

# **CHILD SUPPORT COMMITTEE**

Meeting Minutes – December 16, 2003

## **PRESENT:**

### **Co-Chairs**

- Hon. Peter Hershberger
- Hon. James Waring

### **Members:**

- Hon. Manuel Alvarez
- Hon. Mark Armstrong
- Robert Barrasso
- Hon. Bill Brotherton
- David Byers (designee Karen Kretschman)
- Charles DiGeronimo
- Kim Gillespie
- Leona Hodges (designee Annmarie Mena)
- Kym Hull
- Hon. Michael Jeanes
- Michelle Krstyen
- Ezra Loring
- Suzanne Miles
- David Norton
- Hon. Rhonda Repp
- Chuck Shipley
- Russell Smoldon
- Hon. Monica Stauffer
- Bianca Varelas-Miller

### **GUESTS:**

Judy Bushong  
Julianna Koob  
Andy Wangrycht  
Jane McVay  
Valarie Merritt  
Eddie Sissons

Maricopa County Clerk of Court  
AZ Coalition Against Domestic Violence  
Self/Parent  
Division of Child Support Enforcement  
ACS  
Morris Justice Institute

### **STAFF:**

Marianne Hardy  
Megan Hunter  
Isabel Gillett

House of Representatives  
Administrative Office of the Courts  
Administrative Office of the Courts

**CALL MEETING TO ORDER**

**REP. HERSHBERGER**

The meeting was called to order at 10:15 a.m. by Rep. Peter Hershberger with a quorum present.

**APPROVAL OF MINUTES**

**REP. HERSHBERGER**

**MOTION: Russell Smoldon made a motion to approve the minutes of the September 23, 2003 meeting. Second by Kym Hull. Approved unanimously.**

**ANNOUNCEMENTS**

**REP. HERSHBERGER**

The 2004 meetings will be held on the following dates:

February 24

April 20

June 15

September 21

October 19

November 16

**GUIDELINES WORKGROUP**

**JUDGE MARK ARMSTRONG**

The Guidelines Workgroup voted to recommend to the Child Support Committee the creation of an interim workgroup that would commence after the 2004 review is complete and whose purpose would be to study the economic estimating methods and guidelines models.

**MOTION: Russell Smoldon made a motion to create an interim workgroup to commence after the 2004 review is complete, to study economic child-rearing cost estimating methods and guidelines models. Second by Kim Gillespie. Approved unanimously.**

Federal law requires states to review their child support guidelines at least once every four years. Under statutory authority, the Arizona Supreme Court reviews and adopts the guidelines in Arizona. The law requires that an economic analysis and case file review be conducted to ensure that the guidelines result in appropriate child support amounts. In addition to the reports, a survey on the Supreme Court's website allows opportunity for public comment. Stakeholders in the child support community such as parents, judicial officers, attorneys and members of the state child support agency offer input as well.

The economic analysis required by law proposes an updating of the Schedule of Basic Support Obligations and is based on recent evidence on child-rearing expenditures and changes in prices levels and tax rates. The case file review, also required by law, found a 22% deviation rate. Arizona's deviation rate in the 1999 review was 15%. While this is a somewhat significant increase, the majority or 78% of deviations stem from agreement of the parties and half were upward and half downward.

The Administrative Office of the Courts developed a set of initial recommendations, then invited the Guidelines Workgroup of this Committee to offer further recommendations. The group studied the reports and public comment/input over a period of 14 months to develop a set of recommendations for improvements to the guidelines. The workgroup was comprised of parents, attorneys, judicial officers, court administrators, clerks of court, educators, representatives from the Division of Child Support Enforcement, Office of the Attorney General and Community Legal Services. The workgroup developed a set of recommendations which are being circulated for public comment.

The workgroup proposed the following recommendations:

- 1. Premises.**  
Add a premise that a custodial parent can be ordered to pay support.
- 2. Presumptive Termination Date.**
  - a. Incorporate the duration of support section currently found in section 2.d. into new section 4.
  - b. Provide a presumptive termination date in new section 4.
- 3. Determination of Gross Income.**  
Expand current language to reflect the McNutt v. McNutt decision.
  - a. A parent should have the choice to work overtime or a second job without a risk of increasing the child support award, and/or have the choice to reduce hours to the equivalent of full-time employment without income attribution for child support purposes.
  - b. The court may consider income actually earned greater than full-time employment if that income was historically earned prior to the initial support order from a regular schedule and is anticipated to continue into the future.
- 4. Adjustments to Gross Income**
  - a. Revise for consistency
  - b. Clarify that this adjustment is not for the children at issue in the present case.
  - c. Define simplified application to the guidelines.
  - d. Clarify that the spousal maintenance adjustment can be from this or another divorce.
- 5. Determining the Total Child Support Obligation**
  - a. Add cost of vision insurance to the basic child support obligation, if vision insurance is provided by a parent.
  - b. A parent has 180 days to request a medical expense reimbursement and the other parent has 45 days to make the payment or payment arrangements
  - c. The child care tax credit is not applicable if neither parent has the child for the greater part of the year.
  - d. Revise child care tax credit language for simplification.
  - e. Eliminate adjustment for court-ordered supervised parenting time and exchanges.
- 6. Adjustments for Costs Associated with Visitation**
  - a. Change the term “visitation” to “parenting time” to comport with Arizona statutes.

