

Child Support Guidelines Review Panel

March 31, 2011

Meeting Minutes

Members Present:

Amy Atkinson
Delegate William K. Barlow
Craig M. Burshem, Esquire
Lawrence D. Diehl, Esquire
Hilton W. Graham, II
Paul McLean
Reeves Mahoney, Esquire
Jennifer Oram-Smith, Esquire
Senator Frederick M. Quayle
The Honorable A. Ellen White
Michael Woods

Members Not Present:

Jennifer Crown
Delegate G. Manoli Loupassi
The Honorable Wilford Taylor, Jr.
Delegate Ronald Villanueva

Staff Present:

Alice G. Burlinson, Esquire
Cynthia G. Coiner
Melody C. McKinley
C. Robert Owen
Nathaniel L. Young, Jr.

I. Welcome and Introductions

Senator Quayle

Senator Quayle welcomed the members and noted that several new members have been appointed to the Panel. Senator Quayle made introductory remarks and thanked the members for their attendance and participation. As part of a new process, the Panel has begun its work much earlier in the quadrennial review cycle; the Panel plans to meet quarterly in order to conduct a more thorough review and provide the General Assembly with information throughout the process rather than waiting until legislative changes are proposed. At Senator Quayle's request, Panel members in attendance introduced themselves.

II. Update on Panel Website and E-mail

Craig Burshem

Craig Burshem, Senior Assistant Attorney General and Chief of the Child Support Section of the Office of the Attorney General, gave a PowerPoint presentation which began with an update on the Panel website (<http://dls.state.va.us/childsupport.htm>). The website contains a list of Panel members; the General Assembly's Guidelines Panel page, which provides the Panel's statutory authority (Va. Code Ann. § 20-108.2(H)); meetings dates, agenda, materials and minutes; research and reports from other states; and a link to the Panel's email address (vaguidelinespanel@dss.virginia.gov). Emails sent to the Panel will go to Mr. Burshem, Alice Burlinson, Cindy Coiner and Melody McKinley. Meeting minutes will be circulated to Panel members for approval before posting.

Mr. Burshem pointed out that Virginia is one of only six states that has not updated its guideline schedule since inception. The Panel's goal is to effect a change in Virginia's

schedule and to provide more information to the General Assembly earlier in the review process.

III. Identifying and Involving Stakeholders

Craig Burshem

Mr. Burshem continued the PowerPoint presentation with a discussion of potential stakeholders who might be interested in providing input to the Panel, particularly regarding several policy issues. It would be advantageous to have as many people as possible involved in the process. Mr. Burshem provided a list of organizations and asked members if they knew of specific contacts for the groups identified in the presentation.

Mr. Diehl named Carol Schrier-Polak as a contact for the American Academy of Matrimonial Lawyers, Virginia Chapter (note: Mr. Diehl corrected the name of this organization, which was incorrectly identified as the American Association of Matrimonial Lawyers. The name will be corrected on the PowerPoint before it is posted to the Panel website.) Mr. Mahoney and Mr. Diehl named Roger Mullins as chair of the Boyd-Graves conference. Mr. Mahoney and Mr. Diehl will be copied on correspondence to Mr. Mullins. Mr. Diehl suggested having any policy questions to the Boyd-Graves Conference before its October meeting. Mr. Diehl provided a direct phone number for Mr. Barnes, Chair of the National Center for Family Law at the University of Richmond. Mr. Burshem suggested soliciting input from the League of Social Services Executives, as well as Lelia Hopper and/or Steven Dalle Mura from the Supreme Court of Virginia. Alice Burlinson will obtain contact information for these individuals and will draft a general introductory letter to advise them of the Panel's work and to ask if they would like to provide input during the process. The letter will be circulated among Panel members for approval before mailing.

IV. Consideration of Various Policy Issues

Craig Burshem

Mr. Burshem continued the PowerPoint presentation with a discussion of the Center for Policy Research (CPR). The Department of Social Services has authorized a sole-source contract with CPR to conduct an economic analysis and create a proposed guideline schedule based on the most current data. The sole-source process is much quicker than sending out a Request for Proposals. Jane Venohr, Ph.D., of CPR will be doing this work; she is considered the nation's leading expert on guideline analysis and development.

There are several policy issues the Panel may want Dr. Venohr to consider in creating the proposed guidelines. The Panel discussed several issues and decided to send out a survey to the stakeholders asking which issues they consider most important. Mr. Burshem observed that the Panel should drive the process by determining which issues CPR should consider. The Panel may also want to ask Laura Morgan of Family Law Consulting to assist with some of the policy considerations.

Policy Issue #1 – Guideline Model

The first policy consideration the Panel discussed was which guideline model CPR should use. Virginia has always used the income shares method, which is the most commonly used method nationwide. Mr. Diehl noted that the income shares method is a fairer process and changing to a different method would be contrary to the national trend. Senator Quayle noted that Panels in years past considered other methods but always went back to income shares.

Mr. Diehl proposed that Virginia continue using the income shares model as the basis of its guideline schedule, and Judge White seconded. All Panel members present voted in favor of the proposal.

Policy Issue #2 – Alternate Calculations

The Panel discussed whether to consider separate guideline schedules for single-parent families and previously intact families. The Panel noted several concerns: which schedule to use for parents who did not marry but lived together for several years, various permutations of living arrangements, difficulty with fact-finding, determining whether to use a per capita method or cost attributable to the child, and potential detriment to children from single-parent homes. The Panel decided to leave this issue off the stakeholder survey.

The Panel also considered whether the guideline schedule should be adjusted for different regions of the state. It might be difficult to determine how to draw the lines for different areas; perhaps housing cost could be the deciding factor. This issue has been brought up by several attorneys and will be included on the stakeholder survey.

Policy Issue #3 – Age of Children

Mr. Burshem noted that it is more expensive to support older children than younger children. Judge White remarked that it might be difficult to run guidelines in cases where there are children from varying age groups. Mr. Burshem pointed out that Germany has a guideline schedule which differs based on children's ages which the Panel might want to use as a reference. This issue will be included on the stakeholder survey.

Policy Issue #4 – Self-Support Reserve

Mr. Burshem said that several states have a self-support reserve – a pre-determined amount the noncustodial parent must have left over after