

THE FAMILY COURT OF THE STATE OF DELAWARE

DELAWARE CHILD SUPPORT FORMULA

EVALUATION AND UPDATE

November 8, 2018

REPORT OF THE FAMILY COURT JUDICIARY

THE HONORABLE MICHAEL K. NEWELL,
CHIEF JUDGE

SECTION I: BACKGROUND

An Ad Hoc Committee for Child Support Guideline Review (hereinafter referred to as “the Committee”) was convened at the request of Chief Judge Michael Newell on October 18, 2017, and charged with reviewing and updating the guidelines in accordance with Federal Regulations at 45 C.F.R. §302.56 and Family Court Civil Procedure Rule 500(b).

Federal Regulations require all States to have guidelines for establishing and modifying child support obligations within the State. The State must review, and if appropriate, revise the guidelines at least once every four years to ensure that their application results in the determination of appropriate child support amounts. The guidelines must, at a minimum:

1. Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:
 - a. Takes into consideration all earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent);
 - b. Takes into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State; and
 - c. If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.
2. Address how the parents will provide for the child's health care needs through private or public health care coverage and/or through cash medical support;
3. Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; and
4. Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation.

The Delaware Child Support Formula, also known as the Melson Formula (hereinafter referred to as “the Formula”), is a rebuttable presumption for calculating child support obligations in this State. If the Court finds the application of the Formula inequitable in a given case, it must state on the record the result of a calculation pursuant to the Formula and why the application of the Formula would be unjust or inappropriate. 45 C.F.R. §302.56(g); Dalton v. Clanton, Del. Supr., 559 A.2d 1197 (1989).

This particular review year also coincides with the implementation of major changes in the federal regulations. The new regulations are, in large part, manifestations of the United States Supreme Court ruling in Turner v. Rogers whereby the Court held that “ability to pay” is a critical element in any child support enforcement proceeding. Not surprisingly, the Federal Office of Child Support Enforcement (OCSE) was inclined to extend that concept to child support establishment and modification proceedings especially where those proceedings involve low income and incarcerated parents. The new regulations also emphasize data collection and allocation of health care costs.

The Committee was comprised of representatives of the Family Court, General Assembly, Division of Child Support Services, Department of Justice, Family Law Commission, and the Family Law Section of the Delaware State Bar Association. The members were:

Chief Judge Michael Newell
Senator Bruce Ennis
Representative Andria Bennett
Commissioner Andrew Southmayd
Commissioner DeSales Haley
Commissioner Angela Fowler
Kelly M. Huff, Esquire, Family Law Commission
Constance Dorsney, Esquire, Department of Justice
Theodore Mermigos, Jr., Division of Child Support Services
Leslie Spoltore, Esquire, Family Law Section
Giani Sirignano, Family Court Mediator

This report is inclusive of revisions made to the Formula in 1990, 1994, 1998, 2002, 2006, 2010 and 2014 which are still in effect. Pursuant to the 2006 recommendations, the Formula was restated and adopted on August 28, 2008 as Family Court Civil Procedure Rules 500 through 509.

On September 13, 2018, the Family Court Judiciary met and unanimously endorsed the committee’s report and recommendations.

SECTION II: Summary of Recommendations

The Judiciary approved the following recommendations:

1. The obligation of a parent incarcerated more than 180 days will be reduced to one-half of a “minimum order” unless the person has the resources to pay support or is incarcerated for a crime against the support recipient or a child of the union or for nonpayment of child support. This standard will be included in all future support orders so as to take effect as a matter of law without the necessity of a petition for modification.
2. Income taxes should be eliminated from the calculation as a deduction. To offset this change and produce very similar results as in the past, the Self Support Protection percentage will be reduced from 60% to 45% and Standard of Living Adjustment (SOLA) percentages by 36%. Additionally, the Self-Support Allowance will be increased from 100% to 110% of the poverty guideline. However, these adjustments do not fully compensate, when applicable, for federal self-employment taxes. For this reason, self-employed persons with proof of actual payment of self-employment taxes will receive a 7% self-employment tax adjustment.
3. The Court will adopt more comprehensive standards clarifying when and how to impute income capacity including:
 - a. A person employed in an occupation appropriate to their training and experience at least 35 hours per week and earning at least the “entry” level wage for their occupation according to the Delaware Office of Occupational and Management Information (OOLMI) will be presumed to have reached reasonable earning capacity.
 - b. A parent in appropriate employment but working less than 35 hours per week shall be imputed income representing at least 35 hours per week.
 - c. Parents who loses employment not attributable to their own voluntary conduct or misconduct will be deemed to have a reasonable earning capacity of 50% of their prior income but not less than presumptive minimum income (minimum wage, 40 hours per week).
 - d. Receipt of Unemployment Compensation is presumptive that job loss was involuntary or not for misconduct. Non-receipt of Unemployment Compensation is presumptive that job loss was voluntary or for misconduct. Unemployment that exceeds six (6) months in duration is presumed voluntary.
 - e. All voluntarily unemployed or underemployed parents shall be imputed not less than 40 hours per week based upon work history, training and the OOLMI wage

- tables. Median income for the applicable occupation shall be the starting point for any wage table analysis.
4. In new support actions, a retroactive support obligation at six (6) months prior to filing should be presumed subject to enumerated factors indicating greater or lesser retroactivity including ability to pay. The back support payment will be presumed at 20% of current support.
 5. If either parent's net available income for the Standard of Living Adjustment (SOLA) exceeds \$15,000 per month (approximately \$200,000 total earnings per year), each parent's net available for SOLA should be reduced by 20% of the combined excess. Currently, high income obligations are dominated by SOLA and any proportional difference in the parents' incomes has a minimal impact on the calculation. This proposal will restore the relevance of the custodial parent's income and prevent obligations from becoming a mere percentage distribution of the obligated parents' wealth.
 6. Health insurance premiums that cover the children of the order shall be considered 50% income deduction and 50% itemized primary. If the parent paying the premium has other children to support, the division shall be 75% income deduction and 25% itemized primary.
 7. The maximum deduction for pension contributions shall be increased from 3% to 5%.
 8. The Court will create systems to collect the number of rebuttals of the Formula, default orders, cases involving incarcerated parents, minimum orders, orders wherein the Self-Support Protection percentage is implicated, and when imputed income is utilized for either parent. These systems will produce data for short term management purposes and for the next quadrennial review.
 9. Credits that arise in favor of an obligated parent preferably should be disposed of through the full or partial deferral of current support. When deferral is not available or is insufficient to offset the credit, then the credit may be converted to a past due balance in favor of the obligated parent but only once there are no minor children of the union in the care of the original support recipient.
 10. Due to disproportionally higher increases in costs for shelter over the past 4 years, all Primary Support Allowances should be increased by \$10 more than they would have been increased under the prior standard. An increase of at least \$10 per child was already anticipated.
 11. Depending upon inflation as of January 2019, current indicators suggest Self Support Allowance of \$1140, and Primary Allowances of \$520 for one child, \$830 for two children, and \$310 for each additional child.

12. All allowances will be adjusted annually and rounded to the nearest multiple of ten (with the exception of half child allowances which may be a multiple of five). Allowances were previously adjusted biannually and the Self Support Allowance was rounded to the nearest multiple of twenty.
13. Standard of Living Adjustment percentages will be 12% for one child, 17% for two, 21% for three and 2% more for each additional child.
14. The Self Support Protection is a mechanism by which no parent is assessed a current support obligation in excess of 60% of their Net Income after Self-Support and the Adjustment for Other Dependents. This is being reduced by one-quarter to offset the elimination of income tax as a deduction from income. The Committee recommends reducing the percentage to 30% when a parent has children in three or more households to support.

SECTION III: ANALYSIS OF CASE DATA

A sample of 9,494 child support orders was generated from the Family Court Automated Management Information System (FAMIS) in the 2017 calendar year. Thirty-nine percent (39%) or 3,704 established or modified current child support obligations. Of the orders issued by Commissioners, 89% were based on the application of the Formula compared to 58% of orders issuing from mediation. Similar to 2014, when indicated, deviations downward are far more likely (81%) than deviations upward. Thirty-four percent (34%) of recorded deviations were by agreement of the parties. Unfortunately, “other” still constitutes a very large proportion (43%) of the deviations. While the overall rate of deviations is consistent with 2014 (at 78%), the rate at mediation has grown by 11% while the rate amongst Commissioners shrunk by a third. However, the data may be skewed by anecdotal evidence of differing practices of whether “minimum” orders constitute deviation and significant numbers of orders being produced manually rather than through FAMIS.

Type of Deviation	Commissioner's Orders	Mediation Orders	Total	% of Deviation	2013
01	9	103	112	14%	12%
02	1	5	6	1%	1%
03	1	64	65	8%	6%
04	57	214	271	34%	30%
05	179	169	348	43%	51%
Total Deviations	247	555	802	100%	100%
No Deviations	1952	950	2902	78%	77%
Total Orders	2199	1505	3704	100%	100%
Deviation %	11%	37%	22%		
Change from 2013	-6%	+8%	-1%		

KEY: 01 = Lower amount will meet the needs of the child
02 = NCP purchases items or pays other expenses resulting in lower order
03 = NCP agrees to higher amount to maintain standard
04 = Parties reached an alternative agreement
05 = Other

Child Support Filings

	New Support	Modification	Total
2013	7641	1379	9020
2017	6350	1184	7534
# change	-1291	-195	-1486
% change	-17%	-14%	-16%

All in all, the 2017 FAMIS report is not remarkably different from that produced in 2014. While it appears the rate of deviation decreased amongst Commissioners and increased amongst mediators, those indicators could merely be reflective of differing use of forms and codes. To add more complexity, over the last few years the number and proportion of petitions bypassing mediation due to domestic violence has increased significantly. Also, the 2013/2014 data may be atypical due to the transition to the then-new DECSS computer system at DCSS. The 2014 Report memorialized “better methods of memorializing deviations may be necessary to generate more useful data in the future.” This is obviously still true.

To counter the multiple known weaknesses of the FAMIS data, the Court at the behest of the Committee undertook a study of current orders. Each mediator and

Commissioner were requested to record specific data of up to ten (10) recent consecutive petitions in which child support orders were established or modified with the assistance of the Formula. The survey sought to assess the frequency of deviations, default orders, incarcerated obligors, use of imputed income, minimum orders, and the Self-Support Protection protocol. It also collected whether deviations were up or down, the amount of income utilized for the obligated parent, and the resulting amount of the order.

The survey collected data from 292 cases (159 from New Castle County, 66 from Kent, and 67 from Sussex). Eighteen and a half percent (18.5%) were recorded as deviations from the Formula. Deviations downward were 3.5 times more likely than deviations upward. Obligated parents provided documentation of income in 53% of cases, while income was estimated 16% of the time, and imputed 31%. “Estimated” means the person is employed full-time and the Court estimated their actual income on testimony alone. “Imputed” means the parent is unemployed or under-employed either voluntarily or for cause and the Court assigned them an income capacity.

Obligated parents were attributed minimum presumptive income (\$1430/month) in 20% of cases. Thirteen percent (13%) of orders issued by default. Fourteen percent (14%) were minimum orders. Monthly average gross income varied with \$3286 in New Castle, and \$3201 in Kent, \$2558 in Sussex, and \$3100 statewide. Final order averages were \$467 in New Castle, \$442 in Kent, \$310 in Sussex, and \$425 statewide. Only 3% of cases involved incarcerated parents.

The survey deviation findings were generally consistent with the FAMIS data especially after adjusting for minimum orders recorded in FAMIS as deviations. It is noteworthy that the obligated parent’s income is determined without the benefit of documentation in nearly one-half of cases, and that in one of five cases the Court determined or the parties agreed the obligated parent could not earn more than the equivalent of minimum wage, 40 hours per week. Additionally, 40% of all orders implicated the Self Support Protection alternative which means in all of those cases the primary support needs of the children were not being met.

While the survey was for a limited period, it demonstrated that useful management and Formula data is not difficult to obtain. For example, if it persists that nearly one-half of cases are determined by the Self Support Protection failsafe percentage and, thus, implicate neither the primary support allowances nor the Standard of Living Adjustment (SOLA), then has the Formula fundamentally changed? The Chief Judge directed that following the implementation of the approved revisions, the Court will assemble a work group to re-vamp data collection protocols to provide ongoing and periodic feedback on the performance of the Formula to better identify and address these issues.

SECTION IV: ANALYSIS OF ECONOMIC DATA

The national and state economy has over the last four years continued to rebound from the 2008 recession. Gross Domestic Product has increased by 9.5%. Median income for families with children has grown by 16.8%. The Consumer Price Index has increased by 5.2% while median wages have increased by only 4.1%. “Entry” level wages are defined by the Bureau of Labor Statistics (BLS) as the average of the bottom 30%; “experienced” level wages are defined by the average of the top 70%. Over the last four years the overall entry level wage has increased by 7.7%, and the experienced wage by 5.7%. The unemployment rate in Delaware in 2013 was 6.7% and in 2017 was only 4.6%. The Dow Jones Industrial Average (DJIA) was increased 50%. As demonstrated by the case survey, the Court’s docket is dominated by lower income cases. This economic data appears to be consistent with modest net gains at the bottom of the income spectrum but with less upward mobility and a widening gap between the rich and the poor.

For several quadrennial cycles, the Court relied heavily on the Consumer Price Survey (CEX) produced by the Bureau of Labor Statistics (BLS) and its findings of the annual expenditures in single parent households for food, clothing, shelter and utilities. The Formula broke down these four elements into two parts, food/clothing and shelter/utilities. These pairs are representative of the distinction between personal and household expenditures.

Over the most recently available four years (2012 to 2016), the four expenditure groups combined increased 7%. Food and clothing expenditures increased by only 2.7% while shelter and utilities grew by 9.8%. Additionally, the CPI (that is, the average cost) for food increased by 5.3% while the price of shelter increased by 14%. Thus, both from a cost and expenditure perspective, household expenses have outpaced inflation while personal expenses have remained steady with inflation (5.2%) or maybe even declined.

In sum, while the income and expenditures of single parents and single parent households have improved, there is little evidence of true upward mobility or significant standard of living improvements. The cost of daily subsistence (food and clothing) is stable but the cost of household infrastructure (shelter and utilities) persistently outpaces growth in personal income.

