

**IN THE FAMILY COURT OF THE STATE OF DELAWARE**

**ORDER AMENDING RULES 16.1 AND 500-509 OF THE**

**FAMILY COURT RULES OF CIVIL PROCEDURE**

This 6<sup>th</sup> day of December 2022, **IT IS ORDERED THAT:**

**1. Rule 16.1 shall be amended as follows:**

**Rule 16.1. Mediation.**

(a) Support Proceedings -

(4) Petitions to establish medical arrears or seeking reimbursement of shared incidental expenses, other than in Uniform Interstate Family Support Act cases, shall be scheduled for mediation first in every instance.

**2. Rule 500 shall be amended as follows:**

**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.~~

(1) 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. Every contested order deviating from the Formula shall state the factual findings and reasoning for the deviation.

(2) Every contested order that rebuts the presumptive applicability of the Formula on grounds the results are not in the best interest of the children or inequitable to the parties shall be archived for analysis at the next quadrennial review and update as provided in subsection (b). Application of the evidentiary presumptions within the Formula (Rules 500-510) constitute the application of the Formula and not a deviation from the Formula.

(3) 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.

(c) The rules in effect at the time of a hearing or mediation apply to all prospective and retroactive determinations of support. However, if a hearing commences prior to an amendment of these rules but is not completed until after the amendment, then the prior rules shall apply up until the effective date of the amendment.

(d) *Notice; Admissibility of Reports*

(1) Any notice for mediation or a hearing to be conducted under the Formula shall include, in plain language, an advisory that parties are obligated to bring a Child Support Financial Disclosure Report pursuant to Rule 16(a) with adequate supporting documentation.

(2) Any notice for mediation or a hearing under this rule shall also advise the parties that quarterly wage reports provided by their employer(s) to the state and federal Departments of Labor may be presented in any case involving the Division of Child Support Services. The notice must advise the parties that these reports are available to the parties prior to the mediation or hearing upon request to the Delaware Department of Justice, Child Support Unit (DOJ). Contact information for the DOJ must be included in the notice.

(3) At any mediation or hearing conducted under the Formula, the Court may consider representations of income for each party as reported by employers to the state or federal Departments of Labor. Income reports provided by the state or federal Departments of Labor shall be presumptively admissible evidence without further authentication. If the contents of a report admitted under this rule are materially contradicted by credible documentation of income or testimony during a hearing, or if a party did not receive notice that the income reports could be presented at the hearing, then the Court may in its discretion disregard the report or provide the parties at least ten (10) days to submit further documentation to resolve the discrepancy. All but the last four (4) digits of any Social Security number shall be redacted. Further redaction may occur upon leave of court for good cause shown.

(4) A fully executed Child Support Disclosure Report with authorized documentation may be admitted into evidence as a single exhibit subject to challenge of its individual components.

**3. Rule 501 shall be amended as follows:**

**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 35 hours per week (151.66 hours per month)~~ the "Entry" level wage statewide for all occupations as reported in the most recent edition of "Delaware Wages" published annually by the Delaware Department of Labor Office of Occupational and Labor Management Information (OOLMI) at 150 hours per month rounded to the nearest multiple of ten (10). This shall be effective February 1 of each year as provided in Rule 500(b). 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 has independent income, resources, or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances.

~~(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 Secondary Income.* Secondary income includes earned income from second jobs and passive income from interest, dividends, and trusts. Employment is “secondary” if the parent’s primary employment is substantially full time and consistent with the parent’s reasonable earning capacity. Whether secondary 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 or received 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~~ regarding 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; or

(v) Was historically saved or reinvested.

(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).

(n) *Nontaxable Income Adjustment.* Alimony awarded or modified after 2018, nontaxable proceeds from a private or public entity paid to a parent due to an injury or disability, personal injury awards or settlements determined by the Court to be income for support purposes, military allowances, or any cash entitlement not based on need that enhances the standard of living of a parent but is not taxable under federal law shall be increased by 25% to estimate the taxable earned income equivalent. This shall not apply to payments made by the Social Security Administration.

**4. Rule 502 shall be amended as follows:**

**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 Public need-based benefits, such as Supplemental Security Income (SSI), paid to a child due to the child's own disability ~~are included as income to the household in which it is received~~ shall not be included as income to either parent.

