

HOW TO CALCULATE CHILD SUPPORT UNDER CIVIL RULE 90.3

Instructions for

**Form DR-105, Petition for Dissolution of Marriage
(the child support sections)**

Form DR-305, Child Support Guidelines Affidavit

Form DR-306, Shared Custody Child Support Calculation

DECEMBER 1999

**Alaska Court System
Office of Special Projects
820 West Fourth Avenue
Anchorage, Alaska 99501**

Table of Contents

	<u>Page</u>
Introduction	1
Instructions.....	1
1. Gross Income, Deductions and Net Income.....	1
2. Adjusted Annual Income	3
3. Annual Child Support Calculation.....	4
4. Monthly Child Support Payment.....	4
5. Health Care Coverage.....	6
6. Monthly Child Support Payment (after adding or deducting health insurance costs).....	7
7. Signature Section of DR-305 Affidavit.....	7
8. Request For Different Child Support Amount.....	7
9. Extended Visitation Credit	9
10. Instructions for Form DR-306, Shared Custody Child Support Calculation	10
Sample Filled-Out Form DR-305.....	17
Sample Filled-Out Form DR-306.....	20
Civil Rule 90.3.....	21
Commentary to Civil Rule 90.3	26
Chart For Checking Calculations In Primary Custody Cases	Back Cover(Inside and Outside)

© Copyright 1988, 1990, 1995 and 1999 Alaska Court System

All rights reserved. Permission to reproduce the contents of this booklet, but not for profit, is hereby granted to governmental and non-profit educational institutions. However, reproduction of any part of this booklet for commercial purposes without the express written permission of the Alaska Court System is strictly prohibited.

HOW TO CALCULATE CHILD SUPPORT

Introduction

In divorce and dissolution cases involving children, child support must be paid, even if the parents might agree otherwise. Support is paid on behalf of the children, not for the benefit of the custodial parent.

In Civil Rule 90.3, the Alaska Supreme Court has set the guidelines which courts must follow to determine the amount of child support. A copy of this rule is provided at the end of this booklet, on pages 21-25. Also attached on pages 26-38 is a commentary which explains the rule.

To comply with this rule, each parent must provide information, under oath, about his or her income and must attach documentation verifying that information. Civil Rule 90.3(e). In dissolution cases, that information must be provided in the *Petition* form, DR-105. In divorce cases, it should be provided on form DR-305, *Child Support Guidelines Affidavit*. In both dissolutions and divorces, if the parents decide to share physical custody so that each parent has the children at least 30% of the year, then form DR-306, *Shared Custody Child Support Calculation* must also be attached.

Instructions

See the sample, filled-out DR-305 form on pages 17-19.

1. Gross Income, Deductions and Net Income.

The following instructions apply to:

- page 3 of the DR-105 *Petition* and
- page 1 of the DR-305 *Affidavit*.

First, make copies of your most recent federal tax return and paycheck stubs so you can attach them to your *Petition* or *Affidavit*. If you have other documents which verify your income or deductions, also attach copies of them.

Second, check the box indicating whether the information you fill in will be monthly or yearly. If your work is seasonal, show yearly income.

Third, fill in paragraphs A, B and C as follows.

Paragraph A. Gross Income.

In order to set child support, the court must attempt to predict the parties' income for the foreseeable future. The best indicator of that is usually the parties' current income and most recent past income. However, if you believe your future income or your spouse's future income will be significantly different from current income, you should state expected future income and attach an explanation justifying it to the court.

Be sure to include all sources of income, whether they are listed on the form or not. Please read section III of the commentary to the rule on pages 27-29 for a list of many of the sources of income you should consider. Do not include ATAP (Alaska Temporary Assistance Program), SSI (Supplemental Security Income) or Food Stamps.

"Gross wages" means wages before any money is deducted for taxes or retirement or anything else.

"Value of employer-provided housing/food/etc." means the dollar value of benefits like free housing, meals, use of a car, etc. which your employer gives you. It should be listed if the amount is significant and it reduces your living expenses. It does not include employer-provided health insurance benefits. For military persons, this would mean such allowances, in addition to base pay, as the quarters allowance, the subsistence allowance, etc.

Note that if a person is voluntarily unemployed or underemployed, the court may determine the person's potential income and use that to calculate child support. See paragraph (a)(4) of the rule (page 21) and section III.C of the commentary to the rule, page 28.

Paragraph B. Deductions.

Civil Rule 90.3(a)(1) allows only a limited number of deductions. See the discussion of this portion of the rule in section III.D of the commentary, page 28.

Keep in mind that it is your expected future expenses that the court must predict and that these expenses may be different from your current expenses. For example, your federal income taxes may be different because, rather than filing a joint return, you may be filing a separate return as a "single person" or as a "head of household." Also, child care expenses may increase if the custodial parent has to work full-time.

Most of the deductions are for mandatory items which reduce your income and which you have no choice about paying, like taxes, union dues, and mandatory retirement contributions. There is also, however, a deduction allowed for one optional, non-mandatory item: "voluntary tax-deferred contributions to a qualified retirement or pension plan or account, up to 7.5% of the parent's gross income, if the parent is not a participant in a mandatory retirement plan." A "qualified" plan means a plan that meets the requirements of the federal tax code. It may be an employer-sponsored plan or an individual plan, like an IRA (Individual Retirement Account). See section III.D of the Commentary on page 28.

Example: Father has no retirement plan at work (neither an optional one nor a mandatory one). Father has, however, set up an IRA (Individual Retirement Account) to which he contributes \$2,000 every year. Father's gross income is \$20,000 per year. Therefore, father can take a "voluntary retirement deduction" of \$1,500 per year. Note: This is because the \$2,000 he contributes exceeds the maximum amount of the deduction he is allowed. (His maximum deduction is $.075 \times \$20,000 = \$1,500$.)

Mother's employer has no mandatory retirement plan for employees, but does offer an optional "401(k) Plan" (a qualified plan under the IRS code). Mother contributes \$4,000 every year to her "401(k)" account. Mother's gross income is \$60,000 per year. Therefore, mother can take a "voluntary retirement deduction" of \$4,000 per year (because the \$4,000 she contributes is less than the maximum amount of the deduction she is allowed ($.075 \times \$60,000 = \$4,500$)).

One of the allowed deductions is for "child support for children from prior relationships living with this parent, calculated under Civil Rule 90.3." This means that if you have living with you a child of yours from a relationship prior to the one being dissolved, you can

deduct the cost of supporting that child. This cost must be calculated using the formulas in Rule 90.3. To do this, you should fill out a separate DR-305 *Affidavit* with all your income information and all deductions except this one. Then, on page 2 of that DR-305 form, calculate how much support you would have to pay for this child if the child lived with his/her other parent instead of you. This is the amount you can deduct on the "prior child" line.

Example: Mother and father are getting a divorce. They have agreed that mother will have primary physical custody of the children of their marriage. However, father will continue to have custody of his two children from a prior marriage. These two "prior" children will continue to live with him after the divorce. Therefore, father can deduct the cost of supporting these two "prior" children when he calculates his "adjusted gross income" to determine how much child support he must pay for the children of his second marriage. To calculate the "prior children" deduction, father should fill out a separate DR-305 form as follows:

Father's gross annual income	50,000
Father's annual deductions (not counting deduction for prior children)	– 10,000
Net income	40,000
Rule 90.3 percentage for 2 children	x .27
Annual child support for 2 children	10,800

Thus, the amount of the deduction for the "prior" children will be \$10,800 annually. Father can then use this figure when filling out the forms for the divorce.

Paragraph C. Net Income.

Fill in the totals from the above two sections, then subtract Total Deductions from Total Income to get Net Income.

2. Adjusted Annual Income.

The following instructions apply to:

- page 4 of the DR-105 *Petition* and
- page 2 of the DR-305 *Affidavit*.

Paragraph D. Adjusted Annual Income.

Fill in either subparagraph #1 or #2.

Fill in #1 if you checked the "monthly" box at the top of the previous page and provided monthly income and deduction information. The amount to fill in is the final amount in paragraph C (NET INCOME) multiplied by 12.

Fill in #2 if you checked the "yearly" box at the top of the previous page and provided yearly income and deduction information. The amount to fill in is the same as the final amount in paragraph C, the NET INCOME amount.

3. Annual Child Support Calculation.

The following instructions apply to

- page 8 of the DR-105 *Petition*, paragraphs VI A.1 and A.2
- page 2 of the DR-305 *Affidavit*, paragraph E

Find the Adjusted Annual Income for each party which you calculated in the previous step. If you are using the DR-105 *Petition*, fill in that amount in section A.1. Then, to fill in section A.2 (or paragraph E on the DR-305 *Affidavit*), do the following.

If the Adjusted Annual Income is \$84,000 or less, multiply the Adjusted Annual Income by whichever one of the following numbers applies to your situation:

- .20 if there is only one child involved in the divorce or dissolution
- .27 if there are two children
- .33 if there are three children, plus
- .03 for each additional child

Example: If the Adjusted Annual Income for the mother is \$20,000 and there are two children, multiply \$20,000 by .27 to get the amount to fill in on the mother's Annual Child Support line (\$5,400).

If there were four children in the above example, the number to multiply by would be:

$$.33 \text{ plus } .03 = .36$$

The calculation would be:

$$\$20,000 \times .36 = \$7,200$$

If the Adjusted Annual Income for either party is more than \$84,000, then use \$84,000 in the above calculation instead of the Adjusted Annual Income.

Example: If the mother's Adjusted Annual Income is \$90,000 and there are two children, multiply \$84,000 (not \$90,000) by .27 to get the amount to fill in for the mother (\$22,680).

Note that the court may order a higher child support amount than that calculated assuming an \$84,000 Adjusted Annual Income. The court can do this when the circumstances described in paragraph (c)(2) of Civil Rule 90.3 exist. See the discussion of the \$84,000 exception on page 9.

4. Monthly Child Support Payment.

The following instructions apply to

- page 9 of the DR-105 *Petition*, paragraph VI.A.3 and
- page 2 of the DR-305 *Affidavit*, paragraph F.

