

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 2004

Amending Civil Rule 90.3(a), (c),
(e), and (h) concerning child
support; and amending the Note to
Civil Rule 90.3 concerning
paragraph (h)(1).

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

(A) mandatory deductions such as:

* * * *

(B) voluntary contributions to a 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 7.5% of the parent's total gross wages and self-employment income;

* * * *

(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 ~~total gross wages and self-employment income~~.

(G) life insurance premiums paid for life insurance policies for which the children of the parties or the individual to whom the support is owed is the beneficiary, whether or not the life insurance is court-ordered, except the total allowable deductible amount of these premiums may not exceed \$1,200 annually. If the policy lists beneficiaries in addition to the children covered by the child support order or the individual to whom the support is owed, the allowable deduction is determined by allocating the total cost of the premiums pro rata among all beneficiaries.

(2) Percentage. 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) Extended Visitation Credit. 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) A parent may be voluntarily and unreasonably unemployed or underemployed when the parent's current situation and earnings reflect the parent's decision to not work or to earn less than the parent is capable of earning.

(B) The court shall consider the totality of circumstances to determine whether it is appropriate to impute potential income to a parent, including the following factors:

- (i) whether the parent's reduced income is temporary;
- (ii) whether the parent's income is a result of economic factors or purely personal choices; and
- (iii) the extent to which the children will ultimately benefit from the parent's decision to not work or to earn less than the parent is capable of earning.

(C) If the court determines it is appropriate to impute potential income to a parent, the court shall consider the following factors to determine what amount of income should be imputed:

- (i) the parent's assets;
- (ii) the parent's standard of living, including residence;
- (iii) the parent's literacy, employment and earning history, job skills, and educational attainment;
- (iv) the parent's age and health;
- (v) whether the parent has a criminal record or other employment barriers;

(vi) the parent's record of seeking work, the local job market, and the availability of employers willing to hire the parent;

(vii) prevailing earnings levels in the local community;
and

(viii) any other relevant factor.

(D) The court also may impute potential income for non-income or low income producing assets.

(E) 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.

(5) *Low-Income Adjustment.* For a parent who has a total annual income of \$30,000 or less, the parent's adjusted annual income from all sources is the lesser of the following amounts:

(A) the amount calculated under items (a)(1)(A) – (G) above; or

(B) the parent's total income from all sources minus \$7,500.

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

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(c) Exceptions.

(1) * * * *

(2) Paragraph (a) does not apply to the extent that the parent has an adjusted annual income of over ~~\$138,000~~\$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.

(3) * * * *

(4) * * * *

(5) * * * *

(d) **Health Care Coverage.**

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

(1) Subject to the confidentiality requirements of Civil Rule 90.1(f), 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 parent's ~~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 and deductions. The documents must be redacted to delete social security numbers and to provide only partial financial account information as provided in Civil Rule 90.1(f). 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 parents~~parties~~.

(2) While there is an ongoing monthly support obligation, either parent~~party~~ must provide to the other parent~~party~~, within 30 days of a written request, documentation of annual income and claimed deductions, documents such as tax returns and the last three pay stubs, showing the party's income for the prior calendar year, as well as the parent's most recent three pay stubs from any current employment, and documentation of any other current income sources not listed on the parent's prior year's tax return. The parent~~party~~ making the request must provide documentation of his or her annual income and claimed deductions for the same period, and current income documentation, 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.

(3) * * * *

(f) **Definitions.**

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(g) **Travel Expenses.** * * * *

(h) **Modification.**

(1) * * * *

(2) * * * *

(3) *Preclusion.* The court may find that a parent and a parent's assignee are precluded from collecting arrearages for support of a child that accumulated during a time period exceeding six~~nine~~ consecutive months for which the parent agreed or acquiesced to

the obligor exercising primary custody of the child. A finding that preclusion is a defense must be based on clear and convincing evidence.

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2. The Note at the end of Civil Rule 90.3 is amended as follows:

Note to Civil Rule 90.3(h)(1): Section 44 of ch. 87 SLA 1997 amended AS 25.24.170(b) to allow support to be modified in some instances without a showing of a material change in circumstances as necessary to comply with federal law. ~~Federal law eliminates the need for a showing only in cases being enforced by CSED that are being reviewed under CSED's periodic review and modification program.~~ According to § 152 of ch. 87 SLA 1997, the amendment to AS 25.24.170(b) has the effect of amending Civil Rule 90.3 by changing the standard for certain modifications of a support order as necessary to comply with federal law. Federal law, however, allows states to apply a reasonable quantitative standard to determine if a child support order should be modified. For further explanation, see Commentary X.A.

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3. 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: May 10, 2023

EFFECTIVE DATE: October 16, 2023

/s/
Chief Justice Maassen

/s/
Justice Carney

/s/
Justice Borghesan

/s/
Justice Henderson

/s/
Justice Pate