

2002 Membership:

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Honorable Esther R. Sylvester*
Leslee Silverman Tabas, Esq.
Joanne Ross Wilder, Esq.#

* Term expired 3-25-02
** Effective 3-26-02
+ Effective 4-6-02
++ Term expired 4-25-02
Term expired 9-1-02
Appointed chair effective 9-1-02

Staff:

Patricia A. Miles, Esq., *Counsel*
Terri L. Metil, *Administrative Assistant*

Legal Authorization:

Pa. Constitution, Article V, § 10(c)
42 Pa. C.S., § 1722(a)

Domestic

Relations

Procedural

Rules

Committee

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History/Background

Began as a seven-member section of the Civil Procedural Rules Committee in 1984 and established as its own committee by order of the Supreme Court on June 30, 1987, the Domestic Relations Procedural Rules Committee strives to simplify family law practice. It does this by recommending new rules or amendments to the existing procedural rules relating to paternity, support, custody, divorce and protection from abuse. It reviews new legislation and court decisions to ensure that the rules conform with developments in the law as well as the realities of domestic relations practice. It is the goal of the committee to promote statewide uniformity of practice, to streamline procedure and to encourage the expeditious disposition of family law matters.

In 2002 the Domestic Relations Procedural Rules Committee had as members at various times five judges, six attorneys and one district court administrator. Members are appointed by the Supreme Court to three-year terms, and each member may serve two consecutive terms.

2002 Activities

The committee met four times in 2002 as follows:

February	Philadelphia
May	Wilkes-Barre
September	Gettysburg
November	Philadelphia

Invited guests to the meetings included representatives of the Department of Public Welfare and the Domestic Relations Association of Pennsylvania as well as judges, masters and family law practitioners.

The committee strives to maintain open channels of communication with those who work with or are affected by the rules it proposes, including judges, lawyers, court

administrators, domestic relations section personnel, the Department of Public Welfare and the public. To this end, throughout 2002 committee members and staff spoke at conferences and seminars to inform lawyers, court personnel and others of recent and proposed changes in the procedural rules related to family law matters. These included the Pennsylvania Bar Association Family Law Section's summer and winter meetings, a Pennsylvania Bar Institute continuing legal education seminar, the Domestic Relations Section Director's Conference and the Domestic Relations Association of Pennsylvania Conference.

2002 Recommendations

The following recommendations were promulgated or pending with either the Supreme Court or the committee in 2002. In general numbers are assigned in the order in which each recommendation is submitted for publication. A chart listing the statuses of the recommendations is set forth in Table 3.9.1 on page 77.

Recommendation 55: Proposed new **family court rules** to establish and streamline family court practice. New Rule 1931 was promulgated as a pilot project in four counties. The major provisions allow the domestic relations sections to provide forms and information about filing for an agreed-upon custody order and require unified docketing, that common actions be consolidated, that trials be completed within a ten-day period when possible, that decisions be rendered within 30 days of the completion of the trial and continuing education for family court personnel. Promulgated December 17, 2002; suspended in all jurisdictions except Philadelphia, Allegheny, Berks and Lackawanna Counties.

Recommendation 57: Has two major provisions:

Rule 1910.19 -- Support Modification/Termination. The Department of Public Welfare

(DPW) requested this rule to authorize the court to close certain cases administratively after due notice and the opportunity for the obligee to object. The amendments require that an emancipation inquiry and notice be sent to the obligee, with a copy to the obligor, within a year of a child's turning 18. The obligee must respond within 30 days. If the obligee does not respond or does not indicate a reason for continuing the order past the child's 18th birthday or graduation, (e.g., the child's special needs or an agreement between the parties), the charging order may be terminated or modified. Termination would not affect arrears and the court has the authority to continue the order as arrears only. If other children are in the home or the obligee asserts that the charging order should continue, then the domestic relations section may schedule a conference to determine if the order should be modified on the basis of one of the children's emancipation.

Rule 1930.4 -- Service of Original Process in Domestic Relations Matters. Amendments to clarify the permissible means of service in protection from abuse cases and to provide for an alternative means of service upon authorization by the court. Women Against Abuse related to the committee that many defendants evade service and thus effectively discontinue the action because plaintiffs with limited resources give up trying to effectuate service. As amended, the rule permits the court to order service by mail or other means if the defendant cannot be personally served within 48 hours after the petition is filed.

Promulgated October 11, 2002, effective immediately.

Recommendation 58: Has a variety of provisions as follows:

Rule 1905 -- Final Protection From Abuse Order. Amendments to provide a clearer interpretation of federal firearms restrictions in domestic abuse cases. The separate Brady Indicator has been deleted and the form order

includes a notice to the defendant that federal firearms restrictions may apply.

Rule 1910.2 and Rule 1910.2-1 -- Venue and Intrastate Procedures. The DPW, in cooperation with the Domestic Relations Association of Pennsylvania Board of Directors contacted the committee to request that state-wide rules be implemented to govern intrastate cases. New Rule 1910.2-1 addresses procedures under the Intrastate Family Support Act.

Rule 1910.16-6(c) -- Unreimbursed Medical Expenses. The comment to this rule has been expanded to clarify that, while not mandatory, reasonable psychological expenses may be allocated between the parties.

Rule 1910.16-7 -- Priority of Support Payments. New subdivision (d) to Rule 1910.16-7 added to clarify the priority of payments for all funds received. The order of priorities is current child support; medical, child care or other child support-related expenses; current spousal support or alimony *pendente lite*; child support arrears; spousal support or alimony *pendente lite* arrears; and court costs.