You must check one of the two boxes and fill in the lines. Which box you check will depend on your agreement about who will have physical custody of the children.

Deciding "physical custody" means deciding which parent the children will live with.¹

For purposes of child support, there are two possible physical custody arrangements:²

- a. "primary physical custody" which means the children live with one parent more than 70% of the year. Check box one if this is your arrangement.
- b. "shared physical custody" which means the children live with each parent for at least 30% of each year. Check box two if this is your arrangement.

Remember that it is physical custody (*i.e.*, where the children live) that matters for child support, not legal custody.

Box One: Primary Physical Custody.

The parent who will pay is the one who will have physical custody of the children less than 30% of the year. The monthly amount owed is the Annual Child Support amount for that parent (from the previous section) divided by 12.

Example: Wife has primary physical custody of the three children of the marriage. Husband's adjusted annual income is \$25,000.

Annual child support the husband will pay = $\$25,000 \times .33 = \$8,250$

Monthly child support = $\$8,250 \div 12 = \687.50

¹ Note that, as explained in your dissolution instructions, physical custody and legal custody are separate concepts.

Legal Custody. A parent who is awarded legal custody has the right and responsibility to decide routine questions regarding the child's best interests.

Physical Custody. A parent has physical custody of a child when the child resides with that parent.

² Rule 90.3 also recognizes an arrangement called "divided custody." "Divided custody" means some of the children will live with one parent and some will live with the other parent. That is, each parent will have "primary physical custody" (as defined above) of one or more children of the relationship. Rule 90.3 does not designate a specific formula for calculating child support for divided custody. However, section VI.B.3 of the commentary (page 32 of this booklet) explains how to use the "shared custody" formula to calculate child support in this situation. You can check the box on DR-105 or DR-305 for shared custody, but cross out "share" and write in "divide," then cross out the next sentence. You will then have to attach an additional sheet, explaining your custody and visitation arrangements and how you believe child support should be calculated based on those arrangements. Also attach form DR-306. Note: another method of calculating child support in a "divided custody" situation is described in the supreme court's decision in the case of Bunn v. House, 934 P.2d 753, 755-58 (Alaska 1997).

On the inside and the outside of the back cover is a chart you can use to check your calculations. It shows the monthly amount owed at adjusted annual income levels from \$5,000 to \$84,000 if there are from one to five children.

Box Two: Shared Physical Custody.

If you check this box, you will need to fill out form DR-306, *Shared Custody Child Support Calculation*, before you can fill in the child support amount. The instructions for this form begin on page 10.

5. Health Care Coverage.

The following instructions apply to:

- page 9 of the DR-105 *Petition*, paragraph VI.A.4 and
- pages 2-3 of the DR-305 *Affidavit*, paragraph G.

The court is required by statute and by court rule to include a medical support order in the child support order if health care coverage is available at a reasonable cost. However, before ordering that health insurance be purchased, the court must consider whether the children are eligible for free health care services from the Indian Health Service or some other entity (such as the military). Although one party may be ordered to purchase the insurance, the cost of it must be shared between the parties. This is done by adjusting the amount of child support upward or downward. AS 47.23.060(c) and Civil Rule 90.3(d)(1).

Health Insurance

If the children are not eligible for services from the Indian Health Service or some similar health coverage, and if health insurance for the children is available to either parent at a reasonable cost (for example through your employer or union), the parent who has the insurance available must purchase it. If both parents have such insurance available, you must agree (or the court must decide) which one of you will purchase it. The cost must be divided equally between you unless you can show the court good cause why it should be divided differently. In paragraph 4.a on page 9 of the *Petition* (section G(1) of the *Affidavit*), you must indicate who has such insurance available, who will purchase it and how the cost will be divided between you.

Uninsured Health Care Expenses

In paragraph 4.b on page 10 of the *Petition* (section G(2) of the *Affidavit*), you must describe your agreement about how you will share the cost of health care expenses which are not covered by insurance. Civil Rule 90.3(d)(2) requires the court to divide such expenses between the parties equally unless good cause is shown for dividing them differently or unless the expenses are more than \$5,000 in a calendar year. The rule requires that reasonable expenses exceeding \$5,000 per calendar year must be allocated based on the parties' relative financial circumstances when the expenses occur. If, in the future, the children's uninsured expenses exceed \$5,000 and you cannot agree on how to divide them, you will have to file a motion with the court. If you believe that uncovered expenses under \$5,000 should be divided unequally, check the second box and explain your reasons (for example, a substantial difference in the parties' relative financial circumstances). See section VII of the commentary on pages 34-35.

6. Monthly Child Support Payment (after adding or deducting health insurance costs).

The following instructions apply to:

- page 10 of the DR-105 *Petition*, paragraph VI.A.5, and
- page 3 of the DR-305 *Affidavit*, paragraph H

In paragraph 5 on page 10 of the *Petition* (section H of the *Affidavit*), you must either increase or decrease the amount of child support owed, depending on who is purchasing the insurance and how the cost will be divided between you. For example, if the obligor will buy insurance for the children costing \$100 per month and you have agreed that the obligor will pay half the cost, you should write \$50 on line 5b and subtract it from the amount on line 5a in order to get the net amount due on line 5d. If you had instead agreed that the obligor would pay 70% of the cost, then the amount to subtract on line 5b would be \$30 and you should also revise the beginning of that paragraph as follows:

"b. Less 1/2 (or 30 %) of..."

Note that the insurance cost referred to here is the actual cost of insuring the children who will be the subjects of this support order. It does not include the cost of insuring a parent or any other children who may live in the household. And, it must not include the value of any insurance provided for free by an employer (that is, with no paycheck deduction).

Civil Rule 90.3(d)(1) requires that child support be adjusted only for those insurance payments which are actually made. Therefore, the child support order will state that if these payments are not made, the monthly child support amount due will return to what it was before the adjustment.

7. Signature Section of DR-305 Affidavit.

After filling in section H of the *Affidavit*, you must sign it under oath before a notary public, court clerk or other person authorized to administer oaths. Remember that, in signing the affidavit under oath, you are swearing that all the information you have provided is the truth. There is no charge when you get your affidavit notarized at the court. Bring a photo ID with you to prove your identity.

The information on the DR-105 *Petition* is also being given under oath, but the signature section of that form is several pages later.

8. Request For Different Child Support Amount.

Form DR-105, *Petition*, page 10, section VI.A.6.

You may fill in this section of the *Petition* if you believe the child support amount should be different from that shown in paragraph VI.A.5 of the *Petition* (the amount calculated as required by Civil Rule 90.3).

There are three situations in which the court can change the amount of child support from that shown in paragraph 5.d on page 9 of your *Petition*. The three situations are:

- A. "Unusual Circumstances" as stated in Civil Rule 90.3(c)(1)(A).
- B. "Income Below Poverty Level" as defined in Civil Rule 90.3(c)(1)(B).
- C. "The \$84,000 Exception" as defined in Civil Rule 90.3(c)(2).

If the court does agree to allow a different child support amount, the court must specify in writing the reasons for allowing it and the amount which would have been required if the formulas in the rule had been followed.

A. Unusual Circumstances.

The court may increase or decrease the amount of child support if the court finds that unusual circumstances exist which require the change "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 following are the examples of "unusual circumstances" listed in the commentary to the rule:

- especially large family size
- significant income of a child
- health or other extraordinary expenses
- unusually low expenses

See section VI.B of the commentary on page 31. In deciding whether there are "unusual circumstances" which justify increasing or decreasing the amount of child support, the court must consider the custodial parent's income as well as the non-custodial parent's income.

Before the court can change the child support amount based on unusual circumstances, the court must be shown "proof by clear and convincing evidence that manifest injustice would result if the support award" is not changed.

Please read the discussion of the "Unusual Circumstances" exception in section VI.B of the commentary to the rule, on pages 31-33 of this booklet.

B. Income Below Poverty Level.

The court may change the child support amount if the court finds that the parent who owes child support has a gross income which is below the poverty level as set forth in the Federal Register. Note that it is gross income that matters, not adjusted annual income. However, even if the obligor parent's gross income is below the poverty level, the obligor parent must still pay at least \$50 per month in child support (except for those periods when the obligor parent has physical custody of the children for more than 27 consecutive days).

According to the Federal Register, the poverty income guideline for one person in Alaska in 1999 is \$10,320. (Federal Register, Vol. 64, No. 52, Pages 13428-13430, March 18, 1999. The poverty guidelines change each year. Usually the new guidelines are published in the Federal Register in February or March.)

Therefore, if the obligor parent has a gross income of less than \$10,320, the court may decrease the amount of child support which would otherwise be required, but may not decrease it below \$50.00 per month. The court may do this only if it is shown proof by clear and convincing evidence that manifest injustice would result if the child support is not reduced to that amount.

Please read the discussion of the "Low Income of Obligor" exception in section VI.C of the commentary to the rule, on page 33 of this booklet. The commentary lists some things the court should consider when it decides whether to reduce support to \$50 (things such as the obligor's assets and other resources).

Note that the poverty level which should be used is the one for the state in which the obligor resides. Carstens v. Carstens, 867 P.2d 805 (Alaska 1994). You can find this information for other states in the Federal Register cited above, available at the court system law libraries in Anchorage, Fairbanks and Juneau. Your local court should also have this information.

C. The \$84,000 Exception.

This exception applies if a parent has an adjusted annual income of over \$84,000. In such a case, the court should use \$84,000 as that parent's adjusted annual income in the formula for calculating child support. The court should then increase the amount of child support above the amount calculated using \$84,000 "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."

This \$84,000 limit is already built into the *Petition* form. See the footnote to paragraph VI.A.2 on page 8 of the form and the discussion in section 3 on page 4 of these instructions. If you believe the amount of child support should be increased above the amount calculated by using the \$84,000 limit, you should use paragraph 6 to explain why this should be done and what the child support amount should be. Be sure to cross out the second sentence in the paragraph before writing in your explanation.

