THE FAMILY COURT OF THE STATE OF DELAWARE

DELAWARE CHILD SUPPORT FORMULA

EVALUATION AND UPDATE

November 19, 2014

REPORT OF THE FAMILY COURT JUDICIARY

THE HONORABLE CHANDLEE JOHNSON KUHN,
CHIEF JUDGE

EXECUTIVE SUMMARY

Delaware's economy has continued to shift and adjust in the four years since the last comprehensive review of the State's child support guidelines. Many parents continue to be challenged by significant and widespread changes in the job, housing and mortgage markets. Many parents struggle to find, and then keep, fulltime employment commensurate with their training and abilities. Other parents have taken second jobs, or multiple part-time jobs, to make ends meet.

The Family Court has grappled with the effect of these changes on families, particularly those affecting the allowances and standard adjustments in the Delaware Child Support Formula, and the practice of attributing income to parents who are unemployed or underemployed. As a result of the 2014 review, the Court has determined it should simplify allowances by chaining them, by Court rule, to the Federal Poverty Limit ("FPL"). As detailed further in the Report, changes include:

- Setting the parent's self-support allowance at $1,000 per month beginning in 2015, and having it automatically readjust to 100% of FPL every two years after that.
- Setting the children's primary support need at a fixed percentage of the parent's self-support allowance, and the standard of living adjustment at a fixed percentage of the parent's available income.
- Adopting a single percentage adjustment to recognize a parent's collective support of all other minor children, no matter their number.
- Extending the existing self-support protection to *all* parents, whether or not they have other minor children to support.

The Report also outlines changes to the guidelines regarding the inclusion of income to promote "right-sizing" of obligations based on actual earnings and realistic income attributions. These revisions include:

- Using the minimum wage (instead of one-half the statewide median wage) for determining a parent's presumed earning ability.
- Identifying factors to be considered when deciding whether a parent's income from a second job should be—and should not—be included in the formula.

The Court has also considered changes to the guidelines to further recognize the effect of different parenting arrangements on child support, and to encourage the active involvement of both parents in their children's lives. More specifically, these revisions include:

- Lowering the number of overnight visits that trigger a parenting time adjustment.
- Lowering the number of overnight visits that establish shared placement.
- Making other adjustments that will effectively increase the support obligation of uninvolved, or less involved, parents.

Incarcerated parents continue to present unique and difficult challenges in setting and modifying child support obligations. The Report details changes to the guidelines for families affected by incarceration, including:

- With some restrictions, permitting a parent's support obligation to be modified to a minimum order upon a parent having been incarcerated for at least a year.
- After three years, reducing the incarcerated parent's obligation to one-half a minimum order.

Finally, the Court's Report addresses refinements on other important topics:

- Adopting standards for modifying "arrears-only" obligations.
- Setting support in cases filed by, or on behalf of, someone other than the child's parent.
- Eliminating *de minimis* orders of support in shared placement arrangements.
- Confirming the Court's authority to enter "reverse obligation" orders.
- Clarifying a parent's duty to contribute to shared incidental expenses in shared placement arrangements.
- Prospectively eliminating the requirement that support recipients bear the first $350 of the children's unreimbursed medical expenses.
- Recognizing a parent's legal obligation for the support of other adult family members in some circumstances.
- Clarifying that updates to the formula and guidelines are not a basis for modifying existing support orders.

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SECTION I: BACKGROUND AND PURPOSE

An Ad Hoc Committee for Child Support Guideline Review (hereinafter referred to as "the Committee") was convened at the request of Chief Judge Chandlee Johnson Kuhn in January, 2014. The Committee was charged with reviewing and updating Delaware's Child Support guidelines in accordance with Federal Regulations at 45 C.F.R. §302.56 and Family Court Civil Procedure Rule 500(b). The Committee included representatives of the Family Court, General Assembly, Division of Child Support Enforcement, Department of Justice, Family Law Commission, and Family Law Section of the Delaware State Bar Association.

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 use produces appropriate child support obligations. The guidelines must, at a minimum:

1. Take into consideration all earnings and income of the absent parent;
2. Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and
3. Provide for the child(ren)'s health care needs through health insurance or other means.

The Delaware Child Support Formula, also known as the Melson 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).

The Ad Hoc Committee met five times from January to June, 2014. It reviewed the history and purpose of the Delaware Child Support Formula, applicable statutes, rules and case law, and available state and federal data. The Committee members identified issues and concerns for themselves and their constituents, and agendas were set to systematically consider each item. Broadly, the Committee considered topics relating to the economic "mechanics" of the Formula (including allowances built into the Formula and income attribution); the difficult support issues raised by incarcerated parents; and the administration of the Formula and Guidelines. The Ad Hoc Committee's Report dated September 15, 2014 was formally presented at a meeting of the Family Court Judiciary on October 15, 2014. After discussion, the Report and recommendations were approved in their entirety on that date. The Judiciary also discussed and approved the elimination of the current requirement making most support recipients responsible for the first $350 of the children's unreimbursed medical expenses.

In addition to the changes approved as a result of the 2014 Ad Hoc Committee review, this Report includes a summary of revisions made to the Formula in 1990, 1994, 1998, 2002, 2006 and 2010 to the extent these changes are still in effect. In 2006, the Formula and guidelines were restated as Family Court Civil Procedure Rules 500 through 509.

