

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

ADOPTION REPORT

Amendment of Pa.R.Civ.P. 1910.16-2 and 1910.16-6

On October 25, 2024, the Supreme Court amended Pennsylvania Rules of Civil Procedure 1910.16-2 and 1910.16-6 governing subsequent changes to income, the calculation of earning capacity, and discretionary allocation of child care expenses that would be paid if a parent were employed, in support matters. The Domestic Relations Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

As part of the last quadrennial support guideline review, the Committee recommended several amendments of Pa.R.Civ.P. 1910.16-2. The first aspect, in subdivision (d)(1), governed a party's voluntary income reduction and operated to prevent the party's basic support obligation from being downwardly adjusted. The second aspect, in subdivision (d)(2), governed a party's involuntary income reduction and instructed whether the party's basic child support obligation should correspondingly be downwardly adjusted. Subsumed within subdivision (d)(2) were provisions related to incarceration and earning fluctuations. The third aspect, in subdivision (d)(3), governed seasonal employees and required the trier-of-fact to base monthly net income on a yearly average.¹

The fourth aspect of the amendment of Pa.R.Civ.P. 1910.16-2, concerned subdivision (d)(4), which governed earning capacity, *i.e.*, income imputation, if a party is unemployed or underemployed. This subdivision contained limits on earning capacity and set forth factors to be considered by the trier-of-fact when determining an earning capacity. The subdivision also required the trier-of-fact to consider child care expenses the party would incur if employed. See Pa.R.Civ.P. 1910.16-2(d)(4)(i)(D). This latter requirement was intended to permit those hypothetical child care expenses to be allocated when an earning capacity is imputed.

Pa.R.Civ.P. 1910.16-6(a), governing the allocation of child care expenses, was also amended to add subdivision (a)(1)(ii) indicating that child care expenses "paid" when imputing an earning capacity may be allocated. This subdivision also contained a cross-reference to Pa.R.Civ.P. 1910.16-2(d)(4)(i)(D).

¹ Subdivision (d)(3) operates to modify subdivision (a), which states that monthly gross income is based on at least a six-month average of a party's income.

Questions have arisen about the interplay among subdivisions (d)(1), (d)(2), and (d)(4). Absent clarification, multiple subdivisions may apply to the same circumstances. Specifically, subdivision (d)(4) governing earning capacity for an unemployed and underemployed party could arguably apply to a party's voluntary income reduction governed by subdivision (d)(1).

Subdivisions (d)(1)-(d)(2) are intended to apply to existing support orders and whether an existing support obligation can be reduced. Subdivision (d)(4) is intended to apply when establishing an initial support order based on imputed income when potential income is not fully realized. In essence, subdivisions (d)(1)-(d)(2) are reductive while subdivision (d)(4) is additive.

To provide expedited clarity as to the intended operation of these rules, subdivisions (d)(1) and (d)(2) have been amended to insert language indicating that those subdivisions apply to existing orders. Further, subdivision (d)(4) has been amended to indicate that subdivision applies to initial orders.

The intended operation of Pa.R.Civ.P. 1910.16-2(d)(4)(i)(D) and Pa.R.Civ.P. 1910.16-6(a)(1)(ii) concerning the discretionary allocation of hypothetical child care expenses when an earning capacity has been imputed was frustrated with the errant use of "paid" in Pa.R.Civ.P. 1910.16-6(a)(1)(ii). See, e.g., *M.M.F. v. M.F.*, 273 A.3d 1036 (Pa. Super. 2022), *appeal granted in part sub nom. Fiochetta v. Fiochetta*, 283 A.3d 1244 (Pa. 2022), and *appeal dismissed as improvidently granted sub nom. Fiochetta v. Fiochetta*, 300 A.3d 317 (Pa. 2023). To implement what was intended, "that would be" has been added to precede "paid" in Pa.R.Civ.P. 1910.16-6(a)(1)(ii). Further, "for the purpose of discretionary allocation pursuant to Pa.R.Civ.P. 1910.16-6(a)(1)(ii)" has been added to Pa.R.Civ.P. 1910.16-2(d)(4)(i)(D) to provide a reciprocal cross-reference.

The Comment to Pa.R.Civ.P. 1910.16-2 has been supplemented with commentary intended to guide the application of subdivision (d)(4) and curtail the practice of using hypothetical child care expenses to reduce an imputed income, which operates to decrease that party's basic child support obligation under the income shares model. It is also intended to foreclose the potential practice of "double counting" hypothetical child care expenses whereby they are used to reduce imputed income *and* are allocated.

The Committee intends to further study these topics as part of the current quadrennial support review.

These amendments become effective immediately.