

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 1910 AND 1930]

Amendments to the Rules Relating to Domestic Relations Matters; Recommendation 54

The Domestic Relations Procedural Rules Committee proposes the following amendments to Rules of Civil Procedure 1910.16-4, 1910.16-6, 1910.19, 1910.26 and 1930.5 and further proposes new Rule 1930.6. The Committee solicits comments and suggestions from all interested persons prior to submission of these proposed amendments to the Supreme Court of Pennsylvania.

Written comments relating to the proposed rules must be received no later than Friday, October 20, 2000 and must be directed to:

Patricia A. Miles, Counsel
Domestic Relations Procedural Rules Committee
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The notes and explanatory comments which appear in connection with the proposed amendments have been inserted by the Committee for the convenience of those using the rules. They will not constitute part of the rules and will not officially be adopted or promulgated by the Supreme Court.

DAVID RASNER, ESQ.,
Chair

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.

* * * * *

(c) *Substantial or Shared Physical Custody.*

* * * * *

(2) **Without regard to which parent initiated the support action, [When] when the children spend equal time with both parents, [and] the Part II formula cannot be applied unless the obligor is the parent with the higher income. In no event shall the parent with lesser income be required to pay child support to the parent with the higher income, nor shall a support order be entered in favor of a party who has not filed for support. If application of the formula in Part II results in obligee receiving a larger share of the parties' combined income in cases in which the parties share custody equally, then the court shall adjust the support obligation so that the combined income is allocated equally between the two households.**

Example. Mother and Father have monthly net incomes of \$3,000 and \$2,000 respectively. Both have filed for support for their two children with whom they share time equally. Pursuant to the Basic

Child Support Schedule at Rule 1910.16-3, the support amount for two children at their parents' combined net income level is \$1,335 per month. Mother's share is 60% of that amount, or \$801. Father's share is 40%, or \$534. Application of subdivisions a. and b. of the Part II formula results in a 20% reduction in support when each parent spends 50% of the time with the children. Because the parties share custody equally and both have filed for support, Mother is the obligor for purposes of the Part II calculation because she has the higher income of the two parents. Using Mother as the obligor, her adjusted percentage share of the basic support amount is 40% (60% - 20% = 40%). Her adjusted share of the basic support amount is \$534 (40% of \$1,335). In these circumstances, Mother's support complaint should be dismissed and she would pay Father \$534 per month. Because Father has less income than Mother, he cannot be an obligor in the Part II calculations nor can the amount of support Mother is obligated to pay to Father be offset by calculating Father's adjusted amount of support under Part II. If only Mother had filed for support against Father, her complaint would be dismissed when it was determined that she had the higher income of the two parties. It would be improper for Father to be considered the obligor for purposes of the Part II calculation even though only Mother had filed for support. A support order cannot be entered against the parent with the lesser income. However, a support order cannot be entered against Mother unless Father has also filed for support.

* * * * *

(d) *Divided or Split Physical Custody.*

* * * * *

(2) When calculating a combined child support and spousal or APL obligation, and one or more children reside with each party, the court shall, **except as set forth in subdivision (3) below**, offset the obligor's spousal and child support obligation with the obligee's child support obligation and award the net difference to the obligee as spousal and child support. In the example above, Husband's spousal and child support obligation to Wife and two children is \$564. Wife's child support obligation for one child is \$188. Subtracting \$188 from \$564 produces a net support amount of \$376 payable to Wife as spousal and child support.

(3) When one or more of the children reside with each party and the obligee's net income is 10% or less of the parties' combined net monthly income, in calculating the spousal support or APL obligation, the court shall deduct from the obligor's income both the support owed for the child or children residing with the obligee, as well as the direct support the obligor provides to the child or children living with the obligor, calculated in accordance with the guidelines as if the child or children were not living with the obligor.

* * * * *

(f) *Allocation. Consequences.*

* * * * *

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

[(3)] (4) ***

Explanatory Comment—2000

Subdivision (3) is new and the former subdivision (3) has been renumbered as subdivision (4). The new language is intended to insure alimony tax treatment of unallocated orders pursuant to § 71 of the Internal Revenue Code. A similar change has been made to the form order at Rule 1910.26(e). New Rule 1910.19(d) provides that all spousal support and alimony pendente lite orders terminate upon the death of the payee.

* * * * *

Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation.

(a) Child care expenses. Reasonable child care expenses paid by the custodial parent, if necessary to maintain employment or appropriate education in pursuit of income, are the responsibility of both parents. These expenses shall be allocated between the parties in proportion to their net incomes and obligor's share added to his or her basic support obligation. When the custodial parent is receiving a child care subsidy through the Department of Public Welfare, the expenses to be allocated between the parties shall be the full unsubsidized cost of the child care, not just the amount actually paid by the custodial parent.

