

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[ 231 PA. CODE CH. 1910 ]

#### Amendment to Rule 1910.16-4(e) of the Rules of Civil Procedure; No. 556 Civil Procedural Rules Doc.

#### Order

*Per Curiam*

*And Now*, this 31st day of January, 2012, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1910.16-4(e) 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 February 28, 2012.

#### 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.

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(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 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 calculation is a five-step process. 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. Second, [ **recompute** ] **recalculate** the net income of the parties assuming the payment of the spousal support. Third, determine the child support obligation of the non-custodial parent for [ **two** ] **the children who are the subjects of the support action.** 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 from the original support obligation determined in Step 1. Fifth, because the first step creates additional tax liability for the recipient non-custodial parent and additional tax deductions for the payor custodial parent and the third step involves an offset of the

child support owed by the non-custodial parent against the spousal support or alimony pendente lite owed by the custodial parent, only that reduced amount will be taxable. Therefore, upon application of either party, the trier of fact may consider as a deviation factor the ultimate tax effect of the calculation.

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[Pa.B. Doc. No. 12-281. Filed for public inspection February 17, 2012, 9:00 a.m.]

## Title 252—ALLEGHENY COUNTY RULES

### ALLEGHENY COUNTY

#### Criminal Rules of the Court of Common Pleas; No. 1 of 2012 Rules Doc.

#### Order of Court

*And Now*, to-wit, this 3rd day of February, 2012, *It Is Hereby Ordered, Adjudged and Decreed* that the following Amended Rule of the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division, adopted by the unanimous proxy vote of the Board of Judges on February 3, 2012, shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

Rule 101.1 Construction of Rules; Consistency with Statewide Rules  
 Rule 103.1 Definitions  
 Rule 531.2 Regulations of Surety Business  
 Rule 536.1 Forfeitures and Bail Pieces

*By the Court*

DONNA JO McDANIEL,  
*President Judge*

#### Rule 101.1. Construction of Rules; **Consistency with Statewide Rules.**

(a) All rules of construction adopted by the Supreme Court of Pennsylvania shall apply to local rules adopted by the Court of Common Pleas of Allegheny County that govern the practice and procedure in criminal matters.

(b) **Any requirement imposed by these rules is in addition to, and not in lieu of, the requirements under the Pennsylvania Rules of Criminal Procedure.**

(c) **No pleading or other legal paper shall be refused for filing by the clerk of courts based upon a failure to comply with a requirement imposed by these rules. No case shall be dismissed nor request for relief granted or denied because of a failure to comply with such a requirement. If a party fails to comply with such a requirement, the court shall notify the party of the failure and provide a reasonable time for the party to comply with the requirement.**

#### Rule 103.1. Definitions.

(a) Definitions contained in Pa.R.Crim.P. 103 shall apply to all local rules heretofore and hereafter adopted which govern practice and procedure in criminal matters.

(b) The following words and phrases, when used in any Allegheny County Rule of Criminal Procedure, shall have the following meanings:

*Bail Enforcement Agent* is an individual who performs services or takes action for the purpose of enforcing the terms and conditions of a defendant's release from custody on bail, including locating, apprehending and surrendering a defendant released from custody on bail who has failed to appear at a specified time and place pursuant to Order of Court. The term does not include police officers, sheriffs, court officers or law enforcement personnel who execute warrants of arrest for bail forfeitures pursuant to their official duties.

*Clerk of Courts* is the Director of the Allegheny County Department of Court Records, Criminal Division.

*Corporate Surety* is any corporation, limited liability corporation or partnership which engages in the business of providing bail, providing or soliciting bail undertakings, or providing or soliciting indemnity or counter-indemnity to others on bail undertakings. The term applies to any and all surety bail bond businesses and their agents and fidelity companies and their agents in addition to surety businesses authorized by Order of Court.

*Professional Bail Bondsman* is any person other than a fidelity or surety company or any of its officers, agents, attorneys, or employees authorized to execute bail bonds or to solicit business on its behalf who: (1) engages in the business of giving bail, giving or soliciting undertakings, or giving or soliciting indemnity or counter-indemnity to securities on undertakings; or (2) within a period of thirty (30) days has become a surety or has indemnified a surety, for the release on bail of a person, with or without a fee or compensation, or promise thereof; in three or more matters not arising out of the same transaction (see 42 Pa.C.S.A. § 5741 et seq.).

