

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

[204 PA. CODE CH. 83]

Proposed Amendments to the Pennsylvania Rules of Disciplinary Enforcement Regarding Procedure

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania (Board) is considering recommending to the Supreme Court of Pennsylvania that it adopt amendments to Pennsylvania Rule of Disciplinary Enforcement (Pa.R.D.E.) 208 relating to the assessment of a penalty on untimely paid taxed expenses, as set forth in Annex A.

Current Rule 208(g) provides that the necessary expenses incurred in the investigation and prosecution of disciplinary proceedings shall be paid by the respondent-attorney, as directed by the Supreme Court of Pennsylvania or the Disciplinary Board. The Board proposes adding new subdivision (g)(5) to provide that the failure to pay taxed expenses within 30 days of the assessment becoming final shall result in the assessment of a penalty. This penalty shall be levied monthly at a rate of 0.8% of the unpaid principal balance, or such other rate as established by the Supreme Court from time to time. The proposed amendment gives the Board discretion to reduce the penalty or waive it in its entirety, for good cause shown.

The proposed amendment is intended to incentivize prompt payment of the taxed expenses, as a respondent-attorney will not only be subject to the assessment of a penalty for untimely payment, but may be transferred to administrative suspension pursuant to current Rule 208(g)(3) (regarding active-status attorneys who fail to timely pay taxed expenses). Respondent-attorneys will continue to have 30 days after issuance of the notice of taxed expenses to pay and to engage in discussion with the Board's Finance Office regarding payment.

Upon the Board's research, at present, there are approximately 600 respondents with outstanding taxed expenses due and owing the Board. This proposed rule amendment is not intended to be retroactive in application. Past unpaid taxed expenses will not be recalculated to reflect a monthly penalty. However, upon the rule's effective date, all respondent-attorneys who owe monies to the Board will be subject to the assessment of a penalty on the principal, going forward.¹

Other jurisdictions assess similar penalties on administrative fees and costs.² Additionally, the Pennsylvania Lawyers Fund for Client Security³ and the Pennsylvania Interest on Lawyers Trust Accounts Board⁴ assess interest on monies due and owing. The rate varies among the jurisdictions; predominantly 9 or 10% per annum. The Board's proposal levies a monthly penalty at 0.8% of the unpaid principal, totaling 9.6% per annum. The Board determined to assess this penalty on a monthly basis as

¹ The Finance Office will notify all affected attorneys upon issuance of an Order.
² Florida, Illinois, Louisiana, Maryland, New Jersey, Ohio, Virginia, Washington
³ Pursuant to Rule 531, Pa.R.D.E., when a formerly admitted attorney seeks reinstatement to the bar, that attorney is required to reimburse the Fund in full, plus 10% per annum interest, on all disbursements made on behalf of that attorney.
⁴ IOLTA charges interest at the IRS penalty percentage rate on IOLTA funds that have not been paid to them.

opposed to per annum for ease of reconciliation and implementation for the Finance Office.

Interested persons are invited to submit written comments by mail or facsimile regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106-2625, Facsimile number (717-231-3381), Email address Dboard.comments@pacourts.us on or before October 22, 2018.

*By the Disciplinary Board of the
Supreme Court of Pennsylvania*

JULIA FRANKSTON-MORRIS, Esq.,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 208. Procedure.

(a) *Informal proceedings.*

(1) All investigations, whether upon complaint or otherwise, shall be initiated and conducted by Disciplinary Counsel.

(2) Upon the conclusion of an investigation, Disciplinary Counsel may dismiss the complaint as frivolous, as falling outside the jurisdiction of the Board, or on the basis of Board policy or prosecutorial discretion. Disciplinary Counsel may recommend:

(i) Dismissal of the complaint.

(ii) A conditional or unconditional informal admonition of the attorney concerned.

(iii) A conditional or unconditional private reprimand by the Board of the attorney concerned.

(iv) A conditional or unconditional public reprimand by the Board of the attorney concerned.

(v) The prosecution of formal charges before a hearing committee or special master.

(3) Except where Disciplinary Counsel dismisses the complaint as frivolous, as falling outside the jurisdiction of the Board, or on the basis of Board policy or prosecutorial discretion, the recommended disposition shall be reviewed by a member of a hearing committee in the appropriate disciplinary district who may approve or modify.

(4) Disciplinary Counsel may appeal the recommended disposition directed by a hearing committee member to a reviewing panel composed of three members of the Board which shall order that the matter be concluded by dismissal, conditional or unconditional informal admonition, conditional or unconditional private reprimand, or conditional or unconditional public reprimand, or direct that a formal proceeding be instituted before a hearing committee or special master in the appropriate disciplinary district.

(5) A recommendation by a reviewing hearing committee member for a conditional or unconditional private or public reprimand shall be reviewed by a panel composed of three members of the Board who may approve or modify.

(6) In cases where no formal proceeding has been conducted, a respondent-attorney shall not be entitled to appeal an informal admonition, a private reprimand, a public reprimand, or any conditions attached thereto, but may demand as of right that a formal proceeding be instituted against such attorney in the appropriate disciplinary district. In the event of such demand, the respondent-attorney need not appear for the administration of the informal admonition, private reprimand, or public reprimand, and the matter shall be disposed of in the same manner as any other formal proceeding, but any expenses of the proceeding taxed against the respondent-attorney shall be paid as required by paragraph (g)(2) of this rule.

* * * * *

(g) *Costs.*

(1) The Supreme Court in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of a proceeding which results in the imposition of discipline shall be paid by the respondent-attorney. All expenses taxed under this paragraph pursuant to orders of suspension that are not stayed in their entirety or disbarment shall be paid by the respondent-attorney within 30 days after notice transmitted to the respondent-attorney of taxed expenses. In all other cases, expenses taxed under this paragraph shall be paid by the respondent-attorney within 30 days of entry of the order taxing the expenses against the respondent-attorney.

(2) In the event a proceeding is concluded by informal admonition, private reprimand or public reprimand, the Board in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of the proceeding shall be paid by the respondent-attorney. All expenses taxed by the Board under this paragraph shall be paid by the respondent-attorney within 30 days of entry of the order taxing the expenses against the respondent-attorney. The expenses which shall be taxable under this paragraph shall be prescribed by Board rules.

(3) Failure to pay taxed expenses within 30 days after the date of the entry of the order taxing such expenses in cases other than a suspension that is not stayed in its entirety or disbarment will be deemed a request to be administratively suspended pursuant to Rule 219(1).

(4) The expenses under paragraph (1) or (2) may include an administrative fee except that an administrative fee shall not be included where the discipline imposed is an informal admonition. The administrative fee shall be \$250.

(5) Assessed Penalties on Unpaid Taxed Expenses

(i) Failure to pay taxed expenses within thirty days of the assessment becoming final in accordance with subdivisions (g)(1) and (g)(2) shall result in the assessment of a penalty, levied monthly at the rate of 0.8% of the unpaid principal balance, or such other rate as established by the Supreme Court of Pennsylvania, from time to time.

(ii) Monthly penalties shall not be retroactively assessed against unpaid balances existing prior to the enactment of the rule; monthly penalties shall be assessed against these unpaid balances prospectively, starting 30 days after the effective date of the rule.

(iii) The Disciplinary Board for good cause shown, may reduce the penalty or waive it in its entirety.

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[Pa.B. Doc. No. 18-1479. Filed for public inspection September 21, 2018, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Proposed Amendment of Pa.R.C.P. No. 1910.16, 1910.16-2, 1910.16-3, 1910.16-3.1, 1910.16-4, 1910.18 and 1910.19

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendments of Pa.R.C.P. No. 1910.16, 1910.16-2, 1910.16-3, 1910.16-3.1, 1910.16-4, 1910.18, and 1910.19 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Bruce J. Ferguson, Counsel
Domestic Relations Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
Fax: 717-231-9531
domesticrules@pacourts.us

All communications in reference to the proposal should be received by November 9, 2018. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Domestic Relations
Procedural Rules Committee*

WALTER J. McHUGH, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

[Rule 1910.16. Support Order. Allocation.

(a) In an order awarding child support and spousal support or child support and alimony *pendente lite*, 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.

Official Note: See 23 Pa.C.S. § 4348(d) for additional matters that must be specified in an order of support if arrearages exist when the order is entered.

(b) An unallocated order for child support and spousal support or child support and alimony *pendente lite* shall be a final order as to all claims covered in the order. Motions for post-trial relief may not be filed to the final order.

Official Note: The procedure relating to Motions for Reconsideration is set forth in Pa.R.C.P. No. 1930.2.

Explanatory Comment—1994

The decision to allocate a support order has federal income tax consequences and an effect upon subsequent modification of an order. Allocation of an order, as well as other factors, will determine which party pays the federal income tax, and thus the actual cost of the support to the payor and the amount of money available to the payee. Allocation of the order permits the court to determine more easily whether modification of the order is warranted.

Explanatory Comment —2018

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

Rule 1910.16-2. Support Guidelines. Calculation of Monthly Net Income.

Generally, the amount of support to be awarded is based upon the parties' monthly net income.

(a) *Monthly Gross Income.* Monthly gross income is ordinarily based upon at least a six-month average of all of a party's income. The term "income" is defined by the support law, 23 [Pa.C.S.A.] Pa.C.S. § 4302, and includes income from any source. The statute lists many types of income including, but not limited to:

- (1) wages, salaries, bonuses, fees and commissions;
- (2) net income from business or dealings in property;
- (3) interest, rents, royalties, and dividends;
- (4) pensions and all forms of retirement;
- (5) income from an interest in an estate or trust;

(6) Social Security disability benefits, Social Security retirement benefits, temporary and permanent disability benefits, workers' compensation and unemployment compensation;

(7) alimony if, in the discretion of the [trier of fact] court, inclusion of part or all of it is appropriate; and

Note: In determining the appropriateness of including alimony into gross income, the court should consider whether the party receiving the alimony

must include the amount received as gross income when filing his or her federal income taxes. If the alimony is not includable in the party's gross income for federal income tax purposes, the court should include the amount received in the party's monthly net income, as appropriate. See Pa.R.C.P. No. 1910.16-2(c)(2)(ii).

Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's gross income must also vary. For example, if the obligor is paying \$1,000 per month in alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.

(8) other entitlements to money or lump sum awards, without regard to source, including lottery winnings, income tax refunds, insurance compensation or settlements; awards and verdicts; and any form of payment due to and collectible by an individual regardless of source.

Note: The trial court has discretion to determine the most appropriate method for imputing lump sum awards as income for purposes of establishing or modifying the party's support obligation. These awards may be annualized or they may be averaged over a shorter or longer period [of time] depending on the circumstances of the case. They may also be escrowed in an amount sufficient to secure the support obligation during that period [of time].

Income tax refunds should not be included as income to the extent they were already factored into the party's actual tax obligation for purposes of arriving at his or her **monthly** net income.

(b) *Treatment of Public Assistance, SSI Benefits, Social Security Payments to a Child Due to a Parent's Death, Disability or Retirement and Foster Care Payments.*

(1) *Public Assistance and SSI Benefits.* Neither public assistance nor Supplemental Security Income (SSI) benefits shall be [counted] **included** as income for purposes of determining support.

(2) *Social Security Derivative Benefits for a Child.*

[(A)] (i) This subdivision [(A)] shall be applied if a child for whom support is sought is receiving Social Security derivative benefits as a result of either parent's retirement or disability.

[(i)] (A) If a child for whom support is sought is receiving Social Security benefits as a result of a parent's retirement or disability, the amount of the benefit shall be added to the income of the party receiving the benefit on behalf of the child to calculate child support. Next, apportion the amount of basic child support set forth in the schedule in [Rule] Pa.R.C.P. No. 1910.16-3 between the parties based upon each party's percentage share of their combined net monthly income, including the child's benefit in the income of the party receiving it.

[(ii)] (B) If the child's benefit is being paid to the obligee, the amount of the child's benefit shall be deducted from the basic support obligation of the party whose retirement or disability created the child's benefit. If the child's benefit is being paid to the obligor, the child's benefit shall not be deducted from the obligor's obligation, even if the obligor's retirement or disability created the child's benefit. In cases of equally shared custody, first determine which party has the higher

income without the benefit, and thus is the obligor, before adding the child's benefit to the income of the party receiving it.

[(iii)] (C) In cases in which the obligor is receiving the child's benefits, the domestic relations sections shall provide the parties with two calculations theoretically assigning the benefit to each household.

[(iv)] (D) In allocating additional expenses pursuant to **[Rule] Pa.R.C.P. No.** 1910.16-6, the allocation shall be based upon the parties' **monthly net** incomes before the addition of the child's benefit to the **monthly net** income of the party receiving it.

[(B)] (ii) This subdivision **[(B)]** shall be applied when determining the support obligation of a surviving parent when the child for whom support is sought is receiving Social Security derivative benefits as a result of the other parent's death. The income of a non-parent obligee who is caring for a child but has no support obligation to that child shall include only those funds the obligee is receiving on behalf of the child, including the Social Security derivative benefits if they are being paid to the obligee. If the benefits are being paid to the surviving parent, the amount of the benefit shall be added to that parent's income to calculate child support.