Statistics for Child Support Formula Review

Consumer Price Index

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>4 yr change</u>
CPI-U	230	233	237	237	240	245	5.2%
Food		April 2014:	240.3		April 2018:	253.1	5.3%
Clothing		April 2014:	127.3		April 2018:	118.8	-6.7%
Shelter		April 2014:	268.3		April 2018:	305.8	14.0%
Energy Services		April 2014:	207		April 2018:	204.9	-1.0%

Consumer Expenditure Survey (CEX) for single-parent households

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>4 yr change</u>
CEX food & clothing	606	632	630	622	632	649	2.7%
CEX shelter & Utilities	987	982	997	1017	1063	1078	9.8%
CEX FCSU	1593	1614	1627	1639	1695	1727	7.0%
FC to SU ratio	1.63	1.55	1.58	1.64	1.68	1.66	6.9%
CEX total	3090	3143	3166	3233	3430	3554	13.1%
FCSU share of total	51.6%	51.4%	51.4%	50.7%	49.4%	48.6%	

Office of Occupational Labor and Management Information (OOLMI) – Hourly wages in Delaware

<u>Hourly</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>4 yr change</u>
Entry	9.90	9.93	10.07	10.17	10.44	10.57	10.85	7.7%
Median	17.40	17.65	17.94	18.03	18.15	18.25	18.68	4.1%
Experienced	29.23	29.90	30.49	30.56	31.04	31.44	32.22	5.7%
<u>Monthly</u>								
Entry	1716	1721	1745	1763	1810	1832	1881	
Median	3016	3059	3110	3125	3146	3163	3238	
Experienced	5066	5183	5285	5297	5380	5449	5585	

2017 by County

	<u>Hourly</u>			<u>Monthly</u>			<u>Median</u>
	<u>Entry</u>	<u>Median</u>	<u>Experienced</u>	<u>Entry</u>	<u>Median</u>	<u>Experienced</u>	<u>% of SW</u>
NCC	11.18	20.67	35.22	1938	3583	6105	110.7%
Kent	10.40	16.88	27.19	1803	2926	4713	90.4%
Sussex	10.11	14.76	24.42	1752	2558	4233	79.0%
Statewide	10.85	18.68	32.22	1881	3238	5585	100.0%

Other Indicators

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>4 yr change</u>
Unemployment Rate (Delaware)	6.70%	5.70%	4.90%	4.50%	4.60%	4.2% (4/18)
Poverty Threshold (monthly)	991	1006	1007	1019	1041 (est)	5.0%
Poverty Guideline (monthly)	973	981	990	1005	1012	4.0%
Median Income (families w/children)	5387	5553	5891	6059	na	16.8%
Gross Domestic Product (trillions)	15.79	16.22	16.55	16.85	17.29	9.5%
DJIA (thousands)	16.47	17.83	17.43	19.76	24.72	50.1%

SECTION V: RECOMMENDATIONS

A. Incarceration

Automatic Decrease upon 180 Days of Confinement

The 2014 Report included these statistics published by the Pew Charitable Trust in *Collateral Costs, Incarceration's Effect on Economic Mobility* (2010):

- One in every 28 children in the United States has an incarcerated parent, up from 1 in 125 just 25 years ago.
- One in 9 African American children, 1 in 28 Hispanic children and 1 in 57 white children has an incarcerated parent.
- 54% of inmates have minor children.
- 23% of children with fathers who have been incarcerated have been expelled from school (as opposed to 4% of all other children).
- Past incarceration reduces subsequent wages by 11 percent, annual employment by 9 weeks, and yearly earnings by 40%.

Incarceration as a foreseeable consequence of criminal conduct has been the historical rationale for disregarding incarceration when determining child support. However, aggressive child support obligations based upon pre-incarceration circumstances do not benefit children while a parent is in jail and inhibits child support compliance after the parent is released. The overarching public goal of incarceration is to dissuade future criminal behavior; a priority of all child support policy should be to facilitate prospective responsible parenting. Neither of these objectives is served by the accumulation of potentially insurmountable arrears balances.

Eight years ago, the Formula was amended to allow consideration of the effect of incarceration on the future income of indigent prisoners if the term of incarceration exceeded one year. Four years ago, the Court recognized incarceration as grounds for modification and allowed, upon petition, for the reduction of current support to a minimum order (\$100 per month for one child, \$160 for two) upon one year of continuous confinement and another 50% reduction (to \$50 or \$80) upon three years of confinement. The Court was aware of efforts at the federal level to modify regulations to mandate incarceration as a basis for modification or suspension of current support. The Court contemplated that there would or should be a minimum period of continuous confinement and speculated that period to be one year. Unfortunately, petitions for modification by prisoners are uncommon and many still re-enter the community with insurmountable debt.

The new federal regulations issued in 2016 set the standard at 180 days, not one year. The Committee concurs that 180 days of continuous confinement is appropriate to trigger the entitlement to relief. However, contrary to some of the federal commentary to the new regulations, the Committee believes child support based upon pre-incarceration

circumstances should continue for anyone with income or other resources with which to pay, or who is incarcerated for a crime against a dependent child or support recipient. It is also noteworthy that the Delaware General Assembly also took the extraordinary step of passing a Joint Concurrent Resolution specifically endorsing the Committee's recommendation. Key to that resolution was that the relief be automatic and not reliant upon the filing of a petition.

Prospectively, every new order will contain a provision automatically reducing the obligation upon 180 days of continual confinement to, under current standards, \$50 per month for one child and \$80 for two or more children. Any party can file a petition to recognize the adjustment and to determine whether any of the exceptions apply. DCSS is authorized by the rule and has active plans to implement the adjustments administratively. Incarcerated persons with orders that predate the rule can still seek the adjustment by petition. A limited number who already received a reduction to a minimum order under the previous rule will not be able to seek further relief until the existing order is two and one-half years old.

Rule 506. Minimum orders and self-support allowance protection Low Income Adjustments.

~~(e) The obligation of an incarcerated person for the first 12 months of continuous confinement shall be based upon their pre incarceration circumstances. Subject to the limitations recited in Rule 501(h), an incarcerated person shall be assessed a minimum order for the 12th through 36th month of continuous confinement which shall be reduced by one half commencing the 37th month. The support order shall recite both the date and amount of any subsequent adjustments under this Rule or Rule 508(a).~~

(c) Automatic Adjustment for Incarceration. --

(1) After 180 days of continuous incarceration but subject to the exceptions in Rule 501(k), every prospective current support obligation established or modified after January 31, 2019 will automatically decrease to one half of the minimum order amount recited in Rule 506(a) as of the date of the order.

(2) A petition may be filed to determine the exact date of adjustment and whether any of the Rule 501(k) exceptions apply.

(3) The obligation will not revert upon release from incarceration, but release shall constitute a substantial change of circumstances for modification pursuant to Rule 508.

(4) Every written order for new or modified current support shall advise of this potential adjustment.

(5) Incarcerated parents subject to current child support orders that issued prior to February 1, 2019 may petition for modification under the standards

recited in subsection (1). However, if the obligation had already been calculated on the basis of continuous confinement under the prior standard, then relief may only be awarded two and one-half (2½) years after the last determination of current support.

(6) The Division of Child Support Services (DCSS) may utilize the procedures outlined in Rule 302 to facilitate these adjustments.

Rule 508. Modification.

Any petition for child support modification filed within two and one-half years of the last determination of current support must allege with particularity a substantial change of circumstances not caused by the petitioner's voluntary or wrongful conduct except as described in Rule ~~504(g)~~ 501(j) and 506(c). Furthermore:

~~(a) — Incarceration or anticipated incarceration of one year or less is not a ground for modification of a child support obligation last determined within the last two and one-half years. No modification of support predicated upon a longer term of incarceration shall be effective prior to one year of continuous confinement.~~

B. Allowances

The Primary Support Allowances in the Formula as modified in 2014 manifest two separate components. They are a “per household” component (currently \$200), and a “per child” component (currently \$300). Due to the disproportionate increase in household costs and expenditures, the Committee recommends a small increase in the “per household” component of the Primary Support Allowances in addition to the usual adjustment for inflation. In the interest of simplicity and transparency, all allowances will be expressed in a table that reveals all future adjustments as they relate to the annual January release of the Federal Poverty Guidelines. For reasons to be explained in the recommendation for removal of income taxes as a deduction, the Self Support Allowance be increased from 100% of the Federal Poverty Level (FPL) for a single adult to 110% FPL.

Under the current rule, each Primary Support Allowance is one-half of the Self Support Allowance (as it was defined in 2014). This is the same as saying 50% FPL. Similarly, the allowance increased 30% FPL for each child beyond the first. For purposes of building the table, the ‘per household’ component of the primary support allowances is 25% of the “new” Self Support Allowance minus \$72. The ‘per child’ component will be 25% of the Self Support Allowance plus \$24. Each component is rounded to the nearest multiple of ten (10).

Currently, the allowances in the Formula are intended to be updated every two years. Also, the Self Support Allowance was required to be rounded to the nearest multiple

of twenty. Due to an over-estimation of inflation from 2013 to 2014 and very low inflation in the interim, the allowances have remained unchanged since the last review. If, instead, the Self Support Allowance had been rounded to a multiple of ten and 2013 inflation not overestimated, the Self Support Allowance would have been set at \$980 in January of 2015 and increased by \$10 each year. The Committee concluded that would have been a more desirable outcome and recommends going forward most values be rounded to a multiple of ten and adjusted annually.

Proposed 2019 to 2022 Self-Support, Primary Allowances and Minimum Orders

Federal Poverty Limit from	Federal Poverty Limit to	self support	per child	per h/h	1 child primary	2 child primary	each additional	Minimum Order	
								1 child	2+ child.
12060	12160	1110	300	210	510	810	300	100	160
12170	12270	1120			520	830	310		170
12280	12380	1130	310	220	530	840	310		
12390	12490	1140			540	860	320		
12500	12590	1150			320	230	550	870	
12600	12700	1160	560	890			330		
12710	12810	1170	330	240			570	900	
12820	12920	1180			580	920	340	180	
12930	13030	1190			340	240	590		930
13040	13140	1200	120						
13150	13250	1210							
13260	13360	1220							
13370	13470	1230							
13480	13580	1240							
13590	13690	1250							
13700	13790	1260							

RULE 502. Net Available Income.

~~(d) Self support allowance~~ Self Support Allowance. -- ~~Effective January 1, 2015, the Self support Allowance shall be \$1000. The allowance shall be subsequently adjusted in January of every odd numbered year to 100% of the Federal Poverty Guideline for a one person household as published in January of each year in the Federal Register by the United States Department of Health and Human Services rounded to the nearest multiple of twenty (\$20). The Self Support Allowance shall be 110% of the Federal Poverty Guideline for a one-person household as published in the Federal Register by the United States Department of Health and Human Services rounded to the nearest multiple of ten (\$10). The allowance shall be adjusted in January of each year.~~

RULE 503. Primary Support Need

(b) Primary support. -- Each parent's Primary Support Obligation is determined by multiplying their Primary Share percentage by the sum of all of the elements of the children's primary support need. The elements of the primary support need are:

~~(1) Primary allowances. -- The primary support allowances shall be a percentage of the self support allowance as determined pursuant to Rule 501(d) as follows: One child 50% Each additional child 30% One half child 35% (shared placement) Each additional half child 15% (shared placement) The primary allowances for one child and each additional child shall be rounded to the nearest multiple of ten (10). The shared placement allowances shall be rounded to the nearest multiple of five (5). The primary allowances shall be comprised of two components, a per household component and a per child component:~~

(i) The per household component is 25% of the Self Support Allowance minus \$72.

(ii) The per child component is 25% of the Self Support Allowance plus \$24.

(iii) Each component shall be rounded to the nearest multiple of ten (10). Half child allowances may be rounded to a multiple of five (5).

(iv) To determine the allowance for each household, multiply the number of children by the per child component, and then add the per household component to the result. The allowances shall be adjusted in January of each year.

RULE 506. Minimum orders and ~~self support allowance protection~~ Low Income Adjustments.

~~(a) Minimum orders. -- No person shall be assessed a support obligation of less than \$100 for one child and \$160 for two or more children and adjusted biannually in proportion to the self support allowance except: Except as otherwise provided in this Rule, a support obligation for one child shall not be less than 20% of the Primary Allowance for one child; and for 2 or more children, 20% of the Primary Allowance for two children. Minimum orders shall be rounded to the nearest multiple of ten (10).~~

(1) This limitation shall not apply where children reside in shared (at least 164 overnights in each household) or split (at least one child of the union with primary residence in each household) placement.

(2) A disabled person with actual income of less than the ~~self-support allowance~~ Self Support Allowance may be assessed a lesser obligation upon consideration of the nature and extent of the disability, cash and other resources available, and the totality of the circumstances.

C. Imputed Income

How to Determine Reasonable Income Capacity

The current Rule 501 provides some guidance on determining income for purposes of calculating support. It authorizes the use of wage tables and says that a parent working “full-time” in a job “commensurate” with their training and experience is deemed to have reached reasonable earning capacity. New federal regulations emphasize the importance of actual income information, that an obligated parent’s ability to pay is of utmost importance, and any imputation of income must be based upon “the specific circumstances” of the parent (45 CFR 302.56). However, the current rule does not provide a well-organized comprehensive analytical framework. For example, it allows the use of wage tables but no advice on how to use them. It provides no definition of “full-time” prompting some users of the Formula to always impute not less than 40 hours per week regardless of actual circumstances. It provides no guidance on how to gauge reasonable income capacity for a person who lost employment through no fault of their own and how long their unemployment may endure before it is deemed voluntary.

Therefore, the rule shall be amended as indicated below. The amendments establish that a person who is employed at a job commensurate with their experience at least 35 hours per week at a rate of pay of at least the “entry” level wage for their occupation, then they have reached reasonable earning capacity. If they are similarly employed but for less than 35 hours per week, then they shall be imputed at least 35 hours per week. Persons who are not employed, under-employed, or who fail to bring documentation of their employment will be imputed not less than 40 hours per week at a wage to be determined from testimony and the wage tables. The rule goes on to address the role of unemployment compensation and the reasonable earning capacity of parents who lose work through no fault of their own, as well as several other topics.

RULE 501. ~~Income attribution~~ Reasonable Earning Capacity.

(a) General. -- In determining each parent's ability to pay support the Court considers the health, income and financial circumstances, and reasonable earning capacity of each parent, the manner of living to which the parents had been accustomed as a family unit and the general equities inherent in the situation.

(b) Actual income. -- A parent employed ~~full-time~~ at least 35 hours per week in a manner commensurate with his or her training, education and experience shall be presumed to have reached ~~their~~ his or her reasonable earning capacity.

(c) Documented Part-Time Employment. -- A parent with documented earnings representing an average of fewer than 35 hours per week at employment otherwise commensurate with his or her training and experience shall be imputed the number of hours reasonably available either with parent's current employer or through similar employment but not less than 35 hours per week unless:

- (1) The parent has medical limitations;
- (2) More substantial employment has proven unavailable despite diligent efforts;
- (3) Upon consideration of available hours and rates of pay, available full-time employment would not produce greater total earnings; or
- (4) A child of the union has profound special needs inhibiting the support recipient's ability to maintain employment.

