

1                   **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2   **November 1, 2018**

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4                   **NO. 18-8500-014**

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6                   **IN THE MATTER OF THE AMENDMENT**  
7                   **OF THE ALIMONY GUIDELINE WORKSHEET**

8  
9   **ORDER**

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11                   WHEREAS, the matter having come on for consideration by the Court upon  
12 recommendation of the Domestic Relations Rules Committee and its Statewide  
13 Alimony Guidelines Subcommittee to revise the Alimony Guideline Worksheet in  
14 light of upcoming changes to the federal tax law treatment of alimony payments  
15 under the Tax Cut and Jobs Act of 2017, and the Court having considered the  
16 recommendation and being sufficiently advised, Chief Justice Judith K. Nakamura,  
17 Justice Petra Jimenez Maes, Justice Charles W. Daniels, Justice Barbara J. Vigil,  
18 and Justice Gary L. Clingman concurring;

19                   NOW, THEREFORE, IT IS ORDERED that the amendment of the Alimony  
20 Guideline Worksheet is APPROVED;

21                   IT IS FURTHER ORDERED that the amended Alimony Guideline  
22 Worksheet, which is attached to this order, shall be effective for use on January 1,  
23 2019;

24                   IT IS FURTHER ORDERED that the Clerk of the Court is authorized and  
25 directed to give notice of the amended Alimony Guideline Worksheet as follows:



**ALIMONY GUIDELINE WORKSHEET**

(For Use After January 1, 2019)

Monthly Payment

(Use Only One Box. If Support Nondeductible, Then Make Reduction based on Combined Income)

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**If there are no children for whom support is paid, then use lines 1 through 6.**

1. Payor's Gross Monthly Income \_\_\_\_\_
2. Multiply Line 1 by 0.3                      X 0.30 = \_\_\_\_\_
3. Recipient's Gross Monthly Income \_\_\_\_\_
4. Multiply Line 3 by 0.5                      X 0.50 = \_\_\_\_\_
5. Subtract Line 4 from Line 2                      \_\_\_\_\_
6. Check a Box:
- Line 5 is positive number. Payor pays this monthly alimony payment.
  - Line 5 is zero or negative. No monthly alimony is paid.

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**If there are children for whom child support is paid, use Lines A through F.**

- A. Payor's Gross Monthly Income \_\_\_\_\_
- B. Multiply Line A by 0.28                      X 0.28 = \_\_\_\_\_
- C. Recipient's Gross Monthly Income \_\_\_\_\_
- D. Multiply Line C by 0.58                      X 0.58 = \_\_\_\_\_
- E. Subtract Line D from Line B                      \_\_\_\_\_
- F. Check a Box:
- Line E is positive number. Payor pays this monthly alimony amount.
  - Line E is zero or negative. No monthly alimony is paid.

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**REDUCTION BASED ON COMBINED INCOME (ONLY USE IF SUPPORT IS NONDEDUCTIBLE)**

<b>Combined Yearly Gross Income Amount</b>	<b>Reduce the Above Calculated Amount By:</b>
Up to \$90,000	10%
\$90,001 to \$149,999	15%
\$150,000 to \$199,999	20%
\$200,000 and over	25%

STATEWIDE ALIMONY GUIDELINE COMMITTEE  
**Ad Hoc Committee of the New Mexico Domestic Relations Rules Committee**

REPORT

The Tax Cut and Jobs Act of 2017 (TCJA) made major changes in the way alimony (spousal support) would be treated effective January 1, 2019, radically changing the way alimony traditionally had been treated for IRS purposes. Alimony under the TCJA is no longer deductible to the Payor nor taxable to the Recipient. Deductibility to taxable income on a dollar-for-dollar basis had represented a considerable incentive to Payors to settle alimony claims.

The effect of the TCJA is to increase Payor's payments to a former spouse (by removing the tax deduction), while increasing the payment received by that spouse (since it is no longer taxable income). Feedback from family law practitioners accustomed to the previous alimony percentages approved by the New Mexico Supreme Court in 2007 (and used extensively in settlement negotiations especially in the Second Judicial District) was that obviating tax consequences would greatly impede future settlements and increase litigation.