* * * * *

(c) *Monthly Net Income.*

(1) Unless otherwise provided in these rules, the court shall deduct only the following items from monthly gross income to arrive at net income:

[(A)] (i) federal, state, and local income taxes;

[(B)] (ii) unemployment compensation taxes and Local Services Taxes (LST);

[(C)] (iii) F.I.C.A. payments (Social Security, Medicare and Self-Employment taxes) and non-voluntary retirement payments;

[(D)] (iv) mandatory union dues; and

[(E)] (v) alimony paid to the other party.

(2) In computing a spousal support or alimony *pendente lite* obligation, the court shall:

(i) deduct from the obligor's monthly net income **[all of his or her child support obligations and any amounts of] child support**, spousal support, alimony *pendente lite*, or alimony **amounts** being paid to **children** and former spouses **[.] not part of this action; and**

(ii) include in a party's monthly net income alimony pendente lite or alimony received from former spouses, but not included in the party's gross income as provided in subdivision (a).

Official Note: Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's monthly net income must also vary. For example, if the obligor is paying \$1,000 per month in alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.

* * * * *

(e) *Net Income Affecting Application of the Support Guidelines.*

(1) **[Low Income] Low-Income Cases.**

[(A)] (i) If the obligor's monthly net income and corresponding number of children fall into the shaded area of the schedule set forth in Pa.R.C.P. No. 1910.16-3, the basic child support obligation shall be calculated initially by using the obligor's **monthly net** income only. For example, if the obligor has monthly net income of \$1,100, the presumptive amount of support for three children is \$110 per month. This amount is determined directly from the schedule in Pa.R.C.P. No. 1910.16-3. Next, calculate the obligor's child support obligation by using the parties' combined monthly net incomes and the formula in Pa.R.C.P. No. 1910.16-4. The lower of the two calculated amounts shall be the obligor's basic child support obligation.

* * * * *

[(B)] (ii) In computing a basic spousal support or alimony *pendente lite* obligation, the presumptive amount of support shall not reduce the obligor's monthly net income below the Self-Support Reserve of \$981 per month.

Example 2: If the obligor earns \$1,000 per month and the obligee earns \$300 per month, the formula in **[Part IV of] Pa.R.C.P. No. 1910.16-4(a)(1—Part B)** would result in a support obligation of **[\$280] \$213** per month **([\$1,000 – \$300 = \$700 × 40%] (\$1,000 × 33%) or \$333 minus (\$300 × 40%) or \$120 for a total of \$213)**. Since this amount leaves the obligor with only **[\$720] \$787** per month, it must be adjusted so that the obligor retains at least \$981 per month. The presumptive minimum amount of spousal support, therefore, is \$19 per month in this case.

[(C)] (iii) [When] If the obligor's monthly net income is \$981 or less, the court may award support only after consideration of the parties' actual financial resources and living expenses.

(2) **[High Income] High-Income Cases. [When] If** the parties' combined net income exceeds \$30,000 per month, calculation of child support, spousal support, and alimony *pendente lite* shall be pursuant to **[Rule] Pa.R.C.P. No.** 1910.16-3.1.

Note: See Hanrahan v. Bakker, 186 A.3d 958 (Pa. 2018)

[(f) Dependency Tax Exemption. In order to maximize the total income available to the parties and children, the court may, as justice and fairness require, award the federal child dependency tax exemption to the non-custodial parent, or to either parent in cases of equally shared custody, and order the other party to execute the waiver required by the Internal Revenue Code, 26 U.S.C.A. § 152(e). The tax consequences resulting from an award of the child dependency exemption must be considered in calculating each party's income available for support.]

* * * * *

Rule 1910.16-3. Support Guidelines. Basic Child Support Schedule.

The following schedule represents the amounts spent on children of intact families by combined monthly net

income and number of children. Combined monthly net income is on the vertical axis of the schedule and number of children is on the horizontal axis of the schedule. This schedule is used to find the basic child support obligation. Unless otherwise provided in these rules, the obligor's share of the basic support obligation shall be computed using the formula set forth in [**Part I of**] Pa.R.C.P. No. 1910.16-4(a)(1)—**Part C** or (2)—**Part 1**).

* * * * *

Rule 1910.16-3.1. Support Guidelines. [**High Income**] **High-Income** Cases.

(a) *Child Support Formula*. If the parties' combined monthly net income exceeds \$30,000, the following three-step process shall be applied to calculate the parties' respective child support obligations. The amount of support calculated pursuant to this three-step process shall not be less than the amount of support that would have been awarded if the parties' combined monthly net income was \$30,000. The calculated amount shall be the presumptive minimum amount of support.

(1) [**First, the**] **The** following formula shall be applied as a preliminary analysis in calculating the amount of basic child support to be apportioned between the parties according to their respective monthly net incomes:

One child: \$2,839 + 8.6% of combined monthly net income above \$30,000.

Two children: \$3,902 + 11.8% of combined monthly net income above \$30,000.

Three children: \$4,365 + 12.9% of combined monthly net income above \$30,000.

Four children: \$4,824 + 14.6% of combined monthly net income above \$30,000.

Five children: \$5,306 + 16.1% of combined monthly net income above \$30,000.

Six children: \$5,768 + 17.5% of combined monthly net income above \$30,000;

(2) [**And second, the trier of fact**] **The** court shall apply [**Part II and Part III of the formula at Rule 1910.16-4(a)**] **the formulas in Pa.R.C.P. No. 1910.16-4(a)(1)—Part D and Part E or (2)—Part II and Part III**, as appropriate, making any applicable adjustments for substantial or shared custody pursuant to [**Rule**] Pa.R.C.P. No. 1910.16-4(c) and allocations of additional expenses pursuant to [**Rule**] Pa.R.C.P. No. 1910.16-6;

(3) [**Then, third, the trier of fact**] **The court** shall consider the factors in [**Rule**] Pa.R.C.P. No. 1910.16-5 in making a final child support award and shall make findings of fact on the record or in writing. After considering all of the factors in [**Rule**] Pa.R.C.P. No. 1910.16-5, the [**trier of fact**] **court** may adjust the amount calculated pursuant to subdivisions (1) and (2) [**above upward or downward**], subject to the presumptive minimum.

(b) *Spousal Support and Alimony Pendente Lite*. In cases in which the parties' combined monthly net income exceeds \$30,000, the [**trier of fact**] **court** shall apply the formula in [**Part IV of Rule**] Pa.R.C.P. No. 1910.16-4(a)(1)—**Part B** or (2)—**Part IV** as a preliminary analysis in calculating spousal support or alimony *pendente lite*. In determining the amount and duration of

the final spousal support or alimony *pendente lite* award, the [**trier of fact**] **court** shall consider the factors in [**Rule**] Pa.R.C.P. No. 1910.16-5 and shall make findings of fact on the record or in writing.

[**Explanatory Comment—2010**]

New Rule 1910.16-3.1 is intended to bring all child support cases under the guidelines and treat similarly situated parties similarly. Thus, high income child support cases no longer will be decided pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984). Economic data support the amounts in the basic child support schedule up to combined net incomes of \$30,000 per month. Above that amount, economic data are not readily available. Thus, for cases in which the parties' combined net monthly income is above \$30,000, the formula first applies a fixed percentage to calculate the amount of support. The formula is an extrapolation of the available economic data to higher income cases. Spousal support and alimony *pendente lite* awards in high income cases are preliminarily calculated pursuant to the formula in Part IV of Rule 1910.16-4(a). However, in both high income child support and spousal support/alimony *pendente lite* cases, the trier of fact is required to consider the factors in Rule 1910.16-5 before entering a final order and to make findings of fact on the record or in writing. Pursuant to Rule 1910.11(c)(2), in all high income cases, the parties must submit an Income Statement and the Expense Statement at Rule 1910.27(c)(2)(B) to enable the trier of fact to consider the factors in Rule 1910.16-5.

[**Explanatory Comment—2011**]

The rule has been amended to clarify that the provisions of Rule 1910.16-4(c), regarding adjustments to support when the obligor has substantial or shared custody, apply in high income cases. Previously, when high income cases were decided pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), case law held that because the time and resources each parent provided to a child were factored into the *Melzer* formula, the reductions for substantial or shared parenting time did not apply to cases decided pursuant to *Melzer*. See, e.g., *Sirio v. Sirio*, 951 A.2d 1188 (Pa. Super. 2008), *Bulgarelli v. Bulgarelli*, 934 A.2d 107 (Pa. Super. 2007). As *Melzer* no longer applies to calculate support in high income cases, the prohibition against reductions for substantial or shared parenting time in such cases is no longer applicable.]

[**Explanatory Comment—2010**]

Pa.R.C.P. No. 1910.16-3.1 is intended to bring all child support cases under the guidelines and treat similarly situated parties similarly. Thus, high-income child support cases no longer will be decided pursuant to *Melzer v. Witsberger*, 480 A.2d 991 (Pa 1984). Economic data support the amounts in the basic child support schedule up to combined net incomes of \$30,000 per month. Above that amount, economic data are not readily available. Thus, for cases in which the parties' combined monthly net income is above \$30,000, the formula first applies a fixed percentage to calculate the amount of support. The formula is an extrapolation of the available economic data to higher income cases. Spousal support and alimony *pendente lite* awards in high-income cases are preliminarily calculated pursuant to the formulas in Pa.R.C.P. No.

1910.16-4(a)(1—Part B) or (2—Part IV). However, in both high-income child support and spousal support/alimony *pendente lite* cases, the court is required to consider the factors in Pa.R.C.P. No. 1910.16-5 before entering a final order and to make findings of fact on the record or in writing. Pursuant to Pa.R.C.P. No. 1910.11(c)(2), in all high-income cases, the parties must submit an Income Statement and the Expense Statement at Pa.R.C.P. No. 1910.27(c)(2)(B) to enable the court to consider the factors in Pa.R.C.P. No. 1910.16-5.

Explanatory Comment—2011

The rule has been amended to clarify that the provisions of Pa.R.C.P. No. 1910.16-4(c), regarding adjustments to support if the obligor has substantial or shared custody, apply in high-income cases. Previously, when high-income cases were decided pursuant to *Melzer v. Witsberger*, 480 A.2d 991 (Pa. 1984), case law held that because the time and resources each parent provided to a child were factored into the *Melzer* formula, the reductions for substantial or shared parenting time did not apply to cases decided pursuant to *Melzer*. See, e.g., *Sirio v. Sirio*, 951 A.2d 1188 (Pa. Super. 2008), *Bulgarelli v. Bulgarelli*, 934 A.2d 107 (Pa. Super. 2007). As *Melzer* no longer applies to calculate support in high-income cases, the prohibition against reductions for substantial or shared parenting time in such cases is no longer applicable.

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

(a) The [following formula] formulas in subdivi-

sions (1) or (2) shall be used to calculate the obligor's share of basic child support, either from the schedule in [Rule] Pa.R.C.P. No. 1910.16-3 or the formula in [Rule] Pa.R.C.P. No. 1910.16-3.1(a), as well as spousal support and alimony *pendente lite* obligations. In [high income cases, Part IV] high-income cases, subdivision (1—Part B) or subdivision (2—Part IV), as appropriate, shall be used as a preliminary analysis in the calculation of spousal support or alimony *pendente lite* obligations[:].

(1) The formula in Parts A through E is for an order entered after January 1, 2019, or for a modification of an order entered before January 1, 2019, which includes spousal support or alimony *pendente lite*, in which the amendments to the Internal Revenue Code made by Section 11051 of the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) expressly apply.

Note: Section 11051 of the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) amended the Internal Revenue Code by repealing the alimony deduction from the payor's gross income and the alimony inclusion into the payee's gross income the amount of spousal support, alimony *pendente lite*, and alimony paid or received.

See subdivision (2) for a modification of an order entered before January 1, 2019, which includes spousal support or alimony *pendente lite*, in which the amendments to the Internal Revenue Code made by Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) do not apply to the modification.

