

## Pennsylvania

Worksheet has Part II for “Substantial or Shared Physical Custody Adjustment”:

When the children spend 40% or more of their time during the year with the obligor, a rebuttable presumption arises that the obligor is entitled to a reduction in the basic support obligation to reflect this time. At 40% shared time, the percentage of the basic child support amount that the obligor pays is reduced by 10%; at 45% shared time, the reduction is 15%; at 50% shared time, the reduction is 20%. **Note:** the adjustment is to the share of the basic child support amount that the obligor pays (MO line 4), not to the parent’s support obligation (MO line 9) as we do in Missouri

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

(a) The following formula shall be used to calculate the obligor’s share of basic child support, either from the schedule in Rule 1910.16-3 or the formula in Rule 1910.16-3.1(a), as well as spousal support and alimony pendente lite obligations. In high income cases, Part IV shall be used as a preliminary analysis in the calculation of spousal support or alimony pendente lite obligations:

*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)	_____	_____
5. Combined Total Monthly Net Income	_____	
6. Plus Child’s Monthly Social Security, Death, Retirement or Disability Derivative Benefit, if any. (See Rule 1910.16-2(b)(2))	+	
7. Adjusted Combined Monthly Net Income	_____	
8. PRELIMINARY BASIC CHILD SUPPORT OBLIGATION (determined from schedule at Rule 1910.16-3 based on number of children and line 7 adjusted combined monthly net income)	_____	
	(	
9. Less Child’s Monthly Social Security Derivative Benefit	_____	
	)	
10. BASIC CHILD SUPPORT OBLIGATION		_____
11. Net Income Expressed as a Percentage Share of Income (divide line 4 by line 5 and multiply by 100)	_____	_____
	%	%
12. Each Parent’s Monthly Share of the Basic Child Support Obligation	_____	_____

(multiply line 10 and 11)

*PART II. SUBSTANTIAL or SHARED PHYSICAL CUSTODY ADJUSTMENT, IF APPLICABLE (See subdivision (c) of this rule)*

13. a. Percentage of Time Spent with Children (divide number of overnights with obligor by 365 and multiply by 100) \_\_\_\_\_ %  
b. Subtract 30% ( )  
c. Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation (subtract line 13b from line 11)  
d. Obligor's Adjusted Share of the Basic Monthly Support Obligation (multiply line 13c and line 10) \_\_\_\_\_  
e. Further adjustment, if necessary under subdivision (c)(2) of this rule \_\_\_\_\_
- PART III. ADDITIONAL EXPENSES (See Rule 1910.16-6)*
14. 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 Obligees' 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 \_\_\_\_\_
- OBLIGOR'S TOTAL MONTHLY SUPPORT \_\_\_\_\_
15. OBLIGATION (add line 12 (or 13(d or e) (if applicable) and line 14f) \_\_\_\_\_

*PART IV. SPOUSAL SUPPORT OR APL With Dependent Children*

16. Obligor's Monthly Net Income (line 4) \_\_\_\_\_  
Less Obligor's Support, Alimony Pendente Lite or Alimony Obligations, if ( \_\_\_\_\_  
17. any, to Children or Former Spouses who are not part of this action (see Rule 1910.16-2(c)(2)) \_\_\_\_\_ )  
( \_\_\_\_\_  
18. Less Obligees' Monthly Net Income (Line 4) \_\_\_\_\_ )  
19. Difference \_\_\_\_\_  
20. Less Obligor's Total Monthly Child Support Obligation ( \_\_\_\_\_  
Without Part II Substantial or Shared Custody Adjustment (Obligor's line \_\_\_\_\_

12 plus line 14f)	)
21. Difference	_____
	_____
22. Multiply by 30%	x
	_____
	.30
23. AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL	_____

## *Without Dependent Children*

24. Obligor's Monthly Net Income (line 4)	_____
Less Obligor's Support, Alimony Pendente Lite or Alimony Obligations, if (	
25. any, to Children or Former Spouses who are not part of this action (see	_____
Rule 1910.16-2(c)(2))	)
	(
26. Less Oblige'e's Monthly Net Income (Line 4)	_____
	)
27. Difference	_____
	_____
28. Multiply by 40%	x
	_____
	.40
29. PRELIMINARY AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL	_____
30. Adjustments for Other Expenses (see Rule 1910.16-6)	_____
31. TOTAL AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL	_____

(b) *Order For More Than Six Children.* When there are more than six children who are the subject of a single order, the child support obligation shall be calculated as follows. First, determine the appropriate amount of support for six children under the guidelines. Using the same income figures, subtract the support amount for five children from the amount for six children. Multiply the difference by the number of children in excess of six and add the resulting amount to the guideline amount for six children.

