

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE
RECOMMENDATION 160**

[Rule 1910.4. Commencement of Action. Fee.

(a) An action shall be commenced by filing a complaint with the domestic relations section of the court of common pleas.

Note: For the form of the complaint, see Rule 1910.27(a).

Section 961 of the Judicial Code, 42 Pa.C.S. § 961, provides that each court of common pleas shall have a domestic relations section.

(b) No filing fee shall be required in advance.]

--- The text below replaces the current rule in its entirety. ---

Rule 1910.4. Domestic Relations Section. Commencement of Action. No Filing Fees. Authorized Fees.

(a) Each court of common pleas shall have a domestic relations section, which shall be the filing office for pleadings and documents for child support, spousal support, and alimony *pendente lite* actions.

(b) Child support and spousal support actions shall be commenced by filing a complaint in the domestic relations section. A party shall commence a claim for alimony *pendente lite* by filing a complaint in the domestic relations section if a divorce complaint has been filed with the prothonotary.

Note: See Pa.R.C.P. No. 1920.31(a)(2) regarding the filing of alimony *pendente lite* actions in the domestic relations section.

(c) Payment of a filing fee shall not be required by the domestic relations section to commence an action.

Note: See Pa.R.C.P. No. 1910.27(a) for the form of the support complaint.

(d) Unless authorized by statute, additional fees shall not be imposed by a judicial district. Fees shall be collected by the domestic relations section through the Pennsylvania Child Support Enforcement System (PACSES).

Note: Currently the statutorily authorized fees are the Judicial Computer System fee, 42 Pa.C.S. §§ 3733, 3733.1, the genetic testing fee pursuant to 23 Pa.C.S. § 4343(c)(4), and the federally mandated annual fee pursuant to 23 Pa.C.S. § 4351(a)(1).

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

* * *

(f) Allocation. Consequences.

(1) An order awarding **[both]** spousal support or alimony pendente lite and child support may be unallocated or state the amount of support allocable to the spouse and the amount allocable to each child. **[Each order]**The order shall clearly state whether it is allocated or unallocated even if the amounts calculated for spousal support or alimony pendente lite and child **[and spousal]** support are delineated **[on]**in the order. However, Part IV of the formula provided by these rules assumes that an order will be unallocated. Therefore, if the order is to be allocated, the formula set forth in this rule shall be utilized to determine the amount of support allocable to the spouse. If **the** allocation of an order utilizing the formula would be inequitable, the court shall make an appropriate adjustment. Also, if an order is to be allocated, an adjustment shall be made to the award giving consideration to the federal income tax consequences of an allocated order as may be appropriate under the circumstances. **[No consideration]**Consideration of federal income tax consequences shall be **not** applied if the order is unallocated or the order **is** for **[the]** spousal support or alimony **[pendente lite]**pendente lite only.

Note: The 2005 amendment supersedes *Diament v. Diament*, 816 A.2d 256 (Pa. Super. **[Ct.]** 2003), to the extent that it held that the tax savings from payments for the benefit of a spouse alone or from an unallocated order for the benefit of a spouse and child must be considered in determining the obligor's available net income for support purposes. **[Rule]**Pa.R.C.P. No. 1910.16-4(f)(1) states that the guidelines formula assumes that the order will be unallocated. The tax consequences of an order for a spouse alone or an unallocated order for the benefit of a spouse and child have already been built into the formula.

(2) When the parties are in higher income brackets, the income tax considerations are likely to be a more significant factor in determining an award of support. A support award for a spouse and children is taxable to the obligee while an award for the children only is not. Consequently, in certain situations, an award only for the children will be more favorable to the obligee than an award to the spouse and children. In this situation, the trier of fact should utilize the **[guidelines which result]**method that results in the greatest benefit to the obligee.

[When]if the obligee's net income is equal to or greater than the obligor's net income, the guideline amount for spouse and children is identical to the guideline amount for children only. Therefore, in cases involving support for spouse and children, whenever the obligee's net income is equal to or greater than the obligor's net income, the guideline amount indicated shall be attributed to child support only.

(3) Unallocated charging orders for child and spousal support[,] or child support and alimony **[pendente lite,]pendente lite** shall terminate upon the death of the **[payee spouse or payee ex-spouse]obligee**.

