CIVIL RULE 90.3

COMMENTARY

I. INTRODUCTION

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B. **Purpose.** The primary purpose of Rule 90.3 is to ensure that child support orders are adequate to meet the needs of children, subject to the ability of parents to pay.

The second purpose of 90.3 is to promote consistent child support awards among families with similar circumstances. Third, the rule is intended to simplify and make more predictable the process of determining child support, both for the courts and the parties. Predictable and consistent child support awards will encourage the parties to settle disputes amicably and, if resolution by the court is required, will make this process simpler and less expensive.

The final purpose of 90.3 is to ensure that Alaska courts comply with state and federal law. AS 25.24.160(a)(1) requires that child support be set in an amount which is "just and proper...." The Child Support Enforcement Amendments of 1984 (P.L. 98 378) and its implementing regulations (45 CFR 302.56) require states to adopt statewide guidelines for establishing child support. The Family Support Act of 1988 (P.L. 100 485) requires that the guidelines presumptively apply to all child support awards and that the guidelines be reviewed every four years.

The Nature of Child Support. Every parent has a duty to support his or her child. Child support is the contribution to a child's maintenance required of both parents. The amount of support a child is entitled to receive from a particular parent is determined by that parent's ability to provide for the child. Typically, the obligation to pay child support begins on the child's date of birth if the parents are not living together, or on the date the parents stop living together if separation is after the birth of the child.

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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.

1. Mandatory retirement contributions are a deduction. Voluntary contributions, up to the limit stated in the rule, are also a deduction if the earnings on the retirement account or plan are tax-free or tax-deferred. If a parent is not a participant in a mandatory plan, the limit on voluntary contributions is 7.5 % of gross wages and self-employment income. If a parent is a participant in a mandatory plan, the limit on voluntary contributions is 7.5 % of gross wages and self-employment income minus the amount of the mandatory contribution. Some examples of plans and accounts that qualify for the voluntary contribution are: those qualified under the Internal Revenue Code, 26 USC §§ 401, 403, 408 or 457 (such as a traditional IRA, Roth IRA, SEP-IRA, SIMPLE IRA, Keogh Plan, 401(k) Plan, etc.); Thrift Savings Plans under 5 USC § 8440, 37 USC § 211, etc.; and any other pension plan as defined by § 3 (2) of ERISA (P.L. 93-406; 29 USC § 1002(2)).

2. Child support and spousal support payments paid to another person arising out of different cases are deductible if three conditions are met. First, the child support or spousal support must actually be paid. Second, it must be required by a court or administrative order. (Support which is paid voluntarily without a court or administrative order may be considered under Rule 90.3(c).) Third, it must relate to a prior relationship or 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.) The amount deducted for support of prior children that is ordered and paid may not exceed the support amount calculated under Rule 90.3(a)(2), using the parent's current income, as if the prior children were the only children.

3. A deduction also is allowed for in-kind support of prior children of a different relationship in the primary or shared physical custody of the parent. If the parent has primary physical custody of the prior children, the in-kind deduction is the amount calculated under Rule 90.3(a)(2),

using the parent's current income, as if the prior children were the only children. If the parent has shared physical custody of the prior children, the in-kind deduction is calculated as follows: first, calculate the parent's support under Rule 90.3(a)(2), using the parent's current income, as if the prior children were the only children; second, multiply this number by the percentage of time the parent has physical custody of the prior children. A parent who pays support for prior children may also take a deduction under Rule 90.3(a)(1)(C) for support ordered and paid. Rule 90.3 was amended to allow deductions for both in-kind and paid support for shared custody of prior children. (*Gorton v. Mann*, 281 P.3d 81 (Alaska 2012) interpreted the previous version of the rule.) When adding the in-kind deduction to a deduction based on court or administrative-ordered support, the total deduction cannot exceed the amount calculated under subparagraph (a)(2). The deduction for in-kind support of prior children is not reduced by child support received from the other parent. *Faulkner v. Goldfuss*, 46 P.3d 993, 998 (Alaska 2002).

4. Also, reasonable child care expenses that are necessary to enable a parent to work, or to be enrolled in an educational program which will improve employment opportunities, are deductible. However, the expense must be for the children who are the subject of the support order.

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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 Rule 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 $120,000 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

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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) ($120,000) 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.

This calculation assumes that the parents are sharing expenses in roughly the same proportion as they are sharing custody. If this assumption is not true, the court should make an appropriate adjustment in the calculation.

The second premise is that the total funds necessary to support children will be substantially greater when custody is shared. For example, each parent will have to provide housing for the children. Thus, the amount calculated in the first step is increased by 50% to reflect these increased shared custody costs. However, the obligor's support obligation never will exceed the amount which would be calculated for primary custody under 90.3(a). The amount which would be calculated under 90.3(a) should include any appropriate visitation credit as provided by (a)(3).

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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 $120,000. 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 $120,000), 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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