Among other changes, as a result of this Report, Rule 509 (Numerical Values) will now be deleted, and the allowances and percentages used in the formula will be incorporated into the remaining Court Rules. A complete restatement of the child support Rules as amended is included later in this Report.[1]

SECTION II: ANALYSIS OF CASE DATA

The Family Court entered 16,760 child support orders in its Family Court Automated Management Information System ("FAMIS") from January 1, 2013 through June 24, 2014. Forty-five percent, or 7,510, established or modified current child support obligations.[2] Eighty-three percent of the orders issued by Commissioners were based on the application of the Formula. By comparison, 71% of orders issued from mediation were based on the Formula. These values are comparable to those tallied four years ago. Where a reason was indicated, deviations downward from the calculated amount of support were twice as common as deviations upward. This contrasts with four years ago when upward and downward deviations were equal. Thirty percent of recorded deviations were by agreement of the parties. Less than 2% of recorded deviations resulted from a Commissioner finding that the Formula was rebutted. Modification petitions at mediation were the most likely (33%) to deviate from the Formula, while modification petitions before a Commissioner were the least likely (13%). Petitions to establish new support, whether at mediation (27%) or before a Commissioner (19%), were less disparate.

However, where FAMIS recorded a deviation from the Formula, the reason for deviation was "Other" one-half of the total time, and 83% of the time when entered by Order of a Commissioner. Anecdotal information suggests that most of these deviations may be registrations of support orders from other jurisdictions: in these cases, there is no calculation to attach to the order, or from which to deviate. If the Commissioners' "other" category is brought in line with results from mediation, then the rate of deviation is reduced from 17% to under 5%. Better methods of memorializing deviations may be necessary to generate more useful data in the future.

In summary, the data collected in 2010 were remarkably similar to that collected in 2014 with the exception of recorded upward deviations, which is down by 45%. This change could mean that the Formula result has been perceived as adequate by more users, and that any additional cash support would be unaffordable, particularly given the prevailing economic and job environment since the last Report. However, more definitive conclusions cannot be reached with the limited information available.

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[1] Special thanks are due to Lucy Casper and Monica Graham of Family Court for their skills, hard work, and good humor in producing this Report.

[2] The other orders either addressed medical support issues or the collection of past due support.

The following chart summarizes the analyzed data:

Type of Deviation	Commissioner's Orders	Mediation Consent Orders	Total	% of Deviation	2010 Report
01	20	187	207	12%	11%
02	3	12	15	1%	1%
03	8	93	101	6%	11%
04	76	442	518	30%	30%
05	536	332	868	51%	48%
Total Deviations	643	1066	1709	100%	100%
No Deviations	3161	2640	5801	77.2%	77.2%
Total Orders	3804	3706	7510	100%	100%

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

SECTION III: TOPICS AND RECOMMENDATIONS

The Ad Hoc Committee recommended, and the Court has approved, the following changes to the Formula and guidelines:

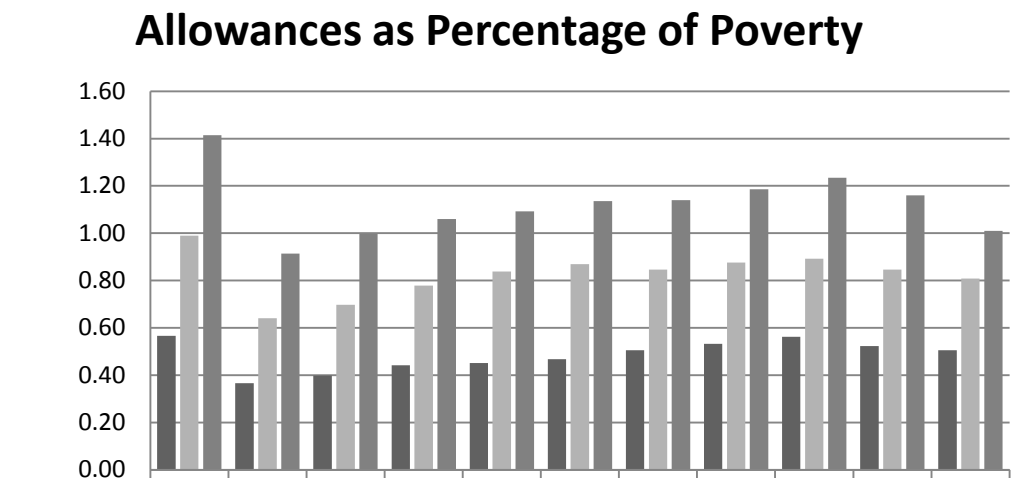
A. ECONOMICS

1. ***Allowances, Protections and Adjustments***: The Melson Formula includes certain critical, fixed allowances and limits: the primary support allowance (the amount of support needed to meet a child's basic needs); the self-support allowance (which recognizes that each parent must support themselves as well as their children); and the self-support protection (a cap on the amount of child support a parent must pay, designed to prevent parents with children in more than two households from being financially overwhelmed by multiple court orders).

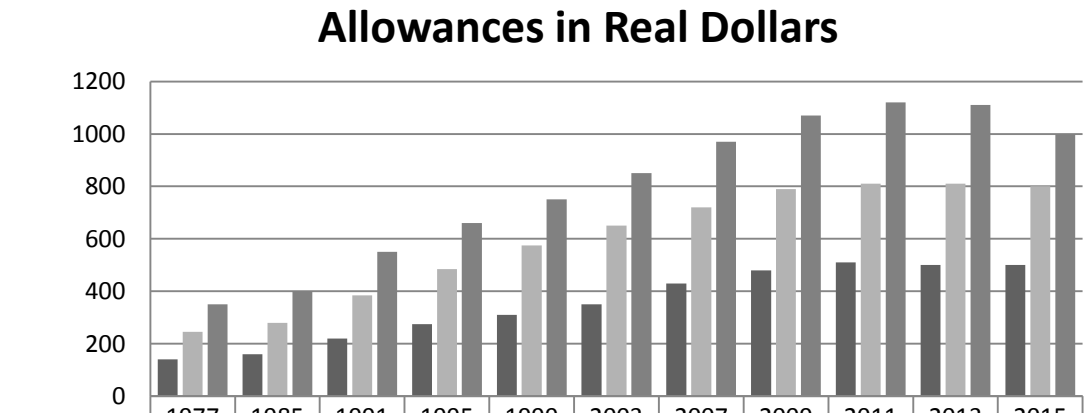
    a. Primary Support Allowances: As noted, the "primary support allowance" is the amount of support needed to meet a child's basic needs in variously sized households. As background, in 1977, the primary support allowances were equal to 40% of the self-support allowance for the first child of the household plus 30% for each additional child of the household. That remained constant until 1994. Since 1994, the percentage for one child has slowly moved upward and for the second child, slowly downward, as growth in household expenses (shelter, utilities, etc.) has exceeded growth in individual expenses (food, clothing, etc.). In other words, the cost of maintaining a household with