(c) *Substantial or Shared Physical Custody.*

(1) When the children spend 40% or more of their time during the year with the obligor, a rebuttable presumption arises that the obligor is entitled to a reduction in the

basic support obligation to reflect this time. Except as provided in subsections (2) and (3) below, the reduction shall be calculated pursuant to the formula set forth in Part II of subdivision (a) of this rule. For purposes of this provision, the time spent with the children shall be determined by the number of overnights they spend during the year with the obligor.

*Example.* Where the obligor and the obligee have monthly net incomes of \$5,000 and \$2,300 respectively, their combined child support obligation is \$1,663 for two children. Using the income shares formula in Part I, the obligor's share of this obligation is 68%, or \$1,131. If the children spend 40% of their time with the obligor, the formula in Part II applies to reduce his or her percentage share of the combined support obligation to 58%, or \$965. If the children spend 45% of their time with the obligor, his or her percentage share of the combined obligation is reduced to 53%, or \$881. If the children spend equal time with both parents, the obligor's percentage share is reduced to 48%, or \$798.

(2) Without regard to which parent initiated the support action, when the children spend equal time with both parents, the Part II formula cannot be applied unless the obligor is the parent with the higher income. In no event shall an order be entered requiring the parent with the lower income to pay basic child support to the parent with the higher income. However, nothing in this subdivision shall prevent the entry of an order requiring the parent with less income to contribute to additional expenses pursuant to Rule 1910.16-6. Pursuant to either party's initiating a support action, the trier of fact may enter an order against either party based upon the evidence presented without regard to which party initiated the action. If application of the formula in Part II results in the obligee receiving a larger share of the parties' combined income in cases in which the parties share custody equally, then the court shall adjust the support obligation so that the combined income is allocated equally between the two households. In those cases, no spousal support or alimony pendente lite shall be awarded.

*Example 1.* Mother and Father have monthly net incomes of \$3,000 and \$2,700 respectively. Mother has filed for support for the parties' two children with whom they share time equally. Pursuant to the Basic Child Support Schedule at Rule 1910.16-3, the support amount for two children at their parents' combined net income level is \$1,440 per month. Mother's share is 53% of that amount, or \$763. Father's share is 47%, or \$677. Application of subdivisions a. and b. of the Part II formula results in a 20% reduction in support when each parent spends 50% of the time with the children. Because the parties share custody equally, Mother cannot be the obligee for purposes of the Part II calculation because she has the higher income of the two parents. In these circumstances, although Mother initiated the support action, she would become the obligor even if Father has not filed for support. Father cannot be an obligor in the Part II calculations nor can the amount of support Mother is obligated to pay to Father be offset by calculating Father's adjusted amount of support under Part II because a support order cannot be

entered against the parent with the lesser income. Using Mother as the obligor, her adjusted percentage share of the basic support amount is 33% ( $53\% - 20\% = 33\%$ ). Her adjusted share of the basic support amount is \$475 (33% of \$1,440). However, instead of \$475 per month, Mother's support obligation would be adjusted to \$150 per month to allocate the parties' combined income equally between the two households. This is the presumptive amount of basic support payable to Father under these circumstances.

*Example 2.* Where the obligor and the obligee have monthly net incomes of \$3,000 and \$2,500 respectively, their combined child support obligation for two children is \$1,412. The obligor's share of this obligation is 55%, or \$777. If the children spend equal time with both parents, the formula in Part II results in a support obligation of \$494 payable to the obligee. Since this amount gives the obligee \$2,994 of the combined income, and leaves the obligor with only \$2,506 of the combined income, the obligor's support obligation must be adjusted to \$250 to equalize the combined income between the parties' households. This is the presumptive amount of basic support payable to the obligee under these circumstances.