9. Extended Visitation Credit. Civil Rule 90.3(a)(3).

If you checked box one, "primary custody," in section VI.A.3 of your *Petition*, you may be able to make the following additional change in child support. In the primary physical custody situation, the parent paying child support may be allowed to reduce child support payments during any period when that parent takes physical custody of the children for over 27 consecutive days. Example: The obligor parent takes physical custody of the children for the month of July (31 days). Note: If the children spend brief periods of time with the custodial parent during this "extended visitation" period, including occasional overnights, it will not defeat the visitation credit. See section IV.B of the commentary on page 29.

The court may (but does not have to) allow a reduction in child support for that period to take into account the added expenses for the obligor parent and the reduced expenses for the non-obligor parent.

Child support can only be reduced a maximum of 75% for that period. It cannot be eliminated because some expenses (e.g., rent) of the parent with primary custody will continue even when the children are not there. Note that paragraph (c)(1) of the rule (on exceptions) applies to the calculation of this credit just like it applies to other calculations in the rule. See the discussion of "unusual circumstances" on pages 31-33.

To qualify for this credit, the parties must specify in section V on page 8 of their *Petition* the dates of the extended visitation period, and the obligor parent must take physical custody as agreed. Also, the court's order must be specific about the amount of reduction allowed.

If you want the child support payment to be reduced for a particular period of time because of this "extended visitation credit" you must tell the court the amount of the reduction and the months when it should occur. You can use paragraph 6 on page 10 of the *Petition* to do this. However, be sure to cross out the second sentence in the paragraph (about unusual circumstances), unless you think it applies, and write in:

We want child support to be reduced to \$_____ during the months of _____ because the obligor will have the children over 27 consecutive days during _____ as specified in our visitation agreement on page 8. Civil Rule 90.3(a)(3).

10. Instructions for Form DR-306, Shared Custody Child Support Calculation.

You need to fill out this form only if you decide on a "shared physical custody" arrangement (meaning each parent has the children at least 30% [almost 4 months] of the year).

A specific visitation schedule showing the 30% custody must be written in your petition (or divorce decree). Ordinarily, for a day of visitation to count towards the required 30%, the children must remain overnight with that parent. (30% would be 110 overnights.) However, the court is allowed to use other methods of calculating the percentages of custody when counting overnights does not give an accurate picture of the costs of custody for each parent. For example, a court might find that the 30% requirement is met if a parent has the children for 24 hours on the weekend and 9.5 hours each weekday (7:30 a.m. to 5 p.m.). Although there is only one overnight each week in this example, the total number of hours per week (71.5) is over 42% of the total number of hours in a week (168 hours). Please read about Shared Custody in section V of the commentary, page 30 of this booklet.

See the sample, filled-out DR-306 form on page 20.

Line 1.

Fill in the adjusted annual income amounts for father and mother from either:

- form DR-305, page 2, section D; or
- form DR-105, page 4, section II.D

Note: If the income amount is over \$84,000, use the actual income amount. Do not use the \$84,000 cap at this stage of the calculation.

Line 2.

On the "x _____" line, fill in the decimal for the number of children. (Fill in ".20" if there is only one child, ".27" if there are two, etc.)

Then calculate the "annual child support" amount for each parent by multiplying the amount on line 1 by the decimal number you just filled in.

Note: If the result is less than \$600, write \$600 on the line instead of the amount you calculated.

Example: Father's adjusted annual income is \$30,000.
Mother's adjusted annual income is \$20,000.
They will share custody of their one child.

	<u>FATHER</u>	<u>MOTHER</u>
Line 1	<u>\$30,000</u>	<u>\$20,000</u>
Line 2	x <u>.20</u>	x <u>.20</u>
	<u>\$6,000</u>	<u>\$4,000</u>

Line 3.

Fill in the percentage of time the father will have physical custody and the percentage of time the mother will have physical custody. In order to show how you arrived at these percentages, you will have to specify in section V (the visitation section) on page 8 of your *Petition for Dissolution* the dates when the children will reside with each parent.

Example: Father has physical custody the first week in April (7 days), June 1 through August 31 (92 days) and December 26 through January 5 (11 days). Total = 110 days or 30% of the year. ($110 \div 365 = .3013$)

Mother has physical custody the rest of the year (70%).

Fill in 70% on mother's line and 30% on father's line.

Note: These percentages can be changed by the court 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." Civil Rule 90.3(b)(2). If you think the percentages should be changed in your case, please bring this to the court's attention by attaching a sheet to your form DR-306 explaining why they should be changed.

Line 4.

On the father's line, write the percentage of time the mother will have custody.

On the mother's line, write the father's percentage.

		FATHER	MOTHER
Example:	Line 3.	<u>30%</u>	<u>70%</u>
	Line 4.	<u>70%</u>	<u>30%</u>

Line 5.

In both columns, multiply the amount on line 2 by the percent on line 4. (In general, this shows the amount of each parent's income which that parent owes to the other parent for the time the children live with the second parent.)

Example: Assume the following:

Father's annual child support amount is \$6,000 and he has custody 30% of the time.

Mother's annual child support amount is \$4,000 and she has custody 70% of the time.

	FATHER	MOTHER
Line 2.	<u>\$60,000</u>	<u>\$4,000</u>
Line 3.	<u>30%</u>	<u>70%</u>
Line 4.	<u>70%</u>	<u>30%</u>
Line 5.	<u>\$4,200</u> (6,000 x .70)	<u>\$1,200</u> (4,000 x .30)

Line 6.

Subtract the smaller amount on line 5 from the larger amount. Write the difference on line 6 in the column with the larger line 5 amount. Leave the other column blank.

The person with the larger line 5 amount is the person who will pay child support. The amount to be paid will be calculated in the next step.

Example: Using the figures in the above example:

	FATHER	MOTHER
Line 5.	<u>\$4,200</u>	<u>\$1,200</u>
Line 6.	<u>\$3,000</u> (4,200 - 1,200)	<u> </u>

Line 7.

Multiply the amount on line 6 by 1.5. The line in one column will be blank.

As explained in section V.B of the commentary on page 30, the reason the rule requires you to multiply by 1.5 is because it is assumed that the total funds of both parties necessary to support the children will be substantially greater when physical custody is shared than when it is not.

Example:	Using the figures in the above example:	
	FATHER	MOTHER
Line 6.	<u>\$3,000</u>	_____
Line 7.	<u>\$4,500</u> (\$3,000 x 1.5)	_____

Line 8.

The person with an amount written on line 7 is the person who will pay child support (the "obligor"). However, the rule requires that the support amount not exceed the amount the obligor would have owed if it was a "primary custody" situation. Therefore, you must compare the line 7 amount with the amount on that person's line 2 (the "primary custody amount"). If the line 2 amount is more than \$84,000, you will have to do another calculation because, at this stage, the \$84,000 cap described on page 9 once again applies. Multiply \$84,000 times the decimal number from paragraph 2 (".20" for one child, ".27" for two, etc.). Then write the smallest of the following amounts on line 8:

- the line 7 amount,
- the line 2 amount, or
- \$84,000 times the decimal number in paragraph 2.

Note: If the obligor's gross income is below the poverty level, the court may limit line 8 to \$600. See section B on page 8 about "income below poverty level."

Example #1: Using the figures in the above series of examples:

	FATHER	MOTHER
Line 1.	<u>\$30,000</u>	<u>\$20,000</u>
Line 2.	<u>\$6,000</u>	<u>\$4,000</u>
Line 7.	<u>\$4,500</u>	<u> </u>
Line 8.	<u>\$4,500</u>	<u> </u>

Example #2: Obligor's adjusted annual income is over \$84,000.

	FATHER	MOTHER
Line 1	<u>\$90,000</u>	<u>\$20,000</u>
Line 2	<u>x .20</u>	<u>x .20</u>
	<u>\$18,000</u>	<u>\$4,000</u>
Line 3	<u>30%</u>	<u>70%</u>
Line 4	<u>70%</u>	<u>30%</u>
Line 5	<u>\$12,600</u>	<u>\$1,200</u>
Line 6	<u>\$11,400</u>	<u> </u>
Line 7.	<u>\$17,100</u>	<u> </u>
Line 8.	<u>\$16,800</u>	<u> </u>

Note: Line 8 is the smallest of the following three amounts:

- line 7 = 17,100
- line 2 = 18,000
- \$84,000 x .20 (the decimal in section 2) = \$16,800

Note: For this comparison, you can reduce the actual amount on line 2 by whatever "extended visitation credit" would be appropriate if you had elected primary custody instead of shared custody. The "extended visitation credit" is explained in section 9 on page 9.

Example: In example #1 above, the actual amount for the father on line 2 is \$6,000. However, the father will have physical custody of the children for the entire months of June, July and August. If these parties were calculating child support as if the mother had primary custody rather than using the shared custody calculations, the father would have been entitled to an extended visitation credit up to 75% of the amount owed for those 3 months.

The monthly amount owed would have been:
 $\$6,000 \div 12 = \500

The maximum credit the court might allow per month is $\$500 \times .75 = \375 . So, the credit for the 3 months = $3 \times \$375 = \1125 .

Therefore, for purposes of this comparison of line 2 and line 7, these parties could use a revised line 2 amount of $\$6,000 - \$1125 = \$4875$.

In this example, the credit will not make a difference because line 7 (\$4,500) is still smaller than the reduced line 2.

The extended visitation credit cannot be used for any other purpose if shared custody is elected.

Line 9.

Fill in the number of months in which payments will be made. This will be 12 unless the obligor parent (the one who must pay support) will have physical custody for periods of 30 consecutive days or more. If the obligor parent will have such extended periods of custody, then he or she will not make payments during those months. Instead, the annual amount due will be paid in equal installments in the months when the obligor does not have extended custody. Thus, fill in on line 9 the number of months when the obligor parent will not have extended custody (custody for periods of 30 consecutive days or more).

