

**By *Per Curiam* Order of the Supreme Court dated December 28, 2018, the Pennsylvania Rules of Civil Procedure were amended and the new Rules became effective January 1, 2019.**

# The following Rules have been changed:

1910.11	1910.16-2(a)	1910.16-4
1910.16	1910.16-2(b)	1910.16-4(e)
1910.16-1	1910.16-2(f)	1910.16-6
1910.16-2	1910.16-3	1910.18
	1910.16-3.1	1910.19(h)

We will address all substantive changes, but not necessarily grammatical changes.

# **1910.11 Office Conference. Subsequent Proceedings. Order.**

- This Rule only effects Counties that operate under Rule 1910.11.
- Ostensibly the Rule expands what documents the party needs to provide to the Conference Officer.

# 1910.11 Office Conference. Subsequent Proceedings. Order.

- The additional documents are as follows:
  - All schedules from a party's Federal Tax Return
  - W-2s
  - 1099s
  - Partnership and Business Tax Returns with all schedules, including, K-1s, if the party is self-employed or a principal in a partnership or business

**1910.11**

# **Office Conference. Subsequent Proceedings. Order.**

- Child support, spousal support, APL or alimony Orders or Agreements for other children or former spouses.
- Income statement as set forth under Pa.R.C.P. 1910.27(c)(1), including high income cases
- Expense statement as set forth in Pa.R.C.P. 1910.27(c)(2)(A), if:
  - There is a claim for unusual needs and unusual fixed expenses which may warrant a deviation pursuant to 1910.16-5, or

# 1910.11 Office Conference. Subsequent Proceedings. Order.

- A party seeks expense apportionment pursuant to Pa.R.C.P. 1910.16-6.
- As a final note, the confidentiality policy of the AOPC does apply to the relevant documents.

# 1910.16 has been rescinded.

- This Rule previously addressed allocation of Support Orders.

## **1910.16-1 Amount of Support. Support Guidelines.**

The change in this provision reinforces the rebuttable presumption that guideline-calculated support is correct.

UNLESS, it is found in writing or on the record that the guideline amount is unjust or inappropriate

ALSO, the trier of fact shall consider the party's special needs and obligations pursuant to the deviation factors

# **1910.16-2(a) Support Guidelines. Calculation of Monthly Net Income**

- The Court must consider the tax liability associated with alimony income, if the alimony income is to be included as part of a party's income for support calculations.
- If the alimony is non-taxable, the Court may add the gross alimony to the recipient party's net income.

## **1910.16-2(b) Treatment of Public Assistance, SSI Benefits, Social Security Payments to a Child Due to a Partner's Death, Disability or Retirement and Foster Care Payments.**

- This Rule change is specific to government benefit, disability and retirement income. As these issues arise, I would suggest reading the specific and applicable part of the Rule for guidance. The Rule has been clarified and is easier to understand

## **1910.16-2(f) Child Tax Credit.**

- The Court is authorized to allocate the child tax credit to the noncustodial parent or 50/50 parent.
- For all intents and purposes, the dependency exemption is no longer, at least until 2025.
- This change is significant, especially for low income child support recipients.
- The parent benefiting from the credit will receive a \$2,000 benefit per child.
- The credit reduces tax, not income.

## 1910.16-3.1

# Support Guidelines. High Income Cases.

- While the revisions are mostly grammatical, it is significant to note that the Court **MUST** consider budgetary expenses and deviation factors after calculation of the support formula.

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

- The revised Rule creates two different formulas explained in detail on the subsequent slides. One formula is to be applied to pre-1/1/2019 Orders and one for post-12/31/2018 Orders.
- A point of caution – be careful going from pre-divorce APL/spousal support to post-divorce alimony, there may be tax consequences.
- Until we receive guidance, we are in the wild west.

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

## The “Old”:

- The “old” formula has been moved to subdivision (2) of the Rule.
- The “old” formula applies to modification of a pre-2019 Order or Agreement.
- This formula has not changed.
- Rule 1910.19(h)(5) restores the Court’s authority to enter an allocated or unallocated Order.
- The Rule also authorizes the Court to exercise discretion as to whether or not to deviate due to tax consequences.

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

## The “New”:

- The “new” formula is applicable to all new Orders entered after January 1, 2019 (not modified Orders).
- Spousal support/APL is always calculated first.
- If there are no children, we simply take 33% of the payor’s net income – 40% of the payee’s net income.
- The APL/spousal support is non-taxable and non-deductible.

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

- If there are children, we still calculate APL/spousal support first, then apply the formula by taking 25% of the payor's net income – 30% of the payee's net income.
- We next recalculate each parents income based on APL/spousal support before applying the child support guidelines.
- Simple, right?

## **1910.16-4(e) Support Obligations When Custodial Parent Owes Spousal Support.**

- The revision to this Rule actually may simplify these cases.
- Like the “new” formula, we will calculate APL/spousal support first, recalculate the parties’ incomes and apply the child support guidelines.

# 1910.16-4(e) Support Obligations When Custodial Parent Owes Spousal Support.

- Two additional steps:
  - Determine the recomputed support obligation of the custodial parent to the non-custodial parent by subtracting the non-custodial parents child support obligation from step 3 from the original support calculated in step 1.
  - The final support amount is the difference calculated in step 1 and step 3.
  - Examples to follow.

## **1910.16-6 Support Guidelines. Basic Support Obligation Adjustments. Additional Expenses Allocation.**

- In child support only cases, expenses remain allocated in proportion to the parents unadjusted net monthly incomes.
- In addition, when allocating medical insurance premiums and mortgage payments, the unadjusted net incomes are continued to be used in determining each parties proportionate share.

## **1910.16-6 Support Guidelines. Basic Support Obligation Adjustments. Additional Expenses Allocation.**

- For all other expense allocations in the Rule, the adjusted net incomes after adding APL/spousal support to the payee/spouse and deducting APL/spousal support from the payor/spouse shall be used to determine each parties proportionate share.

## **1910.18 Support Order. Subsequent Proceedings.**

- This revision to the Rules essentially confirms what the Tax Cuts and Job Acts of 2017 states: a modification of a pre-2019 Order (assuming APL or spousal support is part of the Order) or Agreement shall remain tax deductible unless the Order or Agreement expressly states otherwise.
- Post January 1, 2019 Orders, new Orders are subject to the provisions of the Tax Cuts and Job Acts of 2017.

## **1910.19(h) Modification of Spousal Support or APL Orders Entered Before January 1, 2019**

- This revision to the Rules allows the Court to make an unallocated award or allocated award and requires the trier of fact to state whether the Order is allocated or unallocated.