

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1919

Amending Civil Rule 90.3(a)(1)
and (c)(2) concerning child
support.

IT IS ORDERED:

1. Civil Rule 90.3 is amended to read as follows:

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:

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(C) child or spousal support from different relationships
for

(i) prior children that is required by other court or
administrative proceedings; and

(ii) former spouses that is required by other court or
administrative proceedings and actually paid;

(D) in-kind support for prior children in the primary or
shared physical custody of the parent that is:

(i) for primary custody, the amount calculated under subparagraph (a)(2); or

(ii) for shared custody, the amount calculated under subparagraph (a)(2), multiplied by the percentage of time that parent has physical custody of the prior children; however, the total amount deducted under this sub-item and any deduction for the same children under item (a)(1)(C) may not exceed the amount calculated under subparagraph (a)(2);

(E) work-related child care expenses for the children who are the subject of the child support order; and

(F) health insurance premiums paid for health insurance coverage, including dental and vision coverage, by the parent and for the parent only, except that the total amount of these premiums may not exceed 10% of the parent's gross wages and self-employment income.

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(c) **Exceptions.**

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(2) Paragraph (a) does not apply to the extent that the parent has an adjusted annual income of over \$126,000. 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 the supporting parent's ability to pay.

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2. The attached commentary to Civil Rule 90.3, which was prepared by the Child Support Guidelines Review 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 it is published for informational purposes and to assist users of Rule 90.3.

DATED: December 15, 2017

EFFECTIVE DATE: April 16, 2018

/s/
Chief Justice Stowers

/s/
Justice Winfree

/s/
Justice Maassen

/s/
Justice Bolger

/s/
Justice Carney

CIVIL RULE 90.3

COMMENTARY

III. DEFINING INCOME

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D. Deductions. A very limited number of expenses may be deducted from income. Mandatory deductions such as taxes and mandatory union dues are allowable. The parent claiming a deduction must provide evidence to support it.

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2. Child support arising out of different relationships is deductible if two conditions are met. First, it must be required by a court or administrative order. (Support paid voluntarily without a court or administrative order may be considered under Rule 90.3(c).) Second, it must relate to prior children. The date of birth or adoption of a child determines whether a child is a prior child. *See Coleman v. McCullough*, 290 P.3d 413 (Alaska 2012). A child support order for children of a later marriage or relationship should take into account an order to pay support for children of a prior marriage or relationship, but not vice-versa. (See Commentary VI.B.2 regarding “subsequent” children.)

Spousal support paid to another person arising out of a different relationship is deductible if three conditions are met. First, the spousal support must actually be paid. Second, it must be required by a court or administrative order. Third, it must relate to a prior relationship.

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4. A deduction is allowed for the out-of-pocket cost of health insurance premiums, including dental and vision coverage, paid by the parent and for the parent’s own coverage to a maximum of 10% of the parent’s gross wages and self-employment income. The deduction may not include the cost to cover other members of the household, such as the parent’s spouse or children. If the insurance for the parent also covers other members of the parent’s household, and evidence is unavailable as to the specific cost of insuring only the parent subject to this order, the deductible cost for the parent may be determined by allocating the total cost of coverage pro rata among all covered family members.

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IV. PRIMARY CUSTODY

A. Generally. "Primary custody" as this term is used in Rule 90.3 covers the usual custodial situation in which one parent will have physical custody of the child—in other words, the child will be living with that parent—for over seventy percent of the year. The shared custody calculation in paragraph (b)(1) applies only if the other parent will have physical custody of the child at least thirty percent of the year (110 overnights per year). The visitation schedule must be specified in the decree or in the agreement of the parties which has been ratified by the court. See *also* Commentary V.A.

The calculation of child support for the primary custodial case under 90.3(a) simply involves multiplying the obligor's adjusted income times the relevant percentage given in subparagraph (a)(2). (Normally, the portion of an adjusted annual income over \$126,000 per year will not be counted. See Commentary VI.D.) As discussed above, the rule assumes that the custodial parent also will support the children with at least the same percentage of his or her income.

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V. SHARED, DIVIDED, AND HYBRID PHYSICAL CUSTODY

A. Shared Custody—Generally.

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B. Calculation of Shared Custody Support. The calculation of support in shared custody cases is based on two premises. First, the fact that the obligor is spending a substantial amount of the time with the children probably means the obligor also is paying directly for a substantial amount of the expenses of the children. Thus, the first step in calculating shared custody support is to calculate reciprocal support amounts for the time each parent will have custody based on the income of the other parent. The "high income" limit of paragraph (c)(2) (\$126,000) applies to the determination of adjusted income at the first stage of this process. A parent's annual support amount for purposes of this calculation will be no less than \$600. The support amounts then are offset.

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VI. EXCEPTIONS

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D. High Income of a Parent. Rule 90.3 provides that the percentages for child support will not be applied to a parent's adjusted annual income of over \$126,000. An additional award may be made only if the other parent is able to present evidence which justifies departure from this general rule. The standard of proof for a departure is preponderance of the evidence, unlike the higher standard of clear and convincing evidence required for a showing of manifest injustice under exception (c)(1). The factors which the court should consider when making an additional award in high income cases are specified in the rule.

E. Retroactive Establishment.

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2. *Retroactive Application of Amendments.* When establishing support for a period of time before a complaint or petition was served, the court should apply the most current version of the rule, except for portions of the rule that state dollar amounts. This is because Civil Rule 90.3, unlike most other court rules, is interpretive. The most current version of the rule is presumably the most refined interpretation to date of the statute calling for fair and equitable child support awards. For example, the credit for prior children living with the obligor was not found in early versions of the rule, but nonetheless should be applied when support is being established. However, the dollar amounts in the rule, such as the minimum support amount (increased from \$40 to \$50) and the income cap (increased from \$60,000 to \$126,000), have been revised over time to reflect inflation or for other reasons. With regard to these amounts, the court should apply the version of the rule that was in effect in the month for which support is being calculated.

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