Example: The father in the above example has physical custody for an extended period from June 1 through August 31 in addition to two other shorter periods. He will not pay child support during the three months (June, July and August) the children live with him. Therefore, the number of monthly payments on line 9 will be $12 - 3 = \underline{9}$.

Line 10.

Fill in the months, if any, when payments will not be made because the obligor parent has custody for a 30 or more consecutive day period.

Then fill in the monthly amount to be paid. Calculate this by dividing the annual amount the obligor owes (on line 8) by the number of months in which payments will be made (on line 9).

Then fill in who the obligor is: mother or father.

Example: Continuing the example used above, the months in which payments will not be made are: June, July & August

The monthly amount to be paid is: the annual amount from line 8 (\$4,500) divided by the number on line 9 (9 months).

$\$4,500 \div 9 = \underline{\$500}$

The \$500 is to be paid by the father each month except June, July and August.

If a parent does not take physical custody of the children at least 30% of the year, as agreed, the other parent can file a motion with the court to modify the support order. As required by Rule 90.3(b)(5), the child support order states that failure to take physical custody the required amount of time is grounds for modification. The commentary to the rule indicates that in this circumstance, the support amount should be recalculated using the formula applicable in primary physical custody situations. See section V.C. of the commentary on page 30. Usually, the motion will request a change in both the custody order and the support order. But, even if the court does not change the custody order, it should change the support order and explain the reason for it. However, both the rule and the commentary make it clear that child support should not be modified if the reason for the failure to take physical custody was because the other parent refused to permit it.

Signatures & Transfer of Information to Other Forms

After filling in line 10, sign the form and print your name beneath your signature. Then copy the information from paragraph 10 onto either:

- form DR-305, *Affidavit*, page 2, section F.2; or
- form DR-105, *Petition*, page 9, section VI.A.3.b.

Attach form DR-306 to your *Petition* or *Affidavit*.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

AT Anchorage

In re: Marriage of

Janet E Jones

(~~Plaintiff~~)(Petitioner)

Joseph G Jones

(~~Defendant~~)(Petitioner)

CASE NO. _____

CHILD SUPPORT GUIDELINES
AFFIDAVIT [Civil Rule 90.3]

I swear or affirm under penalty of perjury that the following information is true to the best of my knowledge and belief. I have attached a copy of my most recent federal tax return and pay stubs to verify this information. The following income and deductions are ☐ monthly ☒ yearly.

	FATHER	MOTHER
A. Gross Income (Do not list ATAP or SSI below.)		
Gross wages	30,120	14,214
Value of employer-provided housing/food/etc.	0	0
Unemployment compensation	0	600
Permanent fund dividend	1,770	1,770
Other: <u>interest on savings</u>	257	0
<u>stock dividends</u>	0	89
<u>veteran's benefits</u>	360	0
TOTAL INCOME*	32,507	16,673

*If less than the federal poverty level for Alaska, see Civil Rule 90.3(c)(1)(B).

B. Deductions Allowable under Civil Rule 90.3		
Federal income tax	4,596	1,504
Social security tax	0	1,140
Medicare tax	0	0
Employment security tax	0	0
Mandatory retirement contributions	2,050	800
Mandatory union dues	0	0
Voluntary tax-deferred contributions to a qualified retirement plan, up to 7.5% of gross, if not participating in a mandatory plan	0	0
Other mandatory deductions (specify) <u>State SBS (replaces social security)</u>	1,861	0
Child support/alimony ordered in other cases and currently being paid	0	0
Child support for children from prior relationships living with this parent, calculated under Civil Rule 90.3	0	0
Work-related child care for children of this marriage	0	2,400
TOTAL DEDUCTIONS	8,507	5,844
C. Net Income		
TOTAL INCOME from section A	32,507	16,673
TOTAL DEDUCTIONS from section B	8,507	5,844
Subtract deductions from income to get NET INCOME	24,000	10,829

	<u>FATHER</u>	<u>MOTHER</u>
D. Adjusted Annual Income		
1. If the above figures are based on monthly information, multiply NET INCOME from section C by 12 to get ADJUSTED ANNUAL INCOME	<u>N/A</u>	<u>N/A</u>
2. If the above figures are based on yearly information, repeat the NET INCOME amount from section C to show ADJUSTED ANNUAL INCOME	<u>24,000</u>	<u>10,829</u>
E. Multiply Adjusted Annual Income from section D* by:		
.20 for one child		
.27 for two children	x <u>.33</u>	x <u>.33</u>
.33 for three children, and		
.03 for each additional child		
ANNUAL CHILD SUPPORT**	<u>7,920</u>	<u>3,574</u>

**If section D exceeds \$84,000, use \$84,000 instead of the amount in section D. See Civil Rule 90.3(c)(2).*

***The court may vary the child support amount under Civil Rule 90.3(c).*

- F. Monthly Child Support Payment
- ☒ 1. One parent has primary physical custody.
Divide Annual Child Support amount from section E for the non-custodial parent by
12 = \$ 660 to be paid each month by father
(mother/father)
- ☐ 2. Parents will share physical custody as defined in Civil Rule 90.3(f). That is, the
children will reside with each parent for a period specified in writing of at least 30%
of the year. [Form DR-306 must be attached to show your calculations.]
- Monthly child support payment (from line 9 of attached form DR-306) to be paid
each month except _____ =
\$ _____ to be paid by _____.
(mother/father)

- G. Health Care Coverage.
1. Health Insurance.
- a. Does father have health insurance available for the child(ren) at reasonable cost
through his employer, union or otherwise?
☒ Yes ☐ No ☐ I do not know
- b. Does mother have health insurance available for the child(ren) at reasonable cost
through her employer, union or otherwise?
☐ Yes ☒ No ☐ I do not know
- c. Are the children eligible for services through the Indian Health Service?
☐ Yes ☒ No
- d. Do the children have other health insurance or care available? ☐ Yes ☒ No
Describe: _____

Health insurance for the child(ren) ☒ is being ☐ will be purchased by:
☒ father at a monthly cost to father of \$ 80 *
☐ mother at a monthly cost to mother of \$ _____ *
through the above person's ☒ employer ☐ union ☐ _____
whose name and address are Alaska Court System, 820 West 4th Avenue,
Anchorage AK 99501
The cost ☐ is ☒ will be divided between the parties ☒ equally ☐ _____
Explain reason for unequal division: _____

**List only the cost to insure the children involved in this case. If the insurance also covers other people and you do not know the cost for the children alone, calculate the amount to put on this line as follows: Divide the monthly cost of the insurance by the number of people insured. Then multiply that number by the number of children involved in this case.*

2. Health Care Expenses Not Covered By Insurance.
Should uninsured health care expenses of the child(ren) (up to \$5,000 per calendar year) be shared equally by the parents? ☒ Yes ☐ No
If not, explain how the costs should be divided and why:

H. Monthly Child Support Payment (after adding or deducting health insurance costs).

1. Monthly Child Support Payment from paragraph F above \$ 660
2. If obligor is buying health insurance for the child(ren), subtract
50% (or _____%) of the monthly insurance payment. - \$ 40
(The "obligor" is the parent paying child support.)
3. If obligee is buying health insurance for the child(ren), add
50% (or _____%) of the monthly insurance payment. + \$ _____
(The "obligee" is the parent receiving child support.)
4. Net Monthly Child Support Payment \$ 620

Joseph G. Jones

Signature

Joseph G. Jones

Type or Print Name

Subscribed and sworn to or affirmed before me at _____, Alaska
on _____ Date

(SEAL)

Clerk of Court, Notary Public or other
person authorized to administer oaths.
My Commission Expires: _____

SHARED CUSTODY CHILD SUPPORT CALCULATION

Case Name: Jane Doe and John Doe

Case Number: _____

Attach this form to form DR-305, *Child Support Guidelines Affidavit*, or form DR-105, *Petition for Dissolution of Marriage*, to explain the child support calculation if the parents will share physical custody as defined in Civil Rule 90.3(f). That is, it must be attached only if the children will reside with each parent for a period, specified in writing, of at least 30% of the year.

	FATHER	MOTHER
1. Adjusted annual income (from section D on form DR-305 or section II.D on page 4 of form DR-105). Do <u>not</u> apply \$84,000 cap.	\$ <u>30,000</u>	\$ <u>20,000</u>
2. Multiply line 1 by .20 for one child .27 for two children .33 for three children and .03 for each additional child	x <u>.20%</u>	x <u>.20%</u>
Annual Child Support (Minimum amount is \$600)	\$ <u>6,000</u>	\$ <u>4,000</u>
3. Percentage of time each parent will have physical custody	<u>30%</u>	<u>70%</u>
4. Percentage of time <u>other</u> parent will have physical custody	<u>70%</u>	<u>30%</u>
5. Multiply line 2 times line 4.	\$ <u>4,200</u>	\$ <u>1,200</u>
6. Subtract smaller figure on line 5 from larger and write the difference in the column with the larger line 5 figure. (One line should be blank.)	\$ <u>3,000</u>	\$ _____
7. Multiply line 6 by 1.5. (One line should be blank.)	\$ <u>4,500</u>	\$ _____
8. Annual Child Support. Fill in the smallest of these three amounts:		
• line 7		
• line 2, or	\$ <u>4,500</u>	\$ _____
• \$84,000 times the decimal in section 2.		
(If <u>gross</u> income is below poverty level, the court <u>may</u> limit line 8 to \$600.)		
9. Number of payments per year: <u>9</u> (See Civil Rule 90.3(b)(4).)		
10. Monthly Child Support Payment for all months except <u>June, July, and August</u> (line 8 divided by line 9): \$ <u>500</u> to be paid by <u>father</u> (mother/father)		

Write the paragraph 10 information on either
form DR-305, page 2, section F.2. or
form DR-105, page 9, section VI.A.3.b.