*Surety Business* is any corporate surety, fidelity company, surety company authorized by Order of Court, professional bail bondsman licensed by the Pennsylvania Department of Insurance to do business in the Commonwealth of Pennsylvania, or agents and employees thereof.

#### Rule 531.2. Regulation of Surety Businesses.

(a) *Requirements to Become Qualified.* To become qualified to post bond, the surety business must:

(1) Fully comply with all laws, statutes, local rules and rules of court as may be established from time to time.

(2) Deliver to the Clerk of Courts and the District Attorney satisfactory proof, on the approved form, that the surety business, is licensed by the Pennsylvania Department of Insurance to do business in the Commonwealth of Pennsylvania;

(3) Deliver satisfactory proof of the agency relationship between the surety business and its agents to the District Attorney and Clerk of Courts. The execution of any bail bond by such agents shall be a valid and binding obligation of the surety business;

(4) Deliver satisfactory proof to the Clerk of Courts and the District Attorney that any agent designated to act on behalf of the surety business, is duly licensed by the Pennsylvania Department of Insurance;

(5) Deliver satisfactory proof to the Clerk of Courts and the District Attorney that the surety business maintains an office in Allegheny County from which its business is conducted and where service of notices may be made. Every surety business, shall keep at its office in Allegheny County the usual and customary records pertaining to transactions authorized by its license and/or the license of any of its agents, including, but not limited to, such records of bail bonds executed or countersigned by the surety business, to enable the court to obtain all necessary information concerning such bail bonds for at least three (3) years after the liability of the surety has been terminated. Such records shall be open at all times to examination, inspection or copying by the Court or its representative. Any and all information shall be furnished in such manner or form as the Court requires;

(6) Certify to the Clerk of Courts and the District Attorney that no agent or employee of the surety business has been convicted of any criminal offense. The certification must be based on a criminal history records check conducted by the Pennsylvania State Police for each employee and agent, and a copy of the search results must be attached to a list of employees and agents and certification submitted with the petition required by subsection (c) of this rule. Conviction of an agent or employee of a surety business will render the surety business ineligible to conduct business in the Fifth Judicial District;

(7) Post with the Clerk of Courts as security the minimum sum of \$250,000 in United States currency or unencumbered securities of the United States Government, which will entitle the surety business, to post bond in the aggregate sum of \$1,000,000, and by further posting the sum required for each individual bond or undertaking with the bail authority. Provided, however, that the surety business must post additional security with the Clerk of Courts in the event the surety business intends to post bond in excess of \$1,000,000. The additional security to be posted with the Clerk of Courts must be in units of \$250,000 which will entitle the surety business to post bond in the additional sum of \$1,000,000 per \$250,000 unit;

(8) Provide to the Clerk of Courts and the District Attorney a financial statement certified by a Certified Public Accountant which verifies that the surety business has sufficient assets to satisfy all bail obligations undertaken by or on behalf of the surety business in the Fifth Judicial District and in other jurisdictions in which the surety business conducts business. A current certified statement must be filed with the petition required in subsection (c) of this rule;

(9) Certify to the Clerk of Courts and the District Attorney that only the surety business which is approved by the President Judge upon petition as provided in this rule, may post bail for defendants,

in the name exactly as it appears on the surety's license, and not in the name of any agent or other business entity;

(10) Certify to the Clerk of Courts and the District Attorney a schedule of the fees to be charged Criminal Division defendants for issuing the bail bond. Such fees may not change unless notice is given to the President Judge and Administrative Judge at least thirty (30) days prior to the effective date of the proposed revised fees (see 42 Pa.C.S.A. § 5748);

(11) Upon approval of the petition required in subsection (c) of this rule, register with the Clerk of Courts and the District Attorney and pay to the Clerk of Courts an initial registration fee of \$1,000.00, or such amount as may be established from time to time by the Clerk of Courts with the approval of the President Judge;