(4) In the event that the obligor defaults on an unallocated order, the court shall allocate the order for collection of child support pursuant to the Internal Revenue Service income tax refund intercept program or for registration and enforcement of the order in another jurisdiction under the Uniform Interstate Family Support Act, 23 Pa.C.S.**[A.]** § 7101 **[et seq]et seq**. The court shall provide notice of allocation to the parties.

Note: This provision is necessary to comply with various state and federal laws relating to the enforcement of child support. It is not intended to affect the tax consequences of an unallocated order.

(5) An unallocated order for spousal support or alimony pendente lite and child support shall be a final order as to all claims covered in the order.

Rule 1920.1. Definitions. Conformity to Civil Action.

(a) As used in this chapter,

“action” means an action of divorce or an action for annulment of marriage, **[which may include any other claim which may under the Divorce Code]including ancillary claims that may** be joined with the action of divorce or for annulment **under the Divorce Code, except as otherwise provided in these rules;**

“custody” includes partial custody**[and visitation];**

“divorce” means divorce from the bonds of matrimony**or a civil union;**

* * *

Note: For other claims **[which]that** may be joined, see Section 3104 of the Divorce Code, 23 Pa.C. S. § 3104, **except as otherwise provided in these rules. See Pa.R.C.P. No. 1920.31(a)(2) as to raising claims for child support, spousal support, and alimony pendente lite. The definition of divorce has been expanded to include civil unions. Neyman v. Buckley, 2016 Pa. Super. 307.**

Rule 1920.13. Pleading More Than One Cause of Action. Alternative Pleading.

(a) The plaintiff may state in the complaint one or more grounds for divorce and may join in the alternative a cause of action for annulment.

- (b) **Except as otherwise provided in these rules, the**[The] plaintiff may:
- (1) join **as separate counts** in the complaint **[in separate counts any other claims which may]the ancillary claims that may be joined [under the Divorce Code be joined]** with an action of divorce or for annulment **under the Divorce Code; [or, if they have not been so joined, the plaintiff may as of course]**
 - (2) amend the complaint to include **[such other]the ancillary** claims; **[or may]**
 - (3) file to the same term and number a separate supplemental complaint or complaints limited to **[such other]the ancillary** claims; or **[(2)4]** file to the same term and number a subsequent petition raising **[such other]the ancillary** claims.

(c) The court may order **[alimony pendente lite,]** reasonable counsel fees**[,]** **and** costs and expenses pending final disposition of any claim.

Note: See Pa.R.C.P. No. 1920.31(a)(2) as to raising claims for child support, spousal support, and alimony pendente lite. See Pa.R.C.P. No. 1910.26(b) for interim or special relief for support and alimony pendente lite actions proceeding through the domestic relations section.

Rule 1920.15. Counterclaim. Subsequent Petition.

(a) The defendant may **[set forth]state** in an answer under the heading “Counterclaim” a cause of action of divorce or for annulment**[and, whether the defendant does so or not, may set forth any other matter which under the Divorce Code may be joined with an action of divorce].**

(b) **Except as otherwise provided in these rules, the****[The]** defendant may:

(1) **join as separate counts in the counterclaim the ancillary claims that may be joined with an action of divorce or for annulment under the Divorce Code;**

(2) file **[to]at** the same term and number a subsequent petition raising **[any claims which under the Divorce Code may be joined with an action of divorce or for annulment. The averments shall be deemed denied unless admitted by an answer]the ancillary claims.**

(c) The averments in the counterclaim shall be deemed denied unless admitted by an answer.

Note: **[See Rule]See Pa.R.C.P. No. 1920.31, which requires the joinder of certain related claims under penalty of waiver. A claim for alimony must be raised before the entry of a final decree of divorce or annulment. See Pa.R.C.P. No. 1920.31(a)(2) as to raising claims for child support, spousal support, and alimony pendente lite.**

Rule 1920.31. Joinder of Related Claims. [Child and Spousal Support.] Alimony. [Alimony Pendente Lite.] Counsel Fees. Costs and Expenses.