John Doe
Father's Signature

John Doe
Type or Print Name

Jane Doe
Mother's Signature

Jane Doe
Type or Print Name

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:
 - (A) mandatory deductions such as federal income tax, Social Security tax or the equivalent contribution to an alternate plan established by a public employer, medicare tax, mandatory retirement contributions, mandatory union dues, and voluntary tax-deferred contributions to a qualified retirement or pension plan or account, up to 7.5% of the parent's gross income, if the parent is not a participant in a mandatory retirement plan;
 - (B) child support and alimony payments arising from prior relationships which are required by other court or administrative proceedings and actually paid;
 - (C) child support for children from prior relationships living with the parent, calculated by using the formula provided by this rule; and
 - (D) 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 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 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.
- (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. This determination will be made without regard to adjustments under subparagraphs (c)(1)(B) or (c)(2), except that the minimum annual support amount for each parent is \$600.

- (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 primary custody, taking into account any appropriate adjustment under paragraph (c)(1)(B) or (c)(2), the annual support is the amount calculated under paragraph (a) with appropriate adjustments under paragraphs (c)(1)(B) and (c)(2).
- (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.
- (5) The child support order shall provide that failure to exercise sufficient physical custody to qualify for shared physical custody under this rule is grounds for modification of the child support order. Denial of visitation by the custodial parent is not cause to increase child support.

(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 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) 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 \$84,000. 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.
- (3) In addition to ordering a parent to pay child support as calculated under this rule, the court may, in appropriate circumstances, order one or more grandparents of a child to pay child support to an appropriate person in an amount determined by the court to serve the best interests of the child. However, the amount may not exceed the smaller of (A) a proportionate share of the amount required to provide care in a

supervised setting to the grandchild, as determined by the court, or (B) the amount that would have been awarded if the child's parents had the incomes of the child's grandparents and paragraphs (a) and (b) were applied. An order under this paragraph may be issued only with respect to a child whose parents are both minors, and the order terminates when either parent becomes 18 years of age. The court must specify in writing the reasons why it considers it to be appropriate to order a grandparent to pay child support under this paragraph and the factors considered in setting the amount of the child support award. In this paragraph, "grandparent" means the natural or adoptive parent of the minor parent.

(d) **Health Care Coverage.**

- (1) *Health Insurance.* The court shall address coverage of the children's health care needs and require health insurance for the children if insurance is available to either parent at a reasonable cost. The court shall consider whether the children are eligible for services through the Indian Health Service (or any other entity) or other insurance coverage before ordering the obligor to provide health care coverage through insurance or other means. The court shall allocate equally the cost of this insurance between the parties unless the court orders otherwise for good cause. An obligor's child support obligation will be decreased by the amount of the obligee's portion of health insurance payments ordered by the court and actually paid by the obligor. A child support award will be increased by the obligor's portion of health insurance if the obligee is ordered to, and actually does obtain and pay for insurance.
- (2) *Uncovered Health Care Expenses.* The court shall allocate equally between the parties the cost of reasonable health care expenses not covered by insurance unless the court orders otherwise for good cause. A party shall reimburse the other party for his or her share of the uncovered expenses within 30 days of receipt of the bill for the health care, payment verification, and, if applicable, a health insurance statement indicating what portion of the cost is uncovered. Reasonable, uncovered expenses exceeding \$5,000 in a calendar year will be allocated based on the parties' relative financial circumstances when the expenses occur.

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

(f) **Definitions.**

- (1) *Shared Physical Custody.* A parent has shared physical custody (or shared custody) of children for purposes of this rule if the children reside with that parent for a period specified in writing in the custody order of at least 30 percent of the year, regardless of the status of legal custody.
- (2) *Primary Physical Custody.* A parent has primary physical custody (or primary custody) of children for purposes of this rule if the children reside with the other parent for a period specified in the custody order of less than 30 percent of the year.
- (3) *Divided Custody.* Parents have divided custody under this rule if one parent has

primary physical custody of one or more children of the relationship and the other parent has primary custody of one or more other children of the relationship.

- (4) *Health Care Expenses.* Health care expenses include medical, dental, vision and mental health counseling expenses.
- (g) **Travel Expenses.** After determining an award of child support under this rule, the court shall 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) *Material Change of Circumstances.* A final child support award may be modified 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. For purposes of this paragraph, support includes health insurance payments made pursuant to (d)(1) of this rule.
 - (2) *No Retroactive Modification.* Child support arrearage may not be modified retroactively, except as allowed by AS 25.27.166(d). A modification which is effective on or after the date that a motion for modification, or a notice of petition for modification by the Child Support Enforcement Division, is served on the opposing party is not considered a retroactive modification.
 - (3) *Preclusion.* The court may find that a parent and a parent's assignee are precluded from collecting arrearages for support of children that accumulated during a time period exceeding nine months for which the parent agreed or acquiesced to the obligor exercising primary custody of the children. A finding that preclusion is a defense must be based on clear and convincing evidence.
- (i) **Third Party Custody.**
 - (1) When the state, or another third party entitled to child support, has custody of all children of a parent, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent multiplied by the percentage specified in subparagraph (a)(2). If the third party has custody of some but not all children, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent, multiplied by the percentage specified in subparagraph (a)(2) for the total number of the parent's children, multiplied by the number of the parent's children in third party custody, divided by the total number of the parent's children. For purposes of this paragraph, the number of the a parent's children only includes children of the parent who live with the parent, are substantially supported by the parent or who are in custody of the third party entitled to support.
 - (2) If, in addition to a support obligation to a third party, one or both parents retain primary or shared physical custody of at least one of their children, the support obligation between the parents is calculated pursuant to the other paragraphs of this rule, without consideration of the third party custodian or any children in the custody of the third party custodian, except that the percentage in 90.3(a)(2) must be adjusted pro rata for the number of children in the primary custody of a parent, or shared custody of the parents, compared to the total number of children. After that calculation is completed, any support owed may be offset with support owed to a third party custodian under the preceding subparagraph in order to minimize transactions.

- (j) **Support Order Forms.** All orders for payment or modification of child support shall be entered on a form developed by the administrative director. A party may lodge a duplicate of the court form produced by a laser printer or similar device. A device may also print, in a contrasting typestyle equivalent to that produced by a typewriter, text that otherwise would have been entered by a typewriter or word processor. A party or attorney who lodges a duplicate certifies by lodging the duplicate that it is identical to the current version of the court form.
- (k) **Dependent Tax Deduction.** The court may allocate the dependent tax deduction for each child between the parties as is just and proper and in the child's best interests. The allocation must be consistent with AS 25.24.152 and federal law.

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.

CIVIL RULE 90.3 COMMENTARY

I. INTRODUCTION

- A. **Committee Commentary.** This commentary to Civil Rule 90.3 was prepared by the Child Support Guidelines Committee. The commentary has not been adopted or approved by the Supreme Court, but is published by the court for informational purposes and to assist users of Rule 90.3.
- 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 level of support under the rule is comparable to the national average, but it is significantly above what had been a usual support award in Alaska. The increase was necessary to avoid the impoverishment of custodial parents and to minimize the public's burden of supporting children through the Alaska Temporary Assistance Program (formerly Aid to Families with Dependent Children program). However, the primary focus of the increase in support awards was to promote the welfare of the children who benefit from the support.

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(2) 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.

- C. **Scope of Application.** Rule 90.3 applies to all proceedings involving child support, whether temporary or permanent, contested or non-contested, including without limitation actions involving separation, divorce, dissolution, support modification, domestic violence, paternity, Child in Need of Aid and Delinquency. The support guidelines in the rule may be varied only as provided by paragraph (c) of the rule. Rule 90.3 applies to support of children aged 18 authorized by Chapter 117, SLA 1992, but otherwise does not apply to set support which may be required for adult children.

II. PERCENTAGE OF INCOME APPROACH

Rule 90.3 employs the percentage of income approach. This approach is based on economic analyses which show the proportion of income parents devote to their children in intact families is relatively constant across income levels up to a certain upper limit. Applications of the rule should result in a non-custodial parent paying approximately what the parent would have spent on the children if the family was intact.

Integral to the rule is the expectation that the custodial parent will contribute at least the same percentage of income to support the children. The rule operates on the principle that as the income available to both parents increases, the amount available to support the children also will increase. Thus, at least in the primary custodial situation, the contribution of one parent does not affect the obligation of the other parent.

III. DEFINING INCOME

A. **Generally.** The first step in determination of child support is calculating a “parent's total income from all sources.” Rule 90.3(a)(1). This phrase should be interpreted broadly to include benefits which would have been available for support if the family had remained intact. Income includes, but is not limited to:

1. salaries and wages (including overtime and tips);
2. commissions;
3. severance pay;
4. royalties;
5. bonuses and profit sharing;
6. interest and dividends, including permanent fund dividends;
7. income derived from self-employment and from businesses or partnerships;
8. social security;
9. veterans benefits;
10. insurance benefits in place of earned income such as workers' compensation or periodic disability payments;
11. workers' compensation;
12. unemployment compensation;
13. pensions;
14. annuities;
15. income from trusts;
16. capital gains in real and personal property transactions to the extent that they represent a regular source of income;
17. spousal support received from a person not a party to the order;
18. contractual agreements;
19. perquisites or in-kind compensation to the extent that they are significant and reduce living expenses, including but not limited to employer provided housing and transportation benefits (but excluding employer provided health insurance benefits);
20. income from life insurance or endowment contracts;
21. income from interest in an estate (direct or through a trust);
22. lottery or gambling winnings received either in a lump sum or an annuity;
23. prizes and awards;
24. net rental income;
25. disability benefits;
26. Veteran Administration benefits;
27. G.I. benefits (excluding education allotments);
28. National Guard and Reserves drill pay; and
29. Armed Service Members base pay plus the obligor's allowances for quarters, rations, COLA and specialty pay.

Lump sum withdrawals from pension or profit sharing plans or other funds will not be counted as income to the extent that the proceeds have already been counted as income for the purposes of calculating child support under this rule (i.e., contributions to a voluntary pension plan).

Means based sources of income such as Alaska Temporary Assistance Program (ATAP), formerly Aid to Families with Dependent Children (AFDC), Food Stamps and Supplemental Security Income (SSI) should not be considered as income. The principal amount of one-time gifts and inheritances should not be considered as income, but interest from the principal amount should be considered as income and the principal amount may be considered as to whether unusual circumstances exist as provided by 90.3(c). Tax deferred dividends and interest earned on pension or retirement accounts, including individual retirement accounts, which are not distributed to the parent are not income. Child support is not income.