Rule 1915.3 -- Custody Actions Brought by Grandparents. In *R. M. v. Baxter*, 777 A.2d 446 (Pa. 2001), the Supreme Court of Pennsylvania held that grandparents have legal standing to bring a custody action under 23 Pa. C. S., §5313(b). While standing may be automatic, for the grandparent to prevail, however, he or she still must prove the elements listed in §5313(b), that the grandparent has genuine care and concern for the child, that the grandparent's relationship with the child began with the consent of a parent or an order of court and that the grandparent has assumed the role and responsibilities of a parent for a period of twelve months or if the child is dependent or at risk. The amendment to Rule 1915.3 requires that if a grandparent is initiating a custody action under the statute, he or she must plead, at paragraph seven of the form complaint, the necessary elements listed in §5313(b).

Rule 1920.74 -- Form Motion for Appointment of Master. The form Motion for Appointment of Master previously required an averment that discovery has been completed. Sometimes, however, it is preferable to have a master appointed earlier in the process to deal with discovery issues that arise. The amendment to the form, therefore, requires only a statement as to the status of discovery. A new note recognizes that it is within the discretion of the court to determine at which point in the case to appoint a master and that a master can be appointed to deal with discovery issues.

In addition, the form previously required an averment that the “defendant” has or has not appeared in the action. As either a plaintiff or a defendant may move for the appointment of a master, the word “defendant” has been replaced with the term “non-moving party.”

The form also now includes a place for the name, address and telephone number of the parties’ counsel or any party who is not represented by counsel.

Promulgated October 31, 2002, effective immediately.

Recommendation 59: Technical amendments submitted to the Court without publication.

Rule 1910.27 -- Form of Support Order. Amendment to the section of the form notifying parties that an order may be entered against either of them without regard to which party initiated the action, to delete reference to a “hearing officer.” The change was requested by DPW/PACSES to reflect the different procedures throughout the Commonwealth.

Rule 1930.6 -- Paternity Actions. Corrects the venue provisions to provide that a civil action for paternity may be brought only in the county in which the defendant (mother) or child(ren) reside.

Promulgated June 24, 2002, effective immediately.

Recommendation 61: Has two provisions:

Rule 1910.16-5 (b)--Spousal Support/Alimony Pendente Lite. Proposed amendment to allow the court to deviate not only from the guideline amount, but also the duration of an award of alimony *pendente lite* on the basis of the length of the marriage. The current comment to the rule reflects that this was the intention of the 1998 amendments, but the rule did not specifically include the provision.

Rule 1910.16-6 -- Unreimbursed Medical Expenses. Proposed amendment deletes the phrase “which are recurring and can be reasonably predicted by the court at the time of the establishment or modification of the support order” that now refers to the amount of unreimbursed expenses over \$250 per year. The committee understands that in practice the amount over \$250 has been apportioned without proof that the expense is recurring or reasonably predictable. The suggestion for this amendment came from the Rules Committee of the Allegheny County Family Law Section.

Published for comment summer 2002, submitted to Supreme Court November 2002.

Recommendation 62: Technical amendments submitted to the Court without publication.

Rule 1910.28 -- Order for Earnings and Health Insurance Coverage Information. Amendments to make the response time a uniform 15 days for both earnings and insurance information, as requested by DPW/PACSES.

Rule 1916-4 -- Formula. DPW/PACSES also requested that the formula at Rule 1910.16-4 be amended to include lines for the calculations required when a child is receiving social security derivative benefits and to add a line in the calculation for spousal support only to reflect additional expenses such as mortgage and health insurance.

Promulgated September 24, 2002, effective immediately.

Plans for 2003

Pursuant to state and federal laws, the Commonwealth must review the child support guidelines every four years. Included in that review is research into available economic data relating to household expenditures, in particular the costs of raising a child. In late 2002 the Domestic Relations Procedural Rules Committee was planning to begin another mandated review of the guidelines in cooperation with the Department of Public Welfare Bureau of Child Support Enforcement and with the assistance of Jane Venohr, Ph.D.; Policy Studies, Inc. The committee will continue its ongoing review of

the support guidelines as required by 23 Pa.C.S., §4322 and may recommend other amendments or new rules as may be necessary and appropriate.

Contact Person

Questions about the committee and its work may be directed to Patricia A. Miles, Esq.; Domestic Relations Procedural Rules Committee; 5035 Ritter Road, Suite 700; Mechanicsburg, PA 17055; telephone (717) 795-2037; fax (717) 795-2175; e-mail patricia.miles@pacourts.us. AOPC

Status of Recommendations		
Recommendation	Subject	Status
55	New Family Court Rules to establish and streamline family court practice	Promulgated 12-17-02; suspended in all jurisdictions except Philadelphia, Allegheny, Berks and Lackawanna Counties
57	Support modification/termination and service in protection from abuse	Promulgated 10-11-02, effective immediately
58	Various provisions relating to federal firearms restrictions in domestic abuse cases, intrastate cases, unreimbursed medical expenses, priority of support, custody actions brought by grandparents, Motion for Appointment of Master forms	Promulgated 10-31-02, effective immediately
59	Technical amendments regarding form of support orders and paternity actions	Promulgated 6-24-02, effective immediately
61	Spousal support/alimony <i>pendente lite</i> and unreimbursed medical expenses	Submitted 11-02, pending before Court
62	Technical amendments regarding order for earning and health insurance coverage information and calculating formulas	Promulgated 9-24-02, effective immediately

Chart 3.9.1