

FAMILY COURT IMPROVEMENT COMMITTEE - CHILD SUPPORT GUIDELINES REVIEW SUBCOMMITTEE

Minutes

January 25, 2021, 10:00 a.m. (Virtual Meeting)

Telephonic: Judge David Gass (Chair), Carol Park Aden, Judge John Assini, Laura Belleau, Mary Boyte Henderson, Judge Bruce Cohen, Kellie DiCarlo, Judge Joseph Goldstein, Jennifer Mihalovich, Janet Sell

Absent/Excused: Jeff Fine, Vance Simms, Rosa Torrez, Steve Wolfson

Presenters/Guests: Janice Rogers

Administrative Office of the Courts (AOC) Staff: Theresa Barrett, Angela Pennington, Susan Pickard, Kathy Sekardi

I. REGULAR BUSINESS

Welcome and Opening Remarks

The January 25, 2021, meeting of the Family Court Improvement Committee–Child Support Guidelines Review Subcommittee (FCIC-CSGRS) was called to order at 10:00 a.m. by Judge David Gass, Chair. This 14th meeting of the FCIC-CSGRS was a virtual meeting, with attendees present online, on the phone, or both. Susan Pickard discussed virtual meeting “housekeeping” issues and performed the roll call.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Call to the Public

Janice Rogers addressed the FCIC-CSGRS.

B. Considerations from the Public Hearing

On January 15, 2021, the FCIC-CSGRS held a public hearing. The members discussed the topics brought forward by parents and other interested persons.

Fair Labor Standards Act and First Responders - The members discussed whether to provide guidance regarding full-time hours for occupations where full-time is typically other than 40 hours per week. By consensus, the members determined it was not necessary to provide this information in the guidelines, allowing judicial discretion.

Children with Special Needs and Primary Caregiver – Children with special needs are discussed in the Arizona Child Support Guidelines (Guidelines) in two sections: 1) Income Attribution for a child common to the parties; and 2) Deviations for a child not common to the parties.

Self-Support Reserve Test – Include a recommendation in the Final Report and Recommendations of the Subcommittee (Report) for subsequent committees to review other states’ data, and Arizona’s alignment with that data.

Arrears Interest Rate – This interest rate is set by Arizona statute at 10% per annum. There is no guidance in federal statutes that specifically addresses interest rates. The consensus of the members was to make a recommendation in the Report asking the Family Court Improvement Committee to explore proposing a statutory amendment regarding this interest rate.

C. Essentially Equal Parenting Time and the Older Child

Chris Gorman noted that the older child adjustment is a variable expense for items such as food and clothing to which the parenting time adjustment should be applied. After discussion, it was decided to include a recommendation in the Report that the parenting time adjustment be applied to the basic child support obligation plus the older child adjustment.

D. Accounting for Time at School or in Daycare in the Parenting Time Adjustment

Judge Bruce Cohen noted that the following language in the Guidelines causes confusion:

“For the purposes of calculating parenting days, only the time spent by a child with a parent with less parenting time is considered, time the child is in school or daycare is not considered.”

He recommended that the language be changed to:

“Unless otherwise provided in the court order, if the exchange occurs at school or with a caregiver, the receiving parent’s time commences at the end of the day. Conversely, the other parent’s segment ends at the same time.”

Motion: To approve the proposed language changes as discussed. **Moved:** Judge Bruce Cohen. **Second:** Laura Belleau. **Vote:** Passed unanimously.

E. Parent A – Parent B Terminology

Judge Cohen discussed the many terms that court documents and the Guidelines use to define families and asked members for their input. Members discussed the terms Parent A and Parent B, and Mother and Father and the unintentional marginalization of nontraditional families. Members suggested:

- the use of gender-neutral names in the Guidelines examples;
- the use of gender-neutral terms in the example given in Section XII.C regarding third-party caregivers; and
- including an introductory explanation of the use of gender-neutral names.

Motion: To amend the Guidelines examples using gender-neutral names and include an introductory explanation regarding the use. **Moved:** Janet Sell. **Seconded:** Judge Bruce Cohen. **Vote:** Passed unanimously.

F. Section II and XI Amendments and Referral for Next Review

Carol Park Aden discussed proposed amendments to the Guidelines and the referral of further examination of the Schedule of Basic Support Obligation’s underlying assumptions and factors to a subsequent committee.

- **Section II. Determining Income – What is not included in Child Support Income**
Currently the Earned Income Tax Credit (EITC) and the Additional Child Tax Credit (ACTC) are not listed as means-tested income. Members discussed the validity of whether the tax credits should be considered income.
- **Section XI. Tax Benefits Associated with Minor Children – Allocation of Tax Benefits**
If only one parent, otherwise entitled to a proportionate share of tax benefits, would derive a tax benefit from the ACTC, and the other parent would not derive a tax benefit from the ACTC, then the tax benefits may be allocated by agreement or by court order to the parent who would derive the tax benefits from the child tax credit and the ACTC for that tax year.
- **Issues to Refer to a Subsequent Committee:**
 - Examine the underlying factors of the Schedule of Basic Support Obligation;
 - Consider ‘capping’ child-rearing expenditures at 100% of after-tax income; and
 - Consider whether to use federal, state, and FICA withholding of married taxpayers with children rather than those for single taxpayers.

Motion: Recommend referral of these items for further study by a subsequent committee.
Moved: Janet Sell. **Seconded:** Carol Park Aden. **Vote:** Passed unanimously.

