be imposed, or the judge may order you to jail. If the obligee fails to appear, the court will proceed with the case and enter an appropriate order.

YOU ARE REQUIRED TO BRING:

Your most recent pay stub for any and all employers

Payroll address, phone number, fax number and contact person

Proof of medical coverage

Any other documentation relevant to your case and the issue of contempt as stated in the petition, including the completed Income Statement and Expense Statement forms. For example, documentation related to claims for unemployment compensation, workers' compensation and Social Security benefits.

BY THE COURT:

DATE OF ORDER: _____ Judge

* * * * *

(e) The court may issue a bench warrant as provided by Rule 1910.13-1 for failure of the respondent to appear.

(f) The obligor shall be advised in the Order/Notice to Appear that his or her present ability to pay is a critical issue in the contempt proceeding. The obligor shall be provided with Income and Expense Statements to demonstrate financial ability to pay. At hearing, the obligor shall be provided the opportunity to respond to any questions about his or her financial status. The trier of fact shall issue an express finding that the defendant does or does not have the present ability to pay.

Explanatory Comment—2012

The amendments to the form in subdivision (b) and new subdivision (f) are intended to assure compliance with the U.S. Supreme Court's decision in Turner v. Rogers, 131 S. Ct. 2507 (June 20, 2011). In that case, the Court held that counsel need not automatically be appointed for indigent support obligors facing incarceration in civil contempt proceedings. The Court held that the due process clause of the Fourteenth Amendment to the U.S. Constitution does not require that counsel be provided where the obligee is not represented by counsel and the state provides alternative procedural safeguards including adequate notice of the importance of the ability to pay, a fair opportunity to present, and to dispute, relevant information, and express court findings as to the obligor's ability to pay.

Rule 1910.25-5. Civil Contempt. Contempt Order. Incarceration.

* * * * *

(b) The court shall make a finding, on the record, as to whether the respondent, based upon the evidence presented at the hearing, does or does not have the present ability to pay the court-ordered amount of support.

(c) An order committing a respondent to jail for civil contempt of a support order shall specify the conditions the fulfillment of which will result in the release of the respondent.

* * * * *

[Pa.B. Doc. No. 12-1194. Filed for public inspection June 29, 2012, 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 119

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 Friday, August 10, 2012 directed to:

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*By the Domestic Relations
Procedural Rules Committee*

CAROL S. MILLS McCARTHY,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

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

You, _____, defendant, are ordered to appear at _____ before _____, a con-

ference officer of the Domestic Relations Section, on the _____ day of _____, 20____, at _____ .M., for a conference, after which the officer may recommend that an order for support be entered against you.

You are further ordered to bring to the conference

(1) a true copy of your most recent Federal Income Tax Return, including W-2s, as filed,

(2) your pay stubs for the preceding six months,

(3) the Income Statement and the appropriate Expense Statement, if required, attached to this order, completed as required by Rule 1910.11(c),

(4) verification of child care expenses, and

(5) proof of medical coverage which you may have, or may have available to you.

(6) If a physician has determined that a medical condition affects your ability to earn income you must obtain a Physician Verification Form from the domestic relations section, sign it, have it completed by your doctor, and bring it with you to the conference.

If you fail to appear for the conference or to bring the required documents, the court may issue a warrant for your arrest and/or enter an interim support order. If paternity is an issue, the court shall enter an order establishing paternity.

* * * * *

(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

You, _____, Respondent, have been sued in Court to modify an existing support order. You are ordered to appear in person at _____ on _____ at _____ .M., for a conference/ hearing and to remain until dismissed by the Court. If you fail to appear as provided in this Order, an Order for Modification may be entered against you.

You are further ordered to bring to the conference

(1) a true copy of your most recent Federal Income Tax Return, including W-2s, as filed,

(2) your pay stubs for the preceding six months,

(3) the Income **Statement** and **appropriate** Expense Statement, **if required**, attached to this order, completed as required by Rule 1910.11(c),

(4) verification of child care expenses, and

(5) proof of medical coverage which you may have, or may have available to you.

