FAMILY COURT IMPROVEMENT COMMITTEE - CHILD SUPPORT GUIDELINES REVIEW SUBCOMMITTEE

Minutes
June 8, 2020 10:00 a.m. (Virtual Meeting)
Arizona State Courts Building

Present:

Telephonic: Judge David Gass (Chair), Carol Park Aden, Laura C. Belleau, Mary K. Boyte Henderson J.D., Judge Bruce R. Cohen, Kellie E. DiCarlo, Judge Joseph Goldstein, Chris Gorman, Commissioner John J. Assini (proxy for Joi Hollis, Ph.D.), Jennifer A. Mihalovich, Janet W. Sell, Vance D. Simms, Rosa Torrez, Steve Wolfson J.D.

Absent/Excused: Don Bays

Presenters/Guests: Dennis Hoffman; Director of L. William Sideman Research Institute at W.P. Carey School of Business at Arizona State University; John W. Rogers, Senior Staff Attorney, Arizona Supreme Court; Dr. Jane Venohr, Center for Policy Research

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

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I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The June 8, 2020, meeting of the Family Court Improvement Committee – Child Support Guidelines Review Subcommittee (FCIC-CSGR) was called to order at 10:07 a.m. by Judge David Gass, chair, after a brief introduction to Commissioner John J. Assini. This third meeting of the subcommittee was a virtual meeting, with all attendees being online, on the phone, or both. Susan Pickard disclosed the rules of virtual meeting etiquette, and then moved on to roll call. Judge Gass inquired if there were any other people on the phone whose names had not been called and went over the call to the public procedure for a virtual meeting. Judge Gass presented the February 21 and April 27, 2020, minutes for approval.

Motion: To approve the minutes of the February 21, and April 27, 2020, meetings. **Moved by** Janet Sell. **Seconded by** Mary K. Boyte Henderson. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Restyling Best Practices

John W. Rogers, Senior Staff Attorney, Arizona Supreme Court, spoke to the subcommittee about the Guidelines for Drafting Procedural Rules. He gave the subcommittee a brief

overview and examples of general principles, style and wording conventions, and other style conventions. Mr. Rogers suggested *Garner's Guidelines for Drafting and Editing Court Rules* as a resource. Susan Pickard emailed a copy of the guidelines to subcommittee members.

B. Workgroup Reports

Tax Issues Workgroup

Ms. Carol Park Aden relayed that the group had met two times and will be meeting again on June 19 prior to the June 30th subcommittee meeting. The workgroup is focused on tax exemptions vs tax credits for dependent children, medical insurance related issues that impact taxes and the collectability of out of pocket medical costs or costs covered by Flex Spending Accounts (FSA) and Heath Savings Accounts (HSA). Ms. Aden then discussed the idea of placing all tax related matters into their own section. The workgroup is also striving to simplify terms and definitions while reconciling them with tax specific definable terms. Judge Gass requested a list of the task items noted by Ms. Aden so that they may be reassigned.

Income Issues Workgroup

Mr. Steve Wolfson noted that this workgroup last met on May 15th. The workgroup discussed three main items:

1. The impact of the Tax Cuts and Jobs Act (2017) on the child support calculation, specifically the issue of spousal maintenance that's factored into gross income determination and the loss of deductibility of those monies.

2. The language in section 8 on a cap of $20,000 of combined gross income of the parties.

3. Other issues relating to the basic child support amount and what it included as it effects those 2 previous issues.

The group was unable to reach a consensus on the issue of the impact on the loss of deductibility for spousal maintenance. They are recommending the use of a deviation in the best interest of the child(ren) should the combined income of the parties exceed the $20,000 limit. Information on variables as to what is considered part of the basic child support amount is required. Additional information from Dr. Venohr has been requested. Discussion ensued about language changes, income caps, and deviations .

Deviation Issues Workgroup

Ms. Janet Sell informed the subcommittee that the workgroup had met once. During its first meeting, the members decided to focus their discussions on the issue of multiple families and multiple orders. Ms. Sell advised that the workgroup is considering a draft rule based on a method used by the Attorney General's office in which the adjustment for the child(ren) in the household is reduced so there are some funds left for those not in the household. They also discussed a discretionary credit for orders not being paid and explored possible

recommendations regarding automatic suspension of orders for incarcerated parents. The latter issue was determined not to be a guidelines issue but would require a statute change.

Additionally, several issues such as FSAs and HSAs, spousal maintenance, and the income cap on the table were discussed and issues that cross over into other workgroup's charges were noted. The workgroup is recommending the elimination of parenting time adjustment Table B with a commentary about reducing parenting time in appropriate cases. Lastly, the members discussed parents who share parenting time on a 50/50 level and the use of primary residential parent language.

Expenses & Cost Associated Parenting Workgroup

Mr. Chris Gorman reported that the Expenses & Cost Associated Parenting workgroup met twice before the subcommittee meeting. Their first task was to review and revise parenting time adjustment Table A. In order to reduce contention between the parties, the workgroup may recommend a method closer to what Oregon uses with a curve. They may also recommend widening the number of days that are considered equal parenting time. The workgroup members requested feedback and suggestions on how many days to allow before the calculation comes into play and how often the steps should occur. They support the idea of eliminating Table B. The workgroup plans to review the calculation for children 12 or older.

Mr. Gorman suggested that the workgroup, along with the other workgroups, may want to better define what would be considered a normal expense versus what could be considered an extraordinary expense. Judge Gass stated that if a deviation becomes commonplace, it needs to be moved from the deviation category. It was suggested that any expenses that could be considered extraordinary, but not ongoing, could be treated outside of the calculation, such as travel expenses, or some medical expenses.