~~(e) Attribution~~ (d) Imputed Income. -- Unemployment or underemployment that is either voluntary or due to misconduct, ~~or~~ failure to provide sufficient ~~evidence~~ documentation, or failure to appear for a hearing or mediation conference ~~may~~ shall cause ~~income~~ reasonable earning capacity to be ~~attributed~~ imputed. In determining whether actual employment is commensurate with training and experience and when imputing income, The the Court may examine earnings history, employment qualifications and the current job market shall consider each parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors. Except as provided in subsection (c) of this Rule, imputed income shall be calculated at not less than 40 hours of wages each week. The Court may take judicial notice of Department of Labor wage surveys for individual occupations to estimate or corroborate earning capacity. Where no better information exists, a parent may be attributed at least as much income as the other party.

(e) Wage surveys. The Court may take judicial notice of occupational wage surveys compiled by the United States Bureau of Labor Statistics (BLS) and the Office of Occupational and Labor Market Information (OOLMI) in the Delaware Department of Labor to impute or corroborate reasonable earning capacity.

- (1) If a parent's reasonable earning capacity has not previously been established and the actual income expressed as an hourly wage exceeds the survey's "Entry" level wage (average of the lowest 30%) for the parent's

occupation, then the rate of pay shall be presumed commensurate with the parent's training and experience.

(2) For imputation purposes, analysis should begin with the median wage for each occupation, but may be adjusted up or down between "Entry" and "Experienced" (average of the highest 70%) based upon the totality of the circumstances.

~~(d)~~ (f) Minimum income. -- In any instance not governed by subsections (b) or (c) of this Rule, Every every parent will be presumed to have a minimum monthly gross reasonable earning capacity of not less than \$8.25 per hour, the greater of the Federal or State statutory minimum wage at 40 hours per week (\$1430 173.33 hours per month). As related to this subsection, when using the State statutory minimum wage, the Court will not utilize the statutory training wage or youth wage. That amount will be adjusted biannually in direct proportion to the Self support Allowance as defined in Rule 502(d). However, the rate shall never be less than the greater of the Federal or State statutory minimum wage.

~~(e)~~ (g) Unemployment. -- A person who receives unemployment compensation shall be presumed to have been terminated from employment involuntarily and without cause. Termination without receipt of unemployment compensation shall be presumed voluntary or for cause. Continued unemployment or underemployment in excess of 6 months shall be presumed voluntary.

(h) Involuntary unemployment. -- If a parent's unemployment or underemployment is found by the Court to be involuntary and not for misconduct, then the parent's reasonable earning capacity shall be presumed the greater of:

- (1) One-half of the parent's previous reasonable earning capacity;
- (2) Any Unemployment Compensation received; or
- (3) Minimum Income pursuant to subsection (f) of this Rule.

~~(f)~~ (i) Disability. -- When a person has been determined to be eligible for Social Security Disability Income (SSDI) or Supplemental Security Income (SSI), this determination shall be substantive evidence of a disability. Whether a person has the ability to provide support or to earn additional income shall be determined upon consideration of the nature and extent of the disability, cash and other resources available and the totality of the circumstances. A parent who receives SSI shall not be attributed imputed income or assessed a child support obligation unless the parent has income or an earning capacity independent of their his or her SSI entitlement.

~~(g)~~ (j) Earnest re-employment. -- Parents who suffer a loss of income either voluntarily or due to their own misconduct may have their support obligation

calculated based upon reduced earnings after a reasonable period of time if the parent earnestly seeks to ~~achieve maximum~~ maximize income earning capacity.

~~(h)~~ (k) Incarcerated parents. -- Service of a term of incarceration that exceeds ~~or is anticipated to exceed one year~~ 180 days of continuous confinement may be considered as evidence of a diminished earning capacity unless the individual:

- (1) Has independent income, resources or assets with which to pay an obligation of support consistent with ~~their~~ his or her pre-incarceration circumstances; or
- (2) Is incarcerated for the nonpayment of child support or for any offense of which his or her dependent child or a child support recipient was a victim.

~~(i)~~ (l) Second jobs. -- Employment is "secondary" if the parent's primary employment is substantially full time and consistent with the parent's reasonable earning capacity. Whether income from secondary employment is included in the determination of support is determined on a case-by-case basis and:

(1) Existing secondary employment income is more likely to be included if it:

- (i) Was historically earned especially when or if the parents resided together and significantly enhanced the family's standard of living;
- (ii) Substantially raises the standard of living of the parent or the parent's household to an extent not shared by the child or children before the court; or
- (iii) Is necessary to meet the minimum needs of the child or children before the court; and

(2) Existing second employment income is more likely to be excluded if it:

- (i) Merely allows the parent to "make ends meet" especially with regard to the needs of other dependent children;
- (ii) Is used to pay extraordinary medical or educational expenses (including those of an emancipated child) or to service extraordinary indebtedness;
- (iii) Is necessary because the other parent of the child or children before the court is not providing adequate support; or
- (iv) Substantially conflicts with the parent's contact with the child or children before the court.

(3) Fluctuating income and the 40-hour work week. All income from primary employment is included in determining child support. The fact that income may fluctuate or that wage income may exceed 40 hours per week is not a basis for exclusion from income. Where income fluctuates, the Court must determine average monthly income likely to prospectively recur.

(4) Forsaken second jobs and overtime. To leave a second job or to decline prospective overtime without just cause is not a substantial change of circumstance for the purpose of a modification within two and one-half years. However, in the context of a new support petition or a modification beyond two and one-half years, previously earned second job income or overtime will not be ~~attributed~~ imputed to a parent as long as that parent's actual income is substantially full-time and consistent with reasonable earning capacity.

⊕ (m) Financial report. –

(1) Failure to submit a Child Support Financial Disclosure Report pursuant to Rule 16(a) with adequate supporting documentation risks dismissal or an adverse outcome. Adequate supporting documentation commonly includes but is not limited to each parent's most recent tax returns, W-2 Forms, three most recent pay stubs, documentation of payments from Social Security, Unemployment Compensation, Worker's Compensation, a recent physician's statement as to any claimed disability, and receipts for child care payments and private school costs.

(2) Individuals with self-employment income shall include all schedules and forms required to be filed with the tax return with corroborating documentation for significant expense categories and, to the extent that tax returns do not reflect current earnings or income, other reliable documentation of that income (such as recent bank statements).

(3) Individuals receiving income from a business organization in which they are a partner or significant shareholder also shall include the organization's tax return and supporting schedules and forms, and to the extent that tax returns do not reflect the organization's current earnings or income, other reliable documentation of that income (such as recent bank statements).

D. Taxes

Calculating Support on Net rather than Gross Income

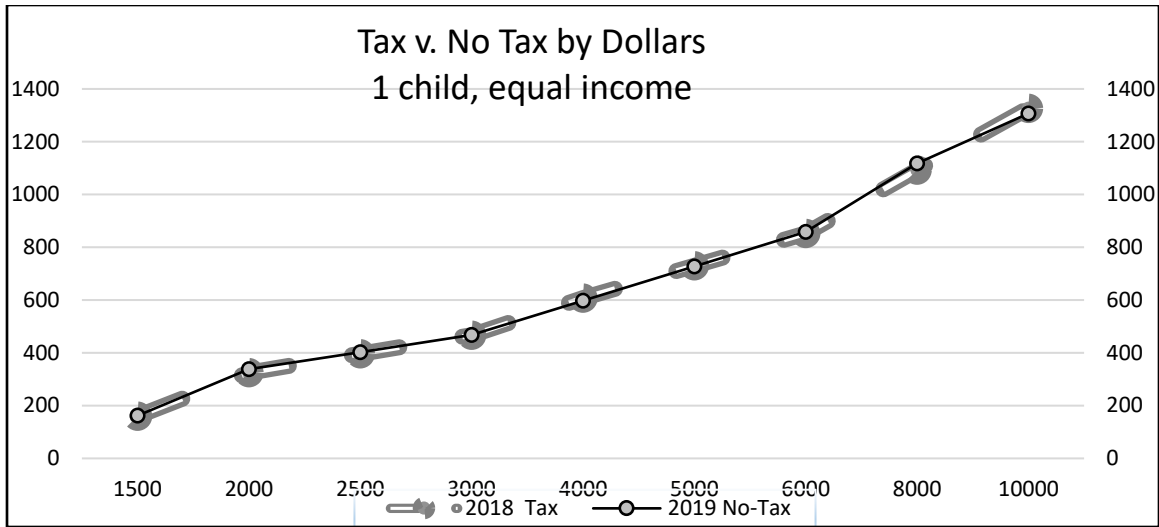
In 1998, the Formula was amended to eliminate the consideration of actual income tax paid and to not individualize tax exemptions or filing status. Instead, the Formula would utilize Delaware state and federal withholding tables with a filing status of single with one dependent (S-1). This was done to streamline the calculation process and to eliminate inconsistencies between users of the Formula. For example, withholding at M-3 (married with three dependents) would increase net available income to the extent it would sometimes cancel out other discounts allowed for the support of other children. “S-1” lived

up to its promise by reducing the amount of time spent on calculations and facilitated the automation of the Formula because tax tables could be easily built into computer programs. Elimination of taxes altogether was discussed in 1998 but creating a formula that replicated past results proved evasive due to the inability to adjust the values in a way that was compatible in the context of both upper and lower incomes.

However, even this limited consideration of taxes is sometimes problematic as tax issues still arise. Unemployment compensation, workers' compensation, military housing and meal allowances, stock dividends, 401k distributions, pensions, capital gains, Social Security, and VA benefits all have unique tax implications and it is easy for persons not thoroughly schooled in each to get it wrong. Problems arise with the computer programs such as errors, glitches and other unforeseen circumstances. It is only after a problem is discovered that one wonders how many prior cases may have been affected. Additionally, tax law changes arise. The most recent tax reform bill eliminated alimony as being deductible for the payer and taxable to the recipient. However, the change only applies to alimony obligations established or modified in 2019 or later. So there will be two different tax treatments of alimony depending on when it originated or was modified.

In 2006 in response to federal guidance to pay special attention to obligated parents with income less than two times the poverty guidelines, the Court adopted "Self Support Protection". This said that no obligation should exceed a designated percentage of a parent's net available income after the Self Support Allowance and the adjustment for the support of other dependent children. In 2006 and 2012 the Court experimented with different floating percentages based upon the number of children in and out of the union. In 2014, the adjustment for the support of other children was amended to a flat 70% regardless of the number of children and the court adopted a flat 60% for Self Support Protection. Unintentionally, this enabled the establishment of obligations based upon gross income comparable to the net income calculations. This worked because the Self Support Protection percentage applies exclusively to lower incomes and the SOLA percentages apply predominantly to middle and upper income cases.

Through trial and error, it was discovered that by reducing the Self Support Protection percentage by one-quarter ($1/4$), reducing the SOLA percentages by a little more than one-third ($1/3$), and increasing the Self Support Allowance by 10%, using gross income closely tracks the results under our current net income system. These discounts mirror the aggregate marginal income tax rates (Federal + State + FICA) applicable to most working parents.



The above recited simplifications do not contemplate persons who pay self-employment tax. It is important to note that many people who profess to be self-employed work “under the table” and do not claim their income from self-employment and, thus, pay no income tax. Nevertheless, for those who do pay and can document actual payment of self-employment tax, a deduction of 7% (up to the Social Security wage base – currently \$10,800 per month) avoids manifest double-taxation and produces similar results as under the current rule.

Gross monthly income	Current obligation w/ tax	no-tax w/7% SE adj	\$ diff	% diff	no-tax w/ no SE adj	\$ diff	% diff
\$2,000	323	324	(1)	0.3%	387	63	19.4%
\$4,000	802	784	18	2.2%	855	71	9.1%
\$6,000	1131	1123	8	0.7%	1215	92	8.2%
\$8,000	1452	1460	(8)	0.6%	1575	115	7.9%
\$10,000	1762	1795	(33)	1.9%	1935	140	7.8%

Using gross rather than net income also modestly dilutes the effect of income deductions (pension, union dues, disability insurance, and medical insurance not allocable to the children) and modestly enhances the effect of itemized primary expenses (medical insurance allocable to the children, day care and private school tuition). The committee found these distinctions to be tolerable and, perhaps, even desirable.

A survey of other states and jurisdictions revealed that a majority use gross rather than net income to calculate child support. Elimination of taxes will foster greater access to the Formula because one will not need to reference the most current tax tables. The calculation

will be able to be done on a clip board rather than a computer. Results will be more consistent due to the elimination of tax errors and ambiguities. Years ago, most calculations were done manually which facilitated greater understanding of the calculation because it is completed step by step rather than feeding data into one end and obtaining a result at the other. The committee discussed the potential but erroneous perception that income tax liability is not being considered but believed that risk was outweighed by the benefits. To these ends, the word “taxes” shall be deleted from Rule 502(a), and the word “nontaxable” shall be deleted from Rule 502(a)(4(ii)). Additionally, Rule 502(b) should be rewritten as follows:

Rule 502. Net Available Income.

(b) Taxes. -- ~~Tax liability for child support purposes shall be derived by the income tax withholding tables and other publications distributed by the Internal Revenue Service and Delaware Department of Revenue based upon a single tax status with one (1) exemption regardless of State of residence. The Court may create specialized tax tables to facilitate the calculation of estimated tax liability for child support purposes.~~

(1) Except as otherwise provided in subsection (2) herein, taxes, either actual or estimated, shall not be deducted in determining available income.

(2) Self-employed parents who establish with documentation actual payment of self-employment taxes shall have their available income reduced a designated amount. That amount shall be 7% of self-employment income to the extent that the sum of taxable wages and self-employment income does not exceed the Social Security wage base.

(c) Deductions. – Allowable deductions include:

(4) Alimony paid. -- Court ordered periodic cash payments for the support of a former spouse shall be deductible from gross income. Alimony required to be paid is an allowable deduction but unless designated otherwise in the award document also must be subtracted from taxable income when calculating Federal and State income tax liability (but not retirement and Medicare taxes).

E. Medical Expenses

50% of Health Insurance Premiums Allocated as Primary Expense

Health insurance premiums have long been allowed as a deduction from income. In 2014, health insurance “allocable to the children” was established as a primary expense similar to day care or private school tuition. The purpose was to equitably share the cost of acquiring health insurance for the children. The amount allocable to the children was the difference between the cost of “employee only” and “employee and children” further allocated per capita when children of more than one union are covered. Consideration of the premium only as an income deduction often only modestly impacts the support amount especially if incurred by the custodian. In practice, documentation is rarely provided and the laudable intention of the policy is unrealized.

