

**ARIZONA SUPREME COURT**  
Child Support Guidelines Review Committee  
**MEETING MINUTES**  
August 21, 2009  
State Courts Building, Phoenix, Arizona

**MEMBERS PRESENT:**

Hon. Rebecca Albrecht  
Mr. Robert L. Barrasso  
Hon. Bruce R. Cohen, Chair  
Ms. Helen Davis  
Prof. Ira Ellman  
Ms. Kim Gillespie  
Ms. Cele Hancock  
Mr. David Horowitz  
Comm. Rhonda Repp  
Hon. Michala Ruechel  
Hon. Kevin White

**STAFF:**

Ms. Kathy Sekardi  
Ms. Tama Reily

**GUESTS PRESENT:**

Ms. Tara Ellman  
Ms. Janet Sell  
Ms. Patricia Madsen  
Mr. Don Vert

**MEMBERS ABSENT:**

Hon. Sarah Simmons

**CALL TO ORDER**

Judge Bruce R. Cohen, Chair, called the meeting of the Child Support Guidelines Review Committee to order at 10:09 a.m.

Judge Cohen announced the recent appointment of David Horowitz to the Domestic Relations Committee.

**APPROVAL OF THE MINUTES**

**MOTION:** To approve the minutes from the May 29, 2009 meeting as presented. Motion seconded. Motion approved unanimously.

**MOTION:** To approve the minutes from the June 2, 2009 meeting as presented. Motion seconded. Motion approved unanimously.

**REPORT ON COBS CALCULATOR**

Professor Ellman reported the COBS calculator reflects different support amounts for custodial and noncustodial parents when equal parenting time exists. Professor Ellman proposed using a system that brings the support amounts to the same point for both custodial and noncustodial parents. Professor Ellman prepared a series of charts demonstrating the appropriate payment at equal and nearly equal parenting times for the members to review. Professor Ellman explained that resolution of the problem is an interpolated process wherein the two end points that anchor the line (referring to Example 1 of the charts) will be 120 and 182.5 days so that when there is a

lower earning non-custodial parent, COBS would begin to calculate a negative support amount. This method will adjust payments by setting payments at equal parenting time and interpolating between equal time and some other number of days.

Members questioned why the calculator should be programmed to begin interpolation at 120 days, versus 130 or more days where there would be even fewer cases. In response, a member explained the Task Group took a combination of the parenting time adjustment in the parenting time days and considered when it would approach equal custody. As the number of days increase, the impact it causes becomes more significant. Staying at around 120 days would ease the transition and lessen the overall impact of this change and make the interpolation more logical. The member also noted that the difference it would make to the few cases falling above 120 would be negligible under the rule being contemplated.

**MOTION:** To use the interpolation method to calculate cases with large income disparities between the parents. Motion seconded. Motion approved unanimously.

**MOTION:** To use 120 parenting days as the demarcation point at which the COBS calculator begins interpolation. Motion seconded. Motion approved unanimously.

## **DISCUSS AND REVIEW COSC COMMENTS REGARDING DRAFT GUIDELINES**

The committee reviewed and discussed comments received on the [Draft Guidelines](#) and made the following changes:

- Section I(C)
- Section II(A)
- Section II (D)(2)(b)
- Section II(F)
- Section II(G)
- Section II(H)
- Section II(K)
- Section II(L)
- Section IV(A)(3)
- Section IV(C)

There was lengthy discussion on comments received from attorney, Mick LaVelle, regarding situations where a substantial part of a parent's income is tax-free. He proposed adding language to section II(D) giving the court the authority to adjust the income of either party in such a situation. The committee concluded this should be addressed under *Deviations* in Section IV(A).

**MOTION:** To amend Section IV(A) to include language for "extraordinary income tax circumstances." Motion seconded. Motion approved. Vote: 9-2-0.

An additional comment was received from the public concerning altering the definition of gross income to include retirement assets. The committee agreed that these types of situations may fall within the deviation section; however, it was impossible to address every deviation scenario. The public comment also remarked on the need to update the child support worksheets to reflect separate calculations for children on differing parenting time schedules. The committee has already addressed this issue. Lastly, the public comment requested that parents choose which financial institution the child support monies are deposited into. The committee remarked that parents may have support payments directly deposited into their accounts. No further recommendations regarding this request will be considered as this issue is governed by contract between the Clearinghouse, DES, and financial institutions.

Comments from the Pima County judiciary were then reviewed. One of their concerns was the whether or not the guidelines will take into consideration the new case on private school tuition and if the standard of “agreement or order of the court” will remain the same in the guidelines. The committee members asked member Helen Davis to review the case and report back to the committee next meeting.

Another concern was how income (SSI or other benefits), such as in the *Hamblen* case (concerning the allocation of adoption subsidies) will be handled in the guidelines. Member Kim Gillespie will research and report back to the committee at the next meeting.

Comments regarding the guidelines having the unintended consequence of unfairness to the custodial parent suggested that the guidelines instructions are unclear in this area. Assistant Attorney General, Janet Sell, volunteered to draft clear, instructive language regarding proportionate division.

Another comment focused on clarifying language in Section IV(C). The comment described this section as being unclear as to whether the range of child support to be awarded is based on the actual parenting time days for each child based on a percentage or based on an average. The committee decided on the following language: “The two resulting figures of \$796 and \$479 provide the range for the child support award. Any amount within this range is considered consistent with the guidelines and it is not a deviation.”

Comments and suggestions from the COSC Child Support Advisory Workgroup were discussed and resulted in changes to the following:

**Section I(C) Presumption** – tabled until next meeting.

**Section II(A) Income Considered and Section II(B)**

**MOTION:** To amend Section II(A) to read “included as income” rather than “treated as income,” and leave Section II(B)(2) as it is currently written. Motion seconded. Vote: 8-2-0.

