

FAMILY COURT IMPROVEMENT COMMITTEE - CHILD SUPPORT GUIDELINES REVIEW SUBCOMMITTEE

Minutes

August 24, 2020 10:00 a.m. (**Virtual Meeting**)

Arizona State Courts Building

Present:

Telephonic: Judge David Gass (chair), Carol Park Aden, Judge John Assini, Laura Belleau, Mary Boyte Henderson, Judge Bruce Cohen, Kellie DiCarlo, Jeff Fine, Judge Joseph Goldstein, Tiffany Harvey, Jennifer Mihalovich, Janet Sell, Rosa Torrez, Steve Wolfson

Absent/Excused: Vance Simms

Presenters/Guests: Donald Bays, Henry + Horne; Steve Everts, Udall Shumway PLC; Chris Gorman, Gorman Consulting Group, LLC; Michael Nimitz, Maricopa County Superior Court Clerk of the Court's Office; Melissa Loughlin-Sines, Henry + Horne; Savahanna Matayasic, Center for Policy Research; Dr. Jane Venohr, Center for Policy Research

Administrative Office of the Courts (AOC) Staff: Chris Manes, Angela Pennington, Susan Pickard

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The August 24, 2020, meeting of the Family Court Improvement Committee – Child Support Guidelines Review Subcommittee (FCIC-CSGRS) was called to order at 10:09: a.m. by Judge David Gass, chair. This sixth meeting of the subcommittee was a virtual meeting, with all attendees being online, on the phone, or both. Susan Pickard performed the roll call and discussed “housekeeping” issues.

Judge Gass thanked the committee for their efforts, discussed the challenges the workgroups are facing in trying to complete their work during this pandemic, and encouraged the subcommittee to stay their course. Judge Gass postponed approval of the minutes until after Dr. Jane Venohr’s presentation giving her as much time as possible to speak to the subcommittee.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Preliminary Economic and Case File Review Results

Dr. Venohr, Center for Policy Research, updated the committee on her research results. Data is coming from two sources, the case file review and an ATLAS extract. The refinement of the

data from ATLAS has been delayed by other DES priority projects. This could delay Dr. Venohr's final report until past December. There is also a new federal requirement to analyze payment behavior, which must come from ATLAS. Dr. Venohr and her team (Venohr Team) want to compare case file payment data to ATLAS payment data.

The Venohr Team will continue to analyze the preliminary files with a focus on minimum wage and disparate income. She discussed the process of extracting the data and their preliminary findings. Dr. Venohr broke from her presentation to discuss questions and concerns from the members.

Deviation rates are currently in line with other states. It is possible a decrease in the deviation rate will be seen after verifying the data regarding rounding, equal parenting time, and zero-dollar amount orders. The verification process is because several forms were received with partial information. Dr. Venohr that proper form completion be discussed during new judge orientation and rotation training.

The lack of the use of Parenting Time Table B (used only in 2 orders) was also discussed, but this number is expected to increase. Dr. Venohr stated she would look for clusters among high income earners. The highest income on Basic Child Support Schedule is currently set at \$20,000. The data is suggesting that there is justification to adjust it higher, but there is some question as to how high.

The members discussed the conversion from hourly wage to gross monthly income for those who are self-employed, reporting less than minimum wage, or have no limit on earning capacity. Other states are eliminating the 40-hour standard, but for Arizona the number of hours attributed for child support is set in statute. The subcommittee must work within the scope of that statute. It was asked if a checkbox for attributed income on the worksheet would be beneficial.

Dr. Venohr discussed case examples including minimum-wage earners and equal custody cases – She discussed additional metrics which are influencing her report and changes to the guidelines. The Bureau of Labor made technical changes to the tax adjustments due to families underestimating their tax obligations. The take-away being that a change to the guidelines is a change in circumstance, but a modification would need to be requested and ordered to realize the benefit, if any. Dr. Venohr stated that parents don't usually file due to a change in guidelines because they "don't want to rock the boat." The subcommittee noted they would like to see how many of the cases will be affected. Dr. Venohr asked that the subcommittee to let her know what other kind of cases they would like to see.

The discussion moved to tax credits, tax refunds, tax exemptions and how to allocate these, especially in household with more than one child. Important points included:

- the detriment to lower income households where there is disparate income;
- children should be divided when applicable, not just rotated;
- the implications of new tax credits, especially those that are refundable past a \$0 tax liability and head of household standing; and
- Equal parenting time and how the number of parenting days could affect tax liability.

The discussion moved to health care expenses in conjunction with the Betson Rothbart 5th Report (BR5) report. \$250 is allotted as the out of pocket cost for health expenses. Medical expenses above \$250 could be considered extraordinary expenses that are addressed by the court at their discretion. Using BR5 could produce decreases outside the self-support reserve test (SSR). The SSR would theoretically decrease the order amount overshadowing any changes in the schedule amount. Dr. Venohr's team will produce a new chart to show where the SSR will apply and if there is a decrease in the schedule.

