

# FAMILY COURT IMPROVEMENT COMMITTEE - CHILD SUPPORT GUIDELINES REVIEW SUBCOMMITTEE

## Minutes

November 9, 2020 10:00 a.m. (Virtual Meeting)

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**Telephonic:** Judge David Gass (chair), Carol Park Aden, 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:** Judge John Assini, Vance Simms

**Presenters/Guests:** Don Bays, Henry + Horne; Chris Gorman, Gorman Consulting Group, LLC; Melissa Loughlin-Sines, Henry + Horne; Dr. Jane Venohr, Center for Policy Research

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

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## A. REGULAR BUSINESS

### Welcome and Opening Remarks

The November 9, 2020, meeting of the Family Court Improvement Committee – Child Support Guidelines Review Subcommittee (FCIC-CSGRS) was called to order at 10:05 a.m. by Judge David Gass, chair. This eighth 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 subcommittee for their work and efforts and then discussed the upcoming deadlines and expectations for the subcommittee to be able to submit their report and recommendations to the Arizona Judicial Council in March 2021. He then presented the minutes for approval. One correction was noted: under the “Guidelines Paragraph 26” heading, it was Janet Sell who lead the discussion.

<p><b>Motion:</b> To approve the minutes of the October 5, 2020, meeting with the noted correction. <b>Moved by</b> Janet Sell. <b>Seconded by</b> Laura Belleau. Motion passed unanimously.</p>
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## B. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### Section 6: Adjustments to Gross Income Proposed (Out of order)

Janet Sell presented the Deviation Issues Workgroup’s proposed amendments to Section 6. The Workgroup was tasked to find a solution for low-income obligors with multiple child support obligations. This issue generally occurs when, a parent’s income is adjusted to support other

children in the household. When the self-support reserve test is applied there is nothing left over for child(ren) for whom child support is being established.

The proposed amendments to Section 6 address the following:

- Eliminate the distinction between children who are the subject of a child support and those that are not when adjusting gross income for other children;
- Allows greater discretion about whether to adjust for another support order;
- Creates a methodology in cases with a low-income to avoid any child being foreclosed from support by the self-support reserve test. The methodology allows for pro-ration of a limited available support among the obligor's children.
- Clarifies the adjustment for other children in the household pursuant to an equal custody arrangement.

**Action Item:** Noting the duty of both parents to support the children, there was discussion about the adjustments and whether costs not paid directly to the other parent, such as daycare or healthcare should be taken into consideration. Judge Gass suggested that a recommendation be made in the subcommittee's report that this issue be researched by an interim workgroup or the next review.

<p><b>Motion:</b> To adopt the language to amend Section 6 with the change to example three from \$2,650 to \$2,624. <b>Moved by</b> Janet Sell. <b>Seconded by</b> Carol Park Aden. Motion passed unanimously.</p>
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### **Section 27 Proposed Revisions – Federal Tax Exemption for Dependent Children: Proposals for Consideration (Out of order)**

Judge Cohen began by providing a historical background on reasoning behind conditioning the dependency exemption allocation on child support. He then discussed the options that the workgroup reviewed and the process that was developed. Judge Cohen reminded the members that due to changes in the tax law, there is no longer a deduction, it is now considered a tax benefit. The allocation of the tax benefit is still conditioned by requiring the obligor to be current.

The workgroup also refined the definition of "child support obligation" as "the monthly child support ordered along with any court ordered monthly arrears payments." For purposes of this definition, payments for reimbursements of non-covered medical, extra-curriculars, etc. are not considered part of the obligation.

The group also decided the person asking the court to assign the tax benefit contrary to the order should have the burden of proof. Judge Cohen walked through process for asking the court to reassign the tax benefit allocation and discussed the possibility of sanctions for unjust actions relating to the tax benefits. Discussion and questions ensued.

- If an obligor has a wage assignment but the pay periods don't align, would that person be considered current?

- The cutoff date to be considered current is January 15<sup>th</sup>. Additional paychecks at the beginning of the year contain wages earned in the previous year and count toward the obligor's child support obligation and bringing them into current status.
- Additional language could be added to the proposal in a subparagraph to clarify the situation noted above.
- Any amount ordered times 12 (months) is the amount which must be paid by January 15<sup>th</sup> in order to be eligible to claim the tax benefit.
  - This is not in lieu of a modification or have anything to do with a person's ability to pay or willingness to pay, it only concerns the condition of payment. Did the obligor pay the full amount by the deadline? Statutory regulations require that the obligor pay the full amount in order to be eligible.
- If the receiving parent collects the tax benefit because the obligor didn't meet the child support obligation, could the obligor receive credit for that tax benefit as payment? This issue should be discussed further.