PART A. CALCULATION OF MONTHLY NET INCOME

	<u>OBLIGOR</u>	<u>OBLIGEE</u>
1. <u>Total Gross Income Per Pay Period</u> (See Pa.R.C.P. No. 1910.16-2(a))	_____	_____
2. <u>Less Deductions</u> (See Pa.R.C.P. No. 1910.16-2(c))	(_____)	(_____)
3. <u>Net Income</u>	_____	_____
4. <u>Conversion to Monthly Net Income</u> (if pay period is other than monthly)	_____	_____

PART B. SPOUSAL SUPPORT OR ALIMONY PENDENTE LITE

	<u>Without</u> <u>Dependent</u> <u>Children</u>	<u>With</u> <u>Dependent</u> <u>Children</u>
5. <u>Obligor’s Monthly Net Income</u> (line 4)	_____	_____
6. <u>Less Obligor’s Child Support,</u> <u>Spousal Support, Alimony Pendente</u> <u>Lite or Alimony Obligations to Children</u> <u>or Former Spouses who are not part</u> <u>of this action, if any.</u> (See Pa.R.C.P. No. 1910.16-2(c)(2))	(_____)	(_____)
7. <u>Obligor’s Net Income Available</u> <u>for Spousal Support or</u> <u>Alimony Pendente Lite</u>	_____	_____
8. <u>Percent of Obligor’s Net Income</u> <u>Available for Spousal Support or</u> <u>Alimony Pendente Lite</u>	x <u>33%</u>	x <u>25%</u>
9. <u>Obligor’s Proportionate Share for</u> <u>Spousal Support or Alimony</u> <u>Pendente Lite</u> (line 7 × line 8)	_____	_____
10. <u>Obligee’s Monthly Net Income</u> (line 4)	_____	_____
11. <u>Percent of Obligee’s Net Income</u> <u>Available for Spousal Support or</u> <u>Alimony Pendente Lite</u>	x <u>.40</u>	x <u>.30</u>
12. <u>Obligee’s Proportionate Share for</u> <u>Spousal Support or Alimony</u> <u>Pendente Lite</u> (line 10 × line 11)	_____	_____
13. <u>Preliminary Monthly Spousal Support or</u> <u>Alimony Pendente Lite amount</u> (line 9 minus line 12 - if less than zero enter a zero on line 13)	_____	_____

- 14. Adjustments for Other Expenses
(See Pa.R.C.P. No. 1910.16-6) _____
- 15. Total Amount of Monthly Spousal Support
or Alimony Pendente Lite _____
(Add or subtract line 14 from line 13, as
appropriate)

PART C - BASIC CHILD SUPPORT

	<u>OBLIGOR</u>	<u>OBLIGEE</u>
16. <u>Monthly Net Income</u> <u>(line 4 and include the amount of</u> <u>child's monthly Social Security</u> <u>derivative benefit, if any, in the</u> <u>Monthly Net Income of the party</u> <u>receiving the benefit pursuant to</u> <u>Pa.R.C.P. No. 1910.16-2(b)(2)(i) or (ii).</u>	_____	_____
17. <u>Preliminary Monthly Spousal Support,</u> <u>or Alimony Pendente Lite amount,</u> <u>if any.</u> <u>(line 13)</u>	(_____)	+ _____
18. <u>Adjusted Monthly Net Income</u>	_____	_____
19. <u>Combined Monthly Net Income</u> <u>(Add Obligor's and Obligee's line 18)</u>	_____	
20. <u>Basic Child Support Obligation</u> <u>(determined from child support schedules</u> <u>in Pa.R.C.P. No. 1910.16-3 based on the</u> <u>number of children and line 19)</u>	_____	
21. <u>Net Income Expressed as a</u> <u>Percentage Share of Combined</u> <u>Monthly Net Income</u> <u>(divide line 18 by line 19 and</u> <u>multiply by 100)</u>	_____ %	_____ %
22. <u>Each Party's Preliminary Monthly</u> <u>Share of the Basic Child Support</u> <u>Obligation</u> <u>(multiply line 20 and line 21)</u>	_____	_____
23. <u>Child's Social Security Derivative</u> <u>Disability or Retirement Benefit.</u> <u>Subtract from the Monthly Share of</u> <u>Basic Child Support of the Party</u> <u>whose Retirement or Disability</u> <u>Created the Child's Benefits, if the</u> <u>Benefits are Paid to the Obligee</u>	_____	_____
24. <u>Each Party's Adjusted Monthly Share</u> <u>of the Basic Child Support Obligation</u> <u>(Line 22 minus Line 23—if Line 23 is</u> <u>less than zero enter a zero on Line 23)</u>	_____	_____

PART D. SUBSTANTIAL OR SHARED PHYSICAL CUSTODY ADJUSTMENT. IF APPLICABLE (See subdivision (c))

25.	a.	<u>Percentage of Time Obligor Spends with Children (divide number of overnights with the obligor by 365 and multiply by 100)</u>	_____ %
	b.	<u>Subtract 30%</u>	(_____ 30%)
	c.	<u>Difference</u>	_____ %
	d.	<u>Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation (subtract line 25c from line 21)</u>	_____ %
	e.	<u>Obligor's Preliminary Adjusted Share of the Basic Monthly Support Obligation (multiply line 25d and line 24)</u>	_____
	f.	<u>Further adjustment, if necessary under subdivision (c)(2)</u>	_____
	g.	<u>Obligor's Adjusted Share of the Basic Child Support Amount</u>	_____

PART E. ADDITIONAL EXPENSES (see Pa.R.C.P. No. 1910.16-6)

26.	a.	<u>Obligor's Share of Child Care Expenses</u>	_____
	b.	<u>Obligor's Share of Health Insurance Premium (if the obligee is paying the premium)</u>	_____
	c.	<u>Less Obligee's Share of the Health Insurance Premium (if the obligor is paying the premium)</u>	_____
	d.	<u>Obligor's Share of Unreimbursed Medical Expenses</u>	_____
	e.	<u>Other Additional Expenses</u>	_____
	f.	<u>Total Additional Expenses</u>	_____
27.		<u>Obligor's Total Monthly Support Obligation (add line 24 or 25g, if applicable, and line 26f)</u>	_____

(2) The formula in Parts I through IV is for a modification of an order entered before January 1, 2019, that includes spousal support or alimony *pendente lite*, in which the amendments to Section 11051 of the Internal Revenue Code made by Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) do not apply.

Note: Section 11051 of the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) amended the Internal Revenue Code by repealing the alimony deduction from the payor's gross income and the alimony inclusion into the payee's gross income the amount of spousal support, alimony *pendente lite*, and alimony paid or received.

See subdivision (1) for an order entered after January 1, 2019, or for a modification of an order entered before January 31, 2019, which includes spousal support or alimony *pendente lite*, in which the amendments to the Internal Revenue Code made by Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) expressly apply to the modification.

PART I. BASIC CHILD SUPPORT

	OBLIGOR	OBLIGEE
1. Total Gross Income Per Pay Period	_____	_____
2. Less Deductions	(_____)	(_____)
3. Net Income	_____	_____
4. Conversion to Monthly Amount (if pay period is other than monthly) Include amount of child's monthly Social Security derivative benefit, if any, in the income of the party receiving it pursuant to [Rule] Pa.R.C.P. No. [1910.16-2(b)(2)(A) or (B)] 1910.16-2(b)(2)(i) or (ii).	_____	_____
5. Combined Total Monthly Net Income	_____	_____

6.	BASIC CHILD SUPPORT OBLIGATION (determined from schedule at [Rule] Pa.R.C.P. No. 1910.16-3 based on number of children and line 5 combined monthly net income)	_____	
7.	Net Income Expressed as a Percentage Share of Income (divide line 4 by line 5 and multiply by 100)	_____ %	_____ %
8.	Each Party's Preliminary Monthly Share of the Basic Child Support Obligation (multiply line 6 and 7)	_____	_____
9.	Subtract Child's Social Security Derivative Disability or Retirement Benefit from the Monthly Share of Basic Child Support of the Party whose Retirement or Disability Created the Child's Benefits if the Benefits are Paid to the Oblige	_____	_____
10.	Each Party's Adjusted Monthly Share of the Basic Child Support Obligation (Not less than 0)	_____	_____

PART II. SUBSTANTIAL OR SHARED PHYSICAL CUSTODY ADJUSTMENT. IF APPLICABLE [(see subdivision (c) of this rule)] (see subdivision (c))

11.	a.	Percentage of Time Obligor Spends with Children (divide number of overnights with the obligor by 365 and multiply by 100)	_____
	b.	Subtract 30%	(_____ 30%)
	c.	Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation (subtract result of calculation in line 11b from line 7)	_____
	d.	Obligor's Preliminary Adjusted Share of the Basic Monthly Support Obligation (multiply line 11c and line 6)	_____
	e.	Further adjustment, if necessary under subdivision (c)(2) [of this rule]	_____
	f.	Obligor's Adjusted Share of the Basic Child Support Amount	_____

PART III. ADDITIONAL EXPENSES (see Pa.R.C.P. No. 1910.16-6)

12.	a.	Obligor's Share of Child Care Expenses	_____
	b.	Obligor's Share of Health Insurance Premium (if the obligee is paying the premium)	_____
	c.	Less Oblige's Share of the Health Insurance Premium (if the obligor is paying the premium)	_____
	d.	Obligor's Share of Unreimbursed Medical Expenses	_____
	e.	Other Additional Expenses	_____
	f.	Total Additional Expenses	_____
13.		Obligor's Total Monthly Support Obligation (add line 10 or 11f, if applicable, and line 12f)	_____

PART IV. SPOUSAL SUPPORT OR APL with dependent children

14.		Obligor's Monthly Net Income (line 4)	_____
15.		Less Obligor's Support, Alimony <i>Pendente Lite</i> or Alimony Obligations, if any, to Children or Former Spouses who are not part of this action, if any (see Rule 1910.16-2(c)(2))	(_____)
16.		Oblige's Monthly Net Income (line 4)	(_____)
17.		Difference	_____

18.	Less Obligor's Total Monthly Child Support Obligation Without Part II Substantial or Shared Custody Adjustment, if any (Obligor's line 10 plus line 12f)	(_____)
19.	Difference	_____
20.	Multiply by 30%	× _____ .30
21.	AMOUNT OF MONTHLY SPOUSAL SUPPORT or APL	_____
<i>Without Dependent Children</i>		
22.	Obligor's Monthly Net Income (line 4)	_____
23.	Less Obligor's Support, Alimony <i>Pendente Lite</i> or Alimony Obligations, if any, to Children or Former Spouses who are not part of this action (see Rule 1910.16-2(c)(2))	(_____)
24.	Less Obligee's Monthly Net Income (line 4)	(_____)
25.	Difference	_____
26.	Multiply by 40%	× _____ .40
27.	PRELIMINARY AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL	_____
28.	Adjustments for Other Expenses (see Rule 1910.16-6)	_____
29.	TOTAL AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL	_____

* * * * *

(e) *Support Obligations When Custodial Parent Owes Spousal Support.* [**Where**] **If** 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:

[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, 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 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.]

(1) calculate the custodial parent's spousal support or alimony *pendente lite* obligation to the non-custodial parent based upon the parties' monthly net incomes and the formula in Pa.R.C.P. No. 1910.16-4(a)(1—Part B) or (2—Part IV), as appropriate;

(2) recalculate the parties' monthly net incomes adjusting for the payment or receipt of the spousal support or alimony *pendente lite* payment in (1);

(3) using the recomputed monthly net incomes from (2), calculate the non-custodial parent's child support obligation to the custodial parent;

(4) the final support obligation is the difference in the amounts calculated in (1) and (3):

(i) if the amount in (1) is greater than the amount in (3), the final amount is spousal support or alimony *pendente lite* payable to the non-custodial parent; and

(ii) if the amount in (1) is less than the amount in (3), the final amount is child support payable to the custodial parent.

(5) if the proceeding is a modification of an order entered before January 1, 2019 that has federal tax consequences associated with spousal support or alimony *pendente lite* payments and the final order results in an award of spousal support or alimony *pendente lite* as in (4)(i), the offset spousal support or alimony *pendente lite* amount, as derived in (4), is federally taxable, and the court may consider a deviation of the award's tax effect.

Note: See Pa.R.C.P. No. 1910.16-4.

[(f) Allocation. Consequences.

(1) An order awarding child support and spousal support or child support and alimony pendente lite may be unallocated or may state the amount of support allocable to the spouse and the amount allocable to each child. The order shall clearly state whether it is allocated or unallocated even if the amounts calculated for child support and spousal support or child support and alimony pendente lite are delineated 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 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 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. The federal income tax consequences shall not be considered if the order is unallocated or the order is for spousal support or alimony pendente lite only.]

* * * * *

Rule 1910.18. Support Order. Subsequent Proceedings. Modification of Spousal Support or Alimony Pendente Lite Orders Entered Before January 1, 2019.

(a) Subsequent proceedings to modify or terminate a support order pursuant to [Rule] Pa.R.C.P. No. 1910.19 shall be brought in the court [which] that entered the order. If the action has been transferred pursuant to [Rule] Pa.R.C.P. No. 1910.2 following the entry of a support order, subsequent proceedings shall be brought in the court to which the action was transferred.

(b) Subsequent proceedings to enforce an order pursuant to [Rule] Pa.R.C.P. No. 1910.20 may be brought in the court [which] that entered the support order or the court of a county to which the order has been transferred.

(c) Subdivision (a) shall not limit the right of the plaintiff to institute additional proceedings for support in any county of proper venue.

(d) Unless a modification provides that the amendments to the Internal Revenue Code as amended by the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) expressly apply, an order entered before January 1, 2019, which includes spousal support or alimony pendente lite, is governed by the formula in Pa.R.C.P. No. 1910.16-4(a)(2—Part IV).

Note: See Pa.R.C.P. No. 1910.16-4(a)(1—Part B) or (2—Part IV), as relevant.

