

ARIZONA SUPREME COURT
Child Support Guidelines Review Committee
DRAFT MEETING MINUTES
April 24, 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. Sarah Simmons
Hon. Kevin White

STAFF:

Ms. Kathy Sekardi
Ms. Lorraine Nevarez

PRESENT:

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

CALL TO ORDER

Judge Cohen, Chair, called the meeting to order at 10:10 a.m. Judge Cohen welcomed the members and reviewed the meeting materials. Judge Cohen acknowledged and thanked Tara Ellman for the time, effort, and expertise she has contributed to the committee.

Judge Cohen discussed considerations that were suggested by the Executive Office of the AOC regarding the Committee's report and recommendations presentation to the Arizona Judicial Council. A few of those suggestions entailed:

- Looking at how the courts will perceive structure and implementation of the guidelines.
- Determine the basic needs to review the guidelines in the future.
- Identify and improve upon any critical process glitches in the system that may need to be addressed.

The Committee made some of the following comments:

- The Committee will take the considerations and continue to review, adjust and develop guidelines that are comprehensible and useful by improving on the process of the current system.
- The Committee also discussed designing guidelines that reflect 95% of the child support orders and adjusting the chart to reflect those cases. Those cases that fall within the remaining 5% may be tied to a presumption that could allow the parties an opportunity to advocate for their interests. Most of these cases lack accurate data on which to base realistic child support amounts.

- Strictly follow the statutory mandates.
- The possibility of using a smaller architecture, less amount of grids

MOTION: Reducing the spreadsheet of the child support guideline grid to a number from a maximum of \$20,000 per parent. The committee will determine the exact cut-off number on the grid later in further discussion. The motion was moved and seconded.

- The Committee agreed upon extending the Committees' term to allow for additional time to fully address new issues, allow public comments, and vetting process within the State Bar and judicial community.

MOTION: A request for an extension of the Committee was moved and seconded.

APPROVAL OF THE MINUTES

MOTION: The March 27, 2009 minutes were moved and seconded without modification.

MOTION: The Amended January 23, 2009 minutes were moved and seconded without modification.

DISCUSS IMPACT OF CASH MEDICAL SUPPORT ORDERS

Janet Sell and Kim Gillespie, Attorney General's Office, discussed suggestions regarding medical support being included in the child support guidelines. They were as follows:

- To continue with the current guidelines which includes insurance but does not include cash medical support and add the cash medical support to the base amount of the child support.
- Take cash medical support and factor it in the same way premiums are included. For example, include the cash medical support by inserting 5% into the worksheet, which results in the amount being divided by both parents.
- Insert a 5% amount for both parents at the top of the worksheet and then apply the percentages.
- Determine the amount of medical insurance first, whether it is the premium or cash amount, then have it taken off the gross income of the parent paying it.

The Committee made some of the following comments:

- It is consistent with other ways some items are factored into the worksheet.
- Should we deal with cash medical separate and apart---is it necessary to take out of the child support equation?
- Allocate the cost of insurance in proportion to incomes.
- Can the cash amount be entered as a separate cash amount?

MOTION: To calculate the insurance premium in the manner that it is currently being calculated. Add to the guidelines section on non-covered medical expenses a provision stating that cash medical support money, when no insurance exists or is

lost, will be credited against non-covered medical expenses. When the cash medical amount is exhausted it will be credited proportionately against any non-covered medical expenses.

DISCUSS NAMING PHASE II MODEL

The Committee discussed names for the Phase II model and agreed on the name "Child Outcome Based Support."

MOTION: To adopt the Phase II model name Child Outcome Based Support. It was moved and seconded.

DISCUSS/REVIEW GUIDELINE SECTIONS 1-29

The Committee reviewed section II and made the following changes:

GROSS INCOME

A. 1. Gross income includes income from any source, and may include, but is not limited to, income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits (subject to Section-IV (E) ~~26~~), **RECEIVED DIRECTLY BY EITHER PARENT AND NOT ON BEHALF OF A CHILD**, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, recurring gifts, prizes, and spousal maintenance. **SEASONAL OR FLUCTUATING INCOME SHALL BE ANNUALIZED. INCOME FROM ANY SOURCE THAT IS NOT CONTINUING OR RECURRING IN NATURE NEED NOT NECESSARILY BE INCLUDED AS GROSS INCOME FOR CHILD SUPPORT PURPOSES.**

~~1.~~ 2. Cash value ~~shall~~ **MAY** be assigned to in-kind or other non-cash benefits or to recurring contributions from any source that reduce living expenses. Seasonal or fluctuating income shall be annualized. Income from any source which is not continuing or recurring in nature need not necessarily be deemed gross income for child support purposes. (moved to "1").