children has grown faster than the cost of providing for each child individually.

In 2006, the Court adopted an especially complex method of weighing these two expense categories and also decided that adjustments to the allowances would be made every ***two*** years. Currently, the proportions are 45.5% of the self-support allowance for the first child and 26.8% for the second. In practice, the actual dollar adjustments have been very modest for several years, as shown by the following graphs:



	1977	1985	1991	1995	1999	2003	2007	2009	2011	2013	2015
1 child	0.57	0.37	0.40	0.44	0.45	0.47	0.51	0.53	0.56	0.52	0.51
2 children	0.99	0.64	0.70	0.78	0.84	0.87	0.85	0.88	0.89	0.85	0.81
self	1.41	0.91	1.00	1.06	1.09	1.14	1.14	1.19	1.23	1.16	1.01



	1977	1985	1991	1995	1999	2003	2007	2009	2011	2013	2015
1 child	140	160	220	275	310	350	430	480	510	500	500
2 children	245	280	385	485	575	650	720	790	810	810	800
self	350	400	550	660	750	850	970	1070	1120	1110	1000

Accordingly, the Court has determined to return to simplified and standard percentages for the primary support allowances.[3] To implement this suggestion, Rule 509 will be deleted, and Rule 503(b)(1) will be rewritten as follows:

> ***Rule 503(b)(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).**

b. Self-support Allowance: The self-support allowance has been described in several ways.

- "What a reasonable prudent, responsible and caring person in the parent's position might be expected to spend in self-support in light of his or her obligation to meet the needs of his or her child." I.B. v. R.S.W.B., Del. Fam., File No. A-3000, Melson, Jr., J. (Nov. 10, 1977)
- "An absolute minimum that an individual would need to fulfill the basic requirements of life." Delaware Child Support Formula: Study and Evaluation, Report to the 132nd General Assembly (1984)
- "Parents are entitled to keep sufficient income to meet their most basic needs in order to encourage continued employment." *Dalton v. Clanton*, 559 A.2d 1197, 1203 (Del. 1989)
- "The minimum amount of net income necessary for a parent to remain productive in a workplace." Family Court Civil Rule 502(d)

Thus, two distinct sentiments inform the self-support allowance. First, it recognizes only the parent's most basic maintenance, an approach consistent with prioritizing the needs of children over the desires of parents. In contrast, the other aspect of the self-support allowance recognizes the economic realities of finding and keeping employment. These include reliable transportation and appropriate attire, and the economic principle that sharing in the benefits of one's labors fosters greater productivity and success. In

[3] The selected percentages also incorporate the Court's decision to lower the 10% Parenting Time threshold from 110 to 80 overnights as discussed later in this Report.

other words, a parent is more likely to remain on a job and advance in their career if they realize direct benefits (in addition to satisfying one's child support obligation) by doing so.

The importance of this second aspect of the self-support allowance has long been recognized. In 1977, Judge Melson used an aggressive self-support allowance of more than 140% of the Federal Poverty Limit ("FPL"), confirming that a parent's mere subsistence was not enough. By 1984, self-support had been adjusted down to approximately 100% FPL, remaining there until 1990. Every four years since 1990, the Court has examined many factors, including FPL, in setting self-support. Since 1998, the Court has relied on an alternative matrix to the FPL which has allowed the allowance to rise as high as 121% of the traditional poverty standard. Thus, there has been an ongoing tension between a 'bare bones' parental allowance that allocates a greater amount of the parent's income to child support, and a higher allowance that better reflects the actual needs of a working parent.

Only 12 states in addition to Delaware currently self-identify as having a self-support reserve in their guidelines. Each state other than Delaware bases their reserve on the FPL as follows:[4]

135%	New York
133%	Washington DC
125%	Washington State
120%	Minnesota, Vermont
105%	New Jersey, New Hampshire
100%	Pennsylvania, Texas, North Carolina, South Carolina, Arizona

In short, adopting 100% FPL as the self-support allowance promotes year to year consistency and predictability without sacrificing the purposes of the allowance. The monthly 2014 FPL for one person is $972. Inflation for 2014 to 2015 will likely be between 1.5% and 2%. Accordingly, 100% FPL would suggest that the self-support allowance be set at $1000. The Court concludes that the 2015 self-support allowance should be set at $1000, and adjusted every other January to 100% FPL.[5]

The Court is aware this recommendation represents a reduction in the Self-support Allowance from the current amount. As stated, this is knowingly done in concert with, and in mitigation of extending the Self-support Protection to obligated parents *without* other children to support. The concern with a more aggressive self-support allowance is that significant numbers of parents have income near or below the threshold. The Court has resorted to increased use of alternative mechanisms (such as minimum orders and

[4] Some other States use income under 100% FPL as a basis for deviation.
[5] It is possible FPL could not quite reach $990 per month in 2015 thus indicating an allowance of $980 as opposed to $1000. The Court feels it is better to identify a set number prior to January 2015 so as to aid in the transition to and proper execution of the new policies implemented by this Report, and then to more strictly follow the FPL for subsequent adjustments.

minimum presumptive income) because the 'traditional' calculation relieves many of these low wage earning parents from providing any support for their children. With this Report, the Court deliberately moves to decreased use of these nonfactual mechanisms by reducing minimum orders, reducing the minimum income presumption to the current minimum wage, and similarly reducing the self-support allowance. The higher the self-support allowance is in relation to these other elements, the more often the presumptive minimums would be needed.