(a) (1) **[When either]If a** party has raised a claim for alimony, **[or]** counsel fees, **or** costs and expenses, each party shall file a true copy of the most recent federal income tax return, pay stubs for the preceding six months, a completed Income Statement in the form required **[at Rule]by Pa.R.C.P. No. 1910.27(c)(1),** and a completed Expense Statement in the form required by **[Rule]Pa.R.C.P. No. 1910.27(c)(2)(B).** A party may not file a motion for the appointment of a master or a request for court action regarding alimony, **[alimony pendente lite or]** counsel fees, **or costs [cost]** and expenses until at least 30 days following the filing of that party’s tax

returns, Income Statement and Expense Statement. The other party shall file the tax returns, Income Statement, and Expense Statement within 20 days of service of the moving party's documents. **[If a claim for child support, spousal support or alimony pendente lite is raised in a divorce complaint, no expense form is needed in a support action that can be decided pursuant to the support guidelines unless a party claims unusual needs or unusual fixed expenses or seeks deviation pursuant to Rule 1910.16-5 or apportionment of expenses pursuant to Rule 1910.16-6.]**

(2) A divorce complaint shall not include claims for child support, spousal support, and alimony pendente lite. Claims for child support, spousal support, and alimony pendente lite shall be raised by filing a complaint with the domestic relations section pursuant to Pa.R.C.P. No. 1910.4.

[(2)3] If a party fails to file the documents as required by subdivision (a)(1), the court on motion may make an appropriate order under **[Rule]Pa.R.C.P. No. 4019** governing sanctions.

[(3) In those counties in which the prothonotary's office does not automatically forward a divorce complaint containing claims for support or alimony pendente lite to the domestic relations section or other appropriate office, if a claim for support or alimony pendente lite is filed as a count in a divorce rather than as a separate action, the award shall be retroactive to the date the moving party delivers a copy of the complaint to the domestic relations section or other appropriate office with a demand for hearing.]

(b) (1) Orders **[of child support, spousal support, alimony or alimony pendente lite]for alimony** may be enforced as provided by the rules governing actions for support and divorce, and in the Divorce Code.

Note: See, inter alia, Section 3323(b) of the Divorce Code relating to enforcement of the rights of any party under a decree, Section 3505(a) relating to an injunction against disposition of property pending suit, and Section 3703 relating to the collection of arrearages.

(2) When so ordered by the court, **[all]payments [of child or spousal support, alimony or alimony pendente lite]for alimony** shall be made to the domestic relations section of the court **[which]that** issued the order.

(c) The failure to claim spousal support, alimony, alimony **[pendente lite]pendente lite, [or] counsel fees, or costs** and expenses prior to the entry of a final decree of divorce or annulment shall be deemed a waiver **of those claims, [thereof]**

unless the court expressly provides otherwise in its decree. The failure to claim child support shall not bar a separate and subsequent action[**therefor**].

(d) Upon entry of a decree in divorce, **[any]an** existing order for spousal support shall be deemed an order for alimony **[pendente lite]pendente lite** if any economic claims remain pending.

EXPLANATORY COMMENT

As amended, Pa.R.C.P. No. 1920.31 precludes the filing of child support, spousal support, and alimony *pendente lite* as counts in a divorce action. Those claims should be filed in the domestic relations section as a separate action from the divorce. This Rule is not intended to affect the legal distinction between spousal support and alimony *pendente lite*.

Rule 1920.51. Hearing by the Court. Appointment of Master. Notice of Hearing.

(a) (1) The court may hear the testimony or, upon its own motion or the motion of **[either]a** party, may appoint a master with respect to **[all or any of the matters]the claims** specified in subdivision (a)(2)(i), **who shall [to]** consider **[same]those claims** and issue a report and recommendation. The order of appointment shall specify the **[matters]claims** which are referred to the master.

(2) (i) The court may appoint a master in an action of divorce under Section 3301(a), (b) and (d)(1)(ii) of the Divorce Code, an action for annulment, and the claims for alimony, **[alimony pendente lite,]** equitable distribution of marital property, **[child support,]** partial custody **[or visitation, or]**, counsel fees, **or** costs and expenses, or any aspect **[thereof]of those claims**.

* * *

Rule 1920.52. Hearing by the Court. Decision. No Post-trial Relief. Decree.

- (a) In claims involving:
- (1) marital property~~[,];~~
 - (2) enforcement of marital agreements~~[,];~~
 - (3) alimony~~[,];~~ or
 - (4) a contested action of divorce, or annulment,

the order of the trial **[judge]court** shall state the reasons **[therefor]for its decision**. **[No]A** motion for post-trial relief may **not** be filed to **[any order]orders involving the claims** enumerated in this subdivision.