(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~~ that 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.

(b) *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~~ unless the policy also covers the children of the union and are includable 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 ~~40%~~ 120% 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.

**5. Rule 503 shall be amended as follows:**

**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 a 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~~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~~ \$25.

(ii) The per child component is 25% of the Self Support Allowance plus ~~\$24~~ \$20.

(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, child-care 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 child-care 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 ( $1/2$ )~~ three-quarters ( $3/4$ ) 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 ( $1/4$ )~~ one-half ( $1/2$ ).

(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. This may include insurance premiums paid by a guardian or through a stepparent. However, no recognition will be given for a premium paid by a guardian or through a stepparent if the policy covers any of the guardian's or stepparent's own children. The portion allocated to the children by way of a stepparent shall be as in subsection (1) 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 only 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) *Shared 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 recalculating the support obligation as if the child resided primarily with the other parent.

a. An expense is considered a "shared incidental expense" based on a totality of the circumstances, including:

- i. Whether the parents agreed or acquiesced to the expense being incurred (even if the parents did not agree how to divide the expense);
- ii. Whether the expense is customarily incurred by similarly situated families;
- iii. Whether both parents benefit from the expense;
- iv. The amount of the expense and the frequency with which it is anticipated to be incurred; and
- v. The parents' respective abilities to contribute to the expense.

b. The following expenses shall be presumptively considered shared incidental expenses: haircuts; school lunches; instrument rentals; school supplies; school project supplies; enrollment/uniform and other mandatory fees (but not equipment) associated with participating in local recreational sports or extracurricular activities; and local field trips not requiring overnight accommodations or air transportation.

c. An action to enforce the provisions of this Rule shall be plead with particularity.

(5) If all the minor children before the ~~court~~ 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.

**6. Rule 504 shall be amended as follows:**

**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~~ ten times (10X) the Self-Support Allowance, then each parent's Net Available Income for the SOLA will be reduced by ~~20%~~ 30% of their combined excess.

**7. Rule 505 shall be amended as follows:**

**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.

**8. Rule 506 shall be amended as follows:**

**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) *Self-Support Protection.* 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%~~ 50% unless the parent has children to support in three (3) or more households in which case the percentage shall be ~~30%~~ 35%.

(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<sub>2</sub> will automatically decrease to one half of the minimum order amount recited in Rule 506(a) as of the date of the order. This also applies to new support and modification petitions wherein the obligated parent is currently incarcerated and has been continually confined for more than 180 days at the time of the hearing or mediation conference. The presumption of a reduced obligation shall be rebutted if the obligated parent has independent income, resources, or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances.

(2) A petition may be filed to determine the exact date of adjustment and whether ~~any of the Rule 501(k) exceptions apply~~ the individual has independent income, resources, or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances.

(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<sub>2</sub> or who were subsequently denied relief due to the underlying reasons for their incarceration, 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 (2<sup>1</sup>/<sub>2</sub>) 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.

**9. Rule 507 shall be amended as follows:**

**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) but rounded to a multiple of 10% as herein described. As needed, percentages greater than 50% shall round down to the next 10% interval; percentages less than 50% shall round up. Other than a child with only one known living parent, the percentage shall be neither greater than 90%, nor less than 10%. If the support recipient is a nonparent and the child has only one known living parent, then the cash medical support percentage is 100%. The cash medical support percentage for inmate obligations imposed pursuant to Rule 506(c) shall be 50%.

(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.”

**10. Rule 508 shall be amended as follows:**

**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~~ 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).

(f) *Annual Document Exchange.* Any party subject to an active current child support obligation may initiate an exchange of child support financial disclosure reports as required by Rule 16(a). Specifically:

1. An exchange is initiated by a party to an ongoing current support obligation sending their own completed financial report along with a blank financial disclosure report form to the other party to complete. The receiving party shall return their completed report with all attachments within 30 days.
2. If the exchange is initiated prior to May 1, tax returns exchanged shall be the most recently filed by the party. After May 1, tax returns exchanged shall be for tax year immediately preceding. If the party has received a tax filing extension, they shall instead submit equivalent financial records such as a draft return with attachments. An exchange may be limited in scope such as the parties’ 3 most recent pay stubs incident to a recent change in employment.
3. Attached to each financial disclosure report shall be all documentation otherwise required by Rule 500(c) to be submitted in preparation for a hearing.
4. No party shall initiate an exchange more than once per year or within 6 months after the most recent Court determination of current support (including the dismissal with prejudice of a petition for modification), or in the calendar year in which the last child subject to the order will reach their 17<sup>th</sup> birthday. A nonparent child support recipient shall only be required to provide information that is directly relevant to the calculation of child support.

