

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1526

Amending Civil Rule 90.3 concerning
child support.

1. IT IS ORDERED THAT Civil Rule 90.3 is amended to provide:

Rule 90.3. Child Support Awards.

(a) **Guidelines -- Primary Physical Custody.** A child support award in a case in which one parent is awarded primary physical custody as defined by paragraph (f) will be calculated as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage specified in subparagraph (a)(2).

(1) Adjusted annual income as used in this rule means the parent's total income from all sources minus:

(A) mandatory deductions such as:

(i) federal, state, and local income tax,

(ii) Social Security tax or the equivalent contribution to an alternate plan established by a public employer, and self-employment tax,

(iii) Medicare medicare tax,

(iv) mandatory retirement contributions, mandatory union dues, and

(v) mandatory contributions to a retirement or pension plan;

(B) voluntary tax-deferred contributions to a qualified retirement or pension plan or account in which the earnings are tax-free or tax-deferred, except that the total amount of these voluntary contributions plus any mandatory contributions under item (a)(1)(A)(v) above may not exceed

~~up to 7.5% of the parent's gross wages and self-employment income, if the parent is not a participant in a mandatory retirement plan;~~

(BC) child support and alimony payments arising from prior relationships which are required by other court or administrative proceedings and actually paid;

(CD) child support for children from prior relationships living with the parent, calculated by using the formula provided by this rule; and

(DE) ~~work~~-work-related child care expenses for the children who are the subject of the child support order.

(2) The percentage by which the non-custodial parent's adjusted income must be multiplied in order to calculate the child support award is:

- (A) 20% (.20) for one child;
- (B) 27% (.27) for two children;
- (C) 33% (.33) for three children; and
- (D) an extra 3% (.03) for each additional child.

(3) The court may allow the obligor parent to reduce child support payments by up to 75% for any period in which the obligor parent has extended visitation of over 27 consecutive days. The order must specify the amount of the reduction which is allowable if the extended visitation is exercised.

(4) Potential Income. The court may calculate child support based on a determination of the potential income of a parent who voluntarily and unreasonably is unemployed or underemployed. A determination of potential income may not be made for a parent who is physically or mentally incapacitated, or who is caring for a child under two years of age to whom the parents owe a joint legal responsibility. Potential income will be based upon the parent's work history,

qualifications, and job opportunities. The court also may impute potential income for non-income or low income producing assets.

(b) **Shared, Divided, and Hybrid Physical Custody.**

(1) Shared Physical Custody. A child support award in a case in which the parents are awarded shared physical custody as defined by paragraph (f) will be calculated by:

~~(A)(1)~~ Calculating the annual amount each parent would pay to the other parent under paragraph (a) assuming the other parent had primary custody. ~~This determination will be made without regard to adjustments under subparagraphs (c)(1)(B) or (c)(2), except that the minimum annual support amount for each parent is \$600.~~ In this calculation the income limit in subparagraph (c)(2) and the minimum support amount in subparagraph (c)(3) apply.

~~(B)(2)~~ Multiplying this amount for each parent by the percentage of time the other parent will have physical custody of the children. However, if the court finds that the percentage of time each parent will have physical custody will not accurately reflect the ratio of funds each parent will directly spend on supporting the children, the court shall vary this percentage to reflect its findings.

~~(C)(3)~~ The parent with the larger figure calculated in the preceding subparagraph is the obligor parent and the annual award is equal to the difference between the two figures multiplied by 1.5. However, if this figure is higher than the amount of support which would be calculated under paragraph (a) assuming primary custody, ~~taking into account any appropriate adjustment under paragraph (c)(1)(B) or~~

~~(c)(2)~~, the annual support is the amount calculated under paragraph (a) ~~with appropriate adjustments under paragraphs (c)(1)(B) and (c)(2)~~.

