

FAMILY COURT IMPROVEMENT COMMITTEE - CHILD SUPPORT GUIDELINES REVIEW SUBCOMMITTEE

Minutes

July 28, 2020 10:00 a.m. (Virtual Meeting)

Arizona State Courts Building

Present:

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

Absent/Excused: Commissioner John Assini, Jeff Fine, Vance Simms, Steve Wolfson

Presenters/Guests: Donald 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: Theresa Barrett, Chris Manes, Angela Pennington, Susan Pickard, Kathy Sekardi

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The July 28, 2020, meeting of the Family Court Improvement Committee – Child Support Guidelines Review Subcommittee (FCIC-CSGRS) was called to order at 10:11: 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 conducted the roll call, noted the committee had new committee members, and discussed “housekeeping” issues.

Judge Gass thanked the committee for their continued effort. He spoke to the members about several cases which substantively discuss child support. These cases had been previously forwarded to the committee members as references. He asked members to consider the decisions or opinions in these cases, as they move through the review. He then moved to the minutes.

<p>Motion: To approve the minutes of the June 30, 2020, meeting. Moved by Mary Boyte Henderson. Seconded by: Janet Sell. Motion passed unanimously.</p>
--

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Workgroup Reports - Part I

Income Issues Workgroup

Laura Belleau presented the Income Issues Workgroup update. Ms. Pickard shared the proposed amendment to Section 8. Ms. Belleau informed the subcommittee that the workgroup's focus for this amendment was the presumptive cap and calculation of a basic child support obligation for high income earners. The workgroup also discussed whether there should still be a stated burden of proof regarding why the child support amount should be more than the presumptive amount. Discussion ensued. Important points included:

- How is the number expressed if a straight extrapolation cannot work?
- There is a natural expectation that each party bear the burden for or against a modification to child support.
 - There is no requirement to prove by clear and convincing evidence, or a preponderance of the evidence, that a modification is in the best interests of the child(ren).
- If we do not state who bears the burden, it is possible that the question will be asked to the Court of Appeals or Supreme Court later.
- Perhaps, "the court shall determine if the evidence establishes an amount in excess of the basic child support amount."
 - How does one side prove a negative?
 - The side asking would have to provide enough evidence.
 - **Action Item:** What constitutes a need vs. a want? Further discussion is needed to determine whether another word or a modifier before "needs" should be used?
- For high income earners, how do we balance the needs of a child with an expectation that the amount should exceed the cap simply because the money is available?
 - Should there be an exception for a disparity in income?
- Should the language include a statutory reference (A.R.S. § 25-320(B), (D))?

Motion: The Section 8 language as amended is adopted. Further discussion on "needs" will take place within the workgroup. **Moved by:** Laura Belleau. **Seconded by:** Janet Sell. Motion passed unanimously.

B. Preliminary Economic and Case File Review Results

Dr. Jane Venohr, Center for Policy Research, making her third presentation to the subcommittee, reviewed the charges of her team for the FCIC-CSGRS: to review the academic data and the cost of raising children and update the schedule and to update the case file review as required by federal regulations.

Dr. Venohr and her team are receiving files from the counties (Apache, Maricopa, Pima and Yavapai Counties) and IV-D cases from the DES-DCSS Arizona Tracking and Locate Automated

System (ATLAS). The data from the sample of court files has been received and about a third has been entered. She highlighted some trends being seen in the data that has been entered. Dr. Venohr stopped her presentation and asked for any questions or discussion based on the previous conversation about high income earners and the Section 8 language.

- Based on the cases seen so far, are the judges putting in actual income or \$20,000 as per the cap?
 - Judges need to use the parties' actual incomes as they affect other cost allocation based on percentages.
- For incomes below the minimum wage, do these cases include incarcerated persons or persons on Social Security?
 - The cases received do not specify this information. This information may be found for some ATLAS cases.

Dr. Venohr discuss labor market information and minimum orders. She recommends the subcommittee be deliberate in their thinking about minimum orders.

Action Item: Janet Sell will take the information back to the back to the Deviation Issues Workgroup for discussion.

Dr. Venohr then discussed Arizona's Schedule of Basic Support Obligations. The current schedule is based on the Betson-Rothbart 3 (BR3) report. She offered alternatives and other mitigating factors to consider and let the committee know her team could produce some additional schedules if needed. Further discussion ensued.