**Section II(D)(2)(b) Adjustments to Income**

Based on today's discussion, Judge Cohen volunteered to assist staff with updating and reviewing this section for accuracy prior to the next meeting.

### **Section II(F) Parenting Time and Other Costs Adjustments**

Member Kim Gillespie will work on drafting an introduction for the step-by-step methodology and forward it to David Horowitz for review. This draft will be ready to present at the next meeting.

### **Section II(G) Preliminary Support Obligation**

The committee agreed to develop a manual calculation method and approved development of look-up tables for manual users.

### **Section II(H)(1)(b) Step 2**

COBS workgroup will review and propose new language for this section.

### **Section II(I) When there are More than Four Children**

Committee agreed that the COBS calculator should give a support amount for four children. When five or more children are the subject of the support order, the court may increase the amount from the amount derived utilizing four children if it finds that a higher amount is appropriate, after considering the factors in A.R.S. § 25-320(D).

### **Section II(J)(3) Extraordinary Child**

The committee removed the word "increase" from the section.

### **Section II(K) Guideline Support Amount**

This section will need more work to clarify language.

### **Section II(M) Travel Expenses**

Committee member Robert Barrasso will develop language for this section.

### **Section III(D) Dependency Exemption**

The committee decided to adopt the suggestion that the dependency exemption should be rounded to a fraction with a denominator no larger than 5, as proposed by Judge Davis.

**MOTION:** Develop the calculator in accordance with Judge Davis' recommendation of appropriate rounding of the dependency exemptions. Motion seconded. Motion approved unanimously.

### **GUIDELINE SECTIONS**

Feedback from the COSC Advisory Workgroup regarding guideline Section II(H) was discussed. The Advisory Workgroup's concern pertained to further clarification of "Step Two." Currently, "Step Two" is necessitated by the standards for basic Excel programs. During a previous meeting with the Advisory Workgroup, Judge Norman Davis questioned the reasoning behind \$50 increments versus \$100 increments in calculating the support. It was explained that increasing the increments to \$100 will cut down on the size of printed versions of the guidelines, and eliminate the need for "Step Two."

Discussion ensued as to what would be the result if increments were increased. Members considered whether interpolation of the numbers would complicate the manual process and agreed there should be a smaller increment, such as \$50, available at lower incomes. In addition, it was agreed that a manual calculator is crucial for unrepresented litigants and those individuals who do not have computer access. There was strong consensus that the public and the Supreme Court would consider a manual calculator a basic necessity. Discussion continued to explore whether or not a manual calculation process would produce a different outcome than the online process due to automated interpolation. The committee discussed what, if any, ramifications would occur if they were to eliminate the interpolation.

The committee also discussed the option of producing print versions of the tables for manual reference. They discussed, for example, creating separate pamphlets for differing number of children: one pamphlet for a single child, another pamphlet for two children, etc. Members agreed that limiting the pamphlets to 75 – 80 pages would be user-friendly. It is expected that the printed versions would capture about 90 percent of cases, with the remaining cases being captured in the online table version.

**MOTION:** To develop a manual calculator. Motion seconded. Motion approved unanimously.

**MOTION:** To produce printed pamphlets in four separate versions; a version for one child, a version for two children, another for three children, and one for four children. The goal is to make each pamphlet under 80 pages. Motion seconded. Motion approved unanimously.

**MOTION:** To have an online table version that will track with the online calculator. Motion seconded. Motion approved unanimously.

**MOTION:** To eliminate interpolation between increments in the calculator. Motion seconded. Motion approved unanimously.

Members agreed that the change in increments should allow for a basic method of calculation and ensure the spreadsheet is kept simple. In addition, it was agreed that the COBS Task Group would be tasked with developing additional increments in order to reduce the number of cells in the table.

**MOTION:** To adopt the concept of reducing the number of increments, tasking the COBS Task Group to develop increments the basic Excel program can accommodate, up to \$20,000, thereby replacing the “Step 2” in Section II(H). Motion seconded. Motion approved unanimously.

**MOTION:** To strike all of Section II(H)(2) and (3), and replace with amended language, “if either parent’s income exceeds \$20,000 per month...” Motion seconded. Motion approved unanimously.

Members agreed it is important to clarify in the guidelines that \$20,000 per month, per parent, is the highest calculated guideline amount and amounts that exceed this amount would be considered a deviation that is not addressed by the guidelines. Member, Kim Gillespie volunteered to work on the language in Section II(H).

Judge Cohen discussed timeline goals. He noted that although the document has been effectively vetted and presented to other Arizona Judicial Council (AJC) committees, the calculator itself has not. He suggested the committee request permission to delay its final presentation to AJC by as much as six months. Judge Cohen and Kathy Sekardi will meet on September 11<sup>th</sup> to review and refine the current draft, and if the Task Group can complete the calculator by the end of September, then the draft and the calculator can be posted on the website for review and comments. The committee could then meet to review the feedback received and make any changes.

The Chair noted that Judge Davis has offered to assist with the completion of the COBS calculator so that the program will resemble the current child support calculator that he originally developed.

**MOTION:** To request an extension of the Guidelines Review Committee through February 2010 to allow for additional time to vet the guidelines and calculator. Motion seconded. Motion approved unanimously.

### **Discuss Next Meeting**

Judge Cohen advised that the goal of the next meeting will be to review the guidelines document starting with Section 1(A) to the end.

### **Call to the Public**

No comments offered.

### **Adjourn**

Meeting adjourned at 4:15pm.