#### **Review of the Arizona Child Support Guidelines: Follow up from October Meeting (Out of order)**

The conversation on Paragraph 27 was stopped at this point as Dr. Jane Venohr had joined the call. Judge Gass let the committee know they would continue this conversation after Dr. Venohr presented.

Dr. Venohr reminded the committee her team is charged with updating the schedule and conducting the analysis of the case data and labor market data. The schedule is good, and they will be sending the report on the economic data to their editors later this week. The subcommittee should receive it in time for the December meeting. The case file data from the courts should be done by December 15<sup>th</sup>. The ATLAS data may not be available until later.

A question was asked about the cap on the schedule, was it \$30,000? Dr. Venohr stated she did not remember if a formal vote was taken. Judge Gass allowed for the possibility of a formal vote at this meeting to establish the cap on the schedule.

Dr. Venohr continued, discussing the following topics:

- Round off and deviations
  - With data cleaning, the deviation rate has dropped.
- The correlation between parenting time adjustments and deviations.
  - They did not find any significant evidence between the two.
- Spousal maintenance, deviations, and essentially equal custody
  - The deviation rates in these cases did not significantly differ from the deviation rates for the overall samples.

- The number of children and their ages and the correlation to deviations and the number of days used in the guideline’s calculator.
  - Again, there was no significant difference between the number and ages of those with and without deviations and equal custody or using a number of days in the guideline’s calculation.
- A question was asked about the bias on upward and downward deviations?
  - There are more downward, though the reason is not always clear as it is not always explained on the orders.

**Motion:** To set \$30,000 as the top cap for the Schedule of Basic Support. **Moved by** Tiffany Harvey. **Seconded by** Laura Belleau and Steve Wolfson seconded simultaneously. Motion passed unanimously.

Judge Gass asked Dr. Venohr to compile a list of actions that the subcommittee needs to take. Dr. Venohr agreed. Mr. Wolfson thanked her for the information she provided for his workgroup.

**Section 27 Proposed Revisions – Federal Tax Exemption for Dependent Children: Proposals for Consideration (cont.)**

Ms. Aden was called on to reopen the discussion on the tax allocations benefit process. She began by stating a restyling of the terms “obligor” and “obligee” to “paying parent” and “receiving parent” could make the section easier to understand. She also asked that the language, “The court may deny the right to present or future tax exemption when a history of non-payment of child support exists” not be eliminated. Ms. Aden voiced objection to the updated definition of child support and the length of time and additional cost that would be required to work the process. Ms. Aden also pointed out that the ability to claim the child(ren) provides not only a refundable tax benefit, but also reduction of tax liability. Discussion ensued.

- Could also apply to other situations where there is improper use of the tax benefits?
- What is the definition of “tax benefit”?
  - The term should be defined elsewhere in the guidelines. It’s not just the child tax credit, but also the additional child tax credit.
  - It was suggested changing the language from tax benefit to “the current existing tax credit” to eliminate any ambiguity. This is clarified in the current paragraph 27.
- *Pro se* litigants will not be able to navigate this process easily.
  - A clearer definition of what it means to have paid your obligation is needed
  - This could slow the tax process for them and cause additional hardship.
- There were concerns about the court process.

- How much will it cost to file?
- Do we need regular service since this a post decree dispute?
- Will this clog the system.
- What about court-ordered payment on arrears vs administratively ordered payment on arrears?
- Will these adjudications be heard by judges or IV-D commissioners?

Ms. Aden stated the section remains a work in progress. A member noted that it's not just poor obligees, but also poor obligors. The process must be fair and equitable to both parties.

A vote at least on the concept was held. The Workgroup will rework the language and return to the next meeting with a final proposal.

**Motion:** To approve the concept of the proposed changes and process for Section 27. **Moved by Bruce Cohen. Seconded by Laura Belleau.** Motion passed unanimously.

## Workgroup Reports

### Income Issues Workgroup

The Income Issues workgroup had been working on the incorporation of spousal maintenance in the calculation when it involved someone other than the parent that is involved in that calculation. They anticipate being prepared to present something to the subcommittee in December.