- B. **Self Employment Income.** Income from self-employment, rent, royalties, or joint ownership of a partnership or closely held corporation includes the gross receipts minus the ordinary and necessary expenses required to produce the income. Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate. Expense reimbursements and in-kind payments such as use of a company car, free housing or reimbursed meals should be included as income if the amount is significant and reduces living expenses.
- C. **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 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 shall consider the totality of the circumstances in deciding whether to impute income. When a parent makes a career change, this consideration should include the extent to which the children will ultimately benefit from the change. The court also may impute potential income for non-income or low income producing assets.
- D. **Deductions.** A very limited number of expenses may be deducted from income. Mandatory deductions such as taxes and mandatory union dues are allowable.

Mandatory retirement contributions are a deduction. Voluntary tax-deferred contributions to a qualified employer sponsored plan or IRA may also be deducted, up to 7.5% of gross income, but only if the parent is not a participant in a mandatory plan.

Child support and alimony payments paid to another person arising out of different cases are deductible if three conditions are met. First, the child support or alimony actually must 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. A child support order for children of a second marriage should take into account an order to pay support to children of a first marriage, but not vice-versa. But see commentary VI.B.2.

A deduction also is allowed for the support of the children of prior relationships even if the party is the custodial parent of the "prior" children and does not make child support payments to the other parent of the children. In this situation support

provided directly to the children is calculated by Rule 90.3 as if the children from the prior relationship were the only children.

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.

- E. **Time Period for Calculating Income.** Child support is calculated as a certain percentage of the income which will be earned when the support is to be paid. This determination will necessarily be somewhat speculative because the relevant income figure is expected future income. The court must examine all available evidence to make the best possible calculation.

The determination of future income may be especially difficult when the obligor has had very erratic income in the past. In such a situation, the court may choose to average the obligor's past income over several years.

Despite the difficulty in estimating future income, a child support order should award a specific amount of support, rather than a percentage of whatever future income might be. The latter approach has been rejected because of enforcement and oversight difficulties.

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 calculations in paragraph (b) 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 \$84,000 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.

- B. **Visitation Credit.** An obligor who exercises extended visitation, even if the visitation does not reach the thirty percent level of shared custody, probably will spend significant funds directly for the children during visitation. The parent with primary custody conversely will have somewhat lower expenses during the extended visitation even though that parent's fixed costs such as housing will not decrease. Consequently, 90.3(a)(3) authorizes the trial court, in its discretion, to allow a partial credit (up to 75% of total support for the period of extended visitation) against a child support obligation. In considering a visitation credit, the court may consider the financial consequences to the parties of the visitation arrangement and a credit. The court shall insure that support for the child, including contributions from both parents, is adequate to meet the child's needs while the child resides with the custodial parent. A visitation credit may be taken only if the extended visitation actually exercised exceeds 27 consecutive days and the court has authorized the specific amount of the credit. Nominal time with the custodial parent during the visitation period, including occasional overnights, does not defeat the visitation credit.

V. SHARED CUSTODY

- A. **Generally.** “Shared custody” as this term is used in Rule 90.3 means that each parent has physical custody of the child at least thirty percent of the year according to a specified visitation schedule in the decree. “Shared custody” as used in 90.3 has no relation to whether a court has awarded sole or joint legal custody. “Shared custody” is solely dependent on the time that the decree or agreement of the parties which has been ratified by the court specifies the children will spend with each parent.

In order for a day of visitation to count towards the required thirty percent, the children normally must remain overnight with that parent. (Thirty percent of the overnights in a year total 110 overnights.) Thus, a day or an evening of visitation by itself will not count towards the total of time necessary for shared custody. Visitation from Saturday morning until Sunday evening would count as one overnight. However, the court may use another method of calculating the percentages of custody when counting overnights does not accurately reflect the ratio of expenditures by the parents.

- 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. This is done without regard to the reduction to the minimum obligation for an obligor below the federal poverty guidelines, or the \$84,000 income cap. However, a parent’s annual support amount for purposes of this calculation will be a minimum of \$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), including appropriate adjustments allowed under paragraphs (c)(1)(B) and (c)(2) for reductions based on low or high income of a parent. The amount which would be calculated under 90.3(a) should include any appropriate visitation credit as provided by (a)(3).

- C. **Failure to Exercise Shared Custody.** An inequity may arise under the shared custody calculation of support if the obligor does not actually exercise the custody necessary to make shared custody applicable (i.e., at least 30% of the time). If the obligor parent does not actually exercise sufficient physical custody to qualify for the shared custody calculation in the rule (at least 110 overnights per year — See Commentary, Section V.A), then (a)(2) of this rule will apply to the child support calculation. Failure to exercise custody in this regard is grounds for modification of support, even if the custody order is not modified. However, this provision may not be interpreted to allow the custodial parent to profit by denying visitation.

VI. EXCEPTIONS

- A. **Generally.** Child support in the great majority of cases should be awarded under 90.3(a) or (b) in order to promote consistency and to avoid a tendency to underestimate the needs of the children. Nevertheless, the circumstances in which support issues arise may authorize courts to vary support awards for good cause.

The court may apply this good cause exception only upon proof by the parent requesting support be varied that there is clear and convincing evidence that manifest injustice would result if the support award were not varied. In addition, a prerequisite of any variation under 90.3(c) is that the reasons for it must be specified in writing by the court.

What constitutes “good cause” will depend on the circumstances of each case. Three situations constituting “good cause” are discussed below in sections VI.B-D. These three specific exceptions are not exclusive; however, the general exception for good cause may not be interpreted to replace the specific exceptions. Absent unusual circumstances, 90.3(c)(1)(A), or the exceptions for low or high incomes, 90.3(c)(1)(B) and (c)(2), the rule presumes that support calculated under 90.3(a) or (b) does not result in manifest injustice.

- B. **Unusual Circumstances.** 90.3(c)(1) provides that a court shall vary support if it finds, first, that unusual circumstances exist and, second, that these unusual circumstances make application of the usual formula unjust. Examples might include especially large family size, significant income of a child, health or other extraordinary expenses, or unusually low expenses. This determination should be made considering the custodial parent's income because the percentage of income approach used in Alaska tends to slightly understate support relative to the national average for cases in which the custodial spouse does not earn a significant income. This understatement relative to the national average becomes substantial if the custodial parent has child care expenses. The application of the unusual circumstances exception to particular types of factual situations is considered below.

1. *Agreement of the Parents.* The fact that the parties, whether or not represented by counsel, agree on an amount of support is not reason in itself to vary the guidelines. The children have an interest in adequate support independent of either parent's interest. Thus, approval of any agreement which varies the guidelines, whether in a dissolution, by stipulation or otherwise, must be based upon an explanation by the parties of what unusual factual circumstances justify the variation.
2. *Subsequent Children.* A parent with a support obligation may have other children living with him or her who were born or adopted after the support obligation arose. The existence of such “subsequent” children, even if the obligor has a legal obligation to support these children, will not generally constitute good cause to vary the guidelines. However, the circumstances of a particular case involving subsequent children might constitute unusual circumstances justifying variation of support. The court should reduce child support if the failure to do so would cause substantial hardship to the “subsequent” children.

In addition, the interests of the subsequent family may be taken into account as a defense to a modification action where an obligor proves he or she has taken a second job or otherwise increased his or her income specifically to better provide for a subsequent family. This defense to an upward modification action should not be allowed to the extent that the prior support

was set at a lower amount prior to the adoption of this rule, or to the extent that the obligor's increase in income is limited to ordinary salary increases.

In considering whether substantial hardship to “subsequent” children exists, or whether the existence of a subsequent family should defeat a motion to increase child support, the court should consider the income, including the potential income, of both parents of the “subsequent” children.

3. *Divided Custody.* The formula for shared custody described above was developed primarily for the situations in which the parents share custody of their only child, or the parents share custody of several children, but the children stay together. Custody of several children also can be divided so that at any one time one parent may have physical custody of one child and the other may have physical custody of the other children. Such an arrangement, depending on the circumstances, may require greater expenditures to support the children because it is somewhat less expensive to support children living together than in two households at the same time.

The first step in determining support in such a divided custody arrangement is to apply the usual shared custody formula in 90.3(b) by averaging the time all children will spend with each parent. For example, if one child will live with the father all of the time and two with the mother, support is calculated as if all the children spent one-third of the time with the father. The appropriate percentage figure for all the children (in the example, 3 or 33%) then is applied.

The second step in determining divided custody support is for the court to carefully consider whether the support amount should be varied under paragraph (c)(1)(A). A divided custody case should be treated as an unusual circumstance under which support will be varied if such a variation is “just and proper....”

4. *Relocation of Custodial Parent.* The relocation of the custodial parent to a state with a lower cost of living normally will not justify a reduction in support. The level of Alaska's guidelines is comparable to the national average. The fact that the obligor parent's income has in effect marginally increased relative to the children's living expenses simply enables the children to be supported at a slightly higher level.
5. *Prior and Subsequent Debts.* Prior or subsequent debts of the obligor, even if substantial, normally will not justify a reduction in support. The obligation to provide child support is more important than the obligation to fulfill most other obligations. However an obligor parent may attempt to present evidence which shows the existence of exceptional circumstances in an individual case.
6. *Income of a New Spouse (or other person in the household).* The income of a new spouse of either the custodial or obligor parent normally will not justify a variation in support. Either party may attempt to show that exceptional circumstances exist in a particular case. A parent who does not work because of the income of a new spouse (or other person in the household) may be assigned a potential income.
7. *Age of Children.* While the costs of raising children who are very young or who are over about ten years old are generally greater than raising other children, this in itself does not justify an increase in support. However, it

should be considered in concert with other circumstances, and a parent always may seek to establish exceptional expenses in a particular case.