* * * * *

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

* * * * *

(c) Pursuant to a petition for modification, the [trier of fact] court 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] court finds that there has been a material and substantial change in circumstances, the order may be increased or decreased depending upon the respective monthly net incomes of the parties, consistent with the support guidelines and existing law, except as set forth in Pa.R.C.P. No. 1910.18(d), and [each] the party's custodial time with the child at the time the modification petition is heard.

* * * * *

(h) Modification of a Support Order with Child Support and Spousal Support or Child Support and Alimony Pendente Lite Entered Before January 1, 2019.

(1) In a subsequent proceeding for the modification of an order awarding child support and spousal support or child support and alimony pendente lite, as provided in Pa.R.C.P. No. 1910.18(d), the court may on its own motion or upon the motion of a party:

(i) Make an unallocated award in favor of the spouse and one or more children; or

(ii) State the amount of support allocable to the spouse and the amount allocable to each child.

(A) The court shall clearly state whether the order is allocated or unallocated even if the amounts calculated for child support and spousal support or child support and alimony pendente lite are delineated in the order.

(B) If the order is allocated, the formula set forth in Pa.R.C.P. No. 1910-16.4(a)(2—Part IV) shall be utilized to determine the amount of support allocable to the spouse; however, the formula assumes that an order will be unallocated and if the allocation of an order utilizing the formula would be inequitable, the court shall make an appropriate adjustment.

(C) An adjustment made to an allocated order giving consideration to the federal income tax consequences of an allocated order as may be appropriate under the circumstances.

(D) The federal income tax consequences shall not be considered if the order is unallocated or the order is for spousal support or alimony pendente lite only.

Note: See 23 Pa.C.S. § 4348(d) for additional matters that must be specified in an order of support if arrearages exist when the order is entered.

(2) An unallocated order for child support and spousal support or child support and alimony pendente lite shall be a final order as to all claims covered in the order. Motions for post-trial relief may not be filed to the final order.

Note: The procedure relating to Motions for Reconsideration is set forth in Pa.R.C.P. No. 1930.2.

The relevant portion of the rule formerly numbered as Pa.R.C.P. No. 1910.16 (rescinded), has been incorporated into this rule as subdivision (h) for subsequent proceedings due to the enactment of the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97).

**PUBLICATION REPORT
RECOMMENDATION 174**

The Domestic Relations Procedural Rules Committee (Committee) is planning to propose to the Supreme Court of Pennsylvania amendments of Pa.R.C.P. No. 1910.16, 1910.16-2, 1910.16-3, 1910.16-3.1, 1910.16-4, 1910.18, and 1910.19. The basis for these amendments is the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) (the Act) enacted on December 22, 2017, that amended the Internal Revenue Code in several ways that affect domestic relations law and the Rules of Civil Procedure. For purposes of the Committee's rulemaking, there are three primary rulemaking issues affected by the Act: (1) the tax treatment of spousal support and alimony *pendente lite* (Pa.R.C.P. No. 1910.16-4 Part IV); (2) the elimination of personal exemptions, including dependency exemptions (Pa.R.C.P. No. 1910.16-2); and (3) the distinction between allocated and unallocated support orders (Pa.R.C.P. Nos. 1910.16 and 1910.16-4(f)). Of course, the Act had other provisions (i.e. reduced tax rates) affecting net income and, as a result, support amounts.

The Committee began reviewing the issues prior to the Act being signed into law. Over the course of several months, the Committee reviewed numerous calculations illustrating the effects of the Act on support. Perhaps the single biggest issue affecting support is the tax treatment of alimony, which includes spousal support and alimony *pendente lite*. Alimony paid to a former spouse will no longer be deductible by the payor, and alimony payments will no longer be included in the payee's gross income. This effectively shifts the tax burden of alimony from the payee to the payor. This provision is effective for divorce and separation agreements and support orders signed after December 31, 2018. As the current tax treatment has been in place for nearly 100 years, the current spousal support methodology incorporates the tax effect on payors and payees.

Although most of the Act's provisions became effective January 1, 2018, the tax treatment of spousal support will become effective January 1, 2019, for orders or agreements entered into on or after that date. Spousal support orders and agreements entered into before January 1, 2019, may continue to utilize the current tax treatment of spousal support. If taxpayers have an existing (pre-2019) alimony order or agreement and the parties modify the order/agreement after January 1, 2019, the new tax law does not apply to that modified order or agreement unless the modification expressly provides that the new tax laws apply. However, as the previous tax laws may govern pre-2019 support orders subsequently modified, the added issue of maintaining two methodologies is necessary, further complicating rulemaking. With the Act's change to the tax treatment of spousal support, one residual effect is eliminating the distinction between allocated and unallocated support orders for post-2018 orders since child support and spousal support will have the same tax treatment.

Based upon the complexity of the issues, the Supreme Court retained Jane Venohr, Ph.D., the economist that assists the Court and Committee with the quadrennial child support review, to perform an in depth analysis of

the tax issues affecting the support rules, formulas, and methodology. Dr. Venohr's report to the Court and Committee provided expert analysis of the issues, and provided a basis for the Committee's recommendation. The Committee will post Dr. Venohr's report and an addendum to the final report on the Committee's website. As the report and addendum will be posted, the details of the report will not be included in this Publication Report.

The proposed Recommendation rescinds Pa.R.C.P. No. 1910.16-2(f), which has permitted courts to award the federal child dependency exemption to the non-custodial parent. As the Act eliminated those exemptions effective January 1, 2018, the provision in the rules is no longer necessary.

Similarly, the Recommendation proposes rescinding Pa.R.C.P. No. 1910.16 as that rule relates to allocation of child support and spousal support or child support and alimony *pendente lite* orders. With the change in the tax treatment of alimony, effective January 1, 2019, there is no distinction in the tax treatment of child support and spousal support/alimony *pendente lite* for new orders after that date. However, as support orders entered prior to January 1, 2019, which are subsequently modified after January 1, 2019, may retain the current laws tax treatment of alimony, the provisions related to allocation/unallocation are included in Pa.R.C.P. No. 1910.19(h).

Unquestionably, the Act's most significant impact from a domestic relations perspective is the tax treatment of alimony, and its effect on the parties' federal tax liability. The alimony tax change affects both parties. Generally, the tax change favors the payee since the spousal support received is not included as taxable income and disfavors payors by disallowing the alimony deduction. Unfortunately, in most cases, the tax change affects each party in different amounts due primarily to the parties having different federal tax rates. Payors are generally in higher tax brackets and payees in lower tax brackets. An additional complicating factor is the change in the tax rates, as well.

The Committee proposes not only a change in the percent of the parties' net income used to determine spousal support, but also, the Committee is proposing a change in the methodology. The proposed methodology is calculating spousal support, adjusting the parties' net incomes by the support amount paid or received, and then calculating child support based on the adjusted net incomes. The Committee has adopted this methodology based on a review of numerous other states' methodologies. Pennsylvania is the only state that calculates child support first. Moreover, this change in methodology will bring consistency in the calculation of support across the rules since this methodology is currently used in determining support when the custodial parent owes spousal support (Pa.R.C.P. No. 1910.16-4(e), and the parties' incomes are adjusted by the alimony paid to the other party (Pa.R.C.P. No. 1910.16-2(a)(7), Pa.R.C.P. Nos. and (c)(1) and (c)(2)).

As to the percent of the party's net income used in the formula for spousal support, the current formula provides that the parties equally contribute 40%, or 30% if there is a child support claim. The basic current formula is:

Spousal support only

Obligor’s net income
 – Obligee’s net income
 × 40%

 Spousal support amount

These formulas can be rewritten as:

Obligor’s net income × 40%
 – Obligee’s net income × 40%
 Spousal support amount

Spousal support and child support

Obligor’s net income
 – child support amount
 – Obligee’s net income
 × 30%

 Spousal support amount

Obligor’s net income × 30%
 – child support amount
 – Obligee’s net income × 30%
 Spousal support amount

As noted, Pennsylvania’s current spousal support formula utilizes the same percentage of net income from both parties to determine the spousal support amount. Because of the tax law changes, the proposed formula acknowledges the more detrimental effect on the obligor’s income by reducing the percent of obligor’s net income used in calculating support to 33% in spousal support only cases and 25% in spousal support cases with child support.

Spousal support only
 Obligor’s net income × 33%
 – Obligee’s net income × 40%
 Spousal support amount

Spousal support and child support
 Obligor’s net income × 25%
 – Obligee’s net income × 30%
 Spousal support amount

In the case of spousal support and child support, the parties’ net incomes are adjusted by the spousal support amount and child support is calculated based on these newly adjusted net incomes.

As has been stated, the current tax law regarding deductibility of alimony for pre-2019 is orders may be retained for modifications after January 1, 2019. As a result, the current methodology and formula percentages are also retained. New formula and methodology have been included in Pa.R.C.P. No 1910.16-4(a) prior to the current formula and methodology.

The published Recommendation does not include many of the corollary or grammatical changes the Committee has made to the rules that will be included in the Recommendation proposed to the Court. These changes are not included in the Recommendation to focus on the relative tax law changes affecting the rules and to reduce the length of the Recommendation.

[Pa.B. Doc. No. 18-1480. Filed for public inspection September 21, 2018, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

[231 PA. CODE CH. 1915]

Proposed Amendments of Pa.R.C.P. No. 1915.7 and 1915.10

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendments of Pa.R.C.P. No. 1915.7 and 1915.10 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being republished in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Bruce J. Ferguson, Counsel
 Domestic Relations Procedural Rules Committee
 Supreme Court of Pennsylvania
 Pennsylvania Judicial Center
 PO Box 62635
 Harrisburg, PA 17106-2635
 Fax: 717-231-9531
 domesticrules@pacourts.us

All communications in reference to the proposal should be received by November 9, 2018. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Domestic Relations
 Procedural Rules Committee*

WALTER J. McHUGH, Esq.,
Chair

Annex A

**TITLE 231. RULES OF CIVIL PROCEDURE
 PART I. GENERAL
 CHAPTER 1915. ACTIONS FOR CUSTODY OF
 MINOR CHILDREN**

Rule 1915.7. Consent Order.

[If an agreement for custody is reached and the parties desire a consent order to be entered, they

shall note their agreement upon the record or shall submit to the court a proposed order bearing the written consent of the parties or their counsel.]

If the parties have an agreement regarding custody and requests the court enter a consent order incorporating the terms of the agreement:

(a) the parties shall submit to the court a proposed custody order bearing the written consent of the parties; or

(b) the parties may state the agreement on the record provided that;

(1) within ten days of placing the agreement on the record, the parties comply with subdivision (a); or

(2) the court memorializes the oral agreement from the record into a written custody order, which the parties shall review and sign.

Rule 1915.10. Decision. Order.

(a) [The court may make the decision before the testimony has been transcribed. The court shall state the reasons for its decision either on the record in open court, in a written opinion, or in the order.] The court may make the decision before the testimony has been transcribed. The court shall state the reasons for its decision on the record in open court or in a written opinion or order.

Official Note: See 23 Pa.C.S. § 5323(d)

(b) [The terms of the order shall be sufficiently specific to enforce the order. The court's decision shall include safety provisions designed to protect an endangered party or a child in any case in which the court has found that either is at risk of harm.] The court shall enter a custody order as a separate written order or in a separate section of a written opinion.

(1) The court's order shall state sufficiently specific terms to enforce the order.

(2) If the court has made a finding that a party or child is at risk of harm, the court's order shall include safety provisions designed to protect the endangered party or child.

(c) [Any custody order shall include notice of a party's obligations pursuant to 23 Pa.C.S. § 5337 dealing with a party's intention to relocate with a minor child.] A custody order shall include a notice outlining the parties' obligations under 23 Pa.C.S. § 5337 regarding a party's intention to relocate with a minor child.

Official Note: See 23 Pa.C.S. § 5323(c).

See Pa.R.C.P. No. 1915.17 regarding relocation.

(d) [No] A party may not file a motion for post-trial relief [may be filed] to an order of legal or physical custody.

[Explanatory Comment—2013

The custody statute, at 23 Pa.C.S. § 5323(d), requires the court to delineate the reasons for its decision on the record in open court or in a written opinion or order. Subdivision (b) further defines and reinforces the requirements found in 23 Pa.C.S. § 5323(e). Examples of safety provisions include, but are not limited to: supervised physical custody,

supervised or neutral custody exchange location, neutral party presence at custody exchange, telephone or computer-facilitated contact with the child, no direct contact between the parties, third-party contact for cancellations, third-party transportation and designating secure, neutral location for a child's passport. The statute, at 23 Pa.C.S. § 5323, requires that any custody order must include notice of a party's obligations when there is a proposed relocation under 23 Pa.C.S. § 5337. Rule 1915.17 also addresses relocation.]

Explanatory Comment—2013

Subdivision (b) further defines and reinforces the requirements found in 23 Pa.C.S. § 5323(e). Examples of safety provisions include, but are not limited to, supervised physical custody, a supervised or neutral custody exchange location, neutral party presence at custody exchange, telephone or computer-facilitated contact with the child, no direct contact between the parties, third-party contact for cancellations, third-party transportation, and designating secure, neutral location for a child's passport.