~~(D)(4)~~ The child support award is to be paid in 12 equal monthly installments except as follows:

(i) unless if shared custody is based on the obligor parent having physical custody for periods of 30 consecutive days or more. ~~In that case, the total annual award may will~~ be paid in equal installments over those months in which the obligor parent does not have physical custody; or

(ii) if the obligor parent's income is seasonal, the court may order unequal monthly support payments as provided in subparagraph (c)(5).

~~(E)(5)~~ The child support order must state ~~shall provide~~ that failure to exercise sufficient physical custody to qualify for shared physical custody under this rule is grounds for modification of the child support order. Denial of visitation by the custodial parent is not cause to increase child support.

~~(2)(6)~~ Divided Physical Custody. A child support award in a case in which the parents have divided custody is calculated, first, by determining what each parent would owe the other for children in that parent's primary physical custody under ~~paragraph 90.3~~ (a), taking into account the income limit in subparagraph (c)(2) and the minimum support amount in subparagraph (c)(3), and offsetting those amounts. Second, because divided custody is an "unusual circumstance," the court ~~must will~~ consider whether this support amount should be varied under ~~subparagraph (c)(1) 90.3(c)(1)(A)~~.

(3) Hybrid Physical Custody. A child support award in a case in which the parents have hybrid custody is calculated by applying paragraph (a), taking into account the

income limit in subparagraph (c)(2) and the minimum support amount in subparagraph (c)(3), to determine support for children in the primary physical custody of each parent and applying subparagraph (b)(1) to determine support for children in the shared physical custody of the parents. In these calculations, the subparagraph (a)(2) percentages must be adjusted pro rata based on the number of children in each type of custody. These results are then combined to determine the net obligation. Finally, because hybrid custody is an “unusual circumstance,” the court must consider whether this support amount should be varied under subparagraph (c)(1).

(c) **Exceptions.**

(1) The court may vary the child support award as calculated under the other provisions of this rule for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied. The court must specify in writing the reason for the variation, the amount of support which would have been required but for the variation, and the estimated value of any property conveyed instead of support calculated under the other provisions of this rule. Good cause may include a finding:

~~——(A)——~~ that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children. The court shall consider the custodial parent's income in this determination;
or,

~~(B) that the parent with the child support obligation has a gross income which is below the poverty level as set~~

~~forth in the Federal Register. However, a parent who would be required to pay child support pursuant to paragraph (a) or (b) must be ordered to pay a minimum child support amount of no less than \$50.00 per month except as provided in paragraphs (a)(3) and (b).~~

(2) ~~Paragraphs (a) and (b) do~~ Paragraph (a) does not apply to the extent that the parent has an adjusted annual income of over ~~\$84,000~~ \$100,000. In such a case, the court may make an additional award only if it is just and proper, taking into account the needs of the children, the standard of living of the children and the extent to which that standard should reflect ~~be reflective of~~ the supporting parent's ability to pay.

(3) The minimum child support amount that may be ordered is \$50 per month (\$600 per year) except as provided in subparagraph (a)(3) and paragraph (b).

~~(4)(3)~~ In addition to ordering a parent to pay child support as calculated under this rule, the court may, in appropriate circumstances, order one or more grandparents of a child to pay child support to an appropriate person in an amount determined by the court to serve the best interests of the child. However, the amount may not exceed the smaller of (A) a proportionate share of the amount required to provide care in a supervised setting to the grandchild, as determined by the court, or (B) the amount that would have been awarded if the child's parents had the incomes of the child's grandparents and paragraphs (a) and (b) were applied. An order under this paragraph may be issued only with respect to a child whose parents are both minors, and the order terminates when either parent becomes 18 years of age. The court must specify in writing the reasons why it considers it to be appropriate to order a grandparent to pay child support

under this paragraph and the factors considered in setting the amount of the child support award. In this paragraph, "grandparent" means the natural or adoptive parent of the minor parent.