8. *Denial of Visitation.* A denial of visitation may not be countered with a reduction in support. See AS 25.27.080(c). Neither may non-payment of support be countered by a denial of visitation. Courts should use their powers to strictly enforce the visitation and custody rights of obligor parents.
9. *Property Settlement.* A parent may justify variation of the guidelines by proving that a property settlement in a divorce or dissolution between the parents provided one of the parents with substantially more assets than the parent otherwise would have been entitled to, that this inequity was intended to justify increasing or decreasing child support, and that this intent specifically was stated on the record. Any such change in monthly child support may not exceed the actual excess of the property settlement apportioned over the minority of the child.

However, courts should not approve in the first instance unequal property settlements which are meant to increase or decrease child support payments. "Property divisions are final judgments which can be modified only under limited circumstances, whereas child support awards can be changed periodically under much more liberal standards. One should not be a trade-off for the other." *Arndt v. Arndt*, 777 P.2d 668 (Alaska 1989)

10. *Overtime Income.* In most cases income from overtime or a second job will be counted as adjusted annual income under Rule 90.3(a). However, the court has discretion not to include this income when, for example, the extra work is undertaken to pay off back child support.

- C. **Low Income of Obligor.** 90.3(c)(1)(B) provides that the guidelines do not necessarily apply if the obligor has a gross income below the federal poverty level. The applicable figure from the Federal Register is for the obligor alone, without regard to any subsequent family of the obligor. Subsequent children, and any income from a subsequent spouse, are relevant, if at all, only under 90.3(c)(1)(A) concerning the unusual circumstances exception.

Even if the obligor has an income of less than the poverty level, or no income at all, a minimum support of \$50.00 per month applies. This \$50.00 minimum support applies for all children, not to each child separately. The minimum level may be reduced under 90.3(a)(3) based on a visitation credit, or reduced under 90.3(b) based on the offset of the other parent's support obligation.

Reduction of support to \$50.00 is not automatic. The court should consider such factors as the obligor's assets, the number of children and any other responsibilities and resources of both parents in deciding whether to reduce support to \$50.00.

- 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 \$84,000, unless the other parent is able to present evidence which justifies departure from this general rule. The factors which the court should consider in such a determination are specified in the rule.

E. **Retroactive Establishment.**

1. *Retroactive Establishment of Child Support.* It will sometimes be necessary for the court to establish support for a time when no complaint or petition for support had yet been served, and there was no other court or administrative order in effect. The court has determined that Civil Rule 90.3 applies to such calculations. *Vachon v. Pugliese*, 931 P.2d 371, 381-2 (Alaska 1996). However, in some circumstances unfairness may result from rigid application of the rule. The court should consider all relevant factors in such a situation, including whether the obligor was aware of the support obligation, especially if the obligor had children subsequent to that child. See also Commentary VI.B.2.
2. *Retroactive Application of Amendments.* When establishing support prior to the service of a complaint or petition, the court should apply the most current version of the rule, except for portions of the rule which may have been adjusted for inflation. This is based on the fact that 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. As an 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, there are portions of the rule which were adjusted for inflation, such as the increase in the minimum support obligation from \$40 to \$50, and the increase in the income cap from \$60,000 to \$84,000. With regard to those portions of the rule, the court should apply the version of the rule which was in effect in the month for which support is being calculated.

VII. **HEALTH CARE COVERAGE**

A. **Health Insurance**

Rule 90.3(d) requires that the court address coverage of the children's health care needs including expenses not covered by insurance. The court must require health insurance if the insurance is available to either party at a reasonable cost. The health insurance will be paid by the party to whom it is available. However, the court must allocate the cost of insurance between the parties. Note that the cost to be allocated is limited to that portion of the total cost necessary to insure the children involved — not the parent, the parent's new spouse or children of another relationship. If the insurance for the children also covers other members of the purchaser's family, and evidence is unavailable on the specific cost of insuring only the children subject to the order, the cost of covering the children must be determined by allocating the total cost of coverage pro rata among all covered family members. See *Rusenstrom v. Rusenstrom*, Op. No. 5130 (Alaska, June 4, 1999).

The allocation of the cost of the children's insurance between the parents should be 50/50 unless the court finds good cause to change that percentage. A substantial difference in the parties' relative financial circumstances may constitute good cause. The rule requires the court to adjust child support either upward or downward to reflect the allocation. Paragraph (h)(1) provides that payments for health care insurance are included in deciding whether there has been a 15% change in support which constitutes a material change of circumstances.

- B. **Uncovered Health Care Expense.** Rule 90.3(d)(2) provides that the court also allocate reasonable health expenses not covered by insurance. The rule requires the party who did not obtain the health care to reimburse the other party within 30 days of receiving the necessary paperwork. The paperwork should include the

medical bill, payment verification, and, if medical insurance applies, an insurance statement indicating any uncovered health care expenses. These materials should be sent to the other party within a reasonable time. The rule should be read to require prepayment of allowable uncovered medical cost when prepayment is required by the health care provider.

The rule provides that the usual 50/50 presumption does not apply for any amount in excess of \$5,000 per calendar year. In such a situation, the excess expenses should be allocated based on the parties' relative financial circumstances during the approximate time period when the expenses occurred.

C. Definition of Health Care Expenses.

Paragraph (f) defines health care expenses to include medical, dental, vision and mental health counseling expenses.

VIII. CHILD SUPPORT AFFIDAVIT AND DOCUMENTATION

Each parent in a proceeding involving a determination of child support must provide the court with an income statement under oath. The rule also requires that the income statement of a parent be verified with documentation of current and past income. Suitable documentation of earnings might include paystubs, employer statements, or copies of federal tax returns. The income statement, with documentation, must be filed with the party's first pleading in the action. This first pleading is the dissolution petition in a dissolution, the complaint or answer in a divorce, the custody petition or response in a child custody case under AS 25.20.060, or the motion or opposition in a motion to modify child support or motion to change custody. The court may impose sanctions on a party who does not timely file the income statement with appropriate documentation. The rule repeats language set out in Civil Rule 95(a). In a default case the court must decide support on the best available information, but should require the present party to make reasonable efforts to obtain reasonably accurate information.

Income affidavits must be filed even by a parent whose income is not presently being used to calculate child support. That parent's income may be relevant if there is a request by either parent for a variation under subsection (c), or it may be needed to determine what percentage of uncovered health care expenses each parent will pay under subsection (d)(2) or how much of travel expenses each parent will pay under subsection (g). In addition, the court may wish to enter an order which automatically shifts the child support obligation if a child changes his or her primary residence, as permitted under *Karpuleon v. Karpuleon*, 881 P.2d 318 (Alaska 1994).

IX. TRAVEL EXPENSES

The court shall allocate any travel expenses that are necessary to exercise visitation. This allocation should generally be done on a percentage basis because the actual costs may not be known or may change. The court should take care that its allocation of these expenses does not interfere with a parent's ability to provide the basic necessities for the children.

X. MODIFICATION

A. Material Change in Circumstances.

Alaska law allows the modification of support orders upon a material change in circumstances. A significant amendment to Rule 90.3 constitutes a material change in circumstances pursuant to AS 25.24.170(h). 90.3(b) presumptively defines a material change in circumstances, whether based on a change in the parties' incomes or a

significant amendment to the rule, as whenever the change would result in an increase or decrease of support under the rule of at least 15%. However, a support order can provide that the support obligation will be adjusted without further order of the court upon a change of health insurance costs and notice of the change to the other parent (and CSED if CSED is handling collections).

See *Flannery v. Flannery*, 950 P. 2d 126 (Alaska 1997), concerning what constitutes a material change of circumstances when the parties by agreement originally set support at a level higher than would have normally been required under Rule 90.3.

A temporary reduction in income normally will not justify an ongoing modification reducing child support. However, a temporary, unforeseen, and involuntary reduction in income may justify a temporary reduction in support subject to the retroactivity provisions in Rule 90.3(h)(2). In considering such a reduction, the court should consider the needs of the children, the ability of the other parent to provide support, liquid assets available to provide support, and the future earning capability of the obligor parent. See *Flannery v. Flannery*, 950 P. 2d 126, 133 (Alaska 1997); *Patch v. Patch*, 760 P. 2d 526, 530 (Alaska 1988).

Federal law, recognized in AS 25.24.170(b) and 25.27.193, appears on its face to require allowing modifications every three years without a showing of a material change in circumstances. See 42 U.S.C. 666(a)(10)(A)(iii). However, in response to questions from states, the federal Office of Child Support Enforcement has stated (in Action Transmittal OCSE-97-10, pages 28-31) that existing regulations which allow reasonable quantitative standards for modifications (such as Alaska's 15% standard) continue to apply.

B. No Retroactive Modification.

The Omnibus Budget Reconciliation Act of 1986, P.L. 99-509, Section 9103(a) (the Bradley Amendment), prohibits retroactive modification of child support arrearages. Rule 90.3(h)(2) is intended to restate this prohibition, including the exception allowed by federal law for modification during the pendency of a modification motion. Pursuant to this rule, the notice of petition for modification sent by the Child Support Enforcement Division triggers the legal process for modification of child support awards and thus an increase or decrease of support back to the date of this notice does not constitute retroactive modification.

The prohibition against retroactive modification limits both requested decreases and increases in child support. **See** Prohibition of Retroactive Modification of Child Support Arrearages, 54 Fed. Reg. 15,763 (1989). Thus, either the custodial or the obligor parent should promptly apply for a modification of child support when a material change in circumstances occurs.

See Section VI.B.2 of the commentary as to the extent support of a "subsequent" family may be used as a defense to a modification action to increase child support.

C. Preclusion.

Illinois courts have applied the doctrine of equitable estoppel to mitigate the sometimes harsh effect of the rule against retroactive modification. *In re Duerr*, 621 N.E. 2d 120 (Ill. App. 1993); *In re Michael*, 590 N.E. 2d 998 (Ill. App. 1992); *Johnston v. Johnston*, 553 N.E. 2d 93 (Ill. App. 1990); *Strum v. Strum*, 317 N.E. 2d 59 (Ill. App. 1974). The doctrine does not allow retroactive modification, but it can in limited and appropriate cases limit collection of a support arrearage. It also may be applied to limit arrearage enforcement by a parent's assignee such as the child support enforcement agency of this or another state. Clear and convincing evidence is required to support a finding of equitable estoppel.