REPUBLICATION REPORT

Recommendation 169

The Domestic Relations Procedural Rules Committee (Committee) is proposing amendments to Pa.R.C.P. No. 1915.7 and 1915.10 as the rules relate to custody agreements and orders. Specifically, the proposed amendments further refine the requirements for parties requesting that the court incorporate an agreement into a custody order, and how courts enter custody orders into the record. The Committee previously published this recommendation in the *Pennsylvania Bulletin*, 48 Pa.B. 1813 (March 31, 2018) with comment period ending June 8, 2018. After reviewing the comments received, the Committee has revised Recommendation 169 and is republishing for additional public comment.

As noted in the original Publication Report, the impetus for the Committee's proposed amendment to Pa.R.C.P. No. 1915.10 is the holding in *R.L.P. v. R.F.M.*, 110 A.3d 201 (Pa. Super. 2015). In *R.L.P.*, the Superior Court held that "in order to be sufficiently specific to be enforced, an order of custody must be entered as a separate written order, or as a separate section of a written opinion." *Id.* at 206. The Committee had received information that the practice of placing custody orders on the record without subsequently entering a written order continued, which was problematic for enforcement and understanding the terms of the agreements/orders. As the Committee determined that custody agreements or orders in a transcript format made enforcement very difficult, the Committee proposed the requirement of a written custody agreement or order once the parties placed a verbal agreement on the record.

The Committee is cognizant of the benefit to the court and parties of placing a custody agreement, in whole or in part, on the record. The Committee has revised the Recommendation after reviewing the comments from the first publication in which several commenters raised a concern that self-represented litigants may not comply with the provision requiring the parties to submit a written agreement of the verbal on-the-record agreement

to the court. With this issue in mind, the Committee revised proposed Pa.R.C.P. No. 1915.7(b) by providing an alternative in the event the court determines the parties will not be able to submit a written custody agreement timely or at all.

The revised Recommendation clarifies in proposed Pa.R.C.P. No. 1915.7(b) that the practice of the parties placing a custody agreement on the record is an option for the court and parties, but that in doing so either the parties must submit a written custody agreement to the court within ten days or the court must memorialize the agreement placed on the record into a written order for the parties to review and sign. Adding the requirement to the rule for the court to memorialize the verbal agreement if the court has concerns about the parties' ability to submit a written agreement is a best practice currently utilized by many judges.

[Pa.B. Doc. No. 18-1481. Filed for public inspection September 21, 2018, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Adoption of Philadelphia Rule of Judicial Administration No. *5005; Administrative Doc. No. 06 of 2018

Order

And Now, this 4th day of September, 2018, it is hereby *Ordered* that Philadelphia Rule of Judicial Administration No. *5005. Custody of Exhibits. Court of Common Pleas, Trial Division, Criminal is adopted as required by Pa.R.J.A. 103.

This Administrative Order and the following local rule shall be filed with the Office of Judicial Records (formerly the Prothonotary, Clerk of Courts and Clerk of Quarter Sessions) in a docket maintained for Administrative Orders issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified copies of this Administrative Order and the following local rule, as well as one copy of the Administrative Order and local rule shall be distributed to the Legislative Reference Bureau on a computer diskette for publication in the *Pennsylvania Bulletin*. One certified copy of this Administrative Order and local rule shall be filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at <http://www.courts.phila.gov>, shall become effective, and shall be incorporated in the compiled set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the Administrative Order and local rule shall also be published in *The Legal Intelligencer* and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

By the Court

HONORABLE JACQUELINE F. ALLEN,
Administrative Judge, Trial Division
Court of Common Pleas
Philadelphia County

PHILADELPHIA RULE OF JUDICIAL ADMINISTRATION

Rule *5005. Custody of Exhibits. Court of Common Pleas, Trial Division, Criminal.

(a) *General Rule*. Counsel and unrepresented parties shall mark all documentary exhibits, non-documentary exhibits, photographs, and photographs of evidence such as weapons, contraband and hazardous materials used and offered during trials, hearings or other proceeding where evidence may be entered on the record (collectively, "proceeding"), which shall be inventoried, filed and retained as provided in this rule.

(b) *Custodian of Exhibits*. The Office of Judicial Records is designated to be the custodian of Exhibits, which shall be docketed and made part of the record, including the record on appeal, and shall insure that the Exhibits be maintained and retained as provided in this rule

(c) *Documentary Exhibits*. Documentary exhibits, including oversized exhibits, must be converted to letter sized pdf and appropriately marked and produced during the proceeding.

(1) *Confidential Documents. Documents Containing Confidential Information*. Confidential documents or documents which contain Confidential Information as provided in the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania (UJS Case Records Policy) which are offered as Exhibits, when electronically filed as provided in Section (i)(1) shall be filed as Confidential Documents, or in a Redacted Format and Unredacted Format as provided in Phila.R.J.A. No. *401.

(2) *Exhibits Sealed by the Court*. Any Exhibit sealed by the presiding judge during the proceeding shall be clearly marked "SEALED" and will not be accessible by the public.

(d) *Non-documentary Exhibits*. Non-documentary exhibits, including audio, video or other electronic media, must be produced by the proponent on a Smart Media Device ("SMD") such as a CD/DVD, and shall at a minimum be marked with the Defendant's Name, Case Number and whether it is a Commonwealth or Defense exhibit.

(e) *Custody of Documentary and Non-Documentary Exhibits During the Proceeding*. Upon identifying or offering documentary and non-documentary exhibits, they shall be maintained during the proceedings and until they are inventoried by designated judicial staff.

(f) *Custody of Documentary and Non-Documentary Exhibits After the Proceeding*. Unless otherwise provided by the presiding judge, at the conclusion of the proceeding, documentary and non-documentary exhibits shall be retained by designated judicial staff as follows:

(1) *Major and Homicide Courtrooms*: Exhibits shall be retained by designated judicial staff for a period of five (5) days pending the electronic filing of Exhibits as provided in Section (i)(1). Upon the electronic filing of the Exhibits, the "original" Exhibits shall be retrieved by the proponent or discarded by the designated judicial staff; and

(2) *Waiver Courtrooms*: Exhibits shall be scanned into the Court's Document Management System as provided in Section (i)(2) and shall be made available depending on the nature of the exhibit, as provided by the UJS Case Records Policy.

(g) *Custody of Weapons, Contraband and Hazardous Materials.* During the proceeding, the proponent of any weapon, contraband and hazardous materials shall retain custody of same, and shall exercise all appropriate safeguards necessary to protect the evidence and the public in general based on the nature of the evidence. At the conclusion of the proceeding, unless the presiding judge directs otherwise, weapons, contraband and hazardous materials introduced as evidence will be returned to the proponent after such evidence is photographed or otherwise converted to letter sized pdf exhibits and made part of the case record as provided in this rule.

(h) *Exhibit List.* At the conclusion of the proceeding, designated judicial staff shall inventory all exhibits and evidence, whether documentary, non-documentary, or weapons, contraband and hazardous materials, whether admitted or marked for identification. Any oversize exhibit, physical evidence or visual evidence not previously converted to letter size pdf format as provided in this rule shall be photographed and/or converted to pdf letter size and marked. Each Exhibit and piece of evidence shall be clearly marked and placed on the Exhibit List which shall be reviewed and approved by the presiding judge and thereafter filed of record. A copy of the Exhibit List shall be provided to all parties.

(i) *Uploading Exhibits and Evidence.* Exhibits and evidence shall be made part of the record as follows:

(1) *Major and Homicide Courtrooms.* Within five (5) business days of the conclusion of the proceeding, each proponent of the exhibits and evidence shall upload their Exhibits through the Electronic Filing System. In addition, no later than within five (5) business days of the conclusion of the proceeding, each proponent shall also provide to the Office of Judicial Records any SMD with non-documentary audio, video or electronic exhibits and evidence, labeled as provided in Section (d). The Exhibits and SMD shall be maintained and retained by the Office of Judicial Records as required by any applicable retention schedule, statute, rule, regulation or policy, or until further order of court.

(2) *Waiver Courtrooms.* At the conclusion of the proceeding, the Office of Judicial Records shall take possession of all Exhibits and SMD, whether admitted or marked for identification during the proceeding, and shall scan into the Court's Document Management System and shall be made available depending on the nature of the exhibit, as provided by the UJS Case Records Policy. The Exhibits and SMD shall be maintained and retained by the Office of Judicial Records as required by any applicable retention schedule, statute, rule, regulation or policy, or until further order of court.

(j) When submitting or uploading Exhibit lists and Exhibits the proponent shall certify compliance with this rule by including (or checking a box certifying) the following language:

I certify that this filing complies with the provisions of Philadelphia Rule of Judicial Administration No. *5005 and that all Exhibits electronically submitted were marked or introduced as evidence during the referenced trial, hearing or other proceeding.

[Pa.B. Doc. No. 18-1482. Filed for public inspection September 21, 2018, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Amendment of Philadelphia Criminal Rule *588; Administrative Doc. No. 07 of 2018

Order

And Now, this 31st day of August, 2018, it is hereby *Ordered* that Philadelphia Criminal Rule *588 is amended as follows, effective November 1, 2018.

This Administrative Order is issued in accordance with the April 11, 1986, order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration, Docket No. 1. As required by Pa.R.J.A. 103(d), the proposed local rule was submitted to the Supreme Court of Pennsylvania Criminal Rules Committee for review, and written notification has been received from the Rules Committees certifying that the proposed local rule of judicial administration is not inconsistent with any general rule of the Supreme Court. This Administrative Order and the following local rule shall be filed with the Office of Judicial Records (formerly the Prothonotary, Clerk of Courts and Clerk of Quarter Sessions) in a docket maintained for Administrative Orders issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified copies of this Administrative Order and the following local rule, as well as one copy of the Administrative Order and local rule shall be distributed to the Legislative Reference Bureau on a computer diskette for publication in the *Pennsylvania Bulletin*. One certified copy of this Administrative Order and local rule shall be filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at <http://www.courts.phila.gov>, and shall be incorporated in the compiled set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the Administrative Order and local rule shall also be published in *The Legal Intelligencer* and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

By the Court

HONORABLE JACQUELINE F. ALLEN,
*Administrative Judge, Trial Division
Court of Common Pleas
Philadelphia County*

Philadelphia Criminal Rule *588. Motion for Return of Property. Post Deprivation Hearing.

(A) Any person aggrieved by a search and seizure may move for the return of the property seized by filing a motion with the Trial Division, Criminal regardless of whether criminal charges have been filed against the owner of the property or the person in possession of the property. [**The relief requested may be interim (i.e. return of the property pending disposition of the criminal case or the forfeiture petition), or permanent in nature.**]

(B) In the event criminal charges have been filed against the owner of the property or the person in possession of the property, the motion shall be filed utilizing the CPCMS number assigned to the underlying case. If criminal charges have not been filed against the owner or person in possession of the property, a Miscellaneous Docket number shall be assigned through CPCMS.

(C) The filer shall serve the Commonwealth through the District Attorney's Office, and shall file an Affidavit of

Service. **Provided, however, that the Commonwealth may agree to be served by Office of Judicial Records upon its receipt of the Motion.**

(D) [Upon receipt of the Affidavit of Service, the] The Office of Judicial Records shall schedule a prompt hearing on the motion and shall notify the Commonwealth and the filer.

(E) The assigned judge may require the filing of an Answer.

(F) In the event a forfeiture petition was filed by the Commonwealth before the filing of a motion for the return of property, the motion(s) shall be assigned to the same judge for disposition, as practicable.

Note: Issued on August 11, 2016 as Administrative Order No. 02 of 2016 by Trial Division Administrative Judge Jacqueline F. Allen. Published in The Pennsylvania Bulletin August 27, 2016, effective September 26, 2016. Revised August 31, 2018; effective November 1, 2018.

[Pa.B. Doc. No. 18-1483. Filed for public inspection September 21, 2018, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Proceedings Seeking Forfeiture of Assets; General Court Regulation No. 01 of 2018

The procedures contained in this General Court Regulation apply to civil forfeiture proceedings, including but not limited to asset forfeiture proceedings commenced pursuant to the Act of June 29, 2017, P.L. 247, No. 13 § 9.

General Court Regulation No. 02 of 2016 issued on July 25, 2016 is rescinded effective on November 1, 2018.

A. Initiation of Civil Forfeiture Proceedings by the Commonwealth

1. *Filing of Forfeiture Petition.* The in rem civil forfeiture proceeding shall be commenced within the time period specified by law by filing a Forfeiture Petition with the Office of Judicial Records, (formerly "Prothonotary," "Clerk of Quarter Sessions" and "Clerk of Courts").

Note: The Petition, Answer, other pleadings and legal papers should be electronically filed with the Office of

Judicial Records at its website www.courts.phila.gov. The Office of Judicial Records will also accept for filing the Petition, Answer and other pleadings and legal papers in a paper format through its office at the Justice Juanita Kidd Stout Center for Criminal Justice ("Stout Center"), Second Floor, Motions Counter, 1301 Filbert Street, Philadelphia, PA.