(5) If the non-custodial parent's income is seasonal, the court may order that the annual support amount be paid in unequal monthly payments, with higher payments during the months the parent expects to receive higher income and lower payments in other months. The court should not make such an order unless (a) it finds that the burden of budgeting for periods of unequal income should be placed on the obligee rather than the obligor and (b) the obligee agrees. The court's order must specify the annual support amount, the average monthly support amount, and the amount due month by month. The order must provide that variations from the average monthly amount begin with monthly payments in excess of the average monthly amount such that a deficit situation cannot occur. Until the excess payments begin, the average monthly amount must be ordered.

(d) **Health Care Coverage.**

(1) *Health Insurance.* The court shall address coverage of the children's health care needs and require health insurance for the children if insurance is available to either parent at a reasonable cost. The court shall consider whether the children are eligible for services through the Indian Health Service (or any other entity) or other insurance coverage before ordering the obligor to provide health care coverage through insurance or other means. The court shall allocate equally the cost of this insurance between the parties unless the court orders otherwise for good cause. An

obligor's child support obligation will be decreased by the amount of the obligee's portion of health insurance payments ordered by the court and actually paid by the obligor. A child support award will be increased by the obligor's portion of health insurance if the obligee is ordered to, and actually does obtain and pay for insurance. The cost of insurance is the cost attributable to the children for whom support is paid. If the cost to the employee of covering the employee alone is the same as the cost to the employee of covering the employee and dependents, then there is no additional cost to the employee for adding the children and no portion of the cost of coverage may be allocated to the children. If dependent coverage can be added for a single cost, rather than per dependent, and the dependent coverage covers dependents in addition to the children subject to the order, the cost of the dependent coverage will be allocated equally among the dependents covered. If there is reason to believe that there is an incremental cost to the employee for insuring dependents but evidence of that incremental cost is unavailable, the cost of insurance is determined by dividing the total cost of coverage by the number of family members covered and multiplying that amount by the number of children subject to the order.

(2) *Uncovered Health Care Expenses.* The court shall allocate equally between the parties the cost of reasonable health care expenses not covered by insurance unless the court orders otherwise for good cause. A party shall reimburse the other party for his or her share of the uncovered expenses within 30 days of receipt of the bill for the health care, payment verification, and, if applicable, a health insurance statement indicating what portion of the cost is uncovered. Reasonable, uncovered expenses exceeding

\$5,000 in a calendar year will be allocated based on the parties' relative financial circumstances when the expenses occur.

(e) **Child Support Affidavit and Documentation.**

(1) Each parent in a court proceeding at which child support is involved must file a statement under oath which states the parent's adjusted annual income and the components of this income as provided in subparagraph (a)(1). This statement must be filed with a party's initial pleading (such as the dissolution petition, divorce complaint or answer, etc.), motion to modify, and any response to a motion to modify. The statement must be accompanied by documentation verifying the income. The statement must state whether the parent has access to health insurance for the children and, if so, the additional cost to the parent of the children's health insurance. For any infraction of these rules, the court may withhold or assess costs or attorney's fees as the circumstances of the case and discouragement of like conduct in the future may require; and such costs and attorney's fees may be imposed upon offending attorneys or parties.

(2) While there is an ongoing monthly support obligation, either party must provide to the other party, within 30 days of a written request, documents such as tax returns and pay stubs showing the party's income for the prior calendar year. The party making the request must provide documentation of his or her annual income for the same period at the time the request is made. A request under this section may not be made more than once per year. This section does not preclude discovery under other civil rules.

(f) **Definitions.**

(1) *Shared Physical Custody.* A parent has shared physical custody (or shared custody) of children for purposes of this rule if the children reside with that parent for a period specified in writing in the custody order of at least 30, but no more than 70, percent of the year, regardless of the status of legal custody.

(2) *Primary Physical Custody.* A parent has primary physical custody (or primary custody) of children for purposes of this rule if the children reside with the other parent for a period specified in the custody order of less than 30 percent of the year.

(3) *Divided Custody.* Parents have divided custody under this rule if one parent has primary physical custody of one or more children of the relationship and the other parent has primary custody of one or more other children of the relationship, and the parents do not share physical custody of any of their children.