Restyling Workgroup

Judge Bruce Cohen reported that the workgroup had meet at least 3 times. The workgroup proposed adding an executive summary to the Guidelines. This summary would be a step by step process of how to apply the guidelines which would cross reference the sections. They have begun drafting the executive summary and have formed an editing group within the workgroup to write this section. The workgroup is also reorganizing the guidelines into a sequence that follows the child support worksheet steps and proposed making the current electronic worksheet more interactive with the guidelines including drop-down menus to explain what goes into the different sections. Terms are also being refined, as many have tax implications.

Judge Gass commented that self-represented litigants generally don't use the guidelines and supported making the electronic worksheet more user friendly as it would improve access to justice. Other suggestions included developing a calculator which could be used as a freestanding instrument, not requiring internet, and addressing nuances to cases involving third party caregivers.

C. Economic Studies and Arizona Economy Q & A

Professor Dennis Hoffman; Director of L. William Sideman Research Institute at W.P. Carey School of Business at Arizona State University, addressed the subcommittee on his views in regard to the child support formula. Professor Hoffman argued that the current child support formula tries to attribute a one-sided monetary figure to a split household based on a variety of traditional two parent households. While acknowledging Arizona's legislative prohibition on adopting the Child Outcome Based Support (COBS) model, he suggested that income disparities between divorced parents cannot be adequately remedied with the current child support model, nor does he believe that the planned adjustments will suffice. Judge Gass thanked him for his presentation and sharing his independent thoughts on the subcommittee's charge.

D. Child Support Guideline Review Processes and Methodology Follow Up

Dr. Jane Venohr informed the subcommittee that the economic review should be completed soon, and schedules are currently being compiled. She advised members the case file review will use a sample size of over seven hundred including 27 from Apache County, 413 from Maricopa County, 197 from Pima County, and 96 from Yavapai County. Additionally, an ATLAS data extract from the Department of Economic Security, Division of Child Support Services has been secured. She anticipates the case file review data will be delivered by the end of July. Dr. Venohr then addressed questions from the subcommittee both on the information she relayed and questions resulting from Professor Hoffman's presentation.

Questions and Answers:

- Do you know where the schedule will fall out in terms of the new maximum amount past $20,000?
    - We will know sometime in July how far that schedule will take the maximum amount out. There will be small increases across the board, but they will not be the same at every income range as the schedule considers tax changes, inflation and deflation, and economist measurements.
- Do the tax credits need to be specifically identified or are they all implied in some sort within the adjustment from gross to net?
    - This was discussed and documented in the previous meeting's PowerPoint. Specifically, take the income withholding formulas and assume a single tax payer and use the income withholding formula closest to what was used during the last review. Start with the W-4, do not use the Earned Income Tax Credit (EITC) or the Child Tax Credit. The subcommittee could consider changing from a single tax payer to a married tax payer. This would be a policy decision.

- How could we better understand where the deviations are necessary or not necessary?
    - We have to bear in mind that most of the cases that come in will be self-represented litigants, lower income cases. Only 30% of the cases have income above $4000 a month. The question was posed, "If less than 5 – 10% of the population is affected by the "deviation", why put it in the guidelines?" It must also be considered whether it is a parental choice or an actual need of the child, such as with extracurriculars.
- A subcommittee member expressed concern about tax credits, dollar for dollar deductions, and how to distribute these credits.
    - Dr. Venohr expressed the opinion that these issues are expansive and messy. She recommended not using gross income. Tax credits, especially the EITC are a policy decision and it is necessary to make sure that the schedules align.

Dr. Venohr then shared her thoughts regarding Dr. Hoffman's comments. She pointed out he focused more on guideline models and not economic studies. Dr. Venohr clarified that she is operating under the premise that the subcommittee will be not be recommending a new way of calculating child support but continuing to support Arizona's use of the income shared model. This model assumes that the children are entitled to the same amount expenditures that they would have received had they lived together, and the parents shared resources. She advised that the high-income disparity cases which were referenced by Dr. Hoffman are a small percentage of the cases. Judge Cohen commented that there is no discussion within the subcommittee to revisit the COBS.

A question was asked, is it possible to put a number to the income disparity when the outcome would merit the court look at a deviation? Dr. Venohr does not recommend a specific threshold. No other states do this. Instead, she suggested that the use of judicial discretion would be the best tool to decide these cases.

Discussion ensued.

- The charge of the committee was reiterated – the subcommittee is meant to revamp and revitalize, not redo the guidelines. The focus should be on the bulk of the cases, not the outliers.
- With regard to the differences in cost of living across Arizona, should the subcommittee consider regional adjustments?
    - Adjustments should be handled as a deviation factor. Intrastate cases, along with cases involving in state addresses in different regions can become very messy.

- Is there any data from around the country which would back the fact that there is a bump in expenses at age of 12 and above, and that our use of 10% is viable?
    - USDA does show through several different age categories, including an increase between ages 12 – 14. A 10% increase would be about right. Judge Gass recommended having the discussion about age brackets at a later date.

Next, Dr. Venohr discussed one more topic: spousal support. She informed the subcommittee that due to changes in the tax code, the payor no longer receives the spousal support deduction and the payee is not paying taxes on spousal support. These changes must be adjusted for in the guidelines. A better decision can be made once all the data is received.

Finally, Dr. Venohr let the subcommittee know that she would send information on third-party caregivers and a brief on additional dependents. Judge Gass thanked Dr. Venohr for her time and assistance.

III. OTHER BUSINESS

A. Announcements/Call to the Public

- No one responded to the call to the public.

B. Next Meeting. Tuesday, June 30. 2020 10 a.m.
Virtual Meeting

The meeting adjourned at 2:26 pm.