

Practice Tips on the New Child Support Guidelines

By Lauren White Hoover



Q. As a general rule, are you seeing smaller awards of support under the new guidelines than under the old?

A. The answer is most certainly yes where one of the parents is a high-income payor. The new guidelines provide a cap on child support (subject to deviation considerations) at a monthly gross income of \$30,000.00 per month. Hypothetically, under old guidelines, payor parent has monthly net income of \$20,000.00. For 1 child, this payor parent would be paying \$2,941 for one child without consideration of the payee parent's income. Under the new guideline, a payor parent with a \$30,000 monthly gross income would be capped at \$1952 and that figure is before allocating any responsibility from the payee parent. If there is no work-related childcare and minimal health insurance costs, then the payor parent is going to see a reduction in support.

Q. Where there is joint custody and a substantial difference in income, is there an offset under the new guidelines?

A. Section II of Admin. Order No. 10 as amended on July 1, 2020 "assume[s] that the payor parent has the minor child(dren) overnight in his or her residence less than 141 overnights per calendar year." (emphasis added) 141 overnights is roughly 38.6% of the year. As we have seen in cases such as *Cooper v. Kalkwarf* and the language of 9-13-101, joint custody does not require a precise 50/50. Since the guidelines are new, we do not yet have guidance from the appellate courts on the proper approach to handle joint custody. From our experience, we have seen courts in Central Arkansas offset the two amounts, divide the payor's amount in half, or make no additional modification.

Q. Where there is a traditional custody/visitation arrangement, how is support allocated?

A. The chart seems to spell out for joint and

split child(ren) but not for standard. The chart presumes that time is shared with the payor parent having less than 141 overnights, but provides specifically in Section V.2. that the Court may consider the time spent by the child(ren) with the payor parent to deviate downward where there is joint or shared custody.

Q. The guidelines reference that the payor is assumed to file taxes as a single person with one dependent. Does and/or how does the analysis change if the payor is married with several dependents?

A. I have not had this issue come up, but we look to gross income and not taxable income and that is not a change.

Q. Does the standing case law on what is "income" still apply to the new chart?

A. Yes, intentionally broad definition of income for child support purposes are included in Amended Admin 10, Section III. 2.

Q. What do you predict will be the most litigated issues under the new chart?

A. Until there is clarity on what should occur when there is joint custody, this issue will be litigated with the approach that you argue what benefits your client for that case until a general rule is developed in the case law or in local practice.

Q. If a party has lost 20% income since the entry of an existing decree, will the reduction in support owed be ordered under the new or old system? What is the best way to get the previously non-paying spouse's income information in this scenario?

A. New rules apply. Best practice is to immediately file a motion where there is a reduction in your client's income because you will want any new amount ordered to be retroactive to the date the motion was

filed. In this scenario, I would propound discovery to obtain the payee parent's income information.

Q. How are bonuses being treated under the new guidelines?

A. Unlike under the old guidelines, a payor would typically pay on his or her regular earnings and the courts would apportion a percentage of any additional net income from bonuses by the payor parent to the payee parent based on the number of dependents. Unless a bonus or other one-time payment is an outlier event for a parent, my experience to date is that these bonuses are included in the average of a person's monthly gross income. Like most family law issues, the trial court has discretion to determine how variable income such as commissions, bonuses, overtime, military bonuses, and dividends will be treated including ordering a one-time support amount based on a percentage.

Q. Do you have any helpful tips to offer?

A. Collect the information on the cost of health insurance for the children and work-related childcare as those amounts are proportioned like the chart child support amount. This will impact the total amount paid from one parent to another.

Income is imputed for underemployed parents, but understand in this COVID year that courts are being flexible with those parents who have experienced income loss due to this pandemic. ■

Lauren White Hoover is an attorney with Lacerra, Dickson, Hoover & Rogers PLLC in Little Rock.