- b. No adjustments should be granted if the noncustodial parent does not incur costs during parenting time
  - c. Clearly define hours/blocks of time toward parenting time, and clarify that the adjustment is for regular, recurring parenting time only.
- 7. Equal Custody**  
Separate the equal custody paragraphs from the parenting time adjustment section.
- 8. Adjustments for Other Costs**  
Add an example to illustrate the intent behind the calculation.
- 9. Self Support Reserve Test**  
Increase the self support reserve amount from \$710 to \$775 to reflect the increase in inflation between 1999 to 2003 of 9.3%.
- 10. Travel Expenses**  
Clarify that long-distance parenting time generally means a distance of more than 100 miles one-way.
- 11. Deviations**  
Clarify that:
- a. Written findings should be contained in the child support order, minute entry or child support worksheet.
  - b. Parties can agree to deviate on the record, in addition to the current ability to deviate based on a written agreement.
  - c. Court may deviate when parties “enter into” instead of current requirements to “sign” the agreement.
- 12. Modification**  
Eliminate reference to “prima facie evidence” and refer to it simply as “evidence”.
- 13. Income of a Child & Credit for Benefits**
- a. Combine sections 24 and 25.
  - b. Clarify, in section 25, that this section applies to benefits received by a parent on behalf of a child.
  - c. Clarify, in section 25, that if the amount of the child’s benefit is less than the paying parent’s support obligation, the difference must be paid by that parent unless the court modifies the order to equal benefits being received.
  - d. Clarify that benefits received directly, and not on behalf of a child, by either parent as a result of his or her own contributions shall be included as part of that parent’s gross income.
- 14. Child Support Arrears**
- a. Court must make a finding when the amount of arrears ordered is less than the amount of accruing monthly interest.
  - b. Court may adjust the arrearage payment upon a showing of substantial and continuing change of circumstances.
  - c. Court must consider the total amount of arrears, accruing interest and time it will take to pay off these amount before adjusting the Order of Assignment to an amount less than the current support amount and payment on arrears.

**15. Effective Date**

- a. Direct the court to use guidelines in effect when the order is entered unless the court determines otherwise based on good cause.
- b. In cases of default or stipulation, the guidelines effective at the time of filing shall be used.

**16. Update the Schedule of Basic Support Obligations**

The workgroup voted to update the Schedule of Basic Support Obligations on a vote of seven in favor, 2 against and 1 abstaining. However, a strong minority opinion against updating the Schedule in light of current economic conditions was noted.

- a. At low and Middle Income Levels, small increases will occur.
- b. At middle to high income levels, small increases will occur. Most child support cases are likely to fall into the area where there are increases to the Schedule.
- c. At high levels of income, large decreases will occur. About 18% of child support cases are likely to be in this category.

Members discussed guidelines models and estimating methods including the factual basis for determine that the existing guidelines model is appropriate. Judge Armstrong explained that Arizona initially adopted the Income Shares model in 1987 and has adopted the same model at each review. Thirty-two states also use the Income Shares model. Senator Waring expressed concern about voting on the guidelines proposal if there are concerns about the model. Senator Brotherton suggested that the interim workgroup be comprised of economic experts. Judge Armstrong stated that the workgroup membership has not been discussed but it is anticipated to include economic experts, and that Dr. Ira Ellman, who is on the subcommittee, has offered to bring in members from the academic community at no cost.

Michael Jeanes asked if it was impossible to change the Guidelines within the four-year period. Judge Armstrong stated that federal law requires that the review occur at least once every four years, but nothing prevents a change to the guidelines from being proposed in the interim period.

Megan Hunter described the three guidelines models in use in the country at present and the separate issue of child-rearing cost estimating methodologies.

Megan read a letter from one of the dissenters on the workgroup, David Hamu, who thinks that the amount paid by the noncustodial parent should go down. He recommended that the recommendations for improvements to the guidelines should be adopted, except the tables. Suzanne Miles presented an opposing viewpoint to the idea and thoughts presented in Mr. Hamu's letter.

**MOTION: Russell Smoldon made a motion to accept the recommended improvements to Arizona's Child Support Guidelines as recommended by the Guidelines Workgroup with two minor, technical modification discussed previously in the meeting. Karen Kretschman seconded the motion. Approved on a voice vote.**

## **BREAK/LUNCH**

After a short break, the meeting was called back to order at 12:50 p.m. with a quorum present.

