

FAMILY COURT IMPROVEMENT COMMITTEE - CHILD SUPPORT GUIDELINES REVIEW SUBCOMMITTEE

Minutes

December 15, 2020 10:30 a.m. (Virtual Meeting)

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, Jennifer Mihalovich, Janet Sell, Rosa Torrez, Steve Wolfson

Absent/Excused: Tiffany Harvey, Vance Simms

Presenters/Guests: Don Bays, Horne+Horne, Chris Gorman, Gorman Consulting Group, LLC; Dr. Jane Venohr, Center for Policy Research

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

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The December 15, 2020, meeting of the Family Court Improvement Committee – Child Support Guidelines Review Subcommittee (FCIC-CSGRS) was called to order at 10:30 a.m. by Judge David Gass, chair. This 10th 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.

The November 9 and November 30, 2020 meeting minutes were presented for approval.

<p>Motion: To approve the minutes of the November 09, 2020, meeting and the November 30, 2020 meeting. Moved by Janet Sell. Seconded by Judge Joseph Goldstein. Motion passed unanimously.</p>

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Review Updating the Child Support Schedule

Dr. Jane Venohr informed the subcommittee that they finally have a report with an updated Schedule of Basic Support Obligation (Schedule). She discussed with the members the seven assumptions that the Center for Policy Research staff considered in developing the Schedule. She provided the opportunity for questions and discussion while reviewing each factor.

- Assumption 1 - Economic Study:

Arizona's Schedule is currently based on the Betson Rothbarth 3 (BR3) economic study. For this review, Arizona funded the updated Betson Rothbarth 5 (BR5) study. There has been extensive discussion as to consideration of other economic studies with the members deciding that either BR3 or BR5 would be used for this review. Dr. Venohr discussed the comparisons between the two studies.

Motion: To adopt the Betson Rothbarth 5 (BR5) economic study. **Moved by.** Carol Park Aden **Seconded by** Janet Sell. Motion passed unanimously.

Action item: Susan will include a small explanation of BR5 and information that will explain why it was chosen in the subcommittee's report.

- Assumption 2 - Extending the Schedule to a higher combined adjusted parents' income:

While the subcommittee had previously voted to extend the schedule to \$30K, Dr. Venohr suggested the data supported an increase to \$34K per month. Changes based on raising the cap include higher increases at the larger incomes.

Motion: To adopt the \$30,000 cap for the Schedule of Basic Support Obligation. **Moved by** Janel Sell. **Seconded by** Carol Park Aden. Motion passed unanimously.

- Assumption 3 - Adjusting the schedule to current price levels: There are no alternatives to the index published by the Bureau of Labor and Statistics. All economists use this index. .

- Assumption 4 - Exclude childcare, child's health insurance premium, and extraordinary out-of-pocket medical expenses from the data:

Historically, Arizona has excluded these costs from the measurements of child-rearing expenditures. Courts consider these costs on a case-by-case basis. However, Arizona has elected to include ordinary out-of-pocket medical expenses of \$250 per year per child.

- The \$250 is considered average out-of-pocket cost for a child by the National Medical Expenditure Survey. Changing this amount would require a reassessment of BR5 without an indication it would provide a substantial benefit.
- This provision is intended to prevent the need to request reimbursement for day-to-day medical expenses like pain relievers, ice packs, and bandages.

Motion: To keep the \$250 annual expense per child per year included in the assumptions of the guidelines. **Moved by** Carol Park Aden. **Seconded by** Janet Sell. Motion passed unanimously.

Action item: Refer the \$250 annual expense of over-the counter and drugstore purchases for review by the next review subcommittee.

- Assumption 5 - Expenditures to net-income ratio:

Betson measured the child-rearing expenditures as a percent of total expenditures so they must be converted for purposes of a gross income-based schedule. Does the subcommittee want to continue to base the schedule on gross-income ?

Motion: To maintain the gross income based schedule. **Moved by** Janet Sell. **Seconded by** Carol Park Aden. Motion passed unanimously.

- o Assumption 6 - Consider federal and state income taxes and FICA:

The federal and state income taxes and FICA figures must also be converted. The historical assumption takes the combined Adjusted Gross Income (AGI) and uses the federal withholding formula applying to a single taxpayer. State income tax is applied to the federal taxable income based on the percentage the employee has picked for their tax rate.

- o The recent passage of Proposition 208 means that high-income earners will see an increase of their tax rate from 4.1% to 8%.

Action on this issue was tabled until after lunch so that Dr. Venohr could acquire solid information on Prop 208 and run some numbers.

- o Assumption 7 – Adjust for Arizona’s cost of living:

Dr. Venohr’s staff did not make any adjustments for cost of living because Arizona’s price parity is only 3.5% less than the national average. This adjustment has not been made before. The information has also lagged, with “current information being from 2018. The cost of living varies by region in the state; to adjust by region would be complicated and cumbersome.

Motion: To make no adjustment for price parity. **Moved by** Carol Park Aden. **Seconded by** Steve Wolfson. Motion passed unanimously.

Action item: Susan should add a note to the report explaining why the subcommittee did not adjust for cost of living.

B. Guidelines Section 9(B)(3) – Extraordinary Child

Judge Bruce Cohen discussed Guidelines Section 9(B)(3) – Extraordinary Child. The proposed amendment would permit the total child support obligation to be adjusted for the needs of an extraordinary child, unless there are benefits paid to a parent to assist in meeting the needs of the child.

Motion: To adopt the language of the amendment to Section 9(B)(3), with the noted correction Section 27 should be Section 26. **Moved by** Judge Cohen. **Seconded by** Carol Park Aden. Motion passed unanimously.

