

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1008

Amending Civil Rule 90.3
concerning child support
guidelines.

IT IS ORDERED:

1. Civil Rule 90.3 is amended to provide:

(a) Guidelines - Sole or Primary Physical Custody. A child support award in a case in which one parent is awarded sole or 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 federal income tax, social security tax, mandatory retirement deductions and mandatory union dues;

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

(C) 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 up to 50% for any period in which that 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.

(b) **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:

(1) Calculating the annual amount each parent would pay to the other parent under paragraph (a) assuming the other parent had primary custody.

(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.

(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 sole or primary custody, the annual support is the amount calculated under paragraph (a).

(4) The child support award is to be paid in 12 equal monthly installments unless 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 will be paid in equal installments over those months in which the obligor parent does not have physical custody. The order must provide that if this physical custody is not exercised, the obligor parent must pay additional child support in an amount equal to what must be paid in months in which the obligor parent is not entitled to physical custody.

(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, such as especially large family size, significant income of a child, health or other extraordinary expenses, or unusually low expenses, 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) a finding 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 not apply to the extent that the parent has an adjusted annual income of over \$60,000. 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 be reflective of the supporting parent's ability to pay.

(d) Health Insurance - Credits. The court shall address coverage of the children's health care needs and require health insurance if insurance is available to either parent at a reasonable cost. In calculating a child support award, credit will be given for medical and dental insurance, or educational payments for the children which are required by the court or administrative order and actually paid.

(e) Child Support Affidavit and Documentation. Each parent in a court proceeding at which child support is involved must file a pleading 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 accompanied by documentation verifying the income.

(f) Definitions. A parent has shared physical custody of children for purposes of this rule if the children reside with that parent for a period specified in writing of at least 30 percent of the year, regardless of the

status of legal custody. A parent has sole or primary physical custody of children for purposes of this rule when the other parent has physical custody of the children less than 30 percent of the year.

(g) **Travel Expenses.** After determining an award of child support under this rule, the court may 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) A final child support award may be modified if allowed by federal law or 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.

(2) Child support arrearages may not be modified retroactively. A modification which is effective on or after the date that a motion for modification is served on the opposing party is not considered a retroactive modification.

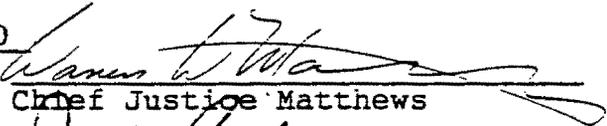
NOTE: This rule is adopted under the supreme court's interpretive authority pursuant to Article IV,

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.

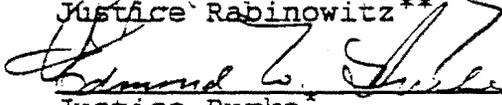
2. The attached commentary to Civil Rule 90.3 which was prepared by the Child Support Guidelines Committee will be published in the Rules of Court immediately following Civil Rule 90.3. The commentary has not been adopted or approved by the Supreme Court, but is published for informational purposes and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

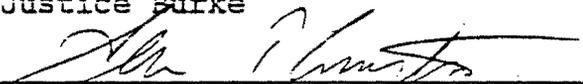
DATED: October 5, 1989

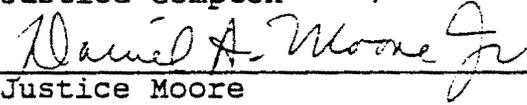
EFFECTIVE DATE: January 15, 1990


Chief Justice Matthews


Justice Rabinowitz**


Justice Burke*


Justice Compton


Justice Moore

* Burke, Justice, dissents. This court's power to make and promulgate rules of law, except in an actual case or controversy calling for the exercise of the court's judicial authority, is limited to rules governing the administration of courts and matters of practice and procedure. Alaska Const. art. IV, §§ 1 and 15. I would withdraw Rule 90.3 as I am presently of the view that it purports to establish substantive rules of law governing awards for the support of minor children, and that the court, therefore, acted without authority when it adopted the rule.

** Rabinowitz, Justice, concurs and dissents. I agree with the rule as amended, except I would use an "income shares" approach in Rule 90.3(a) as is used in Washington state and Colorado without the addition of child care payments.