* * * * *

Official Note

A child care subsidy provided by the Department of Public Welfare should not be used to reduce the child care expenses subject to allocation between the parties to the extent that obligor has the financial resources to contribute to the actual costs of child care. Nor is it appropriate to order the obligee to seek a child care subsidy in order to reduce the obligor's share of child care expenses if obligor has the financial ability to contribute to those expenses. However, if allocation of the unsubsidized amount would result in a support order that is overly burdensome to the obligor, deviation pursuant to Rule 1910.16-5 may be warranted. The trier of fact also has the discretion to determine whether or not to include in the order other adjustments under Rule 1910.16-6, such as a mortgage contribution, which are not mandatory. No adjustment to the basic support amount shall be permitted if such would cause the obligor's remaining net monthly income to fall below the Computed Minimum Allowance of \$550.

* * * * *

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

* * * * *

(d) All orders for spousal support and alimony pendente lite shall terminate upon the death of the payee spouse.

Rule 1910.26. Form of Complaint. Order. Income and Expense Statement. Health Insurance Coverage Information Form. Form of Support Order. Form Petition for Modification.

* * * * *

(e) The form of a support order shall be substantially as follows:

* * * * *

For the support of: _____

All orders for spousal support and alimony pendente lite, including unallocated orders for child and spousal support or child support and alimony pendente lite, shall terminate upon the death of the payee.

* * * * *

CHAPTER 1930. RULES RELATING TO DOMESTIC RELATIONS MATTERS GENERALLY

Rule 1930.5. Discovery in Domestic Relations Matters.

* * * * *

(b) Discovery shall be available without leave of court in accordance with R.C.P. 4001 et seq. in [complex support,] alimony, equitable distribution, counsel fee and expense [applications] and complex support proceedings.

Explanatory Comment—2000

Subdivision (b) has been amended to clarify that the adjective "complex" applies only to a support proceeding.

Rule 1930.6. Paternity Actions.

(a) Scope. This rule shall govern the procedure by which a putative father may initiate a civil action to establish paternity and seek genetic testing. Such an action shall not be permitted if an order already has been entered as to the paternity, custody or support of the child, or if a support or custody action is pending.

Explanatory Comment

Where the paternity of a child born out-of-wedlock is disputed, 23 Pa. C.S. § 4343 provides that the court shall make the determination of paternity in a civil action without a jury. That statutory provision also states, "A putative father may not be prohibited from initiating a civil action to establish paternity." Rule 1930.7 governs the procedures by which a putative father may initiate a civil action to establish paternity outside the context of a support or custody proceeding.

(b) Venue. An action may be brought only in the county in which the plaintiff or the child(ren) reside.

(c) Commencement of Action. An action shall be initiated by filing with the prothonotary a verified complaint to establish paternity and for genetic testing substantially in the form set forth in subdivision (1) below. The complaint shall have as its first page the Notice of Hearing and Order set forth in subdivision (2) below.

(1) The complaint filed in a civil action to establish paternity shall be substantially in the following form:

(Caption)

COMPLAINT TO ESTABLISH PATERNITY AND FOR GENETIC TESTING

Plaintiff, _____, requests genetic testing to establish paternity pursuant to 23 Pa.C.S. § 4343 and in support of that request states that:

1. Plaintiff is an adult individual who resides at _____

2. Defendant is an adult individual who resides at _____

3. Defendant is the natural mother and Plaintiff believes that he may be the natural father of the following child(ren):

Child's Name	Date of Birth
_____	_____

4. The above-named children reside at the following address with the following individuals:

Address	Person(s) Living with Child	Relationship to Child
_____	_____	_____

5. Defendant was/was not married at the time the child(ren) was/were conceived or born.

6. Defendant is/is not now married. If married, spouse's name: _____

7. There is/is not a custody, support or other action involving the paternity of the above-named child(ren) now pending in any jurisdiction. Identify any such actions by caption and docket number.

8. There has/has not been a determination by any court as to the paternity of the child(ren) in any prior support, custody, divorce or any other action. If so, identify the action by caption and docket number _____

9. Plaintiff agrees to pay all costs associated with genetic testing directly to the testing facility in accordance with the procedures established by that facility.

Wherefore, Plaintiff requests that the court order Defendant to submit to genetic testing and to make the child(ren) available for genetic testing.

I verify that the statements made in this complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Petitioner

(2) The Notice of Hearing and Order required by this rule shall be substantially in the following form:

(Caption)

NOTICE OF HEARING AND ORDER

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following papers, you must appear at the hearing scheduled below. If you fail to do so, the case may proceed against you and a final order may be entered against you granting the relief requested by the plaintiff.

