Child Support Guidelines

Quadrennial Review

Meeting Minutes – June 10, 2022

Members present: Jim Fleming, Brad Davis, Lisa Kemmet, Lacey Marklevitz, Paulette Oberst, Sherri Peterson, Sen. Kristin Roers, Cynthia Schaar, Deb Suhr, Bill Woods.

Members absent: Betsy Elsberry, Jamie Goulet, Rep. Robin Weisz.

Visitor: Laura Hermanson

Review of draft amendments: The group reviewed the draft amendments that Oberst had prepared.

Item #6. Revise the definition of "self-employment" to specify that it includes any activity that generates business gains from a self-employment activity.

This draft amendment was approved at the previous meeting but not as originally suggested in the issue for consideration. The group reviewed Oberst's language. There was no further discussion and no further action taken.

Item #10 and Item #25, regarding specifying the number of parenting time overnights in an order for extended parenting time.

These draft amendments were approved at the previous meeting. The group reviewed Oberst's language. There was no further discussion and no further action taken.

Item #22. Expand the preclusion against imputing income to situations where the obligor is earning more than minimum wage and is neither underemployed nor unemployed.

This draft amendment was approved at the previous meeting, again not as originally suggested in the issue for consideration. The group reviewed Oberst's language. There was no further discussion and no further action taken.

Item #27. Consider creating a downward deviation when the child is living outside the parental home at government expense.

The group had requested a draft at the previous meeting. Oberst's language was reviewed. There was a very brief discussion but no changes to the language were sought. Sen. Roers made a motion, seconded by Woods, to approve Oberst's language. All voting members voted "yes" so the motion passed.

Item #28. Create a downward deviation when the obligor is required to pay educational or child care expenses.

The group had requested a draft at the previous meeting. Oberst's language was reviewed. Fleming thought that "all" should be removed as a descriptor for the

educational or child care costs. Schaar suggested changing the language to "all or a greater proportion of." Other members favored removing "all" to leave open an opportunity for the parties to negotiate specific arrangements. Fleming also questioned whether the reference to "private schools" should be removed. Kemmet pointed out that educational costs are not necessarily the same as extracurricular costs (e.g., cost for a child to participate in hockey). Davis said it could lead to situations where these costs are shifted to the obligee. Fleming said that, given the context, it makes sense to leave in the reference to private school expenses.

Oberst pointed out that she had not made any conforming changes to the general instructions (section -02(1)), which authorizes the court, in equal residential responsibility cases, to apportion specific child-related expenses between the parents. She said that the language in section -02(1) is discretionary and the new deviation language is also discretionary so she thinks they can both remain in the guidelines without creating an irreconcilable conflict.

Woods made a motion, seconded by Peterson, to remove "all" in two places and otherwise approve Oberst's draft language. All voting members voted "yes" so the motion passed.

Item #31. Authorize use of this deviation in split custody cases too?

This draft amendment was approved at the previous meeting. The group reviewed Oberst's language. There was no further discussion and no further action taken.

Item #34. Specify whether to impute income or not in an intact family situation when one of the parents is unemployed or underemployed.

This draft amendment was approved at the previous meeting. The group reviewed Oberst's language. There was no further discussion and no further action taken.

Continue discussion of remaining issues for consideration: Fleming noted that an issue related to imputing income still needed to be addressed and also that the group needed to circle back to an item related to self-employment. The other remaining issues for consideration are related to requirements in federal regulations. He said that Woods had also identified an issue for the group's consideration.

Item #16. Consider whether 80 percent should be changed to 90 percent to match the loss analysis when three or more years are averaged.

Davis had raised this issue initially because he thought it was inconsistent to use 80 percent in this one place only where 90 percent was used else in the guidelines. He questioned the reason and said that he had been unable to find any documentation that provided an explanation. Oberst said that the 80 percent benchmark in this provision has been there for many years, for as long as the loss analysis subsections have existed, but agreed with Davis that there doesn't seem to be any documentation explaining the reason. She noted that the 80 percent benchmark is used for the loss

analysis when less than three years of self-employment income are being averaged. The reference to "less than three years" is likely an indication of a new self-employment venture which leads her to speculate that using an 80 percent benchmark instead of 90 percent was a way to acknowledge that a new self-employment venture might take a few years to get off the ground so the guidelines allowed for a little grace.

By consensus, members decided not to pursue any change to this provision.

Item #19. Revisit imputation based on 90 percent of the obligor's greatest average gross monthly earnings.

Fleming recapped Goulet's suggestion from the previous meeting about possibly eliminating 90 percent of historical earnings as a basis for the amount of imputed income. Goulet had noted that the 90 percent prong for imputed income can significantly affect obligors who previously worked in the oil patch, had high earnings as a result, didn't continue their employment for whatever reason (e.g., laid off, physical wear and tear), and were unable to earn similar amounts in a different field.

Fleming noted the existence of the general instruction in section -02(8), which allows courts to consider new or future circumstances if recent past circumstances are not a reliable indicator concerning income. This provision provides a type of safety net for situations where imputing income is just not appropriate.

Schaar said that she tended to support retaining the historical earnings prong but wondered if it would be fair to reduce it from 90 percent to 75 percent. Fleming countered that it might be favorable to the obligor but could be unfair to the obligee.