2. *Parties.* The Commonwealth of Pennsylvania shall be the "Plaintiff" and the property at issue shall be the "Defendant." The party or parties who have an interest in the property subject to forfeiture shall be referenced as "Claimant(s)."

3. *Content of Petition.* The Petition shall contain the following:

a. A description of the property actually seized or constructively seized, including, if known, the address of any real property, the exact dollar amount of any United States currency, or the approximate value of any negotiable instrument or security and the make, model, year and license plate number of any vehicle.

b. A statement of the time and place where seized.

c. The owner, if known.

d. The person or persons in possession at the time of seizure, if known.

e. The related Offense Tracking Number (OTN), CPCMS criminal case number, and the criminal complaint, if applicable.

f. The Property Receipt which describes the property seized.

g. The Philadelphia Tracking Number (PID) of the claimant, if issued.

h. The Philadelphia Police Department District Control number (DC#) associated with the seizure of the subject property, if one exists.

i. An allegation that the property is subject to forfeiture and an averment of material facts supporting the forfeiture action.

j. A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth unless cause is shown to the contrary.

k. A verification pursuant to Pa.R.C.P. No. 1024 signed by the attorney for the Commonwealth.

4. *Notice to Defend.* The first page of the Petition shall be a Notice to Defend, signed as noted thereon, substantially as follows:

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY TRIAL DIVISION, CIVIL

Commonwealth of Pennsylvania : CP - 51- MD - _____
Plaintiff :
vs. : OTN #
 : PID
[Description of Property Seized] : DC #
Defendant : PR #

LOCATION OF SEIZURE: _____

OWNER OF PROPERTY: _____

PROPERTY SEIZED FROM: _____

NOTICE TO DEFEND: CIVIL ASSET FORFEITURE TO THE CLAIMANT OF WITHIN DESCRIBED PROPERTY:

You are required to file a written Answer to this petition, setting forth your title in, and right to possession of, said property within 30 days from the service hereof, and you are also notified that, if you fail to file the Answer, a decree of forfeiture and condemnation will be entered against the property.

A Pretrial Conference will be scheduled by the Court, and you should expect to receive a Notice of Pretrial Conference within a week or so after the Forfeiture Petition and this Notice to Defend are served on you. The date of the Pretrial Conference should be at least two weeks after you receive the Notice of Pretrial Conference which should allow you to attend the hearing. You or your attorney must attend this Pretrial Conference.

If you have been criminally charged in a case associated with the forfeiture matter, prior to filing an Answer to the Forfeiture Petition, you may file a Praeceptum to Stay the Forfeiture Proceedings using the above-referenced caption and docket number. The forfeiture proceedings will be stayed by the Office of Judicial Records upon receipt of the Praeceptum. However, please know that when the stay is lifted, you must file an Answer to the Forfeiture Petition within 30 days from the day the stay is lifted.

If you wish to seek the temporary release of your seized property while these forfeiture proceedings are pending, you may also file a Motion for Release of Seized Property Pending the Conclusion of the Forfeiture Proceedings, pursuant to 42 Pa.C.S. §§ 5805(f) and 5806 at any time during the pendency of the Forfeiture Proceedings.

Additionally, you should know that you may request a jury trial. However, the request must be made no later than twenty (20) days after the service of the last permissible pleading. You can request a jury either by indicating so on any Answer you file or by submitting and filing a separate request with the Office of Judicial Records, preferably electronically, or by mail or in person at the Justice Juanita Kidd Stout Center for Criminal Justice, Second Floor, Motion Counter, 1301 Filbert Street, Philadelphia, PA.

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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE. YOU ARE NOT ENTITLED TO A COURT-APPOINTED LAWYER.

Philadelphia Bar Association
Lawyer Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197

/s/

Name of Person Signing and Title:
Attorney General, Deputy Attorney General,
District Attorney, Deputy District Attorney
or Assistant District Attorney
Date:

A copy of this Notice is also attached below as Attachment A. This Notice may be modified from time to time as may be appropriate, and the current version shall be posted on the website of the First Judicial District at: www.courts.phila.gov/forms.

5. Service of the Petition.

a. Personal Service. Service by Certified Mail. The Commonwealth shall serve the Petition on the owner of the property, if known, and upon each person in possession of the property at the time of the seizure, if known. Service shall be accomplished by personal service or by certified mail.

i. Personal Service. Personal service shall be made as provided in Pa.R.C.P. No. 400.1, and an Affidavit of Service signed by the server, setting forth the date, time and location of service on the Claimant must be filed with the Office of Judicial Records, as soon as practicable after service is accomplished.

ii. Service by Certified Mail. Service by mail shall be made as provided in Pa.R.C.P. No. 403 and must require a receipt signed by the Claimant. Service is complete upon delivery of the mail, and the Plaintiff shall file an Affidavit of Service, and attach the receipt signed by the Claimant, with the Office of Judicial Records, as soon as practicable after service is accomplished.

iii. Service Address. In the event the Claimant was served at an address other than that stated in the Forfeiture Petition, or if the Claimant's address for subsequent service of legal papers other than original process, pursuant to Pa.R.C.P. No. 440, is different than that stated in the Forfeiture Petition, the Commonwealth shall file a Praeceptum with the Office of Judicial Records providing the address to which legal papers may be served on the Claimant. The Praeceptum shall be substantially in the form attached below as Attachment B.

b. Substitute Service. If (i) the owner of the property is unknown, (ii) there was no person in possession of the property when seized or (iii) the owner or each person in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court, notice of the filing of the petition shall be given by the Commonwealth through an advertisement in at least one newspaper of general circulation published in the county where the property has been seized, once a week for two successive weeks.

The substitute notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which shall not be less than 30 days from the date of the first publication. If no claims are filed within 30 days of publication, the Commonwealth may move for default judgment. The Plaintiff shall file an Affidavit of Substituted Service, substantially in the form attached below as Attachment C, referencing advertising of the filing of the Forfeiture Petition and shall attach proof of the advertising.

6. Answer.

a. Filing. As provided in 42 Pa.C.S. § 5805, a claimant shall file an Answer setting forth their title in and right to possession of the property, within thirty (30) days from the service of the Petition, or at any other time agreed upon by the parties, or as ordered by the court. Provided, however, that if the claimant has been criminally charged in a case associated with the forfeiture matter and files a Praeceptum to Stay Forfeiture Proceedings, as provided in

Section 8, the Claimant shall have thirty (30) days to file an Answer from the date the stay is lifted.

b. *Service.* The Claimant must serve the District Attorney or Attorney General who has jurisdiction over the case, and must file proof of service with the Office of Judicial Records. However, the District Attorney's Office has agreed to be served by the Office of Judicial Records upon its receipt and acceptance of the Answer.

7. *Failure to File an Answer.* If an Answer is not filed as required above, the Plaintiff may seek the entry of judgment by default by complying with the provisions of Pa.R.C.P. No. 237.1, or by seeking any appropriate relief by filing an appropriate motion, as more fully set forth below.

8. *Motion Practice.*

a. After the commencement of a forfeiture action, the Plaintiff and Claimant(s) may file motions, including but not limited to the following:

i. *Motion for Default Order of Forfeiture.* Plaintiff may seek the entry of a default forfeiture order if the Forfeiture Petition was served but an Answer was not filed as required under Section 6. If the Claimant attends the hearing scheduled on this Motion, a Pretrial or Status Conference shall be held. Unless the parties otherwise agree, the judge may order the Claimant to file an Answer by a date certain, and may enter an order granting the Forfeiture Petition if an Answer is not filed by that date.

ii. *Praecepte to Stay Forfeiture Proceedings.* Consistent with 42 Pa.C.S. § 5805(a)(2)(ii), a Claimant who has been criminally charged in a case associated with the Forfeiture Petition may, prior to filing an Answer to the Forfeiture Petition, file a Praecepte to Stay the Forfeiture Proceedings, substantially in the form attached below as Attachment D, pending disposition of the criminal case(s).

(a) Upon the filing of the Praecepte, the Office of Judicial Records shall stay the forfeiture proceedings. The stay shall remain in effect until the earlier of:

(1) the issuance of a sentencing order, which is deemed to be the conclusion of the criminal proceedings for purposes of the asset forfeiture proceeding. The Commonwealth must file a Praecepte to Lift the Stay of Forfeiture Proceedings, substantially in the form attached below as Attachment E, with the Office of Judicial Records and a status conference will be scheduled; or

(2) the filing of a Praecepte by the Claimant to lift the stay.

(b) Upon the lifting of the stay, the Claimant must file an Answer within thirty (30) days, and the Office of Judicial Records shall schedule a Status Conference.

(c) The Stay does not affect a Claimant's ability to file a Motion for Release of Property Pending the Conclusion of the Forfeiture Proceedings under 42 Pa.C.S. §§ 5805(f), 5806.

iii. *Motion for Release of Seized Property Pending the Conclusion of the Forfeiture Proceedings Pursuant to Sections 5805(f) and 5806.* Any time after the commencement of civil forfeiture proceedings as provided in this General Court Regulation, the Claimant may seek the release of the seized property pending the conclusion of the forfeiture proceedings, as provided in 42 Pa.C.S. § 5805(f), by filing a Motion for Release of Seized Property Pending the Conclusion of the Forfeiture Proceedings. A Claimant may also file a Motion for Release of Seized Property Pending the Conclusion of the Forfeiture

Proceedings to commence the civil action, even if civil forfeiture proceedings have not yet been commenced, as provided in Section B below.

(a) *Contents of Motion.* The Motion shall set forth the basis for seeking the immediate release of the seized property as provided in Section 5805(f)(1), if applicable. The Motion for Release of Seized Property Pending the Conclusion of the Forfeiture Proceedings shall be substantially as attached below as Attachment E.

(b) *Service.* The Claimant must serve the Motion on the District Attorney or Attorney General who has jurisdiction over the case, and must file proof of service with the Office of Judicial Records. However, the District Attorney's Office has agreed to be served by the Office of Judicial Records upon its receipt and acceptance of the Motion.

(c) *Hearing.* The Office of Judicial Records shall schedule a hearing on the motion, as practicable and consistent with the interests of justice, but no later than for a date within ten (10) business days of the filing of the Motion or, when required, the filing of proof of service of the Motion by the Claimant.

iv. *Motion for Judgment on the Pleadings,* as provided in Pa.R.C.P. No. 1035 et seq., if the Claimant attends the hearing scheduled in connection with this Motion, the hearing shall be converted to a Pretrial Conference or Status Conference.

v. *Motion for Summary Judgment,* as provided in Section 1035.1 et seq., if the Claimant attends the hearing scheduled in connection with this Motion, the hearing shall be converted to a Pretrial Conference or Status Conference.

b. All Motions shall be filed utilizing the Miscellaneous Docket number assigned by the Office of Judicial Records to the Forfeiture Petition.

c. The Claimant must serve any Motions, Answers or Responses filed by the Claimant on the District Attorney or Attorney General who has jurisdiction over the case, and must file proof of service with the Office of Judicial Records. However, the District Attorney's Office has agreed to be served by the Office of Judicial Records upon its receipt and acceptance of the Motion, Answer or Response.

d. All motions will be assigned to a judge for disposition and, as practicable, shall be assigned to the same judge.

9. *Jury Demand.* A jury trial may be demanded by the Plaintiff or Claimant(s). Pursuant to Pa.R.C.P. No. 1007.1(a), the right to jury trial shall be deemed waived unless a party files of record and serves on the adverse party a demand for jury trial no later than twenty (20) days after the service of the last permissible pleading. The Jury Demand shall be made by endorsement on a pleading or by a separate writing, substantially in the form attached below as Attachment G. A jury trial may be waived as provided in Pa.R.C.P. No. 1007.1(c)(2).

10. *Scheduling of a Pretrial Conference.*

a. The Office of Judicial Records shall schedule a Pretrial Conference to be held within thirty (30) days from the date the Forfeiture Petition is served by the Commonwealth on the owner(s) or person(s) in possession at the time of the seizure of the property.

b. The Pretrial Conference shall be scheduled and the Notice of Pretrial Conference shall be mailed within seven days of the filing of proof of service of the

Forfeiture Petition and the date of the Pretrial Conference shall be approximately thirty days after service of the Forfeiture Petition.

c. A draft Notice of Pretrial Conference is attached below as Attachment H. This Notice may be modified from time to time by the Court as may be appropriate.