Thus, Rule 502(d) will be rewritten as follows:

Rule 502(d)
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 following chart demonstrates the actual changes in the parents' self-support allowance and the children's primary support allowance as a result of this change:

	Current	***New***
	2013-2014	2015-2016
Self-support	$1110	$1000
1 child	500	500
2 children	810	800
3 children	1080	1100
each additional	+250	+300

c. Self-support Protection: Under the existing guidelines, if two parents each earned the current presumptive minimum income of $8.70 per hour full time and had one child together, the noncustodial parent would have a support obligation of $140 per month. If that parent increased their gross income by 20% (to $10.46 per hour), they would be paid an additional $220 in net earnings and their child support obligation would increase by the exact same amount. Thus there would be no change in the parent's personal financial situation despite laudable personal achievement at their place of employment. This "100% bracket" effect, where each dollar earned translates to a dollar increase in current support, grows with greater numbers of children, day care expenses, and disparity in income.

In 2006, the Court adopted "Self-support Protection" to prevent the accumulation of multiple orders from overwhelming the self-support allowance. The Formula was amended to limit the obligation of a parent with other children to support to between 25% and 75% of that parent's net available income (depending on the number of children within and without the relationship before the Court). In 2010, the range was limited to between 45% and 67% based only upon the number of "other" children to support.

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.

The bottom line effect of this revision is that no person without other children would be assessed an obligation of more than 60% of net income (after self-support). When combined with the adjustment for other dependent children discussed in the next section, no parent with other children would be assessed an obligation of more than 42% of net income (after self-support). To this end Rule 506(b) will be restated as follows:

> ***Rule 506(b)***
> **Except incident to subsection (a) of this Rule, no parent shall be placed under an obligation to pay more than 60% of net available income as determined under Rule 502(a).**

d. Adjustment for the support of other children and dependents: The Melson Formula has long recognized adjustments for support that parents provide to their other minor children not of the current union. However, prior to 1998, the birth of a new child, or the entry of another child support order, could not be used as a basis to change an existing obligation. In addition, credit for children within one's own household was subject to a supplemental calculation and other support orders were deducted prior to calculating any standard of living adjustment.

In 1998, these methods were replaced with a percentage credit to the bottom line of each calculation based upon the number of other children the obligated parent was required to support (16% for 1 child, 26% for 2, 33% for 3 & 5% each additional) in or out of that parent's household. In 2002, the credit was moved and inverted into a multiplier against net income available and made applicable to both parents (84%, 74%, 67%, 61%, -4%). In 2006, the percentages were included in the sets of numbers to be adjusted every two years according to the new self-support and primary support allowances.

Finally, in 2010, the Court reduced the available multiplier to just 3 (82%, 73%, or 67% for three or more children).

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.

Therefore, to implement both these changes, Rule 502(e) will be amended as follows:

Rule 502(e)

Each parent's available net income will be diluted in recognition of their duty of support to Other Children, excluding step-children, not of this union either in or out of the household by ~~applying a designated percentage against~~ 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. ~~The percentage shall be determined as set forth in Rule 509.~~ A parent's support of other dependents 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.

e. Standard of Living Adjustment (SOLA): In addition to fixing basic support needs, the Formula incorporates a standard of living adjustment for the child's benefit in situations where the parents are able to contribute more than basics to their children's support. As with the Primary Support Allowance percentages, the Court now adopts standard SOLA percentages that are not adjusted. These percentages have been inflated by approximately 10% to accommodate the lowering of the Parenting Time Adjustment as recommended elsewhere in this report. The net result intended (assuming a 50% primary share percentage) is an obligation 10% *greater* than under current standards if a parent has fewer than 80 overnights, and 10% *less* if they have more than 80 overnights. Accordingly Rule 504 should be amended as follows:

> ***Rule 504***
> **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 respective Net Available Income and multiplying the result by a designated percentage based upon the number of children of the union ~~as set forth in Rule 509.~~:**
>
> | | |
> |---|---|
> | **1 child** | **19%** |
> | **2 children** | **27%** |
> | **3 children** | **33%** |
> | **Each additional** | **4%** |

f. Minimum Orders: In 1990 the Court first adopted a minimum order of $50 per month regardless of the number of children based upon the $50 "disregard" passed through to cash welfare recipients when at least $50 current support is paid by an obligated parent within a given month. From 1994 to 2006 the minimum was converted to 20% of applicable primary support allowance and was increased to 25% in 2010. At 25% and in the context of stagnant low-end wages minimum orders have become increasingly common, even predominant, and Delaware's minimum order scheme is amongst the highest in the nation. A minimum order (or very near one) is imposed almost universally in cases of persons earning at or below presumptive minimum income of $8.70 per hour which is 20% greater than the current minimum wage. Thus, the Formula as a mechanism to equitably assess each parent according to their relative ability to pay ceases to operate for a great proportion of lower income litigants. Instead the Court effectively imposes a flat fee known as the minimum order. A minimum order is necessarily funded out of the self-support allowance which means that parent must subsist on less than the amount the Formula declares the minimum necessary for a parent to remain productive in a workplace. This

becomes especially acute with multiple children and multiple orders. The purpose of a minimum order is to recognize the financial circumstances of the non-custodial parent which he/she is able to pay and establishes a regular payment habit that supports the child(ren). The hope is they will become able to do and pay more over time. That aspiration is inhibited by overly aggressive standards.