- Clarification was requested regarding tax assumptions and how those assumptions change based on the income levels. What is the rate attributed to go from net to gross at each income level?
- Are there any assumptions that you would recommend be adopted? Should individual tax credits be considered?
 - Currently there is no compelling reason to change the assumptions. The Earned Income Tax Credit is a means tested program and is the best anti-poverty program. Other tax credits are less stable, can expire, and require complicated math formulas.
- The subcommittee is considering amending the parenting time adjustment. Does this impact any work that goes into the review or the schedules?
 - Numbers will look slightly different as the current case examples do not have time sharing adjustments. Further review after the parenting time adjustment is set will show whether the adjustment will exacerbate or narrow the discrepancies.
 - **Action Item:** Tables will be shared with Dr. Venohr to run scenarios.
- The guidelines state we should divide federal tax child exemptions. These exemptions have been replaced by child tax credits. Would it make sense to divide or allocate the child tax credit?

- This will require further research into the Internal Revenue Service statutes and regulations.
- Dr. Venohr was asked about the division of child health care costs.
 - Currently the schedule includes \$250 per year in ordinary, out-of-pocket medical expenses. Orders also include a specific percentage each parent is responsible for.
 - **Action Item:** Future orders should include the percentage with language stating the \$250 is included.

Judge Gass thanked Dr. Venohr for her time and comments.

C. Open Discussion

Judge Gass moved the subcommittee to the remainder of the workgroup reports.

D. Workgroup Reports - Part II

Income Issues Workgroup (continued)

Ms. Belleau presented a proposed amendment to Section 9A permitting the use of and credit for health insurance provided by a stepparent. The purpose is to ensure as many children as possible are insured. Minimal discussion took place. It was suggested to include “or domestic partner” after stepparent.

Motion: To adopt the amendment of Section 9A. **Moved by** Janet Sell. **Seconded by:** Jennifer Mihalovich. Motion passed unanimously.

Tax Issues Workgroup

Carol Park Aden was asked to give a thumbnail review of the work of the Tax Issues Workgroup. She noted the workgroup is focused on whether to add a separate line item to the Child Support Worksheet, “less tax credit allowed to party for Health Savings Account (HSA)/Flexible Spending Account (FSA) contributions to cover medical expenses of minor child(ren).” While the information was in the meeting packet, Ms. Aden advised that the workgroup will present the schedules at a later meeting, postponing formal action until then.

Deviation Issues Workgroup

Janet Sell reported that the workgroup is still discussing equitability in orders for multiple families with multiple children, especially for low-income families. She forwarded a draft to Judge Bruce Cohen, who has suggested some edits which will be analyzed at the workgroup’s next meeting.

Judge Gass asked Ms. Sell her thoughts on minimum orders and whether they would be considered a deviation. Ms. Sell replied briefly, and it was decided that the conversation would be better left to be hashed out at a later meeting.

Expenses & Cost Associated Parenting Time Workgroup

Chris Gorman gave an update on the workgroup's progress. The members hope to have a proposal for the August meeting regarding the parenting time adjustment with consideration of equal parenting time. The workgroup is considering allowing 20 – 30 days from what is strictly equal parenting before an adjustment is required. On the other end, less than 30 days of parenting time would not have an adjustment. Judge Gass asked that the language be sent to Dr. Venohr.

Action Item: Chris Gorman stated he would share the charts with Dr. Venohr.
--

Restyling Workgroup

Judge Bruce Cohen reported that the workgroup is awaiting substantive guidance from the other workgroups before proceeding. Judge Gass asked if there are any areas where substantive changes are not being considered that they can begin to work on. Judge Cohen stated he believed the changes will permeate throughout, and as such guidance should be received before they begin, but once they begin it will be quick.

E. Decision Points – Parenting Time Adjustment Table B

Ms. Pickard stated that this agenda item was listed to remind the subcommittee of a previously tabled motion to eliminate parenting time adjustment table B. The subcommittee tabled the motion until such time that Dr. Venohr's research is completed.

III. OTHER BUSINESS

A. Announcements/Call to the Public

- No requests to speak at the call to the public were received and no one responded to the call.

B. Next Meeting. Monday, August 24, 2020 10 a.m. Virtual Meeting

The meeting adjourned at 2:26 pm.