Roers and Woods looped back to the discussion at the previous meeting when the group reviewed some hypothetical calculations based on increasing the 60 percent prong for statewide average earnings to 75 percent and reducing the 90 percent prong for historical earnings to 75 percent. Manipulating the amounts of imputed income in those hypotheticals did not have a significant impact on the amount of the obligation (i.e., on the bottom line) as compared to the guidelines in their present form. Woods asked, rhetorically, why we would change something if it won't make a difference.

By consensus, the group decided not to pursue a change to the prongs for imputed income.

Roers pointed out that in section -07(2), the value for 60 percent of statewide average earnings appears first, before the value for minimum wage. However, in sections -07(3) and -07(6), the values are reversed and minimum wage appears first. Fleming noted that we would need to look for cross-references and make conforming changes, as needed. Roers made a motion, seconded by Woods, to flip the values in section -07(2) so that minimum wage appears first. All voting members voted "yes" so the motion passed. Oberst will prepare an amendment, along with conforming changes to any cross-references.

Item #36. Consider the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the federal poverty level.

This item is required by federal regulations. Oberst reviewed a document she had prepared to show how much an obligor would be ordered to pay under the guidelines when his or her income is $13,590, which is 100 percent of the 2022 federal poverty level for a one-person household in the 48 contiguous states. Under the guidelines, the obligation is $140 for one child and $183 for two children. Oberst noted that this income is less than a minimum-wage imputation.

At 150 percent of the federal poverty level ($20,385), the presumptively correct support obligation would be $342 for one child and $416 for two children. At 200 percent of the federal poverty level ($27,180), the presumptively correct support obligation would be $416 for one child and $533 for two children.

There was a side discussion about the amount that can be collected from an obligor's income to pay the child support obligation. In response to a question from Roers, Fleming and Oberst explained that the guidelines are used to set the support obligation. Once the obligation has been set, it can be enforced through income withholding (i.e., the obligor's employer is directed to withhold child support from the obligor's earnings). State law limits the amount that can be withheld to 50 percent of the obligor's disposable income, which is defined as gross income less deductions required by law for taxes and social security.

There was no action taken.

Item #38 and Item #40. Data analysis of court orders.

Oberst explained that federal regulations require an analysis of the application of and deviations from the guidelines as well as a study of defaults and imputing income. To accomplish this analysis, a sample of orders entered since January 1, 2019, were reviewed. The data elements that were reviewed include whether there was a deviation, whether income had been imputed, whether the self-support reserve was applied, and whether the order was entered by default. Last, the effect of imputing income or obtaining a default order on payment rates was assessed.

Mostly, the results were not surprising. There was not much difference in the percentage of orders entered by default versus by stipulation. Income was not imputed much more often than it was. When income was imputed, it was most common, by far, for it to be imputed at minimum wage. Roers said she would have expected that imputing based on 90 percent of historical earnings would have been most common. Davis said it is not unusual that a lot of obligors don't have any earnings history.

Deviations are infrequent and the self-support reserve was only applied a few times, according to the sample.

Regarding payment rates, orders were evaluated to see if some current support had been paid versus all versus none. For orders entered by default, there was actually little difference in the payment rate. Oberst said that if there was anything in the analysis that surprised her it was the good payment rate on default orders. Fleming noted that there has long been a federal hypothesis that obligors are more likely to pay if they had agreed to the obligation because they had input and were more invested in the outcome. Schaar said that the obligors who stipulated to their orders, or litigated them, possibly had higher incomes to begin with, which resulted in higher payment rates after the order was entered.

Regarding payment rates when income had been imputed, there was a significant difference in whether and how much support was paid (e.g., all current support was paid in only 12.5 percent of the cases and no current support was paid in 63.9 percent of the cases).

There was no action taken.

Item #39. Analyze data on the cost of raising children.

This item is also required by federal regulations. Oberst said that in previous quadrennial reviews, the source document for this item was a publication by the USDA. It appears that this document is no longer being published; the most recent publication on the USDA's website is from 2017 using 2015 data.

For this quadrennial review, the group considered data on the cost of living compiled by JSND. The data can be manipulated to show the cost of living for different household sizes at the state level, by region, and by county. Expenditures are tracked for the following categories: food, housing, health care, child care, transportation, taxes, and miscellaneous necessities. The statewide cost of living for a single-parent household with one child is $43,092. Fleming remarked that the obligor's child support payment represents a contribution to these costs; the obligee is responsible for all the remaining costs not covered by child support.

By consensus, the group agreed with Fleming's observation that it looks like the schedule of amounts in the guidelines is appropriate in light of all the data.

New item for consideration. Rounding obligation amounts.

Woods suggested that it could be advantageous to round the presumptively correct amount, as determined by the schedule, to end in zero or five. He said it makes more sense for the obligor and would be easier for an employer to implement. Fleming said that the presumptively correct child support amount doesn't always come from the schedule, as when the multiple-family or extended parenting time adjustment applies. He also doesn't think it would benefit employers because they program their payroll systems based on the income withholding order. Oberst added that if the obligor is delinquent, an additional 20 percent is added to be applied to the arrears so the amount to be withheld wouldn't end with a zero or five anyway, except by coincidence.

Woods made a motion, seconded by Roers, to add a general instruction to round the presumptively correct amount from the schedule to end in a zero or five. Woods voted "yes" and all other voting members voted "no" so the motion failed.

There was a side discussion about the amount of current support paid each month. Fleming said that, collectively, about 75 percent of current support is paid in the month due. He shared the State's rankings in the federal performance measures.

Next meeting: Fleming said that one more meeting, date and time to be determined, will be scheduled to approve the meeting minutes. He anticipates that this will be a short meeting, by Teams.