(12) Certify that the surety business will not represent itself, directly or indirectly, as an employee or agent of the Commonwealth of Pennsylvania or Fifth Judicial District or the County of Allegheny. Agents and employees of a surety business must not wear clothing or present badges or any other form of law enforcement credentials that create the impression of employment of the Commonwealth of Pennsylvania, the Fifth Judicial District or any of its units, including the Pretrial Services Unit or the Warrant Unit of the Fifth Judicial District or the County of Allegheny;

(b) *Requirements to Remain Qualified.* To remain qualified to post bond, the surety business must:

(1) Maintain compliance with the requirements specified in subsection (a) of this rule;

(2) Provide quarterly statements certified by the surety business that it is in compliance with the security posting requirements specified in subsection (a)(7) of this rule to the Clerk of Courts and the District Attorney as required by 42 Pa.C.S.A. § 5747;

(3) Provide to the Clerk of Courts and the District Attorney, on a quarterly basis, or as often as requested by the President Judge or the Administrative Judge, a financial statement certified by a Certified Public Accountant which verifies that the surety business has sufficient assets to satisfy all bail obligations undertaken by the surety business in the Fifth Judicial District and in other jurisdictions in which the surety business conducts business;

(4) Satisfy in full any forfeiture order entered against a defendant or the surety business for a defendant's violation of a bail bond within ninety (90) days of the issuance of the order. In the event the surety business fails to satisfy such forfeiture order, the order will be satisfied from the funds posted with the Clerk of Courts pursuant to subsection (a)(7) of this rule. In that event, the surety business will be prohibited from posting additional bail until such time as all forfeiture orders entered against the surety business are satisfied in full;

(5) Immediately notify, in writing, the President Judge, the Administrative Judge and the District Attorney if an agent or employee of a surety business has been charged with any criminal offense, or if the license of an agent or employee has been

revoked, suspended or not renewed in the Commonwealth of Pennsylvania or any other jurisdiction;

(6) Cease posting bonds if the aggregate maximum amount of unsettled and outstanding bail forfeitures, as determined by the Clerk of Courts and the District Attorney, equals or exceeds \$250,000. The Clerk of Courts, or a designee, shall promptly notify the Common Pleas Court President Judge, and Administrative Judge, Pretrial Services, Pittsburgh Municipal Court, the District Attorney, and the applicable surety business of the occurrence of having reached this maximum limit. Immediately upon notification, no further bonds by the surety business are authorized or acceptable for posting. When full financial settlement has been made of the outstanding bail forfeitures, the Clerk of Courts, or a designee, shall promptly notify the Common Pleas Court President Judge and the Administrative Judge, Pretrial Services, Pittsburgh Municipal Court and the District Attorney, and the applicable surety business that the posting of bonds may resume;

(7) Not represent or identify itself, directly or indirectly, as employees or agents of the Commonwealth of Pennsylvania or Fifth Judicial District or the County of Allegheny. The agents and employees of a surety business must not wear clothing or present badges or any other form of law enforcement credentials that create the impression of employment by the Commonwealth of Pennsylvania, the Fifth Judicial District or any of its units, including the Pretrial Services Unit or the Warrant Unit of the Fifth Judicial District or the County of Allegheny;

(8) Annually renew their registration with the Fifth Judicial District, provide all certifications required by this rule and pay to the Clerk of Courts an annual renewal registration fee of \$250.00, or such amount as may be established from time to time by the Clerk of Courts with the approval of the President Judge;

(9) Fully comply with all laws, statutes, local rules, rules of court and procedures as may be established from time to time.

(c) *Seeking Approval as a Corporate Surety.* Any surety business which is licensed by the Pennsylvania Department of Insurance may seek approval to post bail in the Fifth Judicial District by filing a petition with the Clerk of Courts and the District Attorney. The petition must provide the information, documents and certifications set forth in subsection (a) of this rule. Upon filing, the petition will be assigned to the Administrative Judge for determination.