(4) *Hybrid Custody.* Parents have hybrid custody under this rule if at least one parent has primary physical custody of one or more children of the relationship, and the parents have shared physical custody of at least one child of the relationship.

~~(5)~~(4) *Health Care Expenses.* Health care expenses include medical, dental, vision, and mental health counseling expenses.

(g) **Travel Expenses.** After determining an award of child support under this rule, the court shall allocate reasonable travel expenses which are necessary to exercise visitation between the parties as may be just and proper for them to contribute.

(h) **Modification.**

(1) *Material Change of Circumstances.* A final child support award may be modified upon a showing of a material change of circumstances as provided by state law. A material change of circumstances will be presumed if support as calculated under this rule is more than 15 percent greater or less than the outstanding support order. For purposes of this paragraph, support includes health insurance payments made pursuant to (d)(1) of this rule.

(2) *No Retroactive Modification.* Child support arrearage may not be modified retroactively, except as allowed by AS 25.27.166(d). A modification which is effective on or after the date that a motion for modification, or a notice of petition for modification by the Child Support ~~Services~~Enforcement Division, is served on the opposing party is not considered a retroactive modification.

(3) *Preclusion.* The court may find that a parent and a parent's assignee are precluded from collecting arrearages for support of a child ~~children~~ that accumulated during a time period exceeding nine months for which the parent agreed or acquiesced to the obligor exercising primary custody of the child ~~children~~. A finding that preclusion is a defense must be based on clear and convincing evidence.

(i) **Third Party Custody.**

(1) When the state, or another third party entitled to child support, has custody of all children of a parent, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent multiplied by the percentage specified in subparagraph (a)(2). If the third

party has custody of some but not all children, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent, multiplied by the percentage specified in subparagraph (a)(2) for the total number of the parent's children, multiplied by the number of the parent's children in third party custody, divided by the total number of the parent's children. For purposes of this paragraph, the number of the parent's children only includes children of the parent who live with the parent, are substantially supported by the parent or who are in custody of the third party entitled to support.

(2) If, in addition to a support obligation to a third party, one or both parents retain primary or shared physical custody of at least one of their children, the support obligation between the parents is calculated pursuant to the other paragraphs of this rule, without consideration of the third party custodian or any children in the custody of the third party custodian, except that the percentage in 90.3(a)(2) must be adjusted pro rata for the number of children in the primary custody of a parent, or shared custody of the parents, compared to the total number of children. After that calculation is completed, any support owed may be offset with support owed to a third party custodian under the preceding subparagraph in order to minimize transactions.

(j) **Support Order Forms.** All orders for payment or modification of child support shall be entered on a form developed by the administrative director. A party may lodge a duplicate of the court form produced by a laser printer or similar device. A device may also print, in a contrasting typestyle equivalent to that produced by a typewriter, text that otherwise would have been entered by a typewriter or word

processor. A party or attorney who lodges a duplicate certifies by lodging the duplicate that it is identical to the current version of the court form.

(k) **Dependent Tax Deduction.** The court may allocate the dependent tax deduction for each child between the parties as is just and proper and in the child's best interests. The allocation must be consistent with AS 25.24.152 and federal law.

NOTE: This rule is adopted under the supreme court's interpretive authority pursuant to Article IV, Section I of the Alaska Constitution. Thus, it may be superseded by legislation even if the legislation does not meet the procedural requirements for changing rules promulgated under Article IV, Section 15.

2. The attached commentary to Civil Rule 90.3 which was prepared by the Child Support Guidelines Committee will be published in the Rules of Court immediately following Civil Rule 90.3. The commentary has not been adopted or approved by the Supreme Court, but is published for informational purposes and to assist users of Rule 90.3.

DATED: February 1, 2005

EFFECTIVE DATE: April 15, 2005

/s/

Chief Justice Bryner

/s/

Justice Matthews

/s/

Justice Eastaugh

/s/

Justice Fabe

/s/

Justice Carpeneti