This reform allocates one-half (1/2) of the premium as a deduction from income and one-half (1/2) as a primary expense. The only proof needed will be the cost of the policy (usually as a deduction from pay), and whether the children are covered. If the party has other children to support, then the allocation is three-quarters (3/4) deduction and one-quarter (1/4) primary. The step down to 1/4 is necessary because otherwise the party would, after calculating support to both households, have been wholly relieved of the expense. It also does not matter whether or not the other children are covered by the policy as that fact would be too difficult to confirm as is the problem with the current rule. Guardian and stepparent acquired policies are also contemplated.

RULE 502 Net Available Income.

(c) Deductions. -- Allowable deductions include:

- (1) Medical insurance. -- Medical insurance premiums (including COBRA payments) paid by either parent (but not a guardian or stepparent) and regardless of which persons are covered by the policy are deductible except for any portion of a premium found allocable to a child and included as an element of primary support pursuant to Rule 503(b)(3).

Rule 503. Primary support need.

(b) *Primary Support*. . . The elements of primary support need are:

(3) Health insurance premiums. -- ~~Health insurance premiums allocable to dependent children of the union may~~ A portion of premiums paid by a party for health insurance covering dependent children of the union shall be included as an element of primary support as follows:

(i) ~~The amount of a premium allocable to dependent children shall be the difference between the premium for the parent alone and for the parent and his or her children. If the difference cannot be determined by the evidence given, the entire amount shall remain a deduction from income. That portion shall be one-half (1/2) of a party's out-of-pocket premium unless the party has other minor children to support as described in Rule 502(e) in which case the proportion will be one-quarter (1/4).~~

(ii) ~~Coverage acquired through a stepparent's employment or by a guardian may be considered an element of primary support but only to the extent the increased premium provides coverage for the parties' dependent children and not if the policy does not cover the stepparent's or guardian's own children. The portion allocated to the children by way of a stepparent shall be as in subsection (i) by reference to the parent to whom the stepparent is married. The portion allocated to the children by way of a guardian shall be controlled by reference to whether or not the guardian is also guardian to other children of other unions. If the difference cannot be determined by the evidence given, no consideration will be given to the expense.~~

(iii) ~~The proportion allocable to the children of a particular union shall be the number of children of the union divided by the parent's total number of dependent children.~~

F. Pension Deduction

Increase Deductible Retirement Savings from 3% to 5%

Under Rule 502(c)(2), all parents are currently permitted to deduct up to 3% of their income for contributions to pension plans and qualified retirement accounts, more if the contribution is mandatory. The percentage was inspired by the State of Delaware employee retirement plan. However, for State employees hired in 2011 or later the required

deduction is now 5%. 13 Del. C. §5543. The Committee recommends a commensurate increase within the Formula as a deduction from income.

RULE 502. Net available income.

(c) Deductions. -- Allowable deductions include:

(2) Pension. -- All mandatory retirement contributions are deductible. If that amount is less than 35% of gross income, voluntary contributions to a 401(k) or similar IRS approved retirement plan of up to 35% (including mandatory) of gross income also may be deducted.

G. High Income Adjustment

Partial Abatement of SOLA when Income Exceeds a Threshold

Section 514 of Title 13 of the Delaware Code requires the Family Court to take into consideration, among other things, the wages “and earning capacity” of both parents. Also, the Delaware Supreme Court has cautioned to not allow the calculation to become a mere distribution of a wealthy parent’s estate. Ford v. Ford, 609 A. 2d 21 (Del. Supr. 1991). At lower incomes the obligation is dominated by the primary allowance. However, as income increases the Standard of Living Adjustment (SOLA) becomes proportionally greater and greater and, ultimately, SOLA is predominant and the primary support allowance is *de minimis*. And since SOLA is determined only upon the obligated parent’s income, the custodial parent’s income ceases to be a meaningful consideration.

The Delaware Supreme Court also ruled that SOLA “is intended to allow the child to enjoy the standard of living of the more affluent parent.” (Ford at 29) That statement presupposes the obligated parent to be the more affluent parent. But what if the child support recipient is more affluent than the obligated parent? Transferring even significant portions of limited means into a household of abundant wealth does not elevate the living standards of the more affluent household. Indeed, the negative effect on the obligated parent’s standard of living (and that parent’s ability to maintain a suitable place for a child to visit) may far exceed the positive effect on the recipient.

Therefore, when either or both parent’s net available for SOLA exceeds \$15,000 per month (approximately \$200,000 per year), that both parents’ net available for SOLA will be reduced by 20% of the parents’ combined excess. If the obligated parent’s income exceeds the threshold, the SOLA percentage on the excess is effectively reduced by 20%. If the custodian’s income exceeds the threshold, the obligated parent’s SOLA obligation abates similarly. If both exceed, then the opposing forces create an obligation truly customized to the parent’s relative resources.

RULE 504. Standard of Living Adjustment (SOLA).

(a) After satisfying the parents' own and the children's primary needs, the Standard of Living Adjustment (SOLA) allows each child to share in each parent's economic well-being to simulate what the child would have enjoyed if the parents lived as a single family unit. SOLA is determined by subtracting each parent's Primary Support Obligation from ~~their~~ his or her respective Net Available Income and multiplying the result by a designated percentage based upon the number of children of the union:

1 child	19 <u>12</u> %;
2 children	27 <u>17</u> %;
3 children	33 <u>21</u> %;
Each additional child	4 <u>2</u> %.

(b) If either or both parents' Net Available Income for the SOLA exceeds \$15,000, then each parent's Net Available Income for the SOLA will be reduced by 20% of their combined excess.

H. Self Support Protection

New Maximum Obligation with Three or More Households to Support

Low income parents with three or more child support obligations represent special challenges. While the individual orders will appear modest, the combined obligations can be daunting. The obligations are usually calculated at different times and sometimes, especially in the context of a default order, one order will be disproportionately higher than the others. And when income is limited, partial payments are distributed proportionately with the lowest obligations receiving insultingly small amounts.

The Formula currently limits all obligations to not more than 60% of net available income. Persons with children in multiple households are manifestly limited to 42% upon consideration of the 30% credit for the support of other dependent children. Therefore, a person with two obligations calculated concurrently would pay 84% (2 x 42) of net income after Self Support, or 101% if the payments included a 20% arrears payment. Low income parents with multiple orders commonly owe significant arrears. In other words, they are compelled to subsist on only their Self Support Allowance.

This report, in another section, recommends reducing Self Support Protection to 45%. But this is only an accommodation to the elimination of income tax as a deduction from income and will produce very similar results as the current percentage. As demonstrated, the current scheme is designed to preserve the Self Support Allowance in a two household model. Persons with more than two households were perceived to have

“made their beds” and to have assumed the burden of increasing their income to make up the difference. But as the economic data suggests, upward mobility in the current economy is difficult and multiple obligations tend to co-exist with other barriers to employment and payment. These include criminal records, substance abuse, limited education, injuries, and histories of emotional and physical trauma.

In other words, it is wishful thinking that everyone has the ability, at will, to improve their economic lot and this includes persons with multiple support obligation. Therefore, the Formula will include a second Self Support Protection percentage based upon a three-household model which calculates to one-third less than the standard percentage or 30%.

Rule 506. Minimum orders and self-support allowance protection Low Income Adjustments.

(b) Except incident to subsection (a) of this Rule, no parent shall be placed under an obligation to pay more than ~~60%~~ a designated percentage of net available income as determined under Rule 502(a). The designated percentage shall be 45% unless the parent has children to support in three (3) or more households in which case the percentage shall be 30%.

I. Retroactivity

Six (6) Months Retroactivity Presumed in New Support and Factors to Consider

On a petition for new support, there exists little guidance as to how much, if any, retroactive support to award. In Patricia M.D. v. Alexis I.D., 442 A,2d 952 (Del. 1982), the Delaware Supreme Court ruled that a new child support order could not be retroactive for more than two years prior to filing. This was based upon the two-year statute of limitation for the seldom, if ever, prosecuted criminal charge of nonpayment of child support. The Supreme Court also recognized that the Family Court has broad discretion in the awarding of retroactive support and “a child’s right to support is not dependent upon whether a parent sues on their behalf.” (Patricia M.D. at 955).

Nevertheless, the tendency towards or against retroactive support varied greatly throughout the State. Additionally, there has been significant activity and discussion nationally on the wisdom of retroactive support and how it can imperil the prospective payment of current support if used too aggressively especially against persons whose ability to pay prospective current support is limited.

Accordingly, the Judiciary concluded greater structure will foster greater consistency and the Formula will include a presumption of six months of retroactive support from the date of filing. There already exists a statutory preference for child support arrears payments equal to 20% of current support. 13 Del. C. § 513(b)(2)(b). Family Court

Civil Rule 508, as inspired by federal mandate, enables a recalculation of current support as a matter of course every two and a half years. The rule also adopts the 20% presumptive standard for repayment as a 20% surcharge over 30 months would pay off a six-month deficit.

Six months of retroactivity and a 20% repayment are only presumptive and the rule will also provide grounds for more retroactivity, up to two years, or less, down to none. It also prohibits retroactivity for periods of past incarceration or in foster care cases where the support will be paid to the State which has the arguably conflicting duty of offering reunification services.

RULE 509. Retroactive support.

- (a) Retroactive support in a new support action shall be presumed at 6 months prior to the date of filing. The burden of proof shall be on the party seeking greater or lesser retroactivity. Retroactivity shall not exceed 24 months prior to the date of filing.
- (b) Retroactive support is determined by the totality of the circumstances. Whether or not the value of direct, in-kind or other support provided is comparable to the amount indicated by the Formula is not conclusive of whether retroactive support should be awarded. Factors to be considered include but are not limited to whether:
 1. The parent has:
 - (i) The ability to pay;
 - (ii) Been aware of the possible parentage;
 - (iii) Other children to support;
 - (iv) Avoided service of process;
 - (v) Meaningfully contributed financially or in-kind to the care of the child and whether those contributions were realized within the child's primary residence;
 - (vi) Been incarcerated, institutionalized, hospitalized or otherwise involuntarily absent from the workforce.
 2. The party seeking support has:
 - (i) Exercised due diligence in pursuing legal remedies;
 - (ii) Made requests for assistance that have gone unheeded;
 - (iii) Incurred debt to compensate for the lack of support from the other parent.

3. The child or children have special financial needs;
 4. The parents' finances have been intermingled including if the child has resided in a home to which the parent has provided material support; and
 5. The parties have or had a formal or informal support agreement and whether the agreement was honored.
- (c) Retroactivity prior to the filing date shall not be awarded for any period of incarceration subject to the exceptions contained in Rule 501(k), or incident to foster care placement.
- (d) Retroactive support should be repaid at a rate equal to 20% of the most recent calculation of current support (but not less than \$20) if:
1. Current support is ongoing;
 2. Current support is not ongoing but the subject child or children reside in the home of obligated parent; or
 3. Current support is not ongoing but the retroactive support is owed to the State.

In all other instances repayment shall approximate the amount that would have been due if current support had been ongoing. Deviation may occur by agreement, upon subsequent or repeated contempt for non-payment, or for good cause shown.

J. Overpayment

Offset of Overpayment by Deferral of Current Support; Reverse Judgments

From time to time there may arise a credit in favor of the obligated parent. Reasons behind a credit include overpayment, change of placement and termination of the obligation. Federal regulations prohibit DCSS from withholding disbursement of remittances to correct an overpayment. Therefore, to the extent justice and equity require the recognition of an overpayment, that must occur in the judicial establishment of the order.

Whenever possible, credits should be resolved by the full or partial deferral of current support. If there is no current support to defer, or if insufficient time remains on the obligation to fully exhaust the credit, then the credit may be characterized as a past due support obligation in favor of the obligated parent. However, that conclusion may not be drawn until the obligation of support has terminated.

RULE 510. Overpayments

- (a) Credit in the context of an ongoing support obligation. Whenever a net account credit arises in favor of the obligated parent, the arrears balance should be set at zero and:
- (1) Current support shall be deferred for the period of time necessary to exhaust the credit based upon the current support obligation appropriate under these Rules. This may be subsequently modified if circumstances warrant a modification of the underlying current support obligation.
 - (2) If deferral of current support would be a hardship upon the household of the support recipient and sufficient time remains on the obligation, the Court may instead partially defer the obligation by 20% to 50% until the credit is exhausted.
 - (3) If there is not sufficient time remaining on the obligation to exhaust the credit, the Court shall defer the obligation as in subsection (a) of this Rule, and estimate the likely termination date of the obligation and the credit balance likely to remain at termination. In estimating the termination date, the Court may presume that a child emancipates for child support purposes on June 1 following the child's 18th birthday. However, if a child was born in June, July or August, the presumed date is the child's 18th birthday. This should be adjusted in accordance with the child's actual circumstances.
- (b) Change of placement.
- (1) If the credit arises in the context of a change of placement to the obligated parent, then the credit shall be converted into a past due support balance in favor of that parent and enforceable as such.
 - (2) If the credit arises in the context of a change of placement to a third party, then the credit shall be converted to a past due balance in favor of the obligated parent. However, the credit may be reduced to the extent the support recipient remitted the support proceeds to the new custodian or guardian, or expended the proceeds to the benefit of the child or children.
- (c) Termination. If the credit arises in the context of the emancipation or death of the final child of the order, then the credit shall be established as a past due support obligation in favor of the obligated parent and enforceable as such. This includes when the credit had been previously estimated as in subsection (a)(3) of this Rule. The actual amount of the credit may vary depending upon the circumstances.

SECTION VI. CONCLUSION

In sum, the 2018 Quadrennial Review has focused on a diverse range of issues related to the Delaware Child Support Formula. The most significant recommendation, especially for frequent users of the Formula, is the proposal to simplify the actual calculation by eliminating income tax and social security deductions (in most cases) and using the parties' gross incomes in the determination of their child support obligations. This constitutes a major change in the Formula and should eliminate user errors in categorizing income of the parties.

Another significant change recognizes the challenges that lower income parents face in providing for themselves and their children. This is addressed in several different recommendations. First, the numerical values that underlie the primary allowances for children better reflect the greater cost of providing for shelter and utilities and will be adjusted annually rather than biannually. The parents' Self Support Allowance is tied to the Federal Poverty Guideline but also reflects the higher costs of shelter and utilities. Second, there is automatic relief in all new child support orders for incarcerated parents, as well as a mechanism for parents with older support orders to access such relief. Third, the Formula will impute income to employed parents at no more than 35 hours per week, if the parent works less than 35 hours per week. Additionally, the imputation of income to an unemployed or underemployed parent takes into account a wider range of factors, along with reference to wage surveys, in determining a party's reasonable earning capacity, in order to craft a child support order that is fair to both parents and the child. Lastly, the experience of parents with multiple child support obligations (three or more) is addressed with a greater self-protection percentage be applied in those cases.