11. *Pretrial Conference.*

a. The Pretrial Conference shall be conducted by a judicial officer (a judge or trial commissioner) who shall provide important information to the Claimant regarding the proceedings in an oral and written format. The following issues shall be addressed:

i. Whether the Forfeiture Petition and related documents were served on the owner of the above-referenced Property or upon the person or persons in possession of the property at the time of the seizure. If service could not effectuated, the Pretrial Conference will be rescheduled to a date certain to enable the Plaintiff to effectuate service.

ii. Whether an Answer was filed. If an Answer has not been filed, whether there is agreement that an Answer may be filed within an agreed-upon period of time.

iii. Whether the Claimant is represented by counsel. The Claimant shall be informed that the Claimant is entitled to counsel, but is not entitled to court-appointed counsel.

iv. Whether the Claimant has requested, or intends to request, a jury trial. The Claimant shall be informed that the Claimant is entitled to a jury trial, and that in order to obtain a jury trial, the Claimant must file a written request for a jury trial no later than twenty (20) days after the service of the last permissible pleading and pay the required Jury fee.

v. Whether the proceedings may be resolved by agreement.

vi. If the Plaintiff and Claimant indicate that an agreement has been reached, the proceeding shall be referred to a Judge for approval. If a Judge is not available, the case shall be rescheduled before a Judge as soon as practicable. In order to approve the settlement, the judge must be satisfied that the claimant is entering into the agreement knowingly, voluntarily and intelligently and that the Claimant understands that he/she is entitled to a hearing on the merits, along with other factors that may be required by law.

vii. Whether there are any factual issues upon which the parties agree.

viii. Whether discovery is necessary, and if so, if an Answer has been filed, the terms of discovery and a discovery schedule shall be established.

ix. Whether the Claimant has filed a Praecipe to Stay Forfeiture Proceedings pursuant to 42 Pa.C.S. § 5805(a)(2)(ii), a Motion for Release of Seized Property Pending the Conclusion of the Forfeiture Proceedings pursuant to 42 Pa.C.S. §§ 5805(f) and 5806, a Motion for Return of Property pursuant to Pa.R.Crim.P. 588 and Phila.Crim.R. *588, or is seeking other post-deprivation relief.

x. Whether a trial date can be scheduled or must be scheduled.

xi. Any other procedural issues impacting the forfeiture of the seized property or the owner(s) thereof.

b. On the day of the Pretrial Conference, a Trial Commissioner may be assigned to review the status of the

matter and to determine whether the Pretrial Conference is ready to proceed before the assigned judge on the scheduled date. In the event the Pretrial Conference cannot proceed as scheduled, the Trial Commissioner may reschedule the Pretrial Conference, but shall not take any dispositive action.

c. If the Pretrial Conference is continued, any subsequent continuance requests by either party must be decided by the assigned Judge sitting that day.

12. *Default Proceedings.*

a. If an Answer is not filed as required, the Plaintiff may seek the entry of judgment pursuant to law and rules of court including, but not limited to the following:

i. by default by complying with the provisions of Pa.R.C.P. No. 237.1;

ii. by filing a motion for judgment on the pleading pursuant to Pa.R.C.P. No. 1034, in which case, the court shall enter such judgment or order as shall be proper on the pleadings;

iii. by filing a motion for summary judgment pursuant to Pa.R.C.P. No. 1035.2;

iv. by filing a motion for default order; or

v. by filing any other appropriate motion.

b. If the Claimant attends the hearing scheduled in connection with any of the above motions, the hearing shall be converted to a Pretrial Conference or Status Conference.

13. *Trial or Hearing.* On the filing of an Answer setting forth a right of possession, the case shall be deemed at issue and a date and time shall be fixed for the trial.

14. *Burden of Proof.* The burden of proof shall be as set forth in 42 Pa.C.S. § 5805(j) and as otherwise provided by law.

15. *Appeal.* No post-trial motions need to be filed to the final order or judgment entered by the court. Appeals may be filed pursuant to Pa.R.A.P. 903.

16. *Other Applicable Rules of Civil Procedure.* The Pennsylvania Rules of Civil Procedure shall apply to fill procedural gaps arising from the various statutory provisions governing civil forfeitures.

17. *Minors as Parties.* In the event the owner or person or persons in possession of the seized property is a minor, the Commonwealth shall serve the minor and shall bring to the Court's attention the minority of the owner or person in possession. The Court shall determine to what extent a parent or natural guardian may need to represent the minor's interests consistent with Pa.R.C.P. No. 2026 et seq.

B. Claimant's Initiation of Civil Proceedings by Filing a Motion for Release of Seized Property Pending the Conclusion of the Forfeiture Proceedings

A Claimant may initiate civil proceedings, before the Commonwealth files a Forfeiture Petition as provided in Section A., by filing a Motion for Release of Seized Property Pending the Conclusion of the Proceedings Pursuant to 42 Pa.C.S. §§ 5805(f) and 5806.

1. *Filing of Motion for Release of Seized Property Pending the Conclusion of the Proceedings.* The in rem civil proceedings may be commenced by the Claimant through the filing of a Motion, setting forth the information identified in Sections 5805(f)(1) and 5806, with the Office of Judicial Records.

2. *Contents of Motion.* See Section A.8.a.iii. above for more information regarding the contents of the Motion.

3. *Service.* The claimant must serve the District Attorney or Attorney General who has jurisdiction over the case, and must file proof of service with the Office of Judicial Records. However, the District Attorney's Office has agreed to be served by the Office of Judicial Records upon its receipt and acceptance of the Motion.

4. *Hearing.* The Office of Judicial Records shall schedule a hearing on the Motion, as practicable and consistent with the interests of justice, but no later than for a date within ten (10) business days of the filing of the Motion or, when required, the filing of proof of service of the Motion by the Claimant.

5. *Order.* The Court will enter an appropriate order as provided in Section 5805(f)(5).

This General Court Regulation is issued in accordance with the April 11, 1986 order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Adminis-

tration, Docket No. 1, and shall be filed with the Office of Judicial Records (formerly the Prothonotary, Clerk of Quarter Sessions and Clerk of Courts) in a docket maintained for Orders and General Court Regulations issued by the First Judicial District of Pennsylvania. Two certified copies of this General Court Regulation, and one copy on a computer diskette, shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Copies will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District shall be published in *The Legal Intelligencer* and posted on the First Judicial District's website at <http://www.courts.phila.gov>. This General Court Regulation will become effective on November 1, 2018.

By the Court

HONORABLE JACQUELINE F. ALLEN,
Administrative Judge, Trial Division
Court of Common Pleas, Philadelphia County

Attachment A

Commonwealth of Pennsylvania	:	CP - 51- MD - _____ - _____
Plaintiff		
vs.	:	OTN #
		PID
[Description of Property Seized]	:	DC #
Defendant	:	PR #
LOCATION OF SEIZURE:	_____	
OWNER OF PROPERTY:	_____	
PROPERTY SEIZED FROM:	_____	

**NOTICE TO DEFEND: CIVIL ASSET FORFEITURE
TO THE CLAIMANT OF WITHIN DESCRIBED PROPERTY:**

You are required to file a written Answer to this petition, setting forth your title in, and right to possession of, said property within 30 days from the service hereof, and you are also notified that, if you fail to file the Answer, a decree of forfeiture and condemnation will be entered against the property.

A Pretrial Conference will be scheduled by the Court, and you should expect to receive a Notice of Pretrial Conference within a week or so after the Forfeiture Petition and this Notice to Defend are served on you. The date of the Pretrial Conference should be at least two weeks after you receive the Notice of Pretrial Conference which should allow you to attend the hearing. You or your attorney must attend this Pretrial Conference.

If you have been criminally charged in a case associated with the forfeiture matter, prior to filing an Answer to the Forfeiture Petition, you may file a Praecipe to Stay the Forfeiture Proceedings using the above-referenced caption and docket number. The forfeiture proceedings will be stayed by the Office of Judicial Records upon receipt of the Praecipe. However, please know that when the stay is lifted, you must file an Answer to the Forfeiture Petition within 30 days from the day the stay is lifted.

If you wish to seek the temporary release of your seized property while these forfeiture proceedings are pending, you may also file a Motion for Release of Seized Property Pending the Conclusion of the Forfeiture Proceedings, pursuant to 42 Pa.C.S. §§ 5805(f) and 5806 at any time during the pendency of the Forfeiture Proceedings.

Additionally, you should know that you may request a jury trial. However, the request must be made no later than twenty (20) days after the service of the last permissible pleading. You can request a jury either by indicating so on any Answer you file or by submitting and filing a separate request with the Office of Judicial Records, preferably electronically, or by mail or in person at the Justice Juanita Kidd Stout Center for Criminal Justice, Second Floor, Motion Counter, 1301 Filbert Street, Philadelphia, PA.

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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE. YOU ARE NOT ENTITLED TO A COURT-APPOINTED LAWYER.

THE COURTS

Philadelphia Bar Association
Lawyer Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197

Name:
Title:
Date:

Attachment B

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY TRIAL DIVISION, CIVIL

Commonwealth of Pennsylvania : CP - 51- MD - _ _ _ _ _ - _ _ _ _
Plaintiff
vs. : OTN #
PID
[Description of Property Seized] : DC #
Defendant : PR #

PRAECIPE—CLAIMANT’S CHANGE OF ADDRESS

TO THE OFFICE OF JUDICIAL RECORDS:

Kindly update the Claimant’s address for purposes of service of legal papers other than original process, and for giving notices pursuant to Pa.R.C.P. No. 236 to the following address:

Name:

Address:

Date: _____

Assistant District Attorney/PA Attorney General

Attachment C

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
Court of Common Pleas of Philadelphia County
Trial Division, Civil

In Re: : Forfeiture Petition
: Receipt No. _____
:
: No. __ -51-__ - _ _ _ _ _ - _ _ _ _

AFFIDAVIT OF SUBSTITUTED SERVICE

TO THE OFFICE OF JUDICIAL RECORDS:

The Commonwealth effectuated service of its Forfeiture Petition by Substituted Service pursuant to 42 Pa.C.S. § 5805(c), due to the following:

- the owner of the property is unknown.
there was no person in possession of the property when seized.
the owner(s) or person(s) in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court despite the following efforts by the Commonwealth:

(Set forth below in detail the efforts made to serve the owner(s)/person(s) in possession)

Notice of the filing of the Forfeiture Petition, containing the information required by 42 Pa.C.S. § 5805, shall be given through an advertisement in one newspaper of general circulation published in Philadelphia County once a week for two successive weeks. Proof of Publication shall be filed with the Office of Judicial Records. After publication, any other notice to the owner, person in possession or other interested party deemed served by publication shall be provided, as appropriate, by regular mail if a last known address is known.

Date: _____

Assistant District Attorney/PA Attorney General

Attachment D

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY TRIAL DIVISION, CIVIL

Commonwealth of Pennsylvania : CP - 51- MD - _ _ _ _ _ - _ _ _ _
Plaintiff
vs. : OTN #
PID
[Description of Property Seized] : DC #
Defendant : PR #

LOCATION OF SEIZURE: _____
PROPERTY SEIZED FROM: _____
NAME OF CLAIMANT: _____

PRAECIPE TO STAY FORFEITURE PROCEEDINGS

Claimant, , requests that pursuant to 42 Pa.C.S. § 5805(a)(2)(ii) and Trial Division General Court Regulation No. 01 of 2018, the Forfeiture Proceedings be Stayed until the earlier of the disposition of the criminal case(s) related to the seized property or until Claimant’s request to lift the Stay.

I understand that I may file a Motion for Release of Seized Property Pending the Conclusion of the Forfeiture Proceedings even after this Stay is granted.

Claimant
Date:

Attachment E

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY TRIAL DIVISION, CIVIL

Commonwealth of Pennsylvania : CP - 51- MD - _ _ _ _ _ - _ _ _ _
Plaintiff
vs. : OTN #
PID
[Description of Property Seized] : DC #
Defendant : PR #

LOCATION OF SEIZURE: _____
PROPERTY SEIZED FROM: _____
NAME OF CLAIMANT: _____

PRAECIPE TO LIFT STAY OF FORFEITURE PROCEEDINGS

The undersigned requests that the Stay of Forfeiture Proceeding entered on _____ is lifted at the request of

Claimant _____ ; the Commonwealth

[Claimant] [Commonwealth of Pennsylvania]
Date:

Trial Division GCR 01 of 2018 (8-29-18)

Attachment F

For Official Use Only – Bar Code

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
Motion for the Release of Seized Property
Pending the Conclusion of the Forfeiture Proceedings
Pursuant to 42 Pa. C.S. §§ 5805(f) and 5806

Form containing sections: Motion Must Be Filed with the Office of Judicial Records, FOR OFFICIAL USE ONLY- CAPTION (PROPERTY DESCRIPTION), NAME OF PETITIONER, PETITIONER'S CURRENT ADDRESS, Motion for the Release of Seized Property Pending the Conclusion of the Forfeiture Proceedings, Basis for the Motion, Requested Relief, VERIFICATION, and signature lines for Date, Type Name of Petitioner, and Signature of Petitioner.

Attachment G

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY TRIAL DIVISION, CIVIL

Commonwealth of Pennsylvania : CP - 51- MD - _____ - _____
Plaintiff

vs. : OTN #
PID

[Description of Property Seized] : DC #
Defendant : PR #

LOCATION OF SEIZURE: _____

PROPERTY SEIZED FROM: _____

NAME OF CLAIMANT: _____

JURY TRIAL DEMAND

Claimant, , requests a Jury Trial as provided in Pa.R.C.P. No. 1007.1 and Phila.Civ.R.
*1007.1 and *1007.2.