C. Workgroup Reports

Section 5

Steve Wolfson thanked the subcommittee for their efforts and contributions on this section. He presented to the members the changes made to Section 5, noting that they were not substantive but rather focused on restyling and reorganization. The workgroup aimed to make the section flow better and be more user-friendly.

- The introduction addresses income in general with most of the tax related references removed. The section speaks of income broadly for the purposes of calculating support while not distracting from the process of including different amounts while retaining the court's discretion.
- The use of "gross income" was eliminated and it was clarified that income is from ANY source before any deductions or withholdings.
- The expected contribution of the payor would be 40 hours per week at minimum wage.
- Discretion of the court was maintained to allow for less than 40 hours if the obligor is earning more than minimum wage or to allow for a court to not attribute 40 hour per week at minimum wage under certain circumstances.
- Self-Support Reserve (SSR) Test.
 - Arizona's has one of the highest SSRs.
 - Low income earners can have child support orders zeroed out based on the SSR.
 - The workgroup had planned on adding language to explain the need for the 40 hours a week at minimum wage on income in relation to SSR.
- Use of the federal minimum wage.
 - Several states still match or use the federal minimum wage as their own. If federal minimum wage is used, the SSR would be adjusted to 80% of *that* minimum wage.
- The section was reorganized to clarify what is income, what is not income, and what is attributed income.
- The workgroup clarified that military pay and some benefits that are income; unemployment and underemployment; full-time earnings and overtime.

Restyling of the section was discussed to fix cross-references and numbering. Additionally, some grammatical and editorial changes were mentioned during the discussion.

<p>Motion: To adopt the version of section 5 as amended in the meeting. Moved by Steve Wolfson. Seconded by Laura Belleau. Motion passed unanimously.</p>

Section 9

Chris Gorman discussed the proposed amendments:

- Clarifying the calculation of child related medical insurance by adding three examples: exact cost known; exact cost not known but enough information is available to calculate; and how to calculate if the cost of adding dependents is not known
- Clarifying that unreimbursed and uninsured expenses are included in medical expenses by adding two sentences that noted that unreimbursed and uninsured medical expenses should be included in the total child support obligation, on top of the \$250 previously discussed, as they are medical expenses.
- Clarifying what expenses are included in childcare costs.
 - Language from the Internal Revenue Service (IRS) Publication 501 was used to specify that costs must be paid to a person who cannot be claimed as a dependent.
 - There was some dissent on behalf of lower income families and their financial ability to pay contracted third-party daycare providers.
 - The language is not as limiting as it first appears. It only refers to a person who is living with the parent and who can be claimed as a dependent.
 - Judge Gass suggested adding “Unless otherwise ordered by the Court” to the beginning of the sentence and changing “cannot be claimed” to “is not claimed.”
 - During this discussion it was suggested that the “Older Child Adjustment” be moved from the “may” section to the “must” section.
 - Again, there was some dissent due to disparity in the application of this adjustment, especially in equal parenting time situations.
 - It was decided to leave it in the “may” section as so to allow for the court’s discretion.
- Removing the discussion of tax credits for childcare costs as previously removed from worksheet.
 - It was discussed that the earlier motion was to remove the language but keep the substance in for the court’s discretion.
 - It was suggested to add a sentence to the end of B1 Childcare Costs: the court may consider the consequences of the childcare tax credit in determining the monthly childcare costs.
 - The Restyling Workgroup will consider placement and any additional wording.
- Clarifying extraordinary child costs.

- This provision was voted on earlier in this meeting and passed unanimously.

Motion: To adopt proposed Section 9 as amended. **Moved by** Judge Bruce Cohen. **Seconded by** Jennifer Mihalovich. Motion passed unanimously.

Review Updating the Child Support Schedule (Continued)

Assumption 6 - Consider federal and state income taxes and FICA:

Dr. Venohr rejoined at this time. She discussed Prop 208 and who it will affect. She gave examples of the impact to the child support schedule, ranging from \$30-\$91, about a 1% difference. She pointed out that while it was legislation that was passed, the Department of Revenue has not made mention of collecting on this legislation at this time.

Motion: To not include consideration of Prop 208 in this review, to have the next review subcommittee look at this matter. **Moved by** Janet Sell. **Seconded by** Carol Park Aden. Motion passed unanimously.

Action item: Susan will add language to the report that the subcommittee was aware of this legislation but not want to address it at this time, in part due to pending litigation.

Section 20

Janet Sell discussed additions to the recommendations made by the Deviations Issues Workgroup. The workgroup made one editorial change, modifying “shall” to “will.” They also made additions to the list of circumstances which could cause a deviation and added a section indicating choices that could be made about the child support order which would not be considered a deviation.

There was discussion about both components of the first deviation clause. Judge Cohen responded that this provision exists with both components because the parenting time adjustment overly adjusted in the favor of high-income earners. The second clause also addresses the disparity in income but without parenting time.

The group requested some restyling.

Motion: To approve the proposed section 20. **Moved by** Janet Sell. **Seconded by** Judge Bruce Cohen. Motion passed unanimously.

Action item: Judge Gass noted for the subcommittee’s report that in eliminating Table B, we have identified C3 so that Table B is in there in concept not as a table that was rarely used.

Motion: By consensus the members agreed that the Restyling Workgroup should move forward with reorganizing and adjusting the approved proposals of the Subcommittee to date.

Judge Cohen, as chair of the Restyling Workgroup, asked Ms. Sell to join and she agreed.

III. OTHER BUSINESS

A. Announcements/Call to the Public

- No one responded to the call to the public.

B. Next Meeting. January 5, 2021 10 a.m. Virtual Meeting

The meeting adjourned at 2:48 p.m.