The remaining reforms address issues that came to the Committee's attention through practical experience and the voices of litigants seeking a fairer application of the Formula, e.g. increasing the percentage deduction for pension or 401k contributions; standardizing the allocation of a parents' medical insurance premiums between parental deduction from income and the children's primary expenses; excluding a percentage of income from the Standard of Living Allowance (SOLA) calculation when the parents' net incomes exceed a certain threshold; providing for the repayment of a credit balance owed to a child support obligor and providing for a standard period of retroactivity for new support orders, subject to change if certain factors are proven.

It is the Judiciary's hope that these recommendations provide for a better application of the Delaware Child Support Formula going forward and provide relief to parents who may struggle to meet their financial obligation to their children.

SECTION VII: CONSOLIDATED UPDATES 1990-2018

A. INCOME AVAILABLE FOR CHILD SUPPORT

1. Income from Second Jobs

(2014) Secondary Income. Sometimes the burden of supporting both oneself and one's children in multiple households is overwhelming. Some parents take second jobs to bridge the gap but are frustrated that the additional income may cause their support obligation to increase (or the support they receive to go down). On the other hand, some parents have always worked multiple jobs irrespective of their support obligation; others cobble together a good living with multiple part-time endeavors. Currently under the Formula such "secondary" income is neither presumptively included nor excluded; instead, it is considered on a case-by-case basis. However, this principle is not detailed in the Rule and the Court and others have grown concerned that some users of the formula treat secondary income as presumptively included.

The Court concludes that a case-by-case consideration about whether to include secondary income in the Formula is still appropriate because the reasons behind and availability of secondary income are too varied for any presumptive treatment. However, the Court also finds the Rule should provide more guidance about the use of income from second jobs and will add a new Rule 501(i) as follows:

- b. Second Jobs. Employment is "secondary" if the parent's primary employment is substantially full time and consistent with the parent's reasonable earning capacity. Whether income from secondary employment is included is determined on a case-by-case basis and:
 - i. Existing secondary employment income is more likely to be included if it:
 - 1. Was historically earned especially when or if the parents resided together and significantly enhanced the family's standard of living;
 - 2. Substantially raises the standard of living of the parent or the parent's household to an extent not shared by the child or children before the court; or
 - 3. Is necessary to meet the minimum needs of the child or children before the court.
 - ii. Existing second employment income is more likely to be excluded if it:
 - 1. Merely allows the parent to "make ends meet" especially with regard to the needs of other dependent children;
 - 2. Is used to pay extraordinary medical or educational expenses (including those of an emancipated child) or to service extraordinary indebtedness; or
 - 3. Is necessitated by the nonpayment of adequate child support for the child or children before the court; or

4. Substantially conflicts with the parent's contact with the child or children before the court.
- b. Fluctuating income and the 40-hour work week. All income from primary employment is included in determining child support. The fact that income may fluctuate or that wage income may exceed 40 hours per week is not a basis for exclusion from income. Where income fluctuates, the Court must determine average monthly income likely to prospectively recur.
- c. Forsaken second jobs and overtime. To leave a second job or to decline prospective overtime without just cause is not a substantial change of circumstance for the purpose of a modification within two and one-half years. However, in the context of a new support petition or a modification beyond two and one-half years, previously earned second job income or overtime will not be attributed to a parent as long as that parent's actual income is substantially full-time and consistent with reasonable earning capacity.

(2010) In an effort to foster better preparation for hearings and mediation conferences and mitigate the problem of hidden income, Rule 501 will be amended expanding the minimum documentation required to adequately evidence income and expenses especially from self-employment:

Financial report. (1) Failure to submit a Financial Report Form pursuant to Rule 16(a) with adequate supporting documentation risks dismissal, rescheduling, or an adverse outcome. Adequate supporting documentation commonly includes but is not limited to each parent's most recent tax returns, W-2 Forms, and three most recent pay stubs, documentation of payments from Social Security, Unemployment Compensation, Worker's Compensation, a recent physician's statement as to any claimed disability, and receipts for child care payments and private school costs.

(2) Individuals with self-employment income also should include all schedules and forms required to be filed with the tax return with corroborating documentation for significant expense categories, and to the extent that tax returns do not reflect current earnings or income, other reliable documentation of that income (such as recent bank statements).

(3) Individuals receiving income from a business organization in which they are a partner or significant shareholder shall also include the organization's tax return and supporting schedules and forms, and to the extent that tax returns do not reflect the organization's current earnings or income, other reliable documentation of that income (such as recent bank statements).

2. Attribution of Income

(1990) Underlying the Delaware Child Support Formula is the concept that both parents are responsible for the support of their children. An individual cannot, by voluntary unemployment or underemployment, shift the burden of support to the other parent. As to the method of attribution, an individual's "value as a homemaker" has been eliminated as a basis of attribution. Attribution based on one-half of a spouse or cohabitor's income has also been eliminated; the judiciary felt that this method shifted

the burden of support to a non-parent. Attribution will be used only if an individual is able to work and unemployed or working below capacity.

(1994) For purposes of the attribution of income to self-employed, unemployed, and underemployed persons, and non-appearing or unprepared parties, whose incomes cannot be sufficiently established by evidence presented by the parties, the Court may take judicial notice of wage and earnings surveys distributed by government agencies.

Often, individuals fail to appear in court or appear unprepared, leaving the Court with little to no evidence as to what they earn, are capable of earning, or have earned in the past. This is very frustrating for the trier of fact, as the child support order is based on a calculation of income amounts. This provision will put litigants on notice that, without any better evidence, they may be attributed with the prevailing wage for their current position, or based on their employment history (i.e., carpenter, brick layer, phlebotomist). These wage surveys are available from the Delaware Department of Labor.

(1994) The Court frequently has the benefit of statistical wage information for non-appearing parties; but where no better information exists, the non-appearing party will be assessed with at least the same amount of income as the appearing party.

(2014) When the party petitioning to receive support is not a parent, then the income of the ‘other’ parent (that is, the parent against whom the petition was not filed) will not be estimated or considered. Instead, the calculation will be completed based upon the available income of the party-parent alone and utilizing a 50% primary share on Line 9 of the calculation worksheet.

(1998) A parent who has voluntarily separated from or lost employment due to his/her own fault will be attributed with earnings from that employment and will not be entitled to a reduction in his/her income in the Formula. Any reduction in attributed income will be permitted only after a sufficient period of time has elapsed in which the obligor can demonstrate that he/she has been actively seeking employment commensurate with his/her current skills, education, and training; and in the Court’s discretion, other factors surrounding the loss of employment justify such a reduction.

(2006) There shall be a rebuttable presumption that a parent who receives unemployment compensation has been terminated involuntarily and without cause. Their unemployment compensation shall be included as other taxable income.

(2018) Service of a term of incarceration that exceeds or is anticipated to exceed 180 days may be considered as evidence of a diminished earning capacity unless the individual:

- *Has independent income, resources or assets with which to pay an obligation of support consistent with their pre-incarceration circumstances; or*
- *Is incarcerated for the nonpayment of child support or for any offense of which his or her dependent child or a child support recipient was a victim.*

(2018) Reasonable earning capacity of a parent is established with documented earnings at employment commensurate with their training and experience working at least 35 hours per week and with hourly earnings exceeding the entry level wage for

their occupation as set forth in the Delaware Wage Survey published annually by the Delaware Department of Labor. A similarly situated parent who works less than 35 hours per week shall be imputed income based on at least 35 hours per week.

(2018) There shall be a presumption that the receipt of Unemployment Compensation benefits reflects that a parent's job loss was involuntary or not due to misconduct. Non-receipt of unemployment compensation shall be presumptively interpreted that job loss was voluntary or for cause. Where job loss is not voluntary or for cause, the unemployed parent's reasonable earning capacity shall be 50% of his or her prior income, or his or her unemployment benefits, or minimum wage, whichever is greatest. However, unemployment that exceeds 6 months in duration shall be presumed voluntary.

(2018) Parents who are voluntarily unemployed or underemployed shall be imputed income based on work history, training and education, and the wage tables promulgated by the Delaware Department of Labor, at 40 hours per week. Any wage table analysis shall begin with the median wage for the applicable occupation.

3. Minimum Attribution of Income

(2018) When income must be imputed (other than with documented and commensurate income of less than 35 hours per week), all parents will be presumed to have reasonable earning capacity of not less than the greater of the Federal or State statutory minimum wage at 40 hours per week (173.33 hours per month).

4. Other Income

(1990) Income of a spouse or person cohabiting with either parent may not be used in the calculation.

(1994) Social Security Disability Benefits as well as those pension/disability benefits issued by private corporations, paid to a child(ren) on behalf of a disabled parent shall be added to the disabled parent's income for use in this child support calculation. That parent will then receive a dollar-for-dollar credit off of the bottom line support obligation for these payments received by the child(ren). When a child receives these benefits on his/her own behalf the amount would be added to the custodial parent's income.

The judiciary recognizes the prevailing national view, which treats disability payments to a child on behalf of a disabled parent as the payment of child support by that parent.

(2006) When a person receives Social Security Disability or Supplemental Security Income, this determination shall be substantive evidence of a disability. Whether a person has the ability to provide support or to earn additional income shall be determined by the totality of the circumstances.

(2010) A parent who receives Supplemental Security Income (SSI) shall not be attributed income or assessed a child support obligation unless the parent has income or an income capacity independent of their SSI entitlement.

(2014) Adoption Subsidies: Adoption subsidies are public payments designed to encourage the adoption of disabled children by offsetting the costs associated with bringing the child into the adoptive home. 42 U.S.C. § 673. Including adoption subsidies as income alters the support obligation and mitigates this express public policy. The Court concludes that adoption subsidies should be excluded from income for child support purposes so that the subsidy most benefits the child for which it is intended.

5. Tax Status

(2002) All earned income, including pre-tax income deductions (for example, flexible spending plans and health insurance) shall be treated as available income for child support purposes. For the sake of simplicity and consistency and to further avoid entangling tax and child support policy, all such income should also be treated as taxable.

(2018) Gross income only of the parties shall be utilized in the calculation; deductions for income and social security taxes shall be reflected in a higher self-support allowance and lower percentages for the Standard of Living Adjustment (SOLA) and for Self-Support Protection. There is an exception for self-employed persons who prove they are paying self-employment taxes. Seven percent (7%) of such self-employment income will be deductible to the extent self-employment income and taxable wages do not exceed the Social Security threshold.

6. Allowable Deductions

a. Health Insurance

(1994) All health insurance premiums paid for by either parent, regardless of the persons covered, will be deducted from gross income, unless there has been an affirmative refusal to cover the child(ren) subject to a court Order. It is in no one's best interest to be uninsured; not the child, either parent, or either parent's subsequent children. Any major medical expenditure, due to lack of insurance coverage, by either parent on behalf of that parent, or his/her child(ren) could interfere with the routine payment of child support.

(1998) Payments for health insurance made under COBRA are deductible.

(2010) To better distribute the cost of health insurance allocable to a child, such cost shall not be a deduction from income if it is included as an element of primary support pursuant to other rules.

(2018) Health insurance premiums paid by a parent that cover a child of the order shall be designated as both a deduction from the parent's income (50%) and a primary expense of the child (50%). If the parent has other minor children to support, the designation shall be a 75% deduction from income and a 25% primary expense.

b. Life Insurance

(1994) No deduction shall be allowed for the payment of life insurance premiums, unless the party is bound by a prior agreement or order of the Court to provide life insurance for the benefit of the child(ren). The cost of term life insurance has a de

minimis impact on the support calculation, while the task of separating the premium and investment elements of whole or universal life insurance can be an evidentiary burden.

c. Retirement Plans

(2002) All mandatory employee paid contributions to retirement plans are allowable deductions even if they exceed 3% of gross income. If an employee makes no mandatory contribution to a retirement plan, a voluntary contribution is an allowable deduction up to 3% of gross income. If the mandatory employee contribution is less than 3% of gross income, a voluntary contribution is allowable, provided the combination of the mandatory and voluntary contribution does not exceed 3% of gross income. Payments to voluntary retirement plans must be to 401(k) or other IRS approved plans.

In 1998, the Court recognized that it was inequitable to recognize mandatory contributions to pension plans to the exclusion of all voluntary contributions (up to 3% of gross income). However, issues arose regarding the interaction of mandatory and voluntary contributions and the 3% limitation. This revision to the Formula clarifies that all mandatory contributions are fully deductible and that where there is a mandatory contribution of less than 3%, the difference can be made up through voluntary contributions. The 3% limitation is based on the Delaware State Employees' Pension Plan.

(2018) The maximum deduction for pension plan or deferred compensation plan contributions shall be increased from 3% to 5%.

d. High Cost of Living Location

(2002) There are times when a parent is relocated by an employer to an area with a high cost of living. Sometimes the employer compensates the employee solely for the higher cost of living. If the reason for the increase is clearly identifiable and the amount documented by the employer as compensation for higher cost of living it may be deducted from child support income.

If a parent has been moved by an employer to a city with a high cost of living, an additional stipend to cover that cost will not be available for any other purpose including child support. Therefore, it would not be equitable to include the increased income in the calculation.

(2014) Currently, Rule 502(a)(5) recognizes that sometimes employers compel their employees to relocate to geographic regions with especially high costs of living. The current rule refers to persons "assigned" to such regions; that phrasing can be interpreted to include those who choose to live in a high cost region as opposed to those who are compelled to relocate as a condition of employment. The Court will change the word "assignment" to "relocation."

(2010) Military Allowances: The Formula currently exempts from income the cost of living stipends paid to offset assignments to high income locations. Military housing allowances (BAH) vary depending upon both rank and location. Includable BAH shall be limited to no more than the entitlement of a servicemember stationed at Dover AFB. The BAH tables ("with dependents") for

Dover AFB will need to be readily available to mediators and Commissioners and linked to the on-line calculation. Additionally, military allowances for clothing shall be excluded from income.

e. Disability Insurance

(2010) Disability insurance is a common employment benefit and modest deduction from income but is not currently deductible in the Formula. The purpose of this insurance typically is to replace income in the event of serious illness or injury and is beneficial to an employee's dependents. Therefore, disability insurance premiums withheld from pay or purchased privately for purposes of income replacement (but not to cover credit card or mortgage obligations) shall be deductible in determining net income available for child support.