Rule 90.3's preclusion provision limits application of this principle to cases in which the obligor assumed primary custody of a child for the time period for which the obligee now attempts to collect support. Also, the time period must exceed nine months. The application of preclusion would not be appropriate when the proportions of shared custody changed or even when an arrangement originally conceived as primary custody changed to shared custody. Further, preclusion would apply, as equitable estoppel does in Illinois, only when the obligor assumed primary custody of all the children on which the support obligation is based.

As an alternative to preclusion, AS 25.27.020(b) may allow a reduction of support owed to the other parent when the obligor assumes custody of one or more of the children. See *State v. Gause*, 967 P.2d 599 (Alaska 1998).

XI. THIRD PARTY CUSTODY

A. Support Owed to the Third Party

If the state or another third party entitled to child support has custody of all of a parent's children, child support is calculated in the same way as it would be calculated in other cases. In other words, support is equal to the parent's adjusted annual income multiplied by the relevant percentage in paragraph (a)(2) based on the number of children.

However, this basic calculation does not work when the state or other third party has custody of only some of a parent's children. In this case, the rule provides that the total support calculation (as calculated for the total number of the parent's children) be reduced to only the proportion of the parent's children of whom the third party has custody. For example, the third party might have custody of two of a parent's three children. Support would be calculated as the parent's adjusted annual income, multiplied by .33 (the relevant percentage for three children), multiplied by 2/3 (the third party has custody of two of the parent's three children). Note that the calculation only takes into account children which are either in third party custody, substantially supported by the parent or living with the parent. A child of the parent, for example, living with a relative without substantial support would not be counted in the above calculation.

The deduction for prior children in (a)(1) (B) and (C) would not apply because these children are already taken into account as children living with or supported by the parent.

B. Support Owed Between the Parents

There will be instances when a third party is entitled to support for some of the parent's children, but one or both parents retain primary or shared custody of their remaining children. In this case, child support between the parents should be calculated using Rule 90.3 based on the pro rata support percentages for the children not in third party custody. After that calculation, any support owed may be offset with amounts owed under 90.3(i)(1) to minimize transactions.

For example, a father might have custody of two children and the mother's sister might have custody of, and be entitled to support for, the parents' third child. Both parents in this example have a \$45,000 adjusted annual income. Under Rule 90.3(i)(1), the sister is entitled to \$4,950 per year from the father [$\$45,000$ (annual income) \times 33% (percentage for three children) \times 1/3 (custodian has one of three children)]. The sister also is entitled to the same amount from the mother. (The parents' incomes are the same and the mother supports the children living with the father.)

The pro rata percentage for each child under 90.3 (a)(2) would be 33% (three children) \div 3 or 11% per child. Under 90.3(i)(2), the mother owes the father \$9,900 per year in support ($\$45,000 \times 22\%$). If the support amounts are offset, the mother will owe her sister \$9,900 per year and the father \$4,950 per year. The court could decide, however, that it was preferable not to offset the support amounts because one of the parents might not pay the third party.

XII. SUPPORT ORDER FORMS

Paragraph (j) was formerly Civil Rule 67(b).

XIII. DEPENDENT TAX DEDUCTION

Waggoner v. Foster, 904 P.2d 1234 (Alaska 1995), provides that tax deductions for the children should be allocated based on the child's best interests. AS 25.24.152 places some limits on giving the deduction to the parent with less physical custody. Federal income tax law also may limit who can take the deduction.

CHART FOR CHECKING CALCULATIONS IN PRIMARY CUSTODY CASES*

Adjusted
Annual
Income

Number of Children and Monthly Support Amount

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
5,000	83.33	112.50	137.50	150.00	162.50
6,000	100.00	135.00	165.00	180.00	195.00
7,000	116.66	157.50	192.50	210.00	227.50
8,000	133.33	180.00	220.00	240.00	260.00
9,000	150.00	202.50	247.50	270.00	292.50
10,000	166.66	225.00	275.00	300.00	325.00
11,000	183.33	247.50	302.50	330.00	357.50
12,000	200.00	270.00	330.00	360.00	390.00
13,000	216.66	292.50	357.50	390.00	422.50
14,000	233.33	315.00	385.00	420.00	455.00
15,000	250.00	337.50	412.50	450.00	487.50
16,000	266.66	360.00	440.00	480.00	520.00
17,000	283.33	382.50	467.50	510.00	552.50
18,000	300.00	405.00	495.00	540.00	585.00
19,000	316.66	427.50	522.50	570.00	617.50
20,000	333.33	450.00	550.00	600.00	650.00
21,000	350.00	472.50	577.50	630.00	682.50
22,000	366.66	495.00	605.00	660.00	715.00
23,000	383.34	517.50	632.50	690.00	747.50
24,000	400.00	540.00	660.00	720.00	780.00
25,000	416.66	562.50	687.50	750.00	812.50
26,000	433.33	585.00	715.00	780.00	845.00
27,000	450.00	607.50	742.50	810.00	877.50
28,000	466.66	630.00	770.00	840.00	910.00
29,000	483.33	652.50	797.50	870.00	942.50
30,000	500.00	675.00	825.00	900.00	975.00
31,000	516.66	697.50	852.50	930.00	1,007.50
32,000	533.33	720.00	880.00	960.00	1,040.00
33,000	550.00	742.50	907.50	990.00	1,072.50
34,000	566.66	765.00	935.00	1,020.00	1,105.00
35,000	583.33	787.50	962.50	1,050.00	1,137.00
36,000	600.00	810.00	990.00	1,080.00	1,170.00
37,000	616.66	832.50	1,017.50	1,110.00	1,202.50
38,000	633.33	855.00	1,045.00	1,140.00	1,235.00
39,000	650.00	877.50	1,072.50	1,170.00	1,267.50
40,000	666.66	900.00	1,100.00	1,200.00	1,300.00
41,000	683.33	922.50	1,127.50	1,230.00	1,332.50
42,000	700.00	945.00	1,155.00	1,260.00	1,365.00
43,000	716.66	967.50	1,182.50	1,290.00	1,397.50
44,000	733.33	990.00	1,210.00	1,320.00	1,430.00
45,000	750.00	1,012.50	1,237.50	1,350.00	1,462.50
46,000	766.66	1,035.00	1,265.00	1,380.00	1,495.00
47,000	783.33	1,057.50	1,292.50	1,410.00	1,527.50
48,000	800.00	1,080.00	1,320.00	1,440.00	1,560.00
49,000	816.66	1,102.50	1,347.50	1,470.00	1,592.50
50,000	833.33	1,125.00	1,375.00	1,500.00	1,625.00

*This chart cannot be used in shared custody situations.

CHART FOR CHECKING CALCULATIONS IN PRIMARY CUSTODY CASES*
(continued from inside cover)

Adjusted Annual Income	Number of Children and Monthly Support Amount				
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
51,000	850.00	1,147.50	1,402.50	1,530.00	1,657.50
52,000	866.66	1,170.00	1,430.00	1,560.00	1,690.00
53,000	883.33	1,192.50	1,457.50	1,590.00	1,722.50
54,000	900.00	1,215.00	1,485.00	1,620.00	1,755.00
55,000	916.66	1,237.50	1,512.50	1,650.00	1,787.50
56,000	933.33	1,260.00	1,540.00	1,680.00	1,820.00
57,000	950.00	1,282.50	1,567.50	1,710.00	1,852.50
58,000	966.66	1,305.00	1,595.00	1,740.00	1,885.00
59,000	983.33	1,327.50	1,622.50	1,770.00	1,917.50
60,000	1,000.00	1,350.00	1,650.00	1,800.00	1,950.00
61,000	1,016.67	1,372.50	1,677.50	1,830.00	1,982.50
62,000	1,033.33	1,395.00	1,705.00	1,860.00	2,015.00
63,000	1,050.00	1,417.50	1,732.50	1,890.00	2,047.50
64,000	1,066.67	1,440.00	1,760.00	1,920.00	2,080.00
65,000	1,083.33	1,462.50	1,787.50	1,950.00	2,112.50
66,000	1,100.00	1,485.00	1,815.00	1,980.00	2,145.00
67,000	1,116.67	1,507.50	1,842.50	2,010.00	2,177.50
68,000	1,133.33	1,530.00	1,870.00	2,040.00	2,210.00
69,000	1,150.00	1,552.50	1,897.50	2,070.00	2,242.50
70,000	1,166.67	1,575.00	1,925.00	2,100.00	2,275.00
71,000	1,183.33	1,597.50	1,952.50	2,130.00	2,307.50
72,000	1,200.00	1,620.00	1,980.00	2,160.00	2,340.00
73,000	1,216.67	1,642.50	2,007.50	2,190.00	2,372.50
74,000	1,233.33	1,665.00	2,035.00	2,220.00	2,405.00
75,000	1,250.00	1,687.50	2,062.50	2,250.00	2,437.50
76,000	1,266.67	1,710.00	2,090.00	2,280.00	2,470.00
77,000	1,283.33	1,732.50	2,117.50	2,310.00	2,502.50
78,000	1,300.00	1,755.00	2,145.00	2,340.00	2,535.00
79,000	1,316.67	1,777.50	2,172.50	2,370.00	2,567.50
80,000	1,333.33	1,800.00	2,200.00	2,400.00	2,600.00
81,000	1,350.00	1,822.50	2,227.50	2,430.00	2,632.50
82,000	1,366.67	1,845.00	2,255.00	2,460.00	2,665.00
83,000	1,383.33	1,867.50	2,282.50	2,490.00	2,697.50
84,000	1,400.00	1,890.00	2,310.00	2,520.00	2,730.00

*This chart cannot be used in shared custody situations.