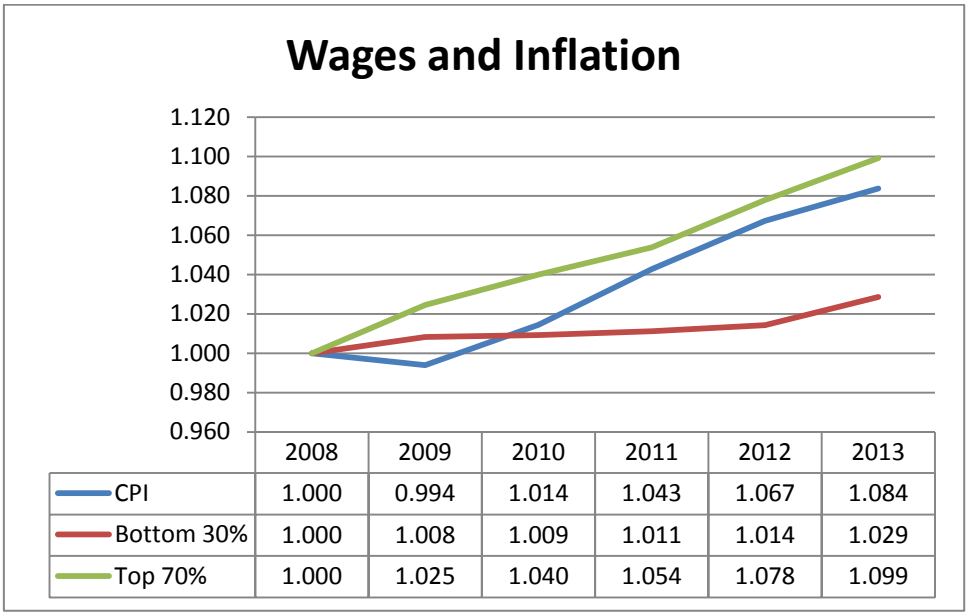
The population against whom minimum orders are imposed is also disproportionately the population against whom there are multiple obligations. Every day the Court establishes and/or enforces obligations which, when combined with previous obligations, the hearing officer knows are unlikely to be fully paid despite being characterized as "minimum" orders. For these reasons 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.

Rule 506(a)

Minimum Orders. **No person shall be assessed a support obligation of less than ~~25% of the primary support allowance (rounded to the nearest multiple of ten and adjusted biannually pursuant to Rule 509),~~ $100 for one child and $160 for two or more children, or 20% of the children's primary support allowances as adjusted biannually), except:**

2. Income Issues

a. Minimum income attribution: Over the years, the Court has attempted to keep the Formula at pace with rising wages by imputing every parent the ability to earn at least one-half of the State wide median wage. Currently, the presumptive minimum is $8.70 per hour or $1508 per month. However, over the last four years, use of the presumption has become more and more common, with a significant proportion of litigants earning less than the presumption. The graph below confirms the Court's experience. It shows that since 2008, for the bottom 30% of workers, wages have remained flat in comparison to the upper 70% whose earnings have generally kept pace with inflation. This gap calls into question the appropriateness of attributing one-half of median wages to many parents who cannot, in fact, earn at that level in the existing economy, no matter how hard they try.



	2008	2009	2010	2011	2012	2013
CPI	1.000	0.994	1.014	1.043	1.067	1.084
Bottom 30%	1.000	1.008	1.009	1.011	1.014	1.029
Top 70%	1.000	1.025	1.040	1.054	1.078	1.099

This year, the State of Delaware enacted a new minimum wage of $8.25 per hour. The Court interprets this as a legislative finding with regard to current labor conditions and concludes Rule 501(d) should be rewritten as follows:

> ***Rule 501(d)***
> **Effective January 1, 2015 every parent will be presumed to have a minimum monthly gross earning capacity of not less than $8.25 per hour, 40 hours per week ($1430 per month). 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.**

b. 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:

Rule 501(i)

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;~~ Is necessary because the other parent of the child or children before the court is not providing adequate support; or
  4. Substantially conflicts with the parent's contact with the child or children before the court.

c. 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.

d. 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.

c. Cost of living Stipend: 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."

d. 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.

To implement the above two suggestions, the Court will amend Rule 502(a)(5) as follows:

Rule 502(a)(5)
Exceptions: ~~Second job income may be disregarded upon consideration of its history, purpose, amount and effect on visitation.~~

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. **~~However,~~ 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.**

3. Custody and Placement

a. Shared Placement *de minimis* orders: When children live about equal time in each of their parent's homes, a current support obligation is assessed against each parent. The lower obligation is then subtracted from the higher obligation, and the net amount is ordered to be paid. In cases where parents have equal incomes and allowable expenses, nothing is paid; with near-equal income, the result can be a very low "net" order. In light of the administrative cost of collecting and disbursing these amounts, and the minimal benefit the children derive from their payment, the Court finds that with shared placement, an obligation of less than $50 per month is *de minimis* and nothing should be ordered to be paid. Therefore, a new Rule 503(d)(5) will state:

Rule 503(d)(5)
If all the minor children before the court reside in the shared placement, and the calculation indicates a net order of less than $50 per month, no affirmative payment of current support shall be ordered.

b. Financial obligations of parents in shared custody cases: Four years ago, at the recommendation of the last *ad hoc* Committee, the Court amended its rules to confirm that parents who share their children's placement must also "adequately contribute to shared incidental expenses." In the years since, parents and attorneys have questioned whether the Rule requires equal contributions from each parent, or contributions proportional to the parents' primary support shares (as with the children's medical expenses). The 2014 Ad Hoc Committee also considered whether the Rule should be kept

purposefully vague to encourage parents to negotiate incidentals in the context of their own situations.