7. Parents' Self Support Allowance

(2014) Self-Support Allowance. Effective January 1, 2015 the Self-support Allowance shall be \$1000. The allowance shall be subsequently adjusted in January of every odd-numbered year to 100% of the Federal Poverty Guideline for a one-person household as published in January of each year in the Federal Register by the United States Department of Health and Human Services rounded to the nearest multiple of twenty (\$20).

(2018) Effective not later than February 1, 2019, the Self Support Allowance shall be 110% of the Federal Poverty Guideline for a one-person household as published in the Federal Register by the United States Department of Health and Human Services rounded to the nearest multiple of ten (\$10). The allowance shall be adjusted in January of each year.

(2014) The Court concludes that Self-support Protection should be extended to all parents (whether or not they have other children) by limiting the final support obligation to 60% of Net Available Income. In combination with lowering the self-support allowance to 100% of the Federal Poverty Level (see above), this change creates a dynamic self-support allowance that permits parents to meet their own basic needs and provides parents the opportunity to advance vocationally, a result that benefits both the parent and the children.

(2018) Effective not later than February 1, 2019, the Self-Support Protection percentage is reduced by one-quarter to account for the use of parents' gross incomes in the calculation of their child support obligations. The percentage will be 45%.

(2018) To better address the issue of obligated parents with limited income but child support obligations for minor children in three or more households, the Self-Support Protection percentage shall be reduced to 30%.

8. Adjustment for the Support of Other Dependents

(2006) The Court determined that the Credit for Support of Other Dependent Children should be changed from a credit against the support obligation of the obligor alone to an adjustment to Net Income Available for Support of both parties. This change will

eliminate the confusion that has existed since the implementation of the Credit for Support of Other Dependent Children in 1998. The 1998 revisions simplified the manner in which an obligor's duty to support other children impacts the calculation. This was accomplished through a percentage credit against the bottom line rather than an analysis of the other children's actual needs or pre-existing order of support. Unfortunately, some obligors perceive the credit as an allowance and complain that it compares unfavorably to the primary support allowances. Some obligees complain that there is no apparent consideration of additional children they may have. This solution negates those misperceptions with minimal impact on the ultimate obligation. It is also more consistent with the underlying assumption that while the burden of new siblings should not fall primarily on pre-existing children, available resources are necessarily diluted.

(2014) The reality of the cost of supporting other children cannot be denied. Nonetheless, the ability to re-litigate support orders for existing children by "voluntarily" bringing new children into the world still causes consternation. In the interest of further simplification, recognition of the genuine needs of "other" children, and reducing litigation, the Court will now utilize a single percentage multiplier of 70% regardless of the number of other children a parent must support.

In addition, the guidelines do not currently recognize that parents of minor children are occasionally legally required to support other dependent family members, including adults who are not able to support themselves. These additional statutory obligations are rare, and for support formula purposes, always secondary to a parent's duty to support their minor children. However, when these other obligations are imposed, they also decrease a parent's available income in much the same way as having additional minor children. Where a parent is meeting these other legal obligations, recognition of that commitment strengthens the family unit as a whole: after all, these other dependent family members are also relatives of the parent's minor children. Accordingly, the Court adopts a limited, and discretionary, recognition of these other statutory obligations where they undisputedly exist or have been formalized by Court Order.

9. *Exclusion of Income from the Standard of Living Adjustment (SOLA)*

(2018) In cases where either parents' net income available for the Standard of Living Adjustment (SOLA) exceeds \$15,000 per month, then both parent's net income subject to SOLA shall be reduced by 20% of the combined excess.

B. CHILDREN'S NEEDS

1. Primary Allowances.

(2018) The primary allowances shall be comprised of two components, a per household component and a per child component:

- (i) The per household component is 25% of the Self Support Allowance minus \$72.*
- (ii) The per child component is 25% of the Self Support Allowance plus \$24.*

(iii) *Each component shall be rounded to the nearest multiple of ten (10). Half child allowances may be rounded to a multiple of five (5).*

(iv) *To determine the allowance for each household, multiply the number of children by the per child component, and then add the per household component to the result. The allowances shall be adjusted in January of each year.*

2. Child Care Costs

(1990) The judiciary concluded that childcare expense is included in primary support amount based on the cost of actual expense incurred by a working custodial parent. No hypothetical or attributed childcare costs are permitted. Where net income is not derived based on tax returns, the childcare expense shall not be reduced by the allowable childcare credit.

3. Health Insurance Premiums Allocable to Dependent Children and Reasonable Cost

(2010) The Delaware Child Support Formula already addresses requiring a parent to obtain health insurance and the equitable distribution of medical expenses not covered by insurance. While health insurance premiums allocable to children are a deduction from income, such does not equitably share the cost with the other parent. To address equitable distribution of the premium cost, any amount allocable to the children shall be treated as a primary support element in the same manner as daycare is treated.

(2010) The cost of the insurance premium for coverage of both the employee parent and all minor dependents is reasonable when the cost does not exceed 10% of the purchasing parent's gross income and there is sufficient total net income available to cover the primary support allowance, child care, and the premium allocable to the children. When insurance is not available at the time the order issues, each parent should be directed to obtain it when the total cost for the employee and any minor dependents does not exceed 10% of gross income.

(2010) When a stepparent provides insurance for the parent's child through the stepparent's employment, the cost of that coverage also may be included in the calculation. This approach promotes the goal of insuring children while not imposing parental responsibilities on non-parents. However, the cost to a stepparent of providing coverage will be included in the calculation only if the stepparent's own children are not included in the coverage, that is, only if the stepparent has additional costs from including a stepchild on an employer-sponsored health plan.

4. Private School Expenses

(2006) Private or parochial school expenses shall only be included in a child support calculation where:

- (a) The parties have adequate financial resources, and
- (b) After consideration of the general equities of the particular case including consideration of whether:

- (i.) The parents previously agreed to pay for their child(ren)'s attendance in private school; or
- (ii) The child has special needs that cannot be accommodated in a public school setting; or
- (iii) Immediate family history indicates that the child likely would have attended private or parochial school but for the parties' separation.

5. Standard of Living Adjustment (SOLA)

(2014) After satisfying the parents' own and the children's primary needs, the Standard of Living Adjustment (SOLA) allows each child to share in each parent's economic wellbeing to simulate what the child would have enjoyed if the parents lived as a single family unit. SOLA is determined by subtracting each parent's Primary Support Obligation from their respective Net Available Income and multiplying the result by a designated percentage based upon the number of children of the union:

1 child	19%
2 children	27%
3 children	33%
Each additional	4%

(2018) The Standard of Living Adjustment (SOLA) percentages are adjusted downward to account for the use of parents' gross incomes in the calculation of child support:

<i>1 child</i>	<i>12%</i>
<i>2 children</i>	<i>17%</i>
<i>3 children</i>	<i>21%</i>
<i>Each additional</i>	<i>2%</i>

C. EXTRAORDINARY MEDICAL EXPENSES

(1990) Extraordinary medical expenses are eliminated from the primary support need calculation. Every order will include a general finding that the parties are required to share unreimbursed medical, dental and psychological counseling expenses in excess of \$350 (per child or per family) expended within each calendar year.

(2002) Each parent's share of medical expenses in excess of \$350 annually shall be in accordance with the Share of Total Net Available Income on the Delaware Child Support Calculation Worksheet. This includes orthodontic payment plans payable over a period of more than one year. Each medical expense including individual payments on orthodontic payment plans should be charged against the year in which the payment is actually made, which may not be the same as the year in which the services are provided or in which the contractual obligation with the service provider arises.

(2014) All new or modified obligations for cash medical support that issue on or after January 2, 2015 shall no longer assign the first \$350 of out of pocket medical expenses

to the support recipient. Instead, all cash medical support will be presumptively allocated to each parent in accordance with their respective percentage share of net available income. However, all rules and orders addressing or containing “first \$350” provisions shall remain in effect unless or until such obligations are modified.

(1990) Furthermore, the order shall include a requirement to pay expenses directly to the custodial parent or to the provider of services, including IV-D cases, absent any other specific order. The issue of non-payment of a covered expense will properly be addressed pursuant to a Rule to Show Cause petition. This mechanism permits the sharing of unanticipated expenses without violating the Bradley requirement to preclude retroactive modification of child support orders. (See 13 Del. C. § 513(d).)

(2006) For all orders entered after January 1, 2007, all claims for medical support reimbursement shall be filed with the Court no later than December 31 of the year following the expenditure. There shall be a presumption that the claim is waived if it is not brought within 2 years. This language shall be included in all orders establishing or modifying current support.

(2010) Problems have arisen with the Formula’s intention that all claims more than two years old be deemed presumptively waived. However, the Court’s rule is currently inconsistent with the 2006 Report and has been interpreted by some as an unyielding statute of limitations rather than a presumption. Additionally, the current process prevents a parent from seeking any relief until they have actually expended funds, sometimes creating a paradox wherein a child cannot receive treatment until they have money but cannot get the money until they receive treatment. To resolve these issues and improve the process, the Rule will be re-written to clarify that the obligation of reimbursement arises upon receipt of treatment and to expressly state that the two-year period is a presumption that can be rebutted upon good cause shown.

D. EMANCIPATED CHILDREN

(1990) It was concluded that a statutory change was required to permit the Court to order support for adult children, aside from the limited cases wherein an adult child is found to be a poor person under existing law. Nevertheless, the judiciary agreed that the Formula should specify that neither the needs of nor voluntary support paid to or for emancipated children be considered. At minimum, adult children should simply be ignored by the Formula. Thus, the new written procedure shall specify that adult children residing in the household not be considered regarding expense incurred for them or contribution made by them to the household.

E. SHARED CUSTODY/PARENTING TIME ADJUSTMENT

(2002) The existing guidelines will now give parents with whom a child resides more than 30% but less than half of annual overnights the opportunity to share in a portion of the combined SOLA.

An adjustment will be triggered by the number of overnights that a child is entitled to spend in the home of a child support obligor pursuant to a court order or written agreement and is intended to be an index of greater interest and superior parenting skills. Modest fluctuations between contact schedules and actual visitation practices will not prompt any adjustment or the rebuttal of the Formula. Thus, an obligor who

does not assume the additional financial responsibilities attendant to substantial additional contact or an obligor who is consistently uncooperative or overly litigious will not be entitled to any credit and may risk rebuttal of the Formula. Substantial discrepancies between schedules and practices should be addressed in visitation (and not support) proceedings.

(2014) Where a court order or written agreement establishes or confirms that a child spends an average of over 79 annual overnights in the household of the parent from whom support is sought, that parent shall be entitled to retain a percentage of both the primary support allowance and combined Standard of Living Adjustment. Additionally:

- The percentage shall correspond to designated ranges of the number of overnights of visitation as follows:
 - Up to 79 0%
 - 80 – 124 10%
 - 151 – 163 30%
 - 164 or more shared placement
- Where the residential arrangement is complex with children in different ranges, then the percentages shall be the averaged.
- If there is no order or written agreement or prior finding, or a party contends that actual practice substantially differs from the order, agreement or finding, the number of overnights must be established by clear and convincing evidence. The burden of proof lies initially with the party seeking the credit and then with the party seeking to establish an alternative number of overnights.

(2014) In shared custody support cases, each parent under the Delaware Child Support Formula retains a portion of the parents' combined support obligation in their respective households and each parent is expected to share in the children's incidental expenses as they arise. In some cases, one parent may be ordered to make a monthly current support payment to the other parent in addition to sharing incidental expenses. Upon a showing that a parent is not equally contributing to shared incidental expenses, the Court may impose any appropriate sanction, including but not limited to a finding that the support formula is rebutted and that a current support obligation be imposed against the offending parent as if the child resided primarily with the other parent.

(2014) In the context of shared placement, a calculation that indicates an obligation of less than \$50 will be considered de minimis and neither parent will be required to pay support to the other.

(2014) In the context of shared placement, an obligation can be imposed against either parent regardless of who filed the petition.

F. **MINIMUM ORDERS**

(2006) No person shall be assessed a support obligation of less than 20% of the primary support allowance for the number of children for who support is sought except:

- a. This limitation shall not apply where children reside in shared (at least 175 overnights in each household) or split (at least one child of the union with primary residence in each household) placement.
- b. A disabled person with actual income of less than the self-support allowance may be assessed a lesser obligation upon consideration of the nature and extent of the disability, cash and other resources available, and the totality of the circumstances.

(2014) The Court has concluded the Formula should be amended back to the 20% standard and to impose a cap on the scheme at two children. In other words, based upon the currently recommended primary allowances, a minimum order for one child would be \$100 per month and for multiple children, \$160 per month. This does not mean that all persons who would have previously qualified for a minimum order will have their obligations reduced to \$100 or \$160. This merely allows the Formula to be calculated below the current minimums based upon the evidence. This is all part of a fundamental shift towards obligations that are realistic and “right-sized” to the individual case.

(2018) Incarcerated Persons. For incarceration that does not exceed 180 days, the child support obligation of the incarcerated person shall be determined without regard to his or her incarcerated status.

(2018) The child support obligation of a parent incarcerated for more than 180 days shall be reduced to one-half of a minimum order, unless the parent has the resources to pay support or is incarcerated for an offense in which the child or the support recipient is the victim or is incarcerated due to the nonpayment of child support. This will occur automatically on all orders issued after implementation of this amended rule. The previous obligation will not resurrect upon release from incarceration. For pre-existing obligations, an inmate can file a petition for modification under the new standard as long as the inmate did not already receive a modification under the old standard.

G. STANDARDS FOR MODIFICATION

(1994) No petition may be filed within 2½ years of the date of the last order regarding current support absent pleading with particularity a substantial change in circumstances—specifically changes in income brought on by no fault of the petitioner, changes in day care expenses, or changes in other child support obligations of the obligor.

There will be no modification of an existing order if filed within 2 ½ years of the prior order regarding current support, unless the calculation indicates a change, upward or downward, of 10% or greater.

The passage of 2½ years since the last order regarding current support shall constitute sufficient basis to file a petition for modification of the current support order. These petitions shall result in a modification of the support order based strictly on the calculation amount, with no need for a 10% threshold to be met.

Where a modification petition has been filed and a change in current support is warranted, the obligation amount may be increased or decreased without regard to the specific modification requested. The Formula is presumed correct whether or not the calculated amount results in an increase or decrease in the existing order. A dismissal of an unsuccessful action for an increase merely spurs the other parent's decrease filing, resulting in re-litigation of the same issue.

(2014) An update or adjustment to the Delaware Child Support Formula pursuant to Rule 500(b) does not constitute a change of circumstances sufficient to modify an existing order for current support even if the amount of current support would change as a result of the update or adjustment.