## **STATUTE CLEANUP WORKGROUP**

### **KIM GILLESPIE**

Kim Gillespie chaired the Statute Cleanup Workgroup over the past several months. The group began meeting in April and finished with their proposals this month. Two proposals have been prepared for the 2004 legislative session.

#### 1. UIFSA (Uniform Interstate Family Support Act)

The UIFSA was intended to provide enforcement of family support orders in interstate cases. It established the “one order” concept to avoid the problems created by the prior interstate law of having multiple support orders simultaneously in effect. UIFSA was initially promulgated in 1992 and revised in 1996. At the request of the child support community and with its active participation, a uniform laws drafting committee prepared amendments to UIFSA, which were approved by the National Conference of Commissioners on Uniform State Laws in 2001. The amendments are intended to improve the act and include provisions as follows:

- Clarify how the controlling order is to be determined and reconciled where multiple orders have been issued.
- Clarify the rules limiting the ability of parties to seek modifications of orders in states other than the issuing state. Permit the parties who have all left the initiating state to agree to modification in a state in which they do not reside.
- Require (rather than permit) a tribunal to permit a party or witness residing in another state to appear by phone or other electronic means.
- Provide clearer guidance to support agencies with regard to redirecting payments to an obligee’s current state of residence.
- Clarify that the duration of support is determined by the laws of the issuing state.
- Expand UIFSA to include coverage of support orders from foreign countries and address other aspects of international support enforcement.
- Require that a copy of all known support orders be attached to the pleadings, but eliminate the requirement that the copies be certified.
- Clarify that an obligor contesting direct withholding has a choice of remedies.

The workgroup did not reach consensus regarding the issue of allowing a party or witness residing in another state to be deposed or to testify by telephone. The uniform laws draft allows for telephonic appearances.

The proposal would repeal the current UIFSA statute because it does not track the uniform national law. The proposal would track the uniform national law, thereby making it less confusing for practitioners in this and other states.

**MOTION: Judge Armstrong made a motion to adopt the UIFSA proposal as proposed by the Statute Cleanup Workgroup without a change to the uniform act**

**regarding telephonic appearances. Suzanne Miles seconded the motion. Approved unanimously.**

2. A.R.S. § 25-527 Child Support Overpayment

This proposal is intended to provide a remedy for a child support obligor parent in cases where he/she paid an amount in excess of the court-ordered support payments. This situation happens when a wage assignment for child support is unstopped at the termination of the order, usually because the obligor forgot to file for wage assignment stoppage. There is currently no law covering this issue in Arizona.

The proposals key provisions include the following:

- Would require an obligee in a child support case, who has been paid in excess of the court-ordered support payments, to refund the overpayment to the obligor parent upon request for reimbursement.
- The request for reimbursement would be filed with the Clerk of the Superior Court.
- The obligor would have a prescribed period of time after the termination of the support obligation to file the request for reimbursement.
- All arrearages and interest would have to be satisfied before reimbursement would be ordered.
- The repayment would go directly to the requesting parent, not through the Support Payment Clearinghouse.
- This would not be a support judgment, but rather a civil judgment enforceable as any other civil judgment.
- Could be made a judgment and enforced as any other civil judgment.

The group did not reach consensus regarding the prescribed time period to request a reimbursement.

**MOTION: Michael Jeanes made a motion to adopt the proposal as submitted by the workgroup. Suzanne Miles seconded the motion. Approved unanimously.**

The workgroup considered a proposal brought to them by Eddie Sissons of the Morris Justice Institute. The workgroup has some concerns about the initial proposal, after which a second draft which addressed the issues was presented at a subsequent workgroup meeting. The workgroup did not take a position on supporting the proposal, but would like Eddie Sissons to explain the proposal.

The proposal is an attempt to provide parity between paternity and dissolution cases. In paternity cases, parties can get retroactive child support up to three years. In dissolution cases, retroactive child support only goes back to the date of filing. This proposal would give permission to court to go back to the date of separation for child support. The parties would be required to prove it up on a factual basis. The proposal would provide economic stability for the divorcing parties.

Lisa Moore Melton, managing attorney of Community Legal Services, explained the details of the proposal. When parties separate, a child support order should be entered to immediately get support flowing to the children. This bill would send message to couples who are separating that they will have an obligation to financially support the children.

Discussion:

Bob Barrasso discussed the issue of Arizona being a community property state. He also expressed concern about digging into the past while the parties were still married.

**MOTION: Kim Gillespie made a motion to support this recommended legislation. The motion was seconded. The proposal was approved on a voice vote.**

#### **STRATEGIC PLANNING WORKGROUP**

##### **REP. HERSHBERGER**

The group did not have a report for this meeting.

#### **CALL TO THE PUBLIC**

No members from the public were present.

#### **NEXT MEETING**

The next meeting will be held on February 24, 2004, at the Arizona State Courts Building, 1501 W. Washington, Phoenix.

#### **ADJOURNMENT**

Rep. Hershberger adjourned the meeting at 1:37 p.m.