(3) This subdivision shall not apply when the obligor's income falls within the shaded area of the schedule in Rule 1910.16-3 or when the obligee's income is 10% or less of the parties' combined income.

(d) *Divided or Split Physical Custody.*

(1) When calculating a child support obligation, and one or more of the children reside with each party, the court shall offset the parties' respective child support obligations and award the net difference to the obligee as child support. For example, if the parties have three children, one of whom resides with Father and two of whom reside with Mother, and their net monthly incomes are \$2,500 and \$1,250 respectively, Father's child support obligation is calculated as follows. Using the schedule in Rule 1910.16-3 for two children at the parties' combined net monthly income of \$3,750, the amount of basic child support to be apportioned between the parties is \$1,190. As Father's income is 67% of the parties' combined net monthly income, Father's support obligation for the two children living with Mother is \$797. Using the schedule in Rule 1910.16-3 for one child, Mother's support obligation for the child living with Father is \$273. Subtracting \$273 from \$797 produces a net basic support amount of \$524 payable to Mother as child support.

(2) When calculating a combined child support and spousal or alimony pendente lite obligation, and one or more children reside with each party, the court shall, except as set forth in subdivision (3) below, offset the obligor's spousal and child support obligation with the obligee's child support obligation and award the net difference to the obligee as spousal and child support.

(3) When one or more of the children resides with each party and the obligee's net income is 10% or less of the parties' combined net monthly income, then, in calculating

the spousal support or alimony pendente lite obligation, the court shall deduct from the obligor's income both the support owed for the child or children residing with the obligee, as well as the direct support the obligor provides to the child or children living with the obligor, calculated in accordance with the guidelines as if the child or children were not living with the obligor.

(e) *Support Obligations When Custodial Parent Owes Spousal Support.* Where 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. 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, recompute 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 two children. 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.

(f) *Allocation. Consequences.*

(1) An order awarding both spousal and child support may be unallocated or state the amount of support allocable to the spouse and the amount allocable to each child. However, the formula provided by these rules assumes that an order will be unallocated. Therefore, if the order is to be allocated, the formula set forth in this rule shall be utilized to determine the amount of support allocable to the spouse. If allocation of an order utilizing the formula would be inequitable, the court shall make an appropriate adjustment. Also, if an order is to be 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. No consideration of federal income tax consequences shall be applied if the order is unallocated or the order for the spousal support or alimony pendente lite only.

Official Note

The 2005 amendment supersedes *Diament v. Diament*, 816 A.2d 256 (Pa. Super. Ct. 2003), to the extent that it held that the tax savings from payments for the benefit of a spouse alone or from an unallocated order for the benefit of a spouse and child must be considered in determining the obligor's available net income for support purposes. Rule 1910.16-4(f)(1) states that the guidelines formula assumes that the order will be unallocated. The tax consequences of an order for a spouse alone or an unallocated order for the benefit of a spouse and child have already been built into the formula.

(2) When the parties are in higher income brackets, the income tax considerations are likely to be a more significant factor in determining an award of support. A support award for a spouse and children is taxable to the obligee while an award for the children only is not. Consequently, in certain situations an award only for the children will be more favorable to the obligee than an award to the spouse and children. In this situation, the trier of fact should utilize the guidelines which result in the greatest benefit to the obligee.

When the obligee's net income is equal to or greater than the obligor's net income, the guideline amount for spouse and children is identical to the guideline amount for children only. Therefore, in cases involving support for spouse and children, whenever the obligee's net income is equal to or greater than the obligor's net income, the guideline amount indicated shall be attributed to child support only.

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

(4) In the event that the obligor defaults on an unallocated order, the court shall allocate the order for collection of child support pursuant to the Internal Revenue Service income tax refund intercept program or for registration and enforcement of the order in another jurisdiction under the Uniform Interstate Family Support Act, 23 Pa.C.S.A. § 7101 et seq. The court shall provide notice of allocation to the parties.

#### Official Note

This provision is necessary to comply with various state and federal laws relating to the enforcement of child support. It is not intended to affect the tax consequences of an unallocated order.

#### **Explanatory Comment—2005**

Rule 1910.16-4(a) sets forth the income shares formula used to establish the support obligation. Subdivision (b) provides the method for calculating support for seven or more children as the basic support schedule in Rule 1910.16-3 sets forth the presumptive amount of support for only up to six children.