(6) If a physician has determined that a medical condition affects your ability to earn income, you must obtain a Physician Verification Form from the domestic relations section, sign it, have it completed by your doctor, and bring it with you to the conference.

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.

* * * * *

Rule 1910.29. [Conduct of Record Hearing.] Evidence in Support Matters.

(a) Record Hearing. Except as provided in this [Rule] rule, the Pennsylvania Rules of Evidence shall be followed in all record hearings conducted in an action for support. A verified petition, affidavit or document, and any document incorporated by reference therein which would not be excluded under the hearsay rule if given in person shall be admitted into evidence if (1) at least 20 days' written notice of the intention to offer them into evidence was given to the adverse party accompanied by a copy of each document to be offered; (2) the other party does not object to their admission into evidence; and (3) the evidence is offered under oath by the party or witness. An objection must be in writing and served on the proponent of the document within 10 days of the date of service of the notice of intention to offer the evidence. When an objection is properly made, the Pennsylvania Rules of Evidence shall apply to determine the admissibility of the document into evidence.

(b) Medical Evidence.

(1) Non-Record Proceeding. In a non-record hearing, if a physician has determined that a medical condition affects a party's ability to earn income and that party obtains a Physician Verification Form from the domestic relations section, has it completed by the party's physician and submits it at the conference, it may be considered by the conference officer. If a party is on Social Security disability or workers' compensation, the party shall submit copies of the disability or workers' compensation determination in lieu of the Physician Verification Form.

(2) Record Proceeding. If the matter proceeds to a record hearing and the party wishes to introduce the completed Physician Verification Form into evidence, he or she must serve the form on the other party not later than 20 days after the conference. The other party may file and serve an objection to the introduction of the form within 20 days of the mailing of the form. If there is no objection, the form may be admitted into evidence without the testimony of the physician. In the event that the record hearing is held sooner than 40 days after the conference, the trier of fact may provide appropriate relief, such as granting a continuance to the objecting party.

(3) The Physician Verification Form shall be substantially in the following form:

IN THE COURT OF COMMON PLEAS
OF _____ COUNTY

Member Name:
Docket Number:
PACSES Case Number:
Other State ID Number:

PHYSICIAN VERIFICATION FORM

TO BE COMPLETED BY THE TREATING PHYSICIAN

Physician's name: _____

Physician's license number _____

Nature of patient's sickness or injury: _____

Date of first treatment: _____

Date of most recent treatment: _____

Frequency of treatments: _____

Medication: _____

The patient has had a medical condition that affects his or her ability to earn income from:

_____ through _____

If the patient is unable to work, when should the patient be able to return to work? Will there be limitations? _____

Remarks: _____

Date: _____ Signature of Treating Physician: _____

Physician's address: _____

Physician's telephone number: _____

I authorize my physician to release the above information to the _____ County Domestic Relations Section.

Patient's signature: _____ Date: _____

Rule 1910.50. Suspension of Acts of Assembly.

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

* * * * *

(4) Section 4 of Act 1997-58, 23 Pa.C.S. § 4342(f), insofar as it is inconsistent with Rule [1910.26] 1910.29 as it relates to record hearings in support actions;

* * * * *

[Pa.B. Doc. No. 12-1195. Filed for public inspection June 29, 2012, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Daniel Peter Jensen having been suspended from the practice of law in the State of Arizona for a period of 6 months and 1 day by Final Judgment and Order of the Presiding Disciplinary Judge of the Supreme Court of Arizona dated July 18, 2011, the Supreme Court of Pennsylvania issued an Order on June 14, 2012, suspending Daniel Peter Jensen from the practice of law in this Commonwealth for a period of 6 months and 1 day, to take effect on July 14, 2012. 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. 12-1196. Filed for public inspection June 29, 2012, 9:00 a.m.]