(2014) Petitions for the modification of orders for the repayment of past due support (also known as 'arrear-only' orders) shall be subject to the same standards as current support orders including but not limited to a substantial change of circumstances not caused by the applicant's voluntary or wrongful conduct if sought within 2 ½ years of the last determination of payment.

H. RETROACTIVE CHILD SUPPORT

(2018) In new child support actions, there shall be a presumption of six (6) months of retroactive support (from the filing date), subject to the application of factors that may justify lesser or greater back support. The back support payment shall be 20% of current support.

I. OVERPAYMENT CREDIT

(2018) In cases where a credit arises in favor of the obligated parent, the credit shall be resolved by either partial or full deferral of current support, except where deferral is not available or is insufficient to reduce the credit. In that circumstance, the credit shall be converted to a past due balance owed to the obligated parent. This shall only take place after all minor children of the union have emancipated or are no longer in the care of the original support recipient.

J. ADMINISTRATIVE PROVISIONS

(1994) All child support obligations shall be rounded to the nearest dollar amount; any figure ending with \$0.01 - \$0.49 shall be rounded down; any figure ending with \$0.50 - \$0.99 shall be rounded up.

(2014) Federal law requires the utilization of presumptive guidelines in the determination of child support. Therefore, all consent orders and settlement agreements submitted for endorsement by the Court resolving a determination of current child support shall have attached one or more child support calculations relied upon in the negotiation even if the final result differs there from. This is different from the prior rule which permitted a calculation to be referenced in lieu of being attached.

(2018) The values utilized in the Formula shall be indexed and updated annually not later than January 31 of each year.

(2018) The report of the Ad Hoc Committee was submitted to the Family Court Judiciary to approve, reject and/or supplement the report's recommendations. The Final Report of the Judiciary includes any necessary amendments to the Family Court

Rules of Civil Procedure to be submitted for consideration by the Delaware Supreme Court. The goal for implementation is not later than February 1, 2019. The next review committee shall be appointed on or before July 1, 2021.

(2006) The instructions to the Delaware Child Support Formula shall be promulgated in a manual format and in plain language to enhance the accessibility to the Court by all litigants. The Guidelines will be incorporated as a Family Court Rule with annotations which will be drafted and submitted to the Judges of the Family Court for approval.

(2018) *The Court shall create information systems to collect the number of child support orders entered by default, or where the Child Support Formula has been rebutted, or a minimum order has been entered, or where the case involves incarcerated parents, imputed income, or application of the Self-Support Protection percentage.*

SECTION VII: DELAWARE CHILD SUPPORT FORMULA
(with amendments)

Rule 500. Delaware child support formula; general principles.

(a) Rebuttable presumption. -- The Delaware Child Support Formula (the "Formula") shall serve as a rebuttable presumption for the establishment and modification of child support obligations in the State of Delaware. The Formula shall be rebutted upon a preponderance of the evidence that the results are not in the best interest of the child or are inequitable to the parties. The Formula may be rebutted in whole or in part. Every order rebutting the Formula shall state the reason for the deviation. The Court may decline to adopt any agreement deviating from the Formula that is clearly contrary to the best interest of the child. Any consent order resolving new support or modification of support petitions must have attached a calculation pursuant to the Formula, whether it is one utilized or one from which there is a deviation.

(b) Review, update and adjustment. -- The Delaware Child Support Formula shall be reviewed and updated no less than every four years with revisions implemented not later than February 1 of the year following each quadrennial review. The numerical values utilized in the Formula will be adjusted not later than February 1 of each year utilizing predetermined objective criteria. The Court will create appropriate forms, tables and instructions to facilitate consistent and accurate application of the Formula.

Rule 501. Reasonable Earning Capacity.

(a) General. -- In determining each parent's ability to pay support the Court considers the health, income and financial circumstances, and reasonable earning capacity of each parent, the manner of living to which the parents had been accustomed as a family unit and the general equities inherent in the situation.

(b) Actual income. -- A parent employed at least 35 hours per week in a manner commensurate with his or her training, education and experience shall be presumed to have reached his or her reasonable earning capacity.

(c) Documented Part-Time Employment. -- A parent with documented earnings representing an average of fewer than 35 hours per week at employment otherwise commensurate with his or her training and experience shall be imputed the number of hours reasonably available either with parent's current employer or through similar employment but not less than 35 hours per week unless:

- (1) The parent has medical limitations;

- (2) More substantial employment has proven unavailable despite diligent efforts;
- (3) Upon consideration of available hours and rates of pay, available full-time employment would not produce greater total earnings; or
- (4) A child of the union has profound special needs inhibiting the support recipient's ability to maintain employment.

(d) Imputed Income. -- Unemployment or underemployment that is either voluntary or due to misconduct, failure to provide sufficient documentation, or failure to appear for a hearing or mediation conference shall cause reasonable earning capacity to be imputed. In determining whether actual employment is commensurate with training and experience and when imputing income, the Court shall consider each parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors. Except as provided in subsection (c) of this Rule, imputed income shall be calculated at not less than 40 hours of wages each week.

(e) Wage surveys. The Court may take judicial notice of occupational wage surveys compiled by the United States Bureau of Labor Statistics (BLS) and the Office of Occupational and Labor Market Information (OOLMI) in the Delaware Department of Labor to impute or corroborate reasonable earning capacity.

(1) If a parent's reasonable earning capacity has not previously been established and the actual income expressed as an hourly wage exceeds the survey's "Entry" level wage (average of the lowest 30%) for the parent's occupation, then the rate of pay shall be presumed commensurate with the parent's training and experience.

(2) For imputation purposes, analysis should begin with the median wage for each occupation, but may be adjusted up or down between "Entry" and "Experienced" (average of the highest 70%) based upon the totality of the circumstances.

(f) Minimum income. – In any instance not governed by subsections (b) or (c) of this Rule, every parent will be presumed to have a reasonable earning capacity of not less than the greater of the Federal or State statutory minimum wage at 40 hours per week (173.33 hours per month). As related to this subsection, when using the State statutory minimum wage, the Court will not utilize the statutory training wage or youth wage.

(g) Unemployment. -- A person who receives unemployment compensation shall be presumed to have been terminated from employment involuntarily and without cause. Termination without receipt of unemployment compensation shall be presumed voluntary or for cause. Continued unemployment or underemployment in excess of 6 months shall be presumed voluntary.

(h) Involuntary unemployment. -- If a parent's unemployment or underemployment is found by the Court to be involuntary and not for misconduct, then the parent's reasonable earning capacity shall be presumed the greater of:

- (1) One-half of the parent's previous reasonable earning capacity;
- (2) Any Unemployment Compensation received; or
- (3) Minimum Income pursuant to subsection (f) of this Rule.

(i) Disability. -- When a person has been determined to be eligible for Social Security Disability Income (SSDI) or Supplemental Security Income (SSI), this determination shall be substantive evidence of a disability. Whether a person has the ability to provide support or to earn additional income shall be determined upon consideration of the nature and extent of the disability, cash and other resources available and the totality of the circumstances. A parent who receives SSI shall not be imputed income or assessed a child support obligation unless the parent has income or an earning capacity independent of his or her SSI entitlement.

(j) Earnest re-employment. -- Parents who suffer a loss of income either voluntarily or due to their own misconduct may have their support obligation calculated based upon reduced earnings after a reasonable period of time if the parent earnestly seeks to maximize earning capacity.

(k) Incarcerated parents. -- Service of a term of incarceration that exceeds 180 days of continuous confinement may be considered as evidence of a diminished earning capacity unless the individual:

- (1) Has independent income, resources or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances; or
- (2) Is incarcerated for the nonpayment of child support or for any offense of which his or her dependent child or a child support recipient was a victim.

(l) Second jobs. -- Employment is "secondary" if the parent's primary employment is substantially full time and consistent with the parent's reasonable earning capacity. Whether income from secondary employment is included in the determination of support is determined on a case-by-case basis and:

(1) Existing secondary employment income is more likely to be included if it:

(i) Was historically earned especially when or if the parents resided together and significantly enhanced the family's standard of living;

(ii) Substantially raises the standard of living of the parent or the parent's household to an extent not shared by the child or children before the court; or

(iii) Is necessary to meet the minimum needs of the child or children before the court; and

(2) Existing second employment income is more likely to be excluded if it:

(i) Merely allows the parent to "make ends meet" especially with regard to the needs of other dependent children;

(ii) Is used to pay extraordinary medical or educational expenses (including those of an emancipated child) or to service extraordinary indebtedness;

(iii) Is necessary because the other parent of the child or children before the court is not providing adequate support; or

(iv) Substantially conflicts with the parent's contact with the child or children before the court.

(3) Fluctuating income and the 40-hour work week. All income from primary employment is included in determining child support. The fact that income may fluctuate or that wage income may exceed 40 hours per week is not a basis for exclusion from income. Where income fluctuates, the Court must determine average monthly income likely to prospectively recur.

(4) Forsaken second jobs and overtime. To leave a second job or to decline prospective overtime without just cause is not a substantial change of circumstance for the purpose of a modification within two and one-half years. However, in the context of a new support petition or a modification beyond two and one-half years, previously earned second job income or overtime will not be imputed to a parent as long as that parent's actual income is substantially full-time and consistent with reasonable earning capacity.

(m) Financial report. –

(1) Failure to submit a Child Support Financial Disclosure Report pursuant to Rule 16(a) with adequate supporting documentation risks dismissal or an

adverse outcome. Adequate supporting documentation commonly includes but is not limited to each parent's most recent tax returns, W-2 Forms, three most recent pay stubs, documentation of payments from Social Security, Unemployment Compensation, Worker's Compensation, a recent physician's statement as to any claimed disability, and receipts for child care payments and private school costs.

(2) Individuals with self-employment income shall include all schedules and forms required to be filed with the tax return with corroborating documentation for significant expense categories and, to the extent that tax returns do not reflect current earnings or income, other reliable documentation of that income (such as recent bank statements).

(3) Individuals receiving income from a business organization in which they are a partner or significant shareholder also shall include the organization's tax return and supporting schedules and forms, and to the extent that tax returns do not reflect the organization's current earnings or income, other reliable documentation of that income (such as recent bank statements).

Rule 502. Net available income.

(a) Net income. -- Net available income for each parent is determined by subtracting limited deductions and a Self Support Allowance from gross income. The result is discounted further by a designated percentage based upon the number of other children each parent is obligated to support. Obligations are calculated on a monthly basis and all values should be rounded to the nearest whole number. Gross income includes:

(1) Salary and wages. -- This includes salaries, wages, commissions, bonuses, overtime and any other income (other than self-employment income) that is subject to Federal Retirement and/or Medicare taxes. For child support purposes, it also includes all income and benefits identified by an employer as "pre-tax" or other similar designation.

(2) Self employment. -- This includes all income earned as an independent contractor and subject to federal self-employment tax.

(3) Unearned. -- This includes all other taxable income including but not limited to dividends, severance pay, pensions, interest, trust income, annuities, capital gains, workers' compensation, unemployment compensation, disability insurance benefits, prizes, and alimony or maintenance received.

(4) Nontaxable. -- This includes all other income not subject to income taxation such as:

(i) Most Social Security Disability (SSD) or retirement benefits and some pension/disability benefits issued by private corporations. Such benefits paid to a child on account of a parent's disability are included in that parent's income but offset the Net Monthly Obligation of that parent as set forth in Rule 506 dollar for dollar. Benefits paid to a child due to the child's own disability are included as income to the household in which it is received.

(ii) Military allowances. -- Military allowances in addition to pay shall be treated as income. However, military clothing allowances shall be excluded and a servicemember's housing allowance (BAH) shall be limited to the amount which he or she would receive if stationed at Dover Air Force Base.

(5) Exceptions. –

(i) Expense reimbursements or in-kind payments received in the course of employment, self-employment, or operation of a business should be counted as income only if they are significant and reduce personal living expenses.

(ii) A cost of living stipend given to an employee as compensation due to relocation to a high cost location will not be included as income as long as it is clearly identified on pay documents.

(iii) Adoption subsidies disbursed pursuant to 42 U.S.C. § 673 or a subsequent or similar statute shall not be counted as income.

(d) Taxes. –

(1) Except as otherwise provided in subsection (2) herein, taxes, either actual or estimated, shall not be deducted in determining available income.

(2) Self-employed parents who establish with documentation actual payment of self-employment taxes shall have their available income reduced a designated amount. That amount shall be 7% of self-employment income to the extent that the sum of taxable wages and self-employment income does not exceed the Social Security wage base.

(c) Deductions. -- Allowable deductions include:

(1) Medical insurance. -- Medical insurance premiums (including COBRA payments) paid by either parent (but not guardian or stepparent) and regardless of which persons are covered by the policy are deductible except

for any portion of a premium found allocable to a child and included as an element of primary support pursuant to Rule 503(b)(3).

(2) Pension. -- All mandatory retirement contributions are deductible. If that amount is less than 5% of gross income, voluntary contributions to a 401(k) or similar IRS approved retirement plan of up to 5% (including mandatory) of gross income also may be deducted.

(3) Union dues. -- Average monthly amount paid to any labor organization as a condition of employment is deductible.

(4) Alimony paid. -- Court ordered periodic cash payments for the support of a former spouse shall be deductible from gross income.

(5) Disability insurance. -- Disability insurance premiums withheld from pay or purchased privately for purposes of income replacement (but not to guarantee credit card, mortgage or other third party obligations) shall be deductible in determining net income available for child support.

(6) Other. -- Other mandatory unreimbursed business expenses such as supplies required by the employer to be purchased are deductible.

(d) Self Support Allowance. -- The Self Support Allowance shall be 110% of the Federal Poverty Guideline for a one-person household as published in the Federal Register by the United States Department of Health and Human Services rounded to the nearest multiple of ten (\$10). The allowance shall be adjusted in January of each year.

(e) Adjustment for other dependent. -- Each parent's available net income will be diluted in recognition of his or her duty of support to other dependent children, excluding step-children, not of this union either in or out of the household by multiplying net income after the subtraction of the Self Support Allowance by 70%. Children outside a parent's household should be counted only if there is a court order for current support or proof of a pattern of support. A parent's support of an adult dependent may be similarly recognized, but only if the parent is legally obligated to provide that support as established either by other court order or the agreement of the parties before the Court.

Rule 503. Primary support need.

(a) Primary share. -- Each parent's Net Available income will be expressed as a percentage to be known as the Primary Share of the parents' combined Net Available income. The percentage will be derived on case by case basis by dividing each parent's Net Available income by their combined Net Available income. This is to allow the children's primary support needs to be equitably allocated between

the parents and to facilitate the sharing of extraordinary medical expenses. If the person seeking support is not a parent, then the Primary Share for the obligor before the court is 50%.

