

NOTICE TO THE BAR

ADDITIONAL AMENDMENTS TO RULES APPENDIX IX-A – “CONSIDERATIONS IN THE USE OF CHILD SUPPORT GUIDELINES”

As part of its July 27, 2006 omnibus rule amendment order, the Supreme Court adopted amendments to Rules Appendix IX-A (“Considerations in the Use of Child Support Guidelines”). The specific paragraphs amended were Paragraphs 18 (“College or Other Post-Secondary Education Expenses”) and 20 (“Extreme Parental Income Situations”). Those amendments became effective September 1, 2006.

Subsequently it was determined that additional amendments should have been made to that Appendix. The Supreme Court on September 11, 2006 thus adopted the following further amendments to Rules Appendix IX-A:

- (1) Amendment to Paragraph 12 (“Imputing Income to Parents”) to update the number shown for the New Jersey minimum wage, which increased to \$7.15 per hour as of October 1, 2006.
- (2) Amendment to subparagraph b of Paragraph 20 (“Extreme Parental Income Situations”); the Court in the omnibus order approved amendments to Appendix IX-F (“Schedule of Child Support Awards”) in accordance with the quadrennial review; the additional amendment here updates Appendix IX-A to reflect the increased maximum combined annual salary covered by amended Appendix IX-F (now \$229,840 rather than the previous \$150,800).

Attached is the Court’s September 11, 2006 order adopting these further amendments, which were effective as of that date.

/s/ Philip S. Carchman

Philip S. Carchman, J.A.D.
Acting Administrative Director of the Courts

Dated: September 11, 2006

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached revisions to Appendix IX-A (“Considerations in the Use of Child Support Guidelines”) of the Rules Governing the Courts of the State of New Jersey are adopted effective immediately.

For the Court,

/s/ Deborah T. Poritz

Chief Justice

Dated: September 11, 2006

APPENDIX IX-A
CONSIDERATIONS IN THE USE OF CHILD SUPPORT GUIDELINES
(Includes Amendments Through Those Effective September 11 [1], 2006)

1. **Philosophy of the Child Support Guidelines** ... no change
2. **Use of the Child Support Guidelines As a Rebuttable Presumption** ... no change
3. **Deviating from the Child Support Guidelines** ... no change
4. **The Income Shares Approach to Sharing Child-Rearing Expenses** - ... no change
5. **Economic Basis for the Child Support Guidelines** ... no change
6. **Economic Principles Included in the Child Support Guidelines** ... no change
7. **Assumptions Included in the Child Support Guidelines** ... no change
8. **Expenses Included in the Child Support Schedules** ... no change
9. **Expenses That May Be Added to the Basic Child Support Obligation** ... no change
10. **Adjustments to the Support Obligation** ... no change
11. **Defining Income** ... no change

12. Imputing Income to Parents. The fairness of a child support award resulting from the application of these guidelines is dependent on the accurate determination of a parent's net income. If the court finds that either parent is, without just cause, voluntarily underemployed or unemployed, it shall impute income to that parent according to the following priorities:

- a. impute income based on potential employment and earning capacity using the parent's work history, occupational qualifications, educational background, and prevailing job opportunities in the region. The court may impute income based on the parent's former income at that person's usual or former occupation or the average earnings for that occupation as reported by the New Jersey Department of Labor (NJDOL);
- b. if potential earnings cannot be determined, impute income based on the parent's most recent wage or benefit record (a minimum of two calendar quarters) on file with the NJDOL (note: NJDOL records include wage and benefit income only and, thus, may differ from the parent's actual income); or
- c. if a NJDOL wage or benefit record is not available, impute income based on the full-time employment (40 hours) at the New Jersey minimum wage [(\$5.15 per hour)] (\$7.15 per hour).

In determining whether income should be imputed to a parent and the amount of such

income, the court should consider: (1) what the employment status and earning capacity of that parent would have been if the family had remained intact or would have formed, (2) the reason and intent for the voluntary underemployment or unemployment, (3) the availability of other assets that may be used to pay support, and (4) the ages of any children in the parent's household and child-care alternatives. The determination of imputed income shall not be based on the gender or custodial position of the parent. Income of other household members, current spouses, and children shall not be used to impute income to either parent except when determining the other-dependent credit. When imputing income to a parent who is caring for young children, the parent's income share of child-care costs necessary to allow that person to work outside the home shall be deducted from the imputed income. For further information on imputing income, see *Gertcher v. Gertcher*, 262 N.J.Super. 176 (Ch.Div. 1992), *Bencivenga v. Bencivenga*, 254 N.J.Super. 328 (App. Div. 1992), *Thomas v. Thomas*, 248 N.J. Super. 33 (Ch.Div. 1991), *Arribi v. Arribi*, 186 N.J.Super. 116 (Ch.Div. 1982), *Lynn v. Lynn*, 165 N.J. Super. 328 (App. Div. 1979), *Mowery v. Mowery*, 38 N.J. Super. 92 (App. Div. 1955).

13. Adjustments for PAR Time (formerly Visitation Time) ... no change

14. Shared-Parenting Arrangements ... no change

15. Split-Parenting Arrangements ... no change

16. Child in the Custody of a Third Party ... no change

17. Adjustments for the Age of the Children ... no change

18. College or Other Post-Secondary Education Expenses ... no change

19. Determining Child Support and Alimony or Spousal Support Simultaneously ... no change

20. Extreme Parental Income Situations - Although these guidelines apply to all actions to establish and modify child support awards, extremely low or high parental income situations make the Appendix IX-F awards inappropriate due to the limitations of the economic data. The guidelines listed below apply to extreme parental income situations.

a. *Obligors With Net Income Less Than the U.S. Poverty Guideline* ... no change

b. *Parents with a Combined Net Annual Income In Excess of \$229,840 [\$150,800]*. If the combined net income of the parents is more than \$229,840 [\$150,800] per year, the court shall apply the guidelines up to \$229,840 [\$150,800] and supplement the guidelines-based award with a discretionary amount based on the remaining family income (i.e., income in excess of \$229,840 [\$150,800]) and the factors specified in N.J.S.A. 2A:34-23. Thus, the maximum guidelines award in Appendix IX-F represents the minimum award for families with net incomes of more than \$229,840 [\$150,800] per year. An award for a family with net income in excess of \$229,840 [\$150,800] per year shall not be less than the amount for a family with a net income of \$229,840 [\$150,800] per year. Because estimates on the marginal cost of children in intact families with net incomes of more than [\$150,800]

\$229,840 per year are either unreliable or unavailable, the court shall not extrapolate the Appendix IX-F schedules (statistically or by adding amounts from different income ranges) beyond that dollar limit.

21. Other Factors that May Require an Adjustment to a Guidelines-Based Award ... no change

22. Stipulated Agreements ... no change

23. Modification of Support Awards ... no change

24. Effect of Emancipation of a Child ... no change

25. Support for a Child Who has Reached Majority ... no change

26. Health Insurance for Children. ... no change

27. Unpredictable, Non-Recurring Unreimbursed Health-Care In Excess of \$250 Per Child Per Year ... no change

28. Distribution of Worksheets and Financial Affidavits ... no change

29. Background Reports and Publications ... no change