

IN THE FAMILY COURT OF THE STATE OF DELAWARE
ORDER AMENDING RULES 500, 501, 502, 503, 504, 506, 507, AND 508
AND ADDING RULES 509 AND 510
OF THE FAMILY COURT RULES OF CIVIL PROCEDURE

This 8th day of November 2018, **IT IS ORDERED THAT:**

1. 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.

(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~~ Formula will be adjusted ~~every two years~~ 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.

2. Rule 501 shall be amended as follows:

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).

3. 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 ~~taxes,~~ limited deductions and a ~~self support allowance~~ 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 is ~~organized by its taxable status and may include~~ 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 ~~nontaxable~~ 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.

(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:

(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 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.

(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. 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).

(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~~ 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.

(e) Adjustment for other dependent. -- Each parent's available net income will be diluted in recognition of ~~their~~ 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~~ 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.

4. 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 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 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.

(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. -- ~~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.~~

(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.

5. 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 ~~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.

6. Rule 506 shall be amended as follows:

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.

(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%.

~~(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.

7. 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 child support formula, the parents' combined net income pursuant to Rule 502 is sufficient to provide all primary expenses exclusive of private school tuition.

8. 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(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)~~ (a) No modification will be ordered unless the new calculation produces a change of more than 10%.

~~(c)~~ (b) Beyond two and one-half years, neither the "particularity" nor the "10%" requirement applies.

~~(d)~~ (c) An obligation may be adjusted upwards or downwards, and the payor and payee may be reversed, regardless of who filed the petition.

~~(e)~~ (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.

(f) (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(g) 501(j).

9. Rule 509 shall be added 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.
- (b) Retroactive support shorter or longer than 6 months 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.

10. Rule 510 shall be added as follows:

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.

11. These amendments shall be effective February 1, 2019.