(b) Primary support. -- Each parent's Primary Support Obligation is determined by multiplying their Primary Share percentage by the sum of all of the elements of the children's primary support need. The elements of the primary support need are:

(1) Primary allowances. -- The primary allowances shall be comprised of two components, a per household component and a per child component:

(i) The per household component is 25% of the Self Support Allowance minus \$72.

(ii) The per child component is 25% of the Self Support Allowance plus \$24.

(iii) Each component shall be rounded to the nearest multiple of ten (10). Half child allowances may be rounded to a multiple of five (5).

(iv) To determine the allowance for each household, multiply the number of children by the per child component, and then add the per household component to the result. The allowances shall be adjusted in January of each year.

(2) Child care. -- The Formula facilitates the equitable allocation of all expenses incurred for the care and supervision of the children of this union by either parent required for the parent to work. No hypothetical or attributed child care costs are permitted. Cancelled checks, childcare contracts, receipts and other instruments created in the usual course of business shall be admissible in addition to the testimony of the parties to prove childcare expenses.

(3) Health insurance premiums. -- A portion of premiums paid by a party for health insurance covering dependent children of the union shall be included as an element of primary support as follows:

(i) That portion shall be one-half (1/2) of a party's out-of-pocket premium unless the party has other minor children to support as described in Rule 502(e) in which case the proportion will be one-quarter (1/4).

(ii) Coverage acquired through a stepparent's employment or by a guardian may be an element of primary support but only if the policy

does not cover the stepparent's or guardian's own children. The portion allocated to the children by way of a stepparent shall be as in subsection (i) by reference to the parent to whom the stepparent is married. The portion allocated to the children by way of a guardian shall be controlled by reference to whether or not the guardian is also guardian to other children of other unions.

(4) Other primary expenses. -- The special needs of some children require parents to regularly incur other expenses including, as permitted by subsection (c), private school.

(c) Private school. -- Private or parochial school expenses shall only be included as a primary expense where:

(1) The parties have adequate financial resources, and

(2) After consideration of the general equities of the particular case including consideration of whether:

(i) The parents previously agreed to pay for their child(ren)'s attendance in private school; or

(ii) The child has special needs that cannot be accommodated in a public school setting; or

(iii) Immediate family history indicates that the child likely would have attended private or parochial school but for the parties' separation.

(d) Shared equal placement. -- Shared Equal placement (at least 164 overnights annually in each household) is established by order of the court, by written agreement, or in the absence of any order or written agreement by other evidence. Additionally,

(1) Each child is counted as one half in each household;

(2) The Court shall establish additional primary support allowances to accommodate any such partial allocation of placement;

(3) Any modification of an order based upon a change between primary and shared equal placement must be proven by court order or written agreement or, in the absence thereof, by clear and convincing evidence.

(4) Upon a showing that a parent is not equally contributing to shared incidental expenses, the Court may impose any appropriate sanction, including but not limited to recalculating the support obligation as if the child resided primarily with the other parent.

(5) If all the minor children before the court reside in shared placement, and the calculation indicates a net order of less than \$50 per month, no affirmative payment of current support shall be ordered.

(6) Either parent may be assessed an affirmative obligation without regard to which parent filed the petition.

Rule 504. Standard of Living Adjustment (SOLA).

(a) After satisfying the parents' own and the children's primary needs, the Standard of Living Adjustment (SOLA) allows each child to share in each parent's economic well-being to simulate what the child would have enjoyed if the parents lived as a single family unit. SOLA is determined by subtracting each parent's Primary Support Obligation from his or her respective Net Available Income and multiplying the result by a designated percentage based upon the number of children of the union:

1 child	12%;
2 children	17%;
3 children	21%;
Each additional child	2%.

(b) If either or both parents' Net Available Income for the SOLA exceeds \$15,000, then each parent's Net Available Income for the SOLA will be reduced by 20% of their combined excess.

Rule 505. Credits and the net monthly obligation.

(a) Gross obligation. -- Each parent's Gross Obligation is the sum of the individual's Primary Support Obligation (Rule 503(b)) and Standard of Living Adjustment (Rule 504).

(b) Credits. -- Each parent shall retain from their Gross Obligation:

(1) Primary Support Allowance for the children of this union in their primary or shared placement; and

(2) Child care, private school or other primary expenses claimed by the parent as allowed by Rule 503(b) or (c); and

(3) Per capita share of the parents' combined SOLA obligation for the children of this union in each parent's primary or shared placement; and

(4) Parenting Time Adjustment as set forth in Rule 505(c), if applicable.

(c) Parenting time adjustment. -- When a child spends an average of more than 79 but less than 164 annual overnights in the household of the parent from whom support is sought, that parent shall be entitled to retain a percentage of the primary support allowance allocable to that child and combined SOLA and shall be known as the Parenting Time Adjustment. The percentage is 10% for 80 to 124 overnights, and 30% for 125 to 163 overnights. Additionally:

(1) The number of overnights must be proven by court order, written agreement, previous finding or other clear and convincing evidence. The party asserting a number of overnights other than as indicated in the order, agreement, or previous finding carries the burden of proof.

(2) Modest or temporary departures from the established contact schedule will not prompt any adjustments or rebuttal of the Formula.

(3) Where the residential arrangement is complex with children in different ranges, then the percentages should be averaged.

Rule 506. Minimum orders and Low Income Adjustments.

(a) Minimum orders. -- Except as otherwise provided in this Rule, a support obligation for one child shall not be less than 20% of the Primary Allowance for one child; and for 2 or more children, 20% of the Primary Allowance for two children. Minimum orders shall be rounded to the nearest multiple of ten (10).

(1) This limitation shall not apply where children reside in shared (at least 164 overnights in each household) or split (at least one child of the union with primary residence in each household) placement.

(2) A disabled person with actual income of less than the Self Support Allowance may be assessed a lesser obligation upon consideration of the nature and extent of the disability, cash and other resources available, and the totality of the circumstances.

(b) Except incident to subsection (a) of this Rule, no parent shall be placed under an obligation to pay more than a designated percentage of net available income as determined under Rule 502(a). The designated percentage shall be 45% unless the parent has children to support in three (3) or more households in which case the percentage shall be 30%.

(c) Automatic Adjustment for Incarceration. --

(1) After 180 days of continuous incarceration but subject to the exceptions in Rule 501(k), every prospective current support obligation established or

modified after January 31, 2019 will automatically decrease to one half of the minimum order amount recited in Rule 506(a) as of the date of the order.

(2) A petition may be filed to determine the exact date of adjustment and whether any of the Rule 501(k) exceptions apply.

(3) The obligation will not revert upon release from incarceration, but release shall constitute a substantial change of circumstances for modification pursuant to Rule 508.

(4) Every written order for new or modified current support shall advise of this potential adjustment.

(5) Incarcerated parents subject to current child support orders that issued prior to February 1, 2019 may petition for modification under the standards recited in subsection (1). However, if the obligation had already been calculated on the basis of continuous confinement under the prior standard, then relief may only be awarded two and one-half (2½) years after the last determination of current support.

(6) The Division of Child Support Services (DCSS) may utilize the procedures outlined in Rule 302 to facilitate these adjustments.

Rule 507. Medical Support.

(a) Available, affordable and accessible health insurance. -- One or both parents shall be ordered to acquire private health insurance when it is available through employment, reasonable in cost and accessible to the child. Whether health insurance available to a parent other than through employment is reasonable in cost and should be acquired or maintained will be determined on a case by case basis.

(1) Reasonable cost. -- In the context of establishing or modifying a child support obligation health insurance is reasonable in cost if:

(i) The premium to cover both the parent and the parent's dependent children does not exceed ten percent (10%) of the parent's gross income; and

(ii) After inclusion of the insurance premium in the Formula, the parents' combined net income pursuant to Rule 502 is sufficient to provide all primary expenses exclusive of private school tuition.

(2) Continuing duty to acquire insurance. -- If affordable coverage is not available at the time of the order or whenever coverage lapses, each parent shall be ordered to acquire coverage that becomes available if the cost to cover both the parent and the parent's dependent children does not exceed ten percent (10%) of the parent's gross income.

(3) Accessibility. -- Health insurance is accessible to a child if it covers medical services within a reasonable distance from the child's primary residence.

(4) Termination. -- Once a parent has been ordered to acquire or maintain a specific policy of insurance, the parent shall continue the coverage despite changes in cost or accessibility until further order of the Court or written consent of the opposing party, or the State of Delaware if the child is a Medicaid recipient.

(5) Specialized coverage. -- Whether either parent is required to acquire or maintain dental, vision or other specialized coverage shall be determined on a case-by-case basis. A National Medical Support Notice or medical support attachment shall not include specialized coverage unless expressly ordered.

(b) Cash medical support. -- Every new or modified order for current support entered on or after January 1, 2015 shall impose an obligation of cash medical support on each parent who is a party to the petition.

(1) Cash medical support shall include all healthcare expenses not reimbursed by insurance, and incurred for the children for whom the order is entered. Such expenses include, but are not limited to, medical, dental, orthodontic, vision, and psychological counseling costs incurred on behalf of each child.

(2) Each parent's obligation for cash medical support shall be determined by multiplying the amount of unreimbursed healthcare expenses by the parent's primary share percentage as defined in Rule 503(a).

(3) An action for contribution to or reimbursement for a medical expense for a child may be brought at any time after the medical expense is incurred. However, any right of reimbursement will be presumed to have been waived unless a petition for reimbursement is filed with the Court by December 31 of the second year following the date the expense was incurred. This presumption may be rebutted for good cause shown.

(4) Incurred. -- For purposes of this rule (including orders entered before 2015 that assigned the first \$350 of healthcare expenses to the child support recipient), "incurred" shall be the date the medical healthcare service was provided, except that in the event a parent contracts to pay orthodontic or other long-term treatment services over a period of time the date each periodic payment is due under the contract shall be deemed to be the date the expense was "incurred."

Rule 508. Modification.

Any petition for child support modification filed within two and one-half years of the last determination of current support must allege with particularity a substantial change of circumstances not caused by the petitioner's voluntary or wrongful conduct except as described in Rule 501(j) and 506(c). Furthermore:

- (a) No modification will be ordered unless the new calculation produces a change of more than 10%.
- (b) Beyond two and one-half years, neither the "particularity" nor the "10%" requirement applies.
- (c) An obligation may be adjusted upwards or downwards, and the payor and payee may be reversed, regardless of who filed the petition.
- (d) An update or adjustment to the Delaware Child Support Formula pursuant to Rule 500(b) does not constitute a change of circumstances sufficient to modify an existing order for current support even if the amount of current support would change as a result of the update or adjustment.
- (e) Any petition for modification of an arrears only order filed within two and one-half years of the last establishment by the court of an arrears only payment after either a hearing on the merits or stipulation of the parties must allege with particularity a substantial change of circumstances not caused by the Petitioner's voluntary or wrongful conduct except as described in Rule 501(j).

Rule 509. Retroactive support.

- (a) Retroactive support in a new support action shall be presumed at 6 months prior to the date of filing. The burden of proof shall be on the party seeking greater or lesser retroactivity. Retroactivity shall not exceed 24 months prior to the date of filing.
- (b) Retroactive support is determined by the totality of the circumstances. Whether or not the value of direct, in-kind or other support provided is comparable to the amount indicated by the Formula is not conclusive of whether retroactive support should be awarded. Factors to be considered include but are not limited to whether:
 - (1) The parent has:
 - (i) The ability to pay;
 - (ii) Been aware of the possible parentage;
 - (iii) Other children to support;

- (iv) Avoided service of process;
 - (v) Meaningfully contributed financially or in-kind to the care of the child and whether those contributions were realized within the child's primary residence;
 - (vi) Been incarcerated, institutionalized, hospitalized or otherwise involuntarily absent from the workforce.
- (2) The party seeking support has:
- (i) Exercised due diligence in pursuing legal remedies;
 - (ii) Made requests for assistance that have gone unheeded;
 - (iii) Incurred debt to compensate for the lack of support from the other parent.
- (3) The child or children have special financial needs;
- (4) The parents' finances have been intermingled including if the child has resided in a home to which the parent has provided material support; and
- (5) The parties have or had a formal or informal support agreement and whether the agreement was honored.
- (c) Retroactivity prior to the filing date shall not be awarded for any period of incarceration subject to the exceptions contained in Rule 501(k), or incident to foster care placement.
- (d) Retroactive support should be repaid at a rate equal to 20% of the most recent calculation of current support (but not less than \$20) if:
- (1) Current support is ongoing;
 - (2) Current support is not ongoing but the subject child or children reside in the home of obligated parent; or
 - (3) Current support is not ongoing but the retroactive support is owed to the State.

In all other instances repayment shall approximate the amount that would have been due if current support had been ongoing. Deviation may occur by agreement, upon subsequent or repeated contempt for non-payment, or for good cause shown.

Rule 510. Overpayments.

- (a) Credit in the context of an ongoing support obligation. Whenever a net account credit arises in favor of the obligated parent, the arrears balance should be set at zero and:
- (1) Current support shall be deferred for the period of time necessary to exhaust the credit based upon the current support obligation appropriate under these Rules. This may be subsequently modified if circumstances warrant a modification of the underlying current support obligation.
 - (2) If deferral of current support would be a hardship upon the household of the support recipient and sufficient time remains on the obligation, the Court may instead partially defer the obligation by 20% to 50% until the credit is exhausted.
 - (3) If there is not sufficient time remaining on the obligation to exhaust the credit, the Court shall defer the obligation as in subsection (a) of this Rule, and estimate the likely termination date of the obligation and the credit balance likely to remain at termination. In estimating the termination date, the Court may presume that a child emancipates for child support purposes on June 1 following the child's 18th birthday. However, if a child was born in June, July or August, the presumed date is the child's 18th birthday. This should be adjusted in accordance with the child's actual circumstances.
- (b) Change of placement.
- (1) If the credit arises in the context of a change of placement to the obligated parent, then the credit shall be converted into a past due support balance in favor of that parent and enforceable as such.
 - (2) If the credit arises in the context of a change of placement to a third party, then the credit shall be converted to a past due balance in favor of the obligated parent. However, the credit may be reduced to the extent the support recipient remitted the support proceeds to the new custodian or guardian, or expended the proceeds to the benefit of the child or children.
- (c) Termination. If the credit arises in the context of the emancipation or death of the final child of the order, then the credit shall be established as a past due support obligation in favor of the obligated parent and enforceable as such. This includes when the credit had been previously estimated as in subsection (a)(3)

of this Rule. The actual amount of the credit may vary depending upon the circumstances.