Claimant
Date:

Attachment H

Commonwealth of Pennsylvania
 Court of Common Pleas
 County of Philadelphia
 1st Judicial District



NOTICE OF PRETRIAL CONFERENCE

 Forfeiture Proceedings



Commonwealth v. [Describe Property], Defendant
 Docket No. CP-51-MD--

Property Receipt No.:
 Date Seized:
 Location:

You are hereby DIRECTED to appear for a Pretrial Conference in the above-captioned Forfeiture proceeding to be held as follows:

Date:	Location: Courtroom ____ Justice Juanita Kidd Stout Center for Criminal Justice 1301 Filbert Street Philadelphia, PA 19107
Time:	

On the above date, a Pretrial Conference will be held. The following issues shall be addressed:

- a. Whether the Forfeiture Petition and related documents were served on the owner of the above-referenced property or upon the person or persons in possession of the property at the time of the seizure. If service could not effectuated, the Pretrial Conference will be rescheduled to a date certain to enable the Plaintiff to effectuate service.
- b. Whether an Answer was filed. If an Answer has not been filed, whether there is agreement that an Answer may be filed within an agreed-upon period of time.
- c. Whether the Claimant is represented by counsel. The Claimant shall be informed that the Claimant is entitled to counsel, but is not entitled to court-appointed counsel.
- d. Whether the Claimant has requested, or intends to request, a jury trial. The Claimant shall be informed that the Claimant is entitled to a jury trial, and that in order to obtain a jury trial the Claimant must file a written request for a jury trial no later than twenty (20) days after the service of the last permissible pleading and pay the required Jury fee, \$247.94.
- e. Whether the proceedings may be resolved by agreement.
- f. If the Plaintiff and Claimant indicate that an agreement has been reached, the proceeding shall be referred to a Judge for approval. If a Judge is not available, the case shall be rescheduled before a Judge as soon as practicable. In order to approve the settlement, the Judge must be satisfied that the Claimant is entering into the agreement knowingly, voluntarily and intelligently and that the Claimant understands that he/she is entitled to a hearing on the merits, along with other factors that may be required by law.
- g. Whether there are any factual issues upon which the parties agree.
- h. Whether discovery is necessary, and if so, if an Answer has been filed, the terms of discovery and a discovery schedule shall be established.
- i. Whether the Claimant has filed a *Praecepto to Stay Forfeiture Proceedings* pursuant to 42 Pa.C.S. § 5805(a)(2)(ii), a *Motion for Release of Seized Property Pending the Conclusion of the Forfeiture Proceedings* pursuant to 42 Pa.C.S. §§ 5805(f) and 5806, a *Motion for Return of Property* pursuant to Pa.R.Crim.P. 588 and Phila.R.Crim.P. *588, or is seeking other post-deprivation relief.
- j. Whether a trial date can be scheduled or must be scheduled.
- k. Any other procedural issues impacting the forfeiture of the seized property or the owner(s) thereof.

TO THE CLAIMANT: Should you receive this Notice less than 14 days before the hearing date, and should you be unable to attend the hearing, kindly contact the District Attorney's office at 215-686-9695 and request that they ask the Court to continue the hearing to enable you to attend the rescheduled Pretrial Conference.

[Pa.B. Doc. No. 18-1484. Filed for public inspection September 21, 2018, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

Certification of District Attorney Pursuant to Pa.R.Crim.P. 507; AD—18-141-PJ

Order of Court

And Now, to wit, this 6th day of September, 2018, *It Is Hereby Ordered, Adjudged and Decreed* that the following amended Allegheny County Rule of Criminal Procedure, adopted by the Board of Judges on August 23, 2018, shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

Rule 507.6. Approval of Certain Police Agency Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth for Designated Felony Crimes.

The District Attorney of Allegheny County, Stephen A. Zappala, Jr., having filed a certification pursuant to Pa.R.Crim.P. 507, criminal complaints and arrest warrant affidavits filed by police officers in the designated police agencies listed below, as defined in the Rules of Criminal Procedure, charging the below designated felony crimes shall not hereafter be accepted by any judicial officer unless the criminal complaint and arrest warrant affidavit have the approval of an attorney for the Commonwealth prior to filing.

DESIGNATED FELONY CRIMES

- a) Aggravated Assault of unborn child—18 Pa.C.S. § 2606(a)
- b) Aggravated Assault—18 Pa.C.S. § 2702(a)(1) through (9)
- c) Aggravated assault of law enforcement officer 18 Pa.C.S. § 2702.1(a)
- d) Stalking—18 Pa.C.S. § 2709.1(a)(1) and (c)(2)
- e) Stalking—18 Pa.C.S. § 2709.1(a)(2) and (c)(2)
- f) Threat to use weapons of mass destruction—18 Pa.C.S. § 2715(a)(3) and (b)(2) and (b)(4)
- g) Threat to use weapons of mass destruction—18 Pa.C.S. § 2715(a)(4) and (b)(2) and (b)(4)
- h) Weapons of mass destruction—18 Pa.C.S. § 2716(a)
- i) Weapons of mass destruction—18 Pa.C.S. § 2716(b)
- j) Terrorism—18 Pa.C.S. § 2717(a)
- k) Kidnapping—18 Pa.C.S. § 2901(a)
- l) Unlawful restraint of minor—18 Pa.C.S. § 2902(b) and (c)
- m) False imprisonment of a minor—18 Pa.C.S. § 2903(b) and (c)
- n) Trafficking in individuals—18 Pa.C.S. § 3011(a) and (b)
- o) Involuntary Servitude—18 Pa.C.S. § 3012(a)
- p) Patronizing a victim of sexual servitude—18 Pa.C.S. § 3013(a)
- q) Unlawful conduct regarding documents—18 Pa.C.S. § 3014
- r) Causing or risking catastrophe—18 Pa.C.S. § 3302(a) and (b)
- s) Burglary—18 Pa.C.S. § 3502(a)
- t) Criminal trespass—18 Pa.C.S. § 3503(a)

- u) Forgery—18 Pa.C.S. § 4101(a)
- v) Intimidation of witness—18 Pa.C.S. § 4952(a) and (b)(1) through (4)
- w) Retaliation against witness/victim—18 Pa.C.S. § 4953(a) and 4952(1) through (5)
- x) Retaliation against prosecutor/judicial official—18 Pa.C.S. § 4953.1(a) and (b)(1) through (5)
- y) Intimidation, retaliation or obstruction in child abuse cases—18 Pa.C.S. § 4958(a)(b), (b.1) and (c)(1)
- z) Disarming law enforcement officer—18 Pa.C.S. § 5104.1(a)
- aa) Recruiting criminal gang member—18 Pa.C.S. § 5131(a) and (b)(1)(iii) and (2)
- bb) Riot—18 Pa.C.S. § 5501
- cc) Animal Fighting—18 Pa.C.S. § 5511(h.1)(1) through (7)
- dd) Facsimile weapons of mass destruction—18 Pa.C.S. § 5516(a)
- ee) Operation of methamphetamine laboratory—18 Pa.C.S. § 7508.2
- ff) Criminal use of communication facility—18 Pa.C.S. § 7512(a)
- gg) Aggravated assault by watercraft while operating under influence—30 Pa.C.S. § 5502.3(a)
- hh) Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance—35 P.S. § 780-113(a)(30)
- ii) Unlawful manufacture of methamphetamine—35 P.S. § 780-113(a)(38)
- jj) Operating a methamphetamine laboratory—35 P.S. § 780-113.4(a)(1)(2)(3) and (b)(1)
- kk) Aggravated assault by vehicle—75 Pa.C.S. § 3732.1(a)
- ll) Aggravated assault by vehicle while driving under the influence—75 Pa.C.S. § 3735.1(a)
- mm) Accidents involving death or personal injury—75 Pa.C.S. § 3742(a) and (b)(2) and (3)(i)
- nn) Accidents involving death or personal injury while not properly licensed—75 Pa.C.S. § 3742.1(a) and (b)(2)

DESIGNATED POLICE AGENCIES TO WHICH THIS RULE APPLIES

Pittsburgh Bureau of Police
Allegheny County Police Department
Braddock Borough Police Department
Braddock Hills Borough Police Department
Clairton City Police Department
Duquesne City Police Department
East McKeesport Police Department
East Pittsburgh Police Department
Elizabeth Borough Police Department
Elizabeth Township Police Department
Forward Township Police Department
Glassport Borough Police Department
Homestead Borough Police Department
Liberty Borough Police Department
Lincoln Borough Police Department
McKeesport City Police Department
Munhall Borough Police Department
North Braddock Borough Police Department
North Versailles Township Police Department
Penn State Greater Allegheny Police Department
Port Vue Borough Police Department

Rankin Borough Police Department
 Turtle Creek Borough Police Department
 Versailles Police Department
 West Homestead Borough Police Department
 West Mifflin Borough Police Department
 Whitaker Borough Police Department
 White Oak Borough Police Department

By the Court

JEFFREY A. MANNING,
President Judge

[Pa.B. Doc. No. 18-1485. Filed for public inspection September 21, 2018, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Adoption of Local Rule of Criminal Procedure 576.1: Electronic Filing and Service of Legal Papers; No. 319-2018

Order

And Now, this 7th day of September, 2018, the Court hereby Adopts Montgomery County Local Rule of Criminal Procedure 576.1: Electronic Filing and Service of Legal Papers. This Rule shall become effective on November 1, 2018.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In conformity with Pa.R.J.A. 103, one (1) certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) copy shall be filed with the Law Library of Montgomery County, and one (1) copy with each Judge of this Court. This Order shall also be published on the Court's website and incorporated into the complete set of the Court's Local Rules.

By the Court

THOMAS M. DeLRICCI,
President Judge

Rule 576.1. Electronic Filing and Service of Legal Papers.

(A) *General Scope and Purpose of the Rule*

Pursuant to Pennsylvania Rule of Criminal Procedure 576.1, Electronic Filing and Service of Legal Papers, electronic filing of legal papers through the PACFile electronic filing system is permissive in Montgomery County, the 38th Judicial District, as of January 1, 2017. The Administrative Office of Pennsylvania Courts and the judicial district of Montgomery County have agreed upon an implementation plan for PACFile in Montgomery County.

(B) *PACFile*

(1) The exclusive system for electronic filing is the PACFile System, developed and administered by the Administrative Office of the Pennsylvania Courts and located on Pennsylvania's Unified Judicial System Web Portal.

(2) Pursuant to Pa.R.Crim.P. 576.1(D)(2), establishment of a PACFile account constitutes consent to participate in electronic filing, including acceptance of service electronically of any document filed on the PACFile system in any judicial district that permits electronic filing.

(3) Any party who declines to participate in the electronic filing system, or who is unable to electronically file or accept service of legal papers which were filed electronically, or who is otherwise unable to access the PACFile system, shall be permitted to file legal papers in a physical paper format and shall be served legal papers in a physical paper format by the Clerk of Courts and other parties, whether electronically filed or otherwise, as required by Pa.R.Crim.P. 576.

(C) *Legal Papers*

(1) "Legal papers" which may be filed electronically shall encompass all written motions, written answers and any notices or documents for which filing is required or permitted, including orders, exhibits and attachments, but excluding:

- (a) applications for search warrants;
- (b) applications for arrest warrants;

(c) any grand jury materials, except the indicting grand jury indictment or the investigating grand jury presentment;

- (d) submissions filed ex parte as authorized by law, and
- (e) submissions filed or authorized to be filed under seal.

(2) Third party filing of amicus briefs or other third party filings shall not be permitted to be filed electronically.

(3) The applicable general rules of court and court policies that implement the rules shall continue to apply to all filings of legal papers regardless of the method of filing.

(4) Any legal paper submitted for filing to the Clerk of Courts in a paper (or 'hard-copy') format shall be accepted by the Clerk of Courts in that format and shall be retained by the Clerk of Courts as may be required by applicable rules of Court and record retention policies. The Clerk of Courts shall convert such hard-copy legal paper to pdf and add it to the system, except those legal papers excluded from electronic filing pursuant to Pa.R.Crim.P. 576.1(C) and this rule.

(D) *Filing Fees*

Applicable filing fees shall be paid through procedures established by the Clerk of Courts and at the same time and in the same amount as required by statute, Court rule or order, or published fee schedule.

(E) *Record on Appeal*

Electronically filed legal papers, and copies of legal papers filed in a paper format as provided in subsection (C)(4), shall become the record on appeal.

(F) *Confidential information*

Counsel and unrepresented parties must adhere to the Public Access Policy of the Unified Judicial System of Pennsylvania and Montgomery County R.Crim.P. 113.1 and refrain from including confidential information in legal papers filed with the Clerk of Courts or the Court whether filed electronically or in a paper format.

[Pa.B. Doc. No. 18-1486. Filed for public inspection September 21, 2018, 9:00 a.m.]