G. Draft – Proposed Guidelines

Judge Gass discussed the proposals submitted by members to fine tune the Guidelines. Some of the issues discussed were:

- Clarify that in the determination of the self-support reserve test, that the calculation is performed against the presumptive child support award in Step Nine; and
- Section II.A.3.b. change language to “historically earned and anticipated to continue in the future.”

Motion: Amend language to read “historically earned and anticipated to continue in the future.”
Moved: Laura Belleau. **Seconded:** Judge Cohen. **Vote:** Passed unanimously.

- Overtime should be highlighted for ease of finding the information.

Motion: Add new section 3: *When is Overtime included in Child Support Income?* **Moved:** Janet Sell. **Seconded:** Laura Belleau. **Vote:** Passed unanimously.

- Janet Sell expressed concern with the addition of the tax example in the Guidelines as it appears to be mandatory. She suggested adding “the court may consider the tax consequences” and remove the example.

Motion: To eliminate the example and amend the language. **Moved:** Janet Sell. **Seconded:** Carol Park Aden. **Roll Call Vote:** 3-7-0.

- Spousal Maintenance Tax Consequences – Members discussed whether to revise the language in the example.

Motion: Revise the language to read “Federal law currently provides spousal maintenance orders originally entered after December 31, 2018, are no longer deductible from the paying parent’s income -- and are excluded from recipient’s taxable income.” **Moved:** Laura Belleau. **Seconded:** Steve Wolfson and Judge Jack Assini. **Vote:** Passed unanimously.

- A technical change was made to all Guidelines examples. Numbers, mathematical and numerical symbols were used in equations, and each calculation was explained for clarity. This technical change also provided additional ADA access for those who use screen readers.

Motion: Accept technical changes. No objections were raised. Judge Gass found by affirmation that members accepted the technical changes.

- Members reviewed the Guidelines examples to ensure all changes were captured.

Action Item: By consensus, Susan Pickard was asked to insert the gender-neutral names received from Judge Cohen into the examples.

- **Section V. Adjustment for Costs Associated with Parenting Time**

Judge Gass discussed the changes to the Parenting Time Table, specifically essentially equal parenting time.

The example in Section V.E.1 was corrected to subtract \$811 only from Parent A’s Presumptive Child Support Award.

Chris Gorman explained the difference between the current and proposed approaches to adjust for essentially equal parenting time. The current approach uses the Combined Adjusted Child Support Obligation then applies the 50% adjustment. The proposed approach applies the 50% equal parenting time adjustment to the basis child support obligation. The slight difference between the results can be accounted for by including the older child adjustment before applying the 50%. The recommendation that a subsequent committee address this issue was made earlier in the meeting.

- **Section IX Deviations**

Paragraph D.6 and D.7 discuss a deviation regarding a child with special needs not common to parties and the need for the caregiver’s presence in the home. These items should be a single consideration.

Motion: Move to combine D.6 and D.7 into one paragraph then strike Section IX.D.7. from the example. **Moved:** Judge Cohen. **Seconded:** Janet Sell. **Vote:** Passed unanimously.

- **Section XI. Tax Benefits Associated with Minor Children**

B. Allocation of the Tax Benefits - defined the tax year as a calendar year.

In Example 1: added “from January 1, 2020 through December 31, 2020’ to define the calendar year for self-represented litigants.

Motion: Move to approve added language to paragraph B. **Moved:** Carol Park Aden. **Seconded:** Laura Belleau. **Vote:** Passed unanimously.

Motion: Move to approve tax year addition and remove language “*beginning in 2020*” from the examples. **Moved:** Carol Park Aden. **Seconded:** Joseph Goldstein. **Vote:** Passed. With one vote in opposition.

Janet Sell discussed the need for guidance in relation to caregivers and tax exemptions. There has never been guidance on this issue.

Motion: Include a recommendation in the Report that a subsequent committee consider the impact on third-party caregivers and the allocation of any tax consequences in relation to child support and care. **Moved:** Janet Sell. **Seconded:** Carol Park Aden. **Vote:** Passed unanimously.

C. Condition for Entitlement to Tax Benefit – Members reworded and added language and reviewed the examples for consistency. Ms. Aden expressed a strong belief that additional examples are needed to address when a child support order, arrears judgment, or child support modification occurs midyear.

Motion: Adopt language and examples regarding midyear changes. **Moved:** Carol Park Aden. **No Second. No Vote.**

Motion: Recommend that midyear changes and examples be considered by a subsequent committee. **Moved:** Carol Park Aden. **Seconded:** Judge Jack Assini. **Vote:** Passed unanimously.

Members discussed post-meeting technical and conforming changes to the Guidelines.

Motion: Adopt the Guidelines as amended giving the Chair authority to make technical and conforming changes including proposed changes to the tax section. **Moved:** Janet Sell. **Seconded:** Carol Park Aden. **Vote:** Passed. With one vote in opposition.

H. Draft – Final Report and Recommendations of the Child Support Guidelines Review Subcommittee

Because the meeting was running later than scheduled, the Chair tabled this agenda item until the March 1, 2021, meeting.

III. OTHER BUSINESS

Announcements/Call to the Public

No one responded to the call to the public.

Next Meeting: March 1, 2021, 10:00 am. Virtual Meeting

The meeting adjourned at 4:53 p.m.