5. The Court will assist, upon request, with the exchange if compliance may violate a no-contact order with the other party or any resident in the other party's home, or if a party has been granted confidential address designation pursuant to Rule 90.1(d).
6. An independent Motion to Compel may be filed upon an opposing party's failure to comply with a properly initiated exchange. The motion may be decided on the papers or after a hearing at the discretion of the Court. The motion shall have attached a copy of the moving party's own financial report and proof of actual delivery to and receipt by the noncompliant party.
7. If the Court finds a party has failed to make a good faith effort to comply with this rule or used this rule to harass or abuse the opposing party, the Court may:
  - i. Direct the party to comply with the rule within a time certain or else appear before the Court for contempt;
  - ii. Authorize the compliant party to file a petition for modification not subject to Rule 508(c).
  - iii. Require the noncompliant party to pay court costs and attorney's fees incurred by the compliant party; or
  - iv. Any other relief the Court finds just and appropriate.
8. The Division of Child Support Services and Department of Justice are not required to facilitate the operation of this rule, and the fact of those agencies' involvement shall not constitute a basis to relieve or excuse either party of their obligations under this rule.

**11. Rule 509 shall be amended as follows:**

**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 and shall not predate the resolution of a previous new support action wherein current support was declined by the same petitioner, or not awarded due to the same petitioner's failure to appear.

(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. However, when imposing a payment term in a case where all arrears have been assigned to the State of Delaware, and the individual has other child support accounts owed to private individuals or other States, then the repayment element of the obligation owed to the State of Delaware should be \$20 per month.

(4) In addition to any other repayment term, genetic test costs should be paid at the rate of \$20 per month.

In all other instances repayment shall approximate the amount that would have been due if current support had been ongoing. If a calculation is performed, it should be based upon the obligated parent's income alone with a 50% primary share and increased by 20% to simulate an arrears payment. Deviation may occur by agreement, upon subsequent or repeated contempt for non-payment, or for good cause shown.

**12. These amendments shall be effective February 1, 2023, which is at least 30 days after notice to members of the Bar.**

BY THE COURT:

/s/ Michael K. Newell 11/21/2022

Michael K. Newell

Chief Judge

/s/ Mark D. Buckworth 12/05/2022  
Mark D. Buckworth  
Judge

/s/ Peter B. Jones 11/30/2022  
Peter B. Jones  
Judge

/s/ Mardi F. Pyott 12/05/2022  
Mardi F. Pyott  
Judge

/s/ Robert B. Coonin 12/1/2022  
Robert B. Coonin  
Judge

/s/ Arlene Minus Coppadge 11/22/2022  
Arlene Minus Coppadge  
Judge

/s/ Joelle P. Hitch 11/21/2022  
Joelle P. Hitch  
Judge

/s/ Paula T. Ryan 11/21/2022  
Paula T. Ryan  
Judge

/s/ Felice G. Kerr 11/30/2022  
Felice G. Kerr  
Judge

/s/ Jennifer B. Ranji 11/28/2022  
Jennifer B. Ranji  
Judge

/s/ Natalie J. Haskins 12/06/2022  
Natalie J. Haskins  
Judge

/s/ Janell S. Ostroski 12/5/2022  
Janell S. Ostroski  
Judge

/s/ Louann Vari 11/30/2022  
Louann Vari  
Judge

/s/ James G. McGiffin, Jr. 11/21/2022  
James G. McGiffin, Jr.  
Judge

/s/ Mary S. Much 11/21/2022  
Mary S. Much  
Judge

/s/ Michael W. Arrington 11/21/2022  
Michael W. Arrington  
Judge

/s/ Theresa M. Hayes 12/05/2022  
Theresa M. Hayes  
Judge