Dr. Venohr was asked to look for data on cases in which the calculations were modified for a parent's other children who are in that parent's household. A member stated that she was curious about the difference in the amount of the adjustment from what would be suggested by a simplified application of the guideline or cases with no order.

Action Item: Janet Sell to send an illustrative worksheet.

The subcommittee adjourned for lunch. Ms. Pickard conducted roll call after lunch and the subcommittee moved on to the approval of the minutes.

Motion: To approve the minutes of the July 28, 2020, meeting. **Moved by** Steve Wolfson. **Seconded by** Carol Park Aden. Motion passed unanimously.

B. Workgroup Reports

Income Issues Workgroup

Laura Belleau presented for the Income Issues Workgroup. The following amendments to *Section 6. Adjustments to Gross Income* were submitted to the members for approval and adoption:

The court-ordered amount of spousal maintenance resulting from this ~~or any other~~ marriage, if actually being paid, shall be deducted from the gross income of the parent paying spousal maintenance. The court may consider the tax consequences of the spousal maintenance payment under applicable federal and state income tax regulations. Court-ordered arrearage payments shall not be included as an adjustment to gross income.

Ms. Belleau explained that the group feels this adjustment to income is warranted based on the Tax Cuts and Jobs Act of 2017 and the subsequent income shift of spousal maintenance. Spousal maintenance is no longer tax deductible for the payor and is no longer considered taxable income for the payee. Discussion ensued and changes were made during the discussion. The following important points were mentioned:

- Tax consequences vs tax effects.
- (Non-modifiable) spousal support agreements and compatibility with child support under the new law.
 - Should this be addressed under the Section 20 deviation language vs. an automatic adjustment?
- Lack of judicial education, and training on the new tax law.

- How do self-represented litigants address this issue.
- Balancing income:
 - “Grossing up” income, adding spousal maintenance as an adjustment to the receiver’s income.
 - If spousal support is considered an addition to income, why not other payments, i.e. – social security, disability, 3rd party payments.
 - Both sides need to be considered.
- Child support is based on the totality of income between the parents. Deducting from one parent without adding to the other reduces the total amount of income.

• **Motion:** To adopt the language and modifications as proposed by the workgroup and modified this afternoon by the subcommittee at large. **Moved by** Steve Wolfson. **Seconded by** Janet Sell. Motion passed unanimously.

Tax Issues Workgroup

Judge Gass tabled this topic until later in the meeting.

Deviation Issues Workgroup

Janet Sell presented for the Deviation Issues Workgroup. This workgroup has also been working on Section 6. A draft was circulated for meeting discussion and feedback only. The changes to this draft were driven by a need to address low income people with multiple orders. Financial support is needed for all the children. This process should not be first come, first served. Changes to the draft include:

- Paragraph B - removed the qualifier “if being payed.”
- Paragraph C - collapsed the two types of adjustments into one regarding children in the household.
 - Also provided adjustments for primary residential parents or equal parenting time with no child support ordered.
- Paragraph D – the adjustment for other children will be the greater of the two adjustments in paragraphs B and C.
- Prorates the margin between the income and the SSR of the parent(s) and splits it among the children

Discussion points included:

- Credit given for any large orders and all orders must be included.
- Allocation of tax credits to balance the lack of funds for child support.
- How to manage orders in different jurisdictions.
- Minimum orders vs. prorations.
- Are changes needed to the simplified modification application?

Expenses & Cost Associated Parenting Time Workgroup

On behalf of this workgroup, Chris Gorman proposed changes to Parenting Time Table A. The proposal reduces the number of steps and expands the idea of equal parenting time. Overall, there was one step reduction. The proposal resets the standard for equal parenting time to 164 days from 184. The wording in Section 11 was revised to reflect the change. The workgroup also removed the 143 days reference and advised that reasons to use Table B would be considered a deviation. Changes to Section 12 were also proposed.

At this point, the meeting was nearing its end. Judge Gass tabled the discussion on this topic and noted that this workgroup would present first at the next meeting. Mr. Gorman requested feedback from the members.

Tax Issues Workgroup

Carol Aden Park discussed briefly health savings and flex spending accounts. Don Bays noted that he and Melissa Loughlin-Sines developed detailed schedules regarding these accounts. This workgroup is also working on changing language as it relates to allocation of tax benefits regarding children which may moot any further conversation to the point of the distinction between legal custody vs legal decision making.

C. Open Discussion – Crossover Issues

Judge Gass closed the meeting by thanking the subcommittee for their efforts and reminded them to stay focused. He informed the subcommittee he believes their work will not finish on schedule due to the pandemic and the end will probably be March vs December.

III. OTHER BUSINESS

A. Announcements/Call to the Public

- Ms. Pickard noted that no emails requesting an opportunity to address the Subcommittee had been received at CSGRS-Staff@courts.az.gov.
- No one responded to the call to the public.

B. Next Meeting. Monday, October 5, 2020 10 a.m. Virtual Meeting

The meeting adjourned at 3:07 pm