~~2.~~ 3. Only income of persons having a legal duty of support shall be treated as income under the guidelines. For example, income of a parent's new spouse is not treated as income of that parent.

~~3.~~ 4. Gross income does not include sums received as child support or benefits received from means-tested public assistance programs including, but not limited to, Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps and General Assistance.

~~H.~~ 5. The court shall not take into account the impact of the disposition of marital property except as provided in Arizona Revised Statutes Section 25-320.A.6. ("Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common") or to the extent that such property generates income to a parent.

INCOME BEYOND FULL-TIME EMPLOYMENT

~~3-~~ 6. EACH PARENT SHOULD HAVE THE CHOICE OF WORKING ADDITIONAL HOURS THROUGH OVERTIME OR AT A SECOND JOB WITHOUT AFFECTING THE CHILD SUPPORT AWARD.

Generally, the court should not ~~attribute~~ INCLUDE income greater than what would have been earned from full-time employment. The court may, however, ~~consider~~ INCLUDE income actually earned that is greater than would have been earned by full-time employment if that income was historically earned from a regular schedule and is anticipated to continue into the future. The court should generally not INCLUDE ~~attribute~~ additional income to a parent if that would require an extraordinary work regimen. Determination of what constitutes a reasonable work regimen depends upon all relevant circumstances including the choice of jobs available within a particular occupation, working hours and working conditions.

~~B-~~

SELF-EMPLOYMENT, ~~;~~—AND BUSINESS OWNERS AND REIMBURSEMENTS

~~C- 5-~~ 1. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts minus ordinary and necessary expenses required to produce income. Ordinary and necessary expenses do not include amounts determined by the court to be inappropriate for determining gross income for purposes of child support. Ordinary and necessary expenses include one-half of the self-employment tax actually paid.

~~D- 6-~~ 2. Expense reimbursements or benefits received by a parent in the course of employment or self-employment or operation of a business ~~shall~~ MAY be counted as income if they ~~are significant and~~ reduce personal living expenses.

UNEMPLOYMENT AND UNDER-EMPLOYMENT

~~E- 7-~~ 7. If a parent is unemployed or working below full earning capacity, the court may consider the reasons. If earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a parent up to his or her earning capacity. If the reduction in income is voluntary but reasonable, the court shall balance ~~that~~ the benefits of that parent's decision and ~~benefits there from~~ AGAINST the financial detriment, if any, to the child. the impact the reduction in that parent's share of child support has on the children's best interest. In accordance with Arizona Revised Statutes Section 25-320, income of at least minimum wage shall be attributed to a parent. ~~ordered to pay child support. If income is attributed to the parent receiving child support, appropriate childcare expenses may also be attributed.~~ The court may decline to attribute income to either parent. Examples of cases in which it may be inappropriate to attribute income include, but are not limited to, the following circumstances:

- ~~1-~~ a. A parent is physically or mentally disabled,
- ~~2-~~ b. A parent is engaged in reasonable career or occupational training to establish basic skills or reasonably calculated to enhance earning capacity, or

3. c. Unusual emotional or physical needs of a natural or adopted child require that parent's presence in the home. ✕

~~4. d. The parent is a current recipient of Temporary Assistance to Needy Families.~~

WORKGROUP TO REVIEW GUIDELINES

The following committee members will review the rest of the guidelines and bring the comments and suggestions to the next full committee.

- Judge Cohen
- Judge Rebecca Albrecht
- Kim Gillespie
- Prof. Ira Ellman

DEVELOP MAY 29, 2009 AGENDA

1. Call to Order
2. Minutes
3. Finalize all sections
4. Work on the Grid
5. Discussion on the final report.
6. Call to the Public
7. Adjourn

CALL TO THE PUBLIC

Public did not comment.

ADJOURN

The meeting was adjourned at 4:00 p.m.