(d) *Opportunity to be Heard.* A surety business whose petition seeking approval to post bail in the Fifth Judicial District is denied will be provided an opportunity to be heard and to contest the denial. Any surety business seeking to contest the denial of its petition for approval to post bail in the Fifth Judicial District must file a petition with the Clerk of Courts and serve District Attorney within thirty (30) days of the date of denial of its initial petition, and set forth the relief requested and the factual basis therefor. Similarly, a surety business, which has received approval to post bail in the Fifth

Judicial District as provided in this rule, but which has been prohibited from posting additional bail, or is otherwise ineligible to post bail in the Fifth Judicial District, will be provided an opportunity to be heard. Any surety business, seeking to contest its prohibition from posting additional bail in the Fifth Judicial District, or any other ineligibility subsequent to its initial approval hereunder, must file a petition with the Clerk of Courts and District Attorney within thirty (30) days of the date of the prohibition or determination of ineligibility, and set forth the relief requested and the factual basis therefor.

(e) *Prohibited Conduct.* A surety business and agents and employees thereof may not engage in prohibited conduct, which includes the violation of any applicable laws, statutes, local rules, rules of court, or the commission of any of the following acts:

(1) having a license as a surety business revoked in this or any other state;

(2) being involved in any transaction which shows unfitness to act in a fiduciary capacity or a failure to maintain the standards of fairness and honesty required of a fiduciary;

(3) having any judgment entered which would reduce the surety business' net worth below the minimum required for licensure;

(4) being convicted of any criminal offense;

(5) failing to promptly advise the Administrative Judge, the District Court Administrator and the District Attorney of any change in circumstances which would materially affect any of the statements, information or certifications required by this rule;

(6) using an unregistered agent to post bail or provide any bail undertaking on behalf of the surety business;

(7) using an individual or entity not contracted and appointed by the surety business to post bail or provide bail undertaking on behalf of the surety business;

(8) signing, executing or issuing bonds by a person or entity which is not registered as an agent of the surety business and/or for which there is no satisfactory proof of an agency relationship with the surety business;

(9) executing a bond without the appropriate counter signature by a licensed and/or authorized agent at time of issue;

(10) failing to account for or pay any premiums held in a fiduciary capacity;

(11) misstating or misrepresenting any material fact in the initial petition or any subsequent petitions, required by this rule, or in any of the statements, information or certifications required by this rule;

(12) failing to preserve, and to retain separately, any collateral obtained as security on any bond;

(13) failing to return collateral taken as security on any bond to the depositor of such collateral, or the depositor's designee, within ten (10) business days of having been notified of the exoneration of

the bond and upon payment of all fees owed to the surety business, whichever is later;

(14) offering or providing any consideration or gratuity to any person employed by, or incarcerated in, a jail facility, any person who has the power to arrest or to hold any person in custody, or to any court officers and attorneys to obtain or secure business;

(15) failing to deliver to the defendant, and any person providing collateral on the defendant's behalf, prior to the time the defendant is released from jail, a one-page disclosure form which, at a minimum, must include:

(A) the amount of the bail;

(B) the amount of the surety's fee, including bail bond premium, preparation fees, and credit transaction fees;

(C) the collateral that will be held by the surety;

(D) the defendant's obligations to the surety and the court;

(E) the conditions upon which the bond may be revoked;

(F) any additional charges or interest that may accrue;

(G) any co-signors or indemnitors that will be required; and

(H) the conditions under which the bond may be exonerated and the collateral returned;

(16) failing to provide the Pretrial Services Unit of the Fifth Judicial District the fully executed one-page disclosure form required by subsection (e)(15) of this rule at the time bond is posted;

(17) charging excessive fees or other unauthorized charges;

(18) requiring unreasonable collateral as security;

(19) failing to provide an itemized statement of any and all expenses deducted from collateral, if any;

(20) advising, requiring or suggesting that, as a condition of posting a bail bond by a surety business, a defendant engage the services of a particular law firm or attorney;

(21) preparing or issuing a fraudulent or forged bail bond, power of attorney or other document;

(22) signing, executing, issuing or posting bail bonds by an unlicensed person;

(23) knowingly violating, advising, encouraging, aiding, abetting or assisting the violation of any applicable law, statute, local rule or rule of court;

(24) soliciting or procuring sexual favors as a condition of obtaining, maintaining or exonerating a bail bond, regardless of the identity of the person who performs such favors;

(25) providing legal advice or a legal opinion in any form; and

(26) holding themselves out by their manner of dress as being a public official.