During prior meetings discussion has been about attribution of income and all the issues where there is not a standard full-time job at minimum wage or more. There have been lengthy discussions on section 5 a – e. The group is currently focusing on e. Federal 45 CFR 302.56 identifies guidelines requirements, including consideration of special circumstances when income is going to be imputed or attributed. The language in e is very close to this language.

The Workgroup is also trying to define full earning capacity. The question is can or should we define this as 40 hours per week at minimum wage. Departing from 40 hours per week at minimum wage sets up a conflict with the self-support reserve test. Using less than full time at minimum wage causes a zeroing out of the child support obligation. Moving towards full earning capacity should be nothing less than 40 hours a week at minimum wage, but if the rate of pay is more than minimum wage, then less than 40 hours considered full time or full earning capacity. The courts still retain jurisdiction to consider the factors that otherwise still exist under the federal code. According to information received from Dr. Venohr, there is no consistent option used by the states.

The Workgroup wants to restyle, repackage, and better organize section 5 a -e. They will be breaking out attribution of income, overtime and second job situations, and under and un-employment. We will also address the self-support reserve test. Discussion ensued:

- Is full earning capacity flexible in any way?
  - Yes, the court still has discretion to consider full earning capacity and the situation.
- Underscores the policy issue. Are we ok if full earning capacity is less than 40 hours per week, even if calculations are zeroed out?
  - They erred on the side of not having obligations zeroed out because of the self-support reserve test.

The Workgroup will continue to work on this.

### **Tax Issues Workgroup**

Ms. Aden discussed earlier goals that the workgroup had been tasked with. These included: tax exemptions for dependent children, child tax credits, and federal tax allocation and medical insurance. The Workgroup are optimistic they will meet an early December timeline for Section 27. The consideration of new spouse provided medical insurance has been approved by the subcommittee

**Action Item:** It was suggested that clarification of the differences between unreimbursed and uncovered medical expenses should be sent to the Expenses and Cost Associated Parenting Time Workgroup (ECAP). Judge Gass asked Chris Gorman to verify that uncovered means insurance does not cover the cost and unreimbursed means insurance covers some but not all. Mr. Gorman stated ECAP will take it. Questions and discussion happened.

- Does that include deductibles?
- Judge Gass discussed medical expenses for which the parents are directly responsible because there is no other 3<sup>rd</sup> party payor.
  - Must educate to the difference in terms

### **Deviation Issues Workgroup**

Janet Sell stated that of the issues the group was tasked with, there is only one left after the vote earlier today. The Workgroup is working on a deviation definition and would like to add a “C” paragraph that says the court may want to consider a deviation when: [reason given]. They are currently compiling the list, including joint custody with the largest rated income and when one party has extraordinary medical expenses. Ms. Sell asked the members to please provide feedback about the issues they think require a deviation? Judge Gass asked if they could please use an inclusive vs exclusive list. If an exclusive list could be read that those are the only times a deviation could be allowed. Ms. Sell stated they will adjust the wording.

### **Expenses and Cost Associated Parenting Workgroup**

Chris Gorman presented for the Expenses and Cost Associate Parenting Time Workgroup. He stated they have only 2 issues left, Section 9B – child care cost and the medical issue that

was just assigned. The Workgroup is currently considering what qualifies as child care costs, and primarily looking to IRS guidelines.

**Action Items:** A member asked if the subcommittee would be clarifying in the guidelines about calculating gross income for veterans who are receiving assistance. The Income Issues Workgroup agreed to take it. It was mentioned that part of this issue is the conflict between guidelines definitions vs tax definitions. It was suggested that the Restyling Group address the definitions.

### **Roadmap, Planning, Deadlines, and Discussion of Future Meeting Dates**

Judge Gass discussed the need to expeditiously wrap up the subcommittee's work and the steps left in the process. He walked the members through the Roadmap that was included in the meeting materials and highlighted the timeline. He emphasized the Public Hearing schedule for January 15. Members should plan on being at the public hearing. Judge Gass then asked the member to reach out to their constituencies for feedback and comments ahead of time give time to deal with hot button issues.

**Action Item:** Ms. Pickard is working on the first draft of the report and will reach out to the workgroups garner additional details.

### **C. OTHER BUSINESS**

#### **A. Announcements/Call to the Public**

- No members of the public were present at the meeting.

#### **B. Next Meeting.** November 30, 2020

The meeting adjourned at 3:07 pm