Subdivision (c) sets forth the method for calculating the presumptive amount of support in cases where the children spend 40% or more of their time during the year with the obligor. When there is equal time sharing, subsection (2) reduces the support obligation further so that the obligor does not pay more than is necessary to equalize the parties' combined income between the two households. Subsection (3) expressly excludes SSR cases from application of this rule. Since the SSR already reduces support to a minimal level, no further reduction should be given for the amount of time spent with the children.

Subdivision (d) relates to the calculation of support in divided or split custody cases. It retains the existing method for offsetting the parties' respective support obligations when one or more of the children resides with each party.

Subdivision (e) governs spousal support obligations when the custodial parent owes spousal support. It has not been amended, other than to update the example to be consistent with the new schedule at Rule 1910.16-3.

In subdivision (f), the guidelines continue to presume that the order will be unallocated for tax purposes. However, new language has been added to subsection (f)(1), and a new Note has been inserted, to clarify that an obligor's tax savings from payment of a spousal support order or an unallocated order for a spouse and child should not be considered in calculating the obligor's available net income for support purposes. Subsection (3) is intended to insure alimony tax treatment of unallocated orders pursuant to § 71 of the Internal Revenue Code. Rule 1910.19(d) provides that all spousal support and alimony pendente lite orders terminate upon the death of the payee. Termination of a charging order does not affect arrears existing at that time. Subsection (4) provides for administrative allocation of the order in two instances: 1) when the obligor defaults on the order and it becomes necessary to collect support by intercepting any income tax refunds that may be due and payable to obligor; and 2) when the obligor defaults and the order must be registered in another state under the Uniform Interstate Family Support Act (UIFSA). As the Note indicates, this administrative allocation is not intended to affect the tax consequences of the unallocated order.

### **Explanatory Comment—2010**

The basic support schedule incorporates an assumption that the children spend 30% of the time with the obligor and that the obligor makes direct expenditures on their behalf during that time. Variable expenditures, such as food and entertainment, that fluctuate based upon parenting time, were adjusted in the schedule to build in the assumption of 30% parenting time. Upward deviation should be considered in cases in which the obligor has little or no contact with the children. However, upward deviation may not be appropriate where an obligor has infrequent overnight contact with the child, but provides meals and entertainment during daytime contact. Fluctuating expenditures should be considered rather than the extent of overnight time. Downward deviation may be appropriate when the obligor incurs substantial fluctuating expenditures during parenting time, but has infrequent overnights with the children.

The calculation in Rule 1910.16-4(c) reduces an obligor's support obligation further if the obligor spends significantly more time with the children. The obligor will receive an additional 10% reduction in the amount of support owed at 40% parenting time, increasing incrementally to a 20% reduction at 50% parenting time. This method still may result in a support obligation even if custody of the children is equally shared. In those cases, the rule provides for a maximum obligation which may reduce the obligation so that the obligee does not receive a larger portion of the parties' combined income than the obligor.

### **Source**

The provisions of this Rule 1910.16-4 adopted September 6, 1989, effective September 30, 1989, 19 Pa.B. 4151; amended January 27, 1993, effective immediately, 23 Pa.B. 701; amended December 7, 1998, effective April 1, 1999, 28 Pa.B. 6162; corrected February 5, 1999, effective April 1, 1999, 29 Pa.B. 645; amended March 2, 2000, effective immediately, 30 Pa.B. 1646; amended October 27, 2000, effective immediately, 30 Pa.B. 5837; amended June 5, 2001, effective immediately, 31 Pa.B. 3306; amended October 30, 2001, effective immediately, 31 Pa.B. 6273; amended September 24, 2002, effective immediately, 32 Pa.B. 5044; amended November 9, 2004, effective immediately, 34 Pa.B. 6315; amended May 17, 2005, effective immediately, 35 Pa.B. 3216 and 3900; amended September 27, 2005, effective 4 months from the date of this order, 35 Pa.B. 5643; amended January 12, 2010, effective May 12, 2010, 40 Pa.B. 586; amended July 8, 2010, effective September 6, 2010, 40 Pa.B. 4140. Immediately preceding text appears at serial pages (347877) to (347885).

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