Mathematically, in lower-income shared placement situations, the Formula effectively equalizes resources between the households; in these cases, it is clearly equitable to require parents to contribute equally to shared incidental expenses. In higher-income situations, requiring parents to contribute equally to shared incidental expenses tends to promote shared decision making about those expenses. The Court also notes that the Rule applies only to *shared* incidental expenses, not every out-of-pocket expense a parent might incur, and only to *incidental* expenses, not extraordinary ones. The Court also concluded it should permit a body of case law to develop around families' actual experiences before it attempts to further define whether and when an expense is shared, incidental or extraordinary. In short, the Court concludes that the word "adequately" should be replaced with "equally" in Rule 503(d)(4), as follows:

> ***Rule 503(d)(4)***
> **Upon a showing that a parent is not ~~adequately~~ equally contributing to shared incidental expenses, the Court may impose any appropriate sanction, including but not limited to, ~~finding that the support formula is rebutted or imposing a current~~ recalculating the support obligation ~~against the offending parent~~ as if the child resided primarily with the other parent.**

c. Reverse Obligations: Rule 508(d) already recognizes that when a petition to modify support is filed, the existing obligation may increase or decrease regardless of which party filed the petition. Sometimes, in the context of shared or split placement, a calculation may indicate a reversal of who pays and who receives cash support. The rules do not currently address this result, creating due process concerns should the Court order support absent an affirmative petition expressly seeking that result. The Court concludes there is no reason to distinguish shared placement cases from primary placement cases, and that they should be treated the same in reverse obligation cases. The purpose of the petition is to determine the appropriate sharing of each child's financial support. Accordingly Rule 508(d) will be amended to:

> ***Rule 508(d)***
> **An obligation may be adjusted upwards or downwards, and the payor and payee may be reversed, regardless of who filed the petition."**

Additionally, a new subsection will be added to Rule 503(d):

> ***Rule 503(d)(5)***
> **Either parent may be assessed an affirmative obligation without regard to which parent filed the petition.**

d. Parenting Time Adjustment ("PTA"): Obligated parents often complain that their active involvement in their child's life is not adequately valued within the Formula; they feel lumped in with the "deadbeats," who they perceive pay little support and are disengaged from their other responsibilities to their children. Prior Committees have been reluctant to adopt or expand "visitation" credits for fear of litigiousness and abuse of process. At the same time, each quadrennial review has resulted in enhanced recognition of the contributions of active parents who do have placement of their children; no flood of litigation or abuse has followed those changes. The Court itself has adopted contact guidelines specifically designed to facilitate greater shared parental responsibility. Additionally, more frequent contact by obligated parents is a predictor of greater child support compliance.

The Court concluded that additional credit should be given to parents with "traditional" but robust contact schedules by:

- Reducing the threshold for a 10% PTA to 80 overnights;
- Lowering the shared placement threshold to 164 overnights[6];
- Eliminating the 40% PTA;
- Eliminating the SOLA limitation; and
- Adopting 'a clear and convincing' standard for rebutting orders and agreements, just as already utilized in the context of shared placement cases.

The following chart illustrates the number of overnights which will now be required to trigger a parenting time adjustment. The chart is based upon the Family court contact Guidelines and presumes 18½ biweekly contact rotations, 12 weeks of summer, and 22 equally divided school and personal holidays:

[6] The Ad Hoc Committee recommended 165 overnights as the shared placement threshold. On further comparison with its standard contact guidelines, the Court concluded that setting the threshold at 164 overnights is more consistent with those guidelines.

Avg. # overnights every 2 weeks	# Overnights between 1st Friday in June and last Friday in August		
	10% (80)	30% (125)	Shared (165)
1	51		
2	**32**	77	
3	14	59	
4	0	**40**	79
5	0	22	61
6	0	3	**42**
7		0	24

By way of example, a non-placement parent with a contact schedule of two (2) overnights every 14 days (aka, every other weekend Friday pm to Sunday pm) plus one half of holidays, and at least 32 overnights each summer would be entitled to a 10% parenting time credit. Under the Family Court Contact Guidelines "summer" is measured from the first Friday in June until the last Friday in August and is usually 12 weeks or 84 overnights. A simpler approximation of the credit also based upon the number of overnights every two weeks and an equal division of holidays is as follows:

- 2 biweekly overnights plus 32 summer overnights triggers a 10% credit; 3 biweekly overnights will almost always trigger a 10% credit.
- 4 biweekly overnights plus 40 summer overnights triggers a 30% credit; 5 biweekly overnights will almost always trigger a 30% credit.
- 6 biweekly overnights plus 42 summer overnights is shared placement; 7 biweekly overnights is almost always means shared placement.

Therefore, orders that derive from the Family Court Contact Guidelines should be fairly simple to interpret for this purpose especially since the guidelines without amendment provide for one-half of the summer which is 42 overnights.

To implement the Court's revision, Rule 505(c) will be amended as follows:

Rule 505(c)

(c) *Parenting time adjustment.* When a ~~Court Order or written agreement establishes or confirms that 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 ~~132~~ 124 overnights, ~~20% for 133 to 150,~~ and 30% for ~~151~~ 125 to 163 overnights ~~, and 40% for 165 to 174~~. Additionally:

i. ~~No parent may claim a Parenting Time Adjustment in excess of his or her individual SOLA obligation.~~ 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.

ii. ~~If the actual practice of the parties deviates from the written schedule, the appropriate remedy is to first apply for a modification of the contact schedule. However,~~ Modest or temporary departures from the established ~~fluctuations between~~ contact schedule ~~and actual visitation practices~~ will not prompt any adjustments or rebuttal of the Formula.

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

e. Cash Medical Support: An issue addressed spontaneously by the Judiciary but not addressed by the Ad Hoc committee, was Cash Medical Support. Except where parents share placement of their children, the child support recipient is currently responsible for the first $350 of the children's unreimbursed medical expenses each calendar year. The remainder is divided by the parties pursuant to their respective primary percentage shares of total net available income. The Court feels this creates difficult accounting issues for parents with little added benefit. Additionally and in light of the more robust self-support protections being adopted in this Report, the Court finds it inequitable to impose 100% responsibility for the first $350 on the parent with primary placement. Therefore, Rule 508(b) will be amended to impose responsibility for all unreimbursed medical expenses in accordance with the primary shares, as is the current practice for parents sharing placement of their children. This will apply only to new and modified orders that issue after January 1, 2015.

Rule 507(b)

(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."

B. INCARCERATION

1. ***Incarcerated parents:*** Consider 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 is a foreseeable consequence of criminal conduct, and this has been the historical rationale for equitably disregarding the results of incarceration when determining child support. However, establishment of aggressive child support obligations, based upon pre-incarceration circumstances, does not benefit children while a parent is in jail and likely inhibits child support compliance after the parent is released.

    Four years ago, the Formula was amended to allow consideration of the effect of incarceration on the income of otherwise indigent prisoners as long as the term of incarceration exceeded one year. However, the current rule also prohibits *modification* based upon incarceration within 2½ years of the last determination of current support. When recalculation is allowed because of a parent's incarceration, a minimum support order is nearly always the result. 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.

    The Court concludes it should continue the policy of determining child support based upon pre-incarceration circumstances 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. Similarly, current incarceration should play no part in the determination of support for the first twelve (12) months of continuous confinement. However, the Court adopts the recommendation of the Ad Hoc Committee that incarcerated persons should be assessed a presumptive minimum order starting the 13th month of continuous confinement, and that this order should then be further reduced by one-half starting the 37th month of continuous confinement. This change will also permit incarceration of more than one year to be pled as a ground for modification, but defers the effective date of

any such modification to the 13th month of continuous confinement. To this end, current Rules 508(a) and 506 will be amended as follow:

Rule 508(a)
Incarceration or anticipated incarceration of one year or less is not a ground for modification of a ~~current~~ 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.

New Rule 506(c)
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. ADMINISTRATIVE

1. ***Private Child Support Agreements***: Parties, often through attorneys, sometimes privately negotiate child support obligations and submit the agreement to the Court to be endorsed as a binding order. Some parents begin the Court's mediation process with an agreement about the amount of support. Rule 500(a) currently requires any such agreement to either attach or "reference" a Delaware Child Support Formula calculation. The rule does *not* require that the parties agree to the amount in the calculation. Instead, the rule serves as an indication the parties were aware of the potential formula results, memorializes the relevant circumstances at the time of the agreement, and provides the Court with some context in the event of a subsequent application to modify, enforce or interpret the agreement. These functions are lost when the calculation is merely "referenced" in the agreement. Accordingly, the Court will amend its rules as follows to require that a calculation actually be included with the agreement.

Rule 500(a)
Any consent order resolving new support or modification of support petitions must ~~reference or~~ have attached one or more calculation(s) pursuant to the Formula, whether it is one utilized or one from which there is a deviation.

2. ***Nonparent Obligees***: Special difficulties arise when the person seeking support is not the child's parent. It is uncommon for both parents to be sued and scheduled at the same time. As a result, the Court rarely receives much information on the income and deductions of the "other" parent. Whatever information is presented is usually hearsay, and the parent present has no opportunity to cross examine the other parent about their income capacity or other relevant circumstances. Additionally, the guardian/petitioner is often aligned with one parent to the detriment of the other, resulting in disparate findings between the two cases. Frequently the parent not present is attributed "minimum" income resulting in both parents having primary share percentages of over 50%. To avoid these pitfalls, encourage consistent application and results from the Formula, and expedite litigation, the Court concludes that the following sentence be added to Rule 503(a):

Rule 503(a)
If the person seeking support is not a parent, then the Primary Share for the obligor before the court is 50%.

3. ***Modification of arrears-only orders***: The Formula does not address standards for the establishment or modification of arrears or back support payments. Rule 302 authorizes the Division of Child Support Enforcement to impose arrears payments of 10% of current support where an arrears payment has not been established by Court order. It similarly authorizes re-allocating the current support payment to arrears when current support terminates until the arrears balance is paid in full. People with "arrears-only" orders sometimes file to modify those orders on the basis that the payment is not affordable. Because the rules do not currently address this situation, problems have arisen with repetitive filings and no standardized way to grant or deny relief. For this reason, the Court will amend current Rule 508 by adding a new sub paragraph (f) as follows:

New Rule 508(f)
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).

4. ***Changes in the Formula and Modification***: Every obligation should be determined by the laws and rules in effect at the time of the litigation, and in the near term, parents need to be able to rely on those findings. Changes in the formula itself should not be permitted to prompt applications for modification of support. To this end, the Court will adopts a new subsection (e) to Rule 508:

New Rule 508(e)
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.

SECTION VII: CONSOLIDATED UPDATES 1990-2014

For historical perspective, the Court offers the following cumulative summary of significant changes to the calculation and guidelines from prior review cycles.

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;*
3. *Is necessary because the other parent of the child or children before the court is not providing adequate support; 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.

(2010) Service of a term of incarceration that exceeds or is anticipated to exceed one year 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; or

(2014) If an incarcerated person has no resources and is not incarcerated for victimizing the support recipient or the minor child for whom the support is due, or for nonpayment of child support, then the fact of continuous confinement may be determinative of the obligation. For the first 12 months of continuous confinement, the obligation shall be determined without regard to the incarceration. For the 13th

through and including the 36th month of continuous confinement, a minimum order will be imposed. Commencing the 37th month of confinement, the obligation will be reduced by one half. An obligation may be adjudicated in contemplation of the 12 and 36 month thresholds but the adjustments will not be effective until the relevant date. All such orders will contain the exact dates and amounts of any adjustments.

3. Minimum Attribution of Income

   (2014) Effective January 1, 2015 every parent will be presumed to have a minimum monthly gross earning capacity of not less than $8.25 per hour, 40 hours per week ($1430 per month). 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.

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) <u>Adoption Subsidies</u>: 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

   (1994) All persons for whom taxable income is determined shall be assessed a tax status of single with one exemption (S-1). In keeping with this philosophy of simplification, the earned income tax credit and the dependent care tax credit shall not

be considered for purposes of calculating child support. These credits are given to individuals based on needs intended to be addressed by the relevant federal and state revenue statutes. The Court ought not to mitigate the effect of these statutes by local court rules of evidence and procedure.

(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.

(2006) Regardless of the State of residence of one of the parties the Court will use the Delaware State Income tax tables in the Formula. Local wage or income taxes will remain specific to the city of residence or employment.

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.

   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.

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).

   (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.

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.

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.

B. CHILDREN'S NEEDS

1. Primary Allowances.

   (2014) 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).

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 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 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%*

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 a 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.

(2014) Incarcerated Persons. The child support obligation of an incarcerated person for the persons first year of incarceration shall be determined without regard to their incarcerated status.

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 2 ½ 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 'arrears-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. 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 completed for the parties even if the final amount of support agreed to by the parties differs from the calculation(s). This is different from the prior rule which permitted a calculation to be referenced in lieu of being attached.

(2014) All child support orders calculated from January 2, 2015 shall prospectively utilize the 2014 revisions to the Delaware Child Support Formula. If back support is calculated it shall be done applying the 2014 revisions to the Formula.

(2014) Most values utilized in the Formula shall be indexed and adjusted biannually not later than January 31 of every odd-numbered year.

(2014) 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 Civil Procedure Rules to be submitted for consideration by the Delaware Supreme Court. The goal for implementation is January 1, 2015. The next review committee shall be appointed on or before July 1, 2017. Any changes to the Formula shall be implemented on or before January 1, 2019.

(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.

SECTION V: 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. The numerical values utilized in the formula will be adjusted every two years utilizing predetermined objective criteria. The Court will create appropriate forms, tables and instructions to facilitate consistent and accurate application of the Formula.

RULE 501. INCOME ATTRIBUTION

(a) *General.* In determining each parent's ability to pay support the Court considers the health, income and financial circumstances, and 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 in a manner commensurate with his or her training, education and experience shall be presumed to have reached their reasonable earning capacity.

(c) *Attribution.* Unemployment or underemployment either voluntary or due to misconduct or failure to provide sufficient evidence or failure to appear for a hearing or mediation conference may cause income to be attributed. The Court may examine earnings history, employment qualifications and the current job market. 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.

(d) *Minimum Income*. Every parent will be presumed to have a minimum monthly gross earning capacity of not less than $8.25 per hour, 40 hours per week ($1430 per month). 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) *Unemployment.* A person who receives unemployment compensation shall be presumed to have been terminated from employment involuntarily and without cause.

(f) *Disability.* When a person has been determined to be eligible for Social Security Disability 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 income or assessed a child support obligation unless the parent has income or an earning capacity independent of their SSI entitlement.

(g) *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 income capacity.

(h) *Incarcerated parents*: Service of a term of incarceration that exceeds or is anticipated to exceed one year 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 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) 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 <u>included</u> 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 <u>excluded</u> 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 to a parent as long as that parent's actual income is substantially full-time and consistent with reasonable earning capacity.

(j) *Financial report.*

(1) Failure to submit a Financial Report Form 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 taxes, 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 is organized by its taxable status and may include:

(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.

(c) *Deductions.* Allowable Deductions include:

(1) Medical insurance. Medical insurance premiums (including COBRA payments) paid by either parent 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 3% of gross income, voluntary contributions to a 401(k) or similar IRS approved retirement plan of up to 3% (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. 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.* 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).

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

(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 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.

(ii) Coverage acquired through a stepparent's employment may be considered but only to the extent the increased premium provides coverage for the parties' dependent children and not the stepparent's own children. 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.

RULE 504. STANDARD OF LIVING ADJUSTMENT (SOLA)

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 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 child	4%

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 SELF-SUPPORT ALLOWANCE PROTECTION

(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:

(1) 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.

(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 60% of net available income as determined under Rule 502(a).

(c) 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).

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

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

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

(e) 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) 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).

SECTION VI: SUMMARY

The Delaware Child Support Formula remains a fair and equitable approach to determining child support obligations. It comports with federal law as well as Delaware statutory and case law. These revisions focus on the best interest of children through the standardization of court policies and simplification of procedures. The adjustments reflect current economic data relevant to the cost of raising children. These recommended changes are hereby respectfully submitted.

The Delaware Child Support Formula Ad Hoc Committee:

Judge Michael Newell, Chair
Commissioner John Carrow
Commissioner Andrew Southmayd
Commissioner Louann Vari
Charles Hayward, Director of Division of Child Support Enforcement
Carrie Hyla, Director of Special Court Services
Senator Bryan Townsend
State Representative Andria Bennett
Brenda Sammons, Esquire, Department of Justice
Shawn Dougherty, Esquire, Family Law Section
Raetta McCall, Family Law Commission
Andrea Coll, Family Court Mediator