**Rule 536.1. Forfeitures and Bail Pieces.****(a) Forfeitures.**

(1) If a bail bond is ordered to be forfeited pursuant to Pa.R.Crim.P. 536, execution of the order shall be delayed until ninety (90) days from the date of the filing of the forfeiture order.

(2) If a defendant whose bail has been ordered forfeited surrenders within ninety (90) days of the date of the entry of the order, the Administrative Judge or a designee may set aside the forfeiture order and either reinstate bail or set a new bail without the necessity of the filing of a petition as hereinafter provided.

(3) Unless the forfeiture order has been set aside as provided for in subsection (2), in order for a surety to have the forfeiture order set aside or remitted in whole or in part, the party seeking remission, set aside or exoneration shall present a petition to the Administrative Judge or a designee, file the petition with the Clerk of Courts, and serve a copy thereof upon the District Attorney. The petition shall set forth in detail the reasons for seeking the set aside, remission or exoneration. In order to facilitate the assessment and investigation of petitions requesting remittance, the surety is required to delineate within the petition the following:

(A) A recitation of the history of the case including the charges, the date the bond was set, the amount of the bond, and the name and district of the issuing authority;

(B) The date of forfeiture and nature of the proceeding at which forfeiture occurred;

(C) A statement establishing the fact that the defendant was apprehended including the date of apprehension and the agency responsible for the apprehension;

(D) A detailed summary of all efforts by the petitioner to apprehend the defendant including the name, phone number and address of all agents hired or assigned to effectuate the apprehension, and all times, dates, and locations searched;

(E) A declaration that the apprehension or return of the defendant was effected by the efforts of the surety or that those efforts at least had a substantial impact on the defendant's apprehension; and

(F) A clear and specific factual recitation in support of the above declaration.

(b) *Bail Pieces.* After a bail piece is issued pursuant to Pa.R.Crim.P. 536 and the defendant is apprehended by or on behalf of the surety, the defendant must be brought before the Administrative Judge or a designee in accordance with Pa.R.Crim.P. 150. Bail pieces shall not be utilized to exonerate the surety.

*Comment:* Regarding forfeiture and remissions, see *Commonwealth v. Hernandez*, 886 A.2d 231 (Pa. Super. 2005), *Commonwealth v. Mrozek*, 703 A.2d 1052 (Pa. Super. 1997) and *Commonwealth v. Fleming*, 485 A.2d 1130 (Pa. Super. 1984).

[Pa.B. Doc. No. 12-282. Filed for public inspection February 17, 2012, 9:00 a.m.]

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## Title 25—LOCAL COURT RULES

### CUMBERLAND COUNTY

#### Local Rule 1302-5; Civil Term; 96-1335 Civil

#### Order

*And Now*, this 2nd day of February, 2012, effective this date or thirty (30) days after publication in the *Pennsylvania Bulletin*, Rule 1302-5 of the Cumberland County Rules is amended to read as follows:

Rule 1302-5. Unless otherwise ordered by the court, following the filing of the award, the Chairman of the Board of Arbitrators shall be paid the sum of \$160.50. Other members of the Board shall be paid the sum of \$128.00. In the event that the appointment of the Board is vacated, the Chairman shall be entitled to an administrative fee as ordered by the Court.

*Note:* Formerly Local Rule 407.

Adopted May 15, 1981, effective May 15, 1981, amended April 17, 1984, effective June 4, 1984.

Amended May 13, 1988, effective June 1, 1988,

Amended January 2, 1991, effective February 1, 1991.

Amended January 3, 2011, effective January 3, 2011.

Amended February 2, 2012, effective February

Pursuant to Pa.R.C.P. 239, the Court Administrator is directed to forward seven (7) certified copies of this order to the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, together with a diskette, formatted in Microsoft Word for Windows reflecting the text in hard copy version, one (1) copy to the Supreme Court Civil Procedural Rules Committee and/or the Supreme Court Domestic Relations Committee, and one (1) copy to the *Cumberland Law Journal*.

*By the Court*

KEVIN A. HESS,  
*President Judge*

[Pa.B. Doc. No. 12-283. Filed for public inspection February 17, 2012, 9:00 a.m.]

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