

## 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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