Plaintiff and Defendant are directed to appear on the _____ day of _____, 20__ at ____ .m. in courtroom _____ for a hearing on Plaintiff's request for genetic testing. If you fail to appear as ordered, the court may enter an order in your absence requiring you and your child(ren) to submit to genetic tests.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

(name) _____

(address) _____

(telephone number) _____

Americans with Disabilities Act of 1990

The Court of Common Pleas of _____ County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference or hearing.

(d) *Service.* Service of original process and proof of service in a civil action to establish paternity shall be in accordance with Rule 1930.4.

(e) *Hearing and Order.* At the hearing, the judge will determine whether or not the plaintiff is legally entitled to genetic testing and, if so, will issue an order directing the defendant and the child(ren) to submit to genetic testing, the cost of which shall be borne by the plaintiff.

[Pa.B. Doc. No. 00-1415. Filed for public inspection August 18, 2000, 9:00 a.m.]

PART III. FAMILY COURT RULES

[231 PA. CODE PART III]

Rules Relating to Domestic Relations Matters; Recommendation 55

The Domestic Relations Procedural Rules Committee proposes the following new rules relating to family law matters and the operation of family courts. The Committee solicits comments and suggestions from all interested persons prior to submission of these proposed rules to the Supreme Court of Pennsylvania.

Written comments relating to the proposed rules must be received no later than Friday, December 1, 2000 and must be directed to:

Patricia A. Miles, Counsel
Domestic Relations Procedural Rules Committee
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The notes and explanatory comments which appear in connection with the proposed rules have been inserted by the Committee for the convenience of those using the

rules. They will not constitute part of the rules and will not officially be adopted or promulgated by the Supreme Court.

Recommendation 55
Family Court Rules

Introduction

More citizens of this commonwealth will come into contact with our courts as a result of a family law matter than any other type of legal action. Several years ago, the Pennsylvania Supreme Court began to examine how courts could better serve the needs of children and families who become involved with the justice system as a result of divorce or other family problems.

In 1997, Supreme Court Justice Sandra Schultz Newman and Superior Court Judge Kate Ford Elliott co-chaired a conference on family court reform which was co-sponsored by the Pennsylvania Bar Association's Commission on Women in the Profession and the Family Law Section. As an outgrowth of that conference, the Task Force on Family Court Reform was created. In addition to the conference sponsors, the task force also included members of the Pennsylvania Chapter of the American Academy of Matrimonial Lawyers. The charge of the task force was to study problems and innovations in family court procedures in Pennsylvania and to make specific recommendations for reform. The task force surveyed each judicial district in the commonwealth, including personal contacts with family court judges and administrators to obtain an understanding of flaws in the system, as well as the efforts being made in individual judicial districts to improve the methods of handling family law cases. In addition, the task force studied models in place in other jurisdictions outside the commonwealth. The preliminary report and recommendation of the task force was issued in the summer of 1999.

At the same time, the Children's Rights Committee of the Pennsylvania Bar Association conducted its own survey of citizens who used the family court system to learn what they thought of their experiences and how to improve the process. That committee's report was also considered by the task force in making its recommendations.

In the meantime, the House of Representatives Judiciary Committee Domestic Relations Task Force, chaired by Representative Lita Cohen, began its examination of family court reform, with its findings submitted in late 1998. Many of the judges, masters and lawyers who testified at Judiciary Committee hearings are the same individuals who participated on the Family Court Reform Task Force and who served or now serve on the Supreme Court Domestic Relations Procedural Rules Committee.

The foregoing demonstrates that there has been a great deal of interest in family court reform by members of our bench, bar and legislature. A tremendous amount of effort was expended in obtaining and studying information from many sources. Now the reports and recommendations have been issued and it is time to effectuate change.

As the recommendations for change primarily affect procedure, the most appropriate and expeditious, as well as least expensive, means of accomplishing family court reform is through promulgation of procedural rules by the Supreme Court. The rules that will be promulgated over time will attempt to satisfy the recommendations of those who have studied our family court system in depth. They will incorporate several recommendations common to all of the reports studied:

1. *One Judge or One Team per Family.* The goal of eliminating fragmentation in the system is best served by consistency in adjudication units. The assignment of one master and/or one judge and/or one team to a family prevents litigants from having to present similar or related facts to different triers of fact in different proceedings. If a team approach is used, it should be supervised by the assigned judge or master.

2. *Consolidated Intake.* The goal is to create a system that is "user-friendly". Each district should establish one location for the filing of all family law matters.

