

PROPOSED RULES

AMENDMENTS TO THE RULES OF CIVIL PROCEDURE RELATING TO DOMESTIC RELATIONS MATTERS

SUPREME COURT OF PENNSYLVANIA DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

RECOMMENDATION 105

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, February 11, 2011** directed to:

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Deleted material is **bold** and **[bracketed]**. New material is **bold** and underlined.

By the Domestic Relations Procedural Rules Committee

Carol A. Behers, Esquire
Chair

SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

RECOMMENDATION 105

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.

(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 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 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.

(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--2010

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.

A new subdivision (b) has been added to clarify that in all initial and subsequent 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.

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Rule 1910.5. Complaint. Order of Court.

(a) The complaint shall be substantially in the form provided by Rule 1910.27(a).

(b) The complaint shall not contain a notice to defend or be endorsed with a notice to plead.

Note: Neither Rule 1018.1 nor Rule 1361 applies to a complaint in an action for support.

(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 support order may be entered against either party without regard to which party initiated the action or filed a modification petition.**

Note: For service of original process in support matters, see Rule 1930.4.

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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.

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.] §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.] §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.

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

(a) A petition for modification or termination of an existing support order shall specifically aver the material and substantial change in circumstances upon which the petition is based. A new guideline amount resulting from new or revised support guidelines may constitute a material and substantial change in circumstances. The existence of additional income, income sources or assets identified through automated methods or otherwise may also constitute a material and 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, the petition may not be withdrawn unless both parties consent.**

(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 and each party's custodial time with the child at the time the modification petition is heard.**

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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.

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(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 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 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.

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(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.

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