

MCSF Changes for Simplification and Clarification

The SCAO hosted a workgroup to assist in the federally required four year review of Michigan's support guideline. The group included representatives from the Family Law Section of the state bar, Friend of the Court Association, Prosecuting Attorney's Association of Michigan, Office of Child Support and MiCSES, and Referees Association of Michigan. The group reviewed potential changes and members reached agreement on a compromise package of proposed changes. The changes focus on (1) correcting known problems, (2) simplifying its use, (3) easing case administration by the courts, and (4) making its provisions more consistent. A summary of the proposed changes follows.

- **Additional Children:** currently the formula treats "other" children in a parent's household differently than those for whom the parent pays support. The proposed change consolidates all other children not-in-common with the other parent into a percentage of a parent's income (whether in that parent's household or beneficiary of another support order). The new percentages more closely approximate amounts that would be ordered for the same number of children. A single way of accounting for additional children gives those in a parent's household a similar amount of that parent's income, and eliminates most of the disparity between support obligations in cases with another parent.
- **Children-In-Common:** when parents have several children in common, the current manual treats them differently depending on whether they are in a single or multiple cases. This occurs because calculating support for individual children (as occurs across multiple cases) provides no economy of scale savings for the children being in the same household. The proposed change calculates support for all of the children and prorates it for those in the present case. This equalizes support for children in one or multiple cases, as well as eliminating parents of paying higher support in different custody arrangements than if all children spent the same time with each parent.
- **Imputed Income:** due to case law clarification on this issue, especially related to the factors determining a parent's ability and likelihood to earn, imputation becomes *potential income*. The proposed changes clarify the factors that must be considered to impute income and strengthen language that its focus is to figure the amount of income that the parent could actually earn. Receipt of means tested income would no longer bar imputation. As case law currently requires, courts will look at a parent's potential, and base imputation on their actual ability and likelihood of earning.
- **Low Income Calculations:** currently the formula uses a fluctuating percentage of a payer's income (reduced from ten percent as payee income increases). The first proposed change simplifies to always use ten percent. This gives an equal share of income to children with different custodians and continues to permit a parent to pay at a reduced rate. In cases where currently every additional dollar earned is directed to support, the second proposed change reduces the increase to 50%-70% (depending on the number of children) of every additional dollar earned.
- **Income Calculations:** some income is difficult to express in monthly or annual figures. Proposed changes clarify that some irregular types qualify as income to the extent they

represent or may be used to generate regular income. The proposal also includes consideration of perks and in-kind income, and the value of gifts or gratuities from relatives and friends if it continues to represent or replace income or employment.

- **Third Party Custodians:** instead of choosing one of two calculations depending on whether parents reside in the same or separate homes, the proposed change just uses the option that considers each parent's income separately. Since it does not consider the other parent's income, this permits calculation of a parent's obligation in family support act and foster care cases where one of the parent's may not be a party to the present case.
- **Parental Time Offset (Considering Time Spent with Each Parent):** the proposed changes reintroduce the cubing equation presented during the last review. This change eliminates the shared economic cliff caused by using two calculations. To the extent possible, calculating the approximate number of overnights is simplified. Once implemented in a case, this change gets rid of all parenting time abatements. If substantial difference in overnights exercised from number used to set order occurs, the provision makes the parent responsible to seek adjustment by modification.
- **Deviation Factors:** Several current "special handling" situations were moved from specific provisions to deviation factors. This was done for parents ordered to pay taxes, mortgages, utilities, etc. in ex parte or temporary orders, children earning extraordinary income, and a parent supporting step-children whose parents cannot support them.

Three new deviation factors were added to have the court consider whether deviation is appropriate when (1) parents are ordered to pay restitution, costs, etc. following a criminal conviction, (2) payments to a bankruptcy plan or a bankruptcy discharge of debt significantly impacts monies that a parent has to pay support, and (3) parent who provides daytime care and directly provides for greater share of a child's cost than reflected in the number of overnights used to calculate the parental time offset.

- **Minimum Threshold for Modification:** Increased the minimum change needed before FOCs must seek modification to \$50 or 10%, whichever is greater.
- **Arrearage Payment Calculation:** minimum repayment amount changed to 2% of arrears, but not less than \$50 nor more than half of the current support charge.
- **Change or Discontinuation of Child Care Expenses:** (1) Parties should notify each other of changes in the costs as well as notifying the FOC when child care expenses stop. (2) Child care should continue through August 31 following the child's 12th birthday, unless there are special circumstances.
- **Prorate full cost of Health Care:** The formula currently requires finding difference between single and family coverage. The proposal would prorate the children's share of the cost of family coverage for children. This saves finding the cost of single coverage, and eliminates calculation of the difference.

The new 2008 Michigan Child Support Manual and its supplement, which take effect October 1, 2008, are now available at: <http://courts.michigan.gov/scao/services/focb/mcsf.htm>.

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