- (b) In claims involving:
- ~~[(1) child or spousal support,]~~
 - ~~[(2)1] paternity when tried by a judge[,];~~
 - ~~[(3)2] custody[, partial custody, or visitation,];~~
 - ~~[(4) alimony pendente lite,]~~
 - ~~[(5)3] counsel fees[, or] costs and expenses[, or];~~
 - ~~[(6)4] an uncontested action of divorce or annulment[,];~~ or
 - ~~[(7)5] protection from abuse,~~

the order of the trial **[judge]court** may set forth only general findings. **[No]A** motion for post-trial relief may **not** be filed to **orders involving the claims** enumerated in this subdivision.

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Rule 1920.54. Hearing by Master. Report. Related Claims.

(a) If claims for **[child support, alimony pendente lite, or]** counsel fees and **costs and** expenses have been referred to a master pursuant to **[Rule]Pa.R.C.P. No. 1920.51(a)**, the master's report shall contain **a** separate **[sections]section** captioned **["Child Support," "Alimony Pendente Lite," or]** "Counsel Fees **and Costs** and Expenses." **[as appropriate.]** The report may be in **a** narrative form stating the reasons for the recommendation and shall include a proposed order stating:

- (1) the amount **[of support or alimony pendente lite]**;
- (2) by and for whom it shall be paid; and
- (3) the effective date of the order.

* * *

[Rule 1920.56. Support. Alimony Pendente Lite. Allocation of Order.

(a) In an order awarding child support combined with spousal support, alimony pendente lite or both, the court may on its own motion or upon the motion of either party

- (1) make an unallocated award in favor of the spouse and one or more children, or
- (2) state the amount of support allocable to the spouse and the amount allocable to each child.

(b) An unallocated order in favor of the spouse and one or more children shall be a final order as to all claims covered in the order.

EXPLANATORY COMMENT-1989

The allocation of a support order is of great significance to the parties and the court. It has impact upon two substantive areas, federal income taxation and subsequent modification of an order.

With respect to taxation, the decision to allocate a support order will determine which party pays the federal income tax and thus the actual amount of money available to the beneficiary of the order. With regard to subsequent modification of an order, allocation will enable the court to determine whether modification is warranted since the amount of support each beneficiary is receiving is known.

The issue of allocation arises in a support action where both child and spousal support are sought. It also surfaces in actions for divorce in which child support is sought together with spousal support, alimony pendente lite or both.

Two rules are proposed to govern these situations, one for support actions (amended Rule 1910.16) and one for divorce actions (new Rule 1920.56).

Allocation of a support order may not be appropriate in all cases. Rather, the decision whether to allocate must be based upon the facts of the particular case. Subdivision (a) of each rule makes clear that the court has the power to determine whether or not to allocate and that the decision rests in the discretion of the court. The question of allocation may be raised by the court on its own motion or by the parties.

Subdivision (b) of each rule settles the question of the appealability of an unallocated order and any other claims adjudicated in that order. The rule declares such orders to be final and therefore appealable. Not only is the unallocated support order final and appealable, so also are any other claims covered in the same order irrespective of whether they would be final and appealable had they not been a part of the order awarding unallocated support.]

Rule 1920.74. Form of Motion for Appointment of Master. Order.

(a) The motion for appointment of a master shall be substantially in the following form:

(Caption)

MOTION FOR APPOINTMENT OF MASTER

_____ (Plaintiff) (Defendant), moves the court to appoint a master with respect to the following claims:

() Divorce

() Annulment

() Alimony

[() Alimony Pendente Lite]

() Distribution of Property

[() Support]

() Counsel Fees

() Costs and Expenses

and in support of the motion states:

(1) Discovery (is) (is not) complete as to the claim(s) for which the appointment of a master is requested.

(2) The non-moving party (has) (has not) appeared in the action (personally) (by his **or her** attorney, _____, Esquire).

(3) The statutory ground(s) for divorce (is) (are) _____

(4) Delete the inapplicable paragraph(s):

(a) the action is not contested.

(b) An agreement has been reached with respect to the following claims: _____

(c) The action is contested with respect to the following claims: _____

(5) The action (involves) (does not involve) complex issues of law or fact.

(6) The hearing is expected to take _____ (hours) (days).

(7) Additional information, if any, relevant to the motion: _____

Date: _____

Attorney for (Plaintiff) (Defendant)

* * *