3. *Case Management and Early Intervention.* The goal of assuring that matters move through the system expeditiously requires case management. One individual or team should be responsible for, among other things, assigning priorities based on the family's needs, screening for domestic violence and making appropriate referrals. It is important that the case manager or team review the pleadings and meet with the parties early in the process to determine the best course of action in light of the particular circumstances of the case.

4. *Timely Outcomes.* While each case will not be resolved in the same amount of time, a vital goal of family court reform is to assure timely resolution of interim matters as well as the final disposition. The case manager or team should set and enforce (through the supervising judge or master) time limits for pleadings, discovery, conferences and hearings. Triers of fact also must be accountable for issuing prompt decisions and opinions.

5. *Consolidated Proceedings.* To reduce the time and expense to the family and to the court, whenever possible, related issues should be heard together.

6. *Continuous Trials.* The goal is to treat parties in family law matters the same as litigants in any other matters. Cases involving custody of children, the financial support of a spouse and children, protection against violence and the dissolution of a marriage are too important to be heard piecemeal in available time slots between criminal and other civil cases. The emotional and financial welfare of families and children, as well as judicial economy, requires that hearings and trials in family law matters be heard, if not on continuous days until the case is fully presented, then at least within a short and specified time frame.

7. *Training for Judges, Masters and Other Family Court Personnel.* Skillful handling of family court matters requires not only knowledge of the statutes, rules and case law, but also the psychological and sociological backdrop against which many family law matters present themselves. To assure that those individuals managing the cases, as well as those adjudicating the cases, have the knowledge necessary to make the best decisions for children and families, ongoing training in the form of a standard statewide curriculum should be required.

8. *Other Recommended Programs.*

a. *Resource and Referral Office.* One place a person can visit or call to obtain information about how family court works, a contact person for his or her case, referrals to social services etc.

b. *Space for Children in the Courthouse.* Appropriately staffed and appointed facility to leave children while parents are on court business and to provide a place for supervised visitation when ordered by the court in custody cases.

c. *Mediation Programs.*

d. *Seminars/Programs for Separating Families and for Children of Those Families.*

e. *Court-Connected Custody Evaluations and Home Studies.*

f. *Court Appointed Special Advocate (CASA) Program.*

While few would disagree that, in theory, the goals set forth above are laudable, achieving them will not be easy. Change is difficult and often meets with resistance. To ease the process, the following rules address only a few of the goals listed above.

The following initial Family Court Rules focus on consolidating and managing family law matters. They will not require a tremendous amount of new resources, but rather can be accomplished in most jurisdictions by a restructuring and reallocation of existing resources and personnel.

Later rules will address those programs listed in paragraph 8 above which, while highly desirable, are not as essential to the major goals of family court reform. These programs already are established in some jurisdictions.

The last phase of family court reform will be to reorganize and renumber the rules of civil procedure relating to family matters and bring them under the Family Court Rules. Throughout the process of family court reform, constructive comments and suggestions from the bench, bar, court administration and the public are welcome.

DAVID RASNER, ESQ.,
Chair

TITLE 231—RULES OF CIVIL PROCEDURE

PART III. FAMILY COURT RULES

GENERAL RULES

Rule 101. Actions Governed by Family Court Rules.

(a) *Divorce, Annulment, Dissolution of Marriage.*

- (1) Equitable Distribution.
- (2) Alimony/Alimony Pendente Lite.
- (3) Counsel Fees, Costs and Expenses.
- (4) Special Relief.

(b) *Child Custody.*

- (1) Legal Custody.
- (2) Physical Custody.
- (3) Partial Custody/Visitation.

(c) *Support.*

- (1) Child Support.
- (2) Spousal Support.
- (3) Modification and Enforcement.

(d) *Paternity.*

(e) *Protection From Abuse.*

Rule 102. Commencement of Action.

(a) *Centralized Filing.*

(1) Each judicial district shall establish a Family Court Filing Unit either as a separate and distinct office of the district's family court division, or as a separate and distinct unit of the prothonotary's or court administrator's

office. All actions governed by these Family Court Rules shall be commenced by a filing in the Family Court Filing Unit.

(2) Within ten days of the commencement of any action under these Family Court Rules, the Family Court Filing Unit shall assign the case to a case manager or case management team under the supervision of a master or judge of the judicial district. If either party initiates any other actions governed by these Family Court Rules, the same case manager or case management team shall be assigned.

(b) *Case Management.*

(1) Within ten days of the assignment of a matter to the case manager or case management team, the case manager or team shall review the pleading and schedule a meeting with the parties to be held as soon as possible after service of the pleading.

(2) At the first case management meeting with the parties and counsel, if represented, the case manager or case management team shall:

(i) determine if other actions under these Family Court Rules are necessary or appropriate;

(ii) screen for allegations of domestic violence;

(iii) determine if other government or community agencies are involved with the family (i.e. Children and Youth, Adult or Juvenile Probation, Mental Health and Retardation etc.);

(iv) advise the parties of community services and resources, including alternate dispute resolution;

(v) in a support matter, schedule the conference;

(vi) in a custody case, schedule the mediation orientation session or custody conciliation, depending upon the jurisdiction's practice;

(3) Within five days of the first case management meeting, the judge supervising the case shall enter and serve upon the parties and their counsel, an order:

(i) setting forth any agreements or stipulations reached by the parties;

(ii) establishing a discovery schedule;

(iii) scheduling a support conference, if appropriate;

(iv) scheduling a custody conciliation or mediation, if appropriate;

(v) establishing filing dates for inventories, income and expense statements and parenting plans;

(vi) setting the date for the next case management meeting which shall occur, except for good cause shown, not more than 90 days after the first meeting.

Rule 103. Consolidation of Family Court Matters.

(a) *General Rule.* To the extent it is practical and appropriate, two or more actions under these Family Court Rules involving the same parties and common questions of law and/or fact shall be consolidated for hearing or trial.

(b) *Trial Continuity.* Whenever possible, trials before a judge or a master shall be scheduled to be heard on consecutive days. If not held on consecutive days, then the trial shall be concluded within 45 days of the date of the commencement of the trial.

(c) *Prompt Decisions.* Except for good cause shown and reflected upon the record, in any matter brought under these Family Court Rules, a decision by a conference

officer, master or judge shall issue not later than 30 days after the conference, hearing or trial concludes.

Rule 104. Continuing Education for Family Court Judges and Personnel.

(a) *Program Development.* The Administrative Office of Pennsylvania Courts (AOPC) shall develop or provide courses of instruction that include, at a minimum, the following topics:

- (1) The substantive law and procedural aspects of the areas of law governed by these Family Court Rules;
- (2) Domestic violence;
- (3) Child development;
- (4) Family dynamics;
- (5) Addictions and treatments;
- (6) Asset valuation;
- (7) Community resources.

(b) *Initial Training.* Each judge, master and case manager assigned to cases governed by these Family Court Rules shall successfully complete the coursework developed by the AOPC.

(c) *Continuing Education.* Each judge, master and case manager assigned to cases governed by these Family Court Rules shall successfully complete 6 hours of coursework developed by the AOPC each calendar year after the calendar year in which the initial training was completed.

(d) *Compliance.* The AOPC shall monitor compliance with the educational requirements for judges, masters and case managers. The AOPC shall notify the Judicial Conduct Board of any noncompliance by a judge and the Disciplinary Board of any noncompliance by a master. Noncompliance by a case manager shall be reported to the president judge in the case manager's judicial district.

[Pa.B. Doc. No. 00-1416. Filed for public inspection August 18, 2000, 9:00 a.m.]

Title 25—LOCAL COURT RULES MONTGOMERY COUNTY

**Local Rule of Civil Procedure Rule 3129.2(b)(1)*—
Notice of Sale, Handbills, Written Notice, Publi-
cation; Administrative Order 2000**

Order of Court

And Now, this 25 day of July, 2000, it is hereby *Ordered* that:

With respect to the handbills, and legal publication, the "brief description" of the property required by Pa.R.C.P.

3129.2(b)(1) shall consist of the street address, parcel identification number, and a copy of the legal description of the property.

This Order shall remain in effect until such time as 30 days from the date of publication in the *Pennsylvania Bulletin* of Montgomery County Local Rule of Civil Procedure 3129.2(b)(1)*—Notice of Sale, Handbills, Written Notice, Publication.

By the Court

JOSEPH A. SMYTH,
President Judge

[Pa.B. Doc. No. 00-1417. Filed for public inspection August 18, 2000, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated August 1, 2000, Richard D. Goldberg has been disbarred on consent from the Bar of this Commonwealth, to be effective August 31, 2000. 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,
*Executive Director & Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 00-1418. Filed for public inspection August 18, 2000, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that on August 3, 2000, pursuant to Rule 214(d)(1) of the Pa.R.D.E., Brenda Joyce Hamer, who resides outside the Commonwealth of Pennsylvania, was placed on temporary suspension by the Supreme Court until further Order of the Court. In accordance with Rule 217(f), Pa.R.D.E., this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
*Executive Director & Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 00-1419. Filed for public inspection August 18, 2000, 9:00 a.m.]