Responding to this concern and considering the limited time period to effect adjustments, a committee was formed again as mandated in the earlier Order of the Supreme Court:

“4. The Committee may reconvene at reasonable intervals at the call of the chair, or at the direction of this Court, to gather feedback and review the use of the Statewide Alimony Guidelines and Commentaries, to make recommendation to this court for reviewing the guidelines or commentaries as may be warranted from time to time, and to make any other recommendations with regard to the

use and distribution of the guidelines that may be needed.” [Exhibit A, Order entered April 16, 2007]

The committee comprised five former statewide alimony guideline committee members (Muriel McClelland, Chair, the Honorable Deborah D. Walker, Twila B. Larkin, Barbara V. Johnson, Richard Wexler, CPA) and four new members (Randy W. Powers, Jr. and Edward R. Street, CPA [Albuquerque], Grace B. Duran [Las Cruces], and Janet Clow [Santa Fe]). This committee met every two weeks since its first meeting on March 27, 2018 through June 20, 2018. The goal of the committee was to maintain as closely as possible the original guideline percentages and adjust those percentages consistent with the TCJA alimony changes. Since time was of the essence, the goal was also to complete this work by September, 2018 in order to timely inform attorneys.

The committee first reviewed what other states were doing with respect to guidelines, some of which were statutory. Committee members communicated with counterparts in other states. Other states for the most part had not yet produced usable revisions at the time the committee researched states, with the exception of Illinois and Colorado. Illinois changed from using gross income to net income. The committee determined that using a net income formula would greatly encourage disputes about what is or is not deductible from gross income to arrive at net income. Colorado’s overall formula made sense: use their present guideline formula with adjustments based upon percentages of combined income. Colorado’s percentages of 20% and 25% adjustments did not, however, conform to New Mexico’s statutory requirements of ability to pay and need, especially for lower income families.

CPA Ed Street ran multiple analyses using present and possible future percentages and

produced multiple spreadsheets, all of which were reviewed in depth by the committee. The committee's recommended adjustment of four combined income categories came the closest to the original guideline formula results. Feedback obtained from the Family Law Section Board of Directors and other attorneys was positive.

The present spousal support income percentages are 30% of Payor's gross income minus 50% of Recipient's gross income for parties without children. For parties with children (since child support is additional) the income percentages are 28% of Payor's gross income minus 58% of Recipient's gross income. The proposed guidelines retain the original percentages and add one more calculation based upon the combined gross income of the parties.

The additional calculation is a percentage deduction for the applicable combined income bracket: 10% deduction to the established alimony guideline figure for combined incomes up to \$90,000; 15% for incomes up to \$149,000; 20% for incomes up to \$199,999; 25% for incomes \$200,000 and above. The resulting amount would reflect adjusted guideline amounts with zero tax consequences. The recommended guideline amounts are within 1% of the present guideline formula results in most cases. [Amended Worksheet attached hereto as Exhibit B]

While this work was in process the New Mexico Supreme Court referred this matter to the Domestic Relations Rules Committee. This Alimony Guideline Committee was designated as an *ad hoc* committee of the Rules Committee, which approved its analysis, formula and worksheet at a meeting on July 13, 2018, and voted that the Committee's Report and Attached Worksheet be recommended to the Supreme Court.

The Statewide Alimony Guideline Committee recommendations are:

1. Given the new IRS regulations (TCJA), the existing alimony guidelines required

review for necessary revisions.

2. That the Supreme Court issue an Order adopting the attached Alimony Guideline Worksheet for use effective January 1, 2019;

3. That this Report and the attached Worksheet be published in the Bar Bulletin for a period of four weeks (without including the original Commentaries);

4. That the New Mexico State Judiciary Website Alimony Commentaries include this Report and the attached Worksheet as an addendum to the 2007 Commentaries; and

5. That the Supreme Court Order adopting this Report and the attached Worksheet be disseminated to all Family Law Section members via email.

Dated: August 10, 2018



Muriel McClelland, Chair

ATTEST: A TRUE COPY

*Josely D. Meza*

Chief Clerk of the Supreme Court  
of the State of New Mexico

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 07-8500

SUPREME COURT OF NEW MEXICO  
**FILED**

APR 16 2007

IN THE MATTER OF THE REPORT OF THE  
ALIMONY GUIDELINES STATEWIDE PILOT PROJECT  
COMMITTEE AND ADOPTION OF ALIMONY  
GUIDELINES FOR THE STATE COURTS OF NEW MEXICO

*Letraun Johnson*

ORDER

WHEREAS, the Supreme Court established the Alimony Guidelines Statewide Pilot Project Committee on October 1, 2004, for the purpose of studying and collecting data using the proposed alimony guidelines and commentaries in settlement negotiations in a pilot project in the First, Second, Third, and Eighth Judicial District Courts;

WHEREAS, the Committee submitted a report to this Court on September 26, 2006, setting forth the results of its study and data collection;

WHEREAS, the Committee's report also contained recommendations for expanding the use and availability of the alimony guidelines and commentaries statewide;

WHEREAS, at the request of this Court, the Domestic Relations Task Force commented on the Committee's report and agreed that the proposed alimony guidelines and commentaries should be published and their use in settlement negotiations should be encouraged and extended statewide; and

WHEREAS, this Court having considered the report and recommendations, and being sufficiently advised, Chief Justice Edward L. Chávez, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Richard C. Bosson, concurring;

Exhibit  
**A**



ATTEST: A TRUE COPY

*Jessy D. Mayo*

Chief Clerk of the Supreme Court  
of the State of New Mexico

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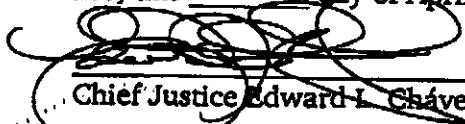
NOW, THEREFORE, IT IS ORDERED that the report of the Alimony Guidelines  
Statewide Pilot Project Committee is hereby ACCEPTED;

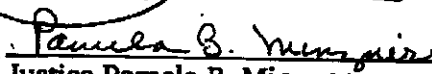
IT IS FURTHER ORDERED that certain recommendations from the report  
hereby are ADOPTED and shall be implemented as follows:

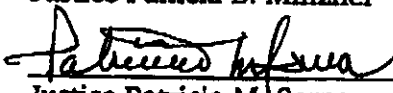
1. The Committee's proposed alimony guidelines and commentaries, as revised September 6, 2006, shall be formally known as the Statewide Alimony Guidelines and Commentaries;
2. All New Mexico Judicial Districts are authorized and encouraged to use the Statewide Alimony Guidelines and Commentaries for settlement negotiation purposes;
3. The Administrative Office of the Courts is authorized to publish and distribute the Statewide Alimony Guidelines and Commentaries throughout the State of New Mexico, which shall include posting them on the New Mexico State Judiciary Website; and
4. The Committee may reconvene at reasonable intervals at the call of the chair, or at the direction of this Court, to gather feedback and review the use of the Statewide Alimony Guidelines and Commentaries, to make recommendations to this Court for revising the guidelines or commentaries as may be warranted from time to time, and to make any other recommendations with regard to the use and distribution of the guidelines that may be needed.


IT IS SO ORDERED.

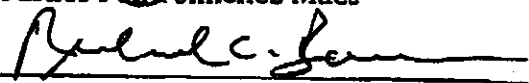
Done at Santa Fe, New Mexico, this 16th day of April, 2007.

  
 Chief Justice Edward I. Chavez

  
 Justice Pamela B. Minzner

  
 Justice Patricio M. Serna

  
 Justice Petra Jimenez Maes

  
 Justice Richard C. Bosson

**ALIMONY GUIDELINE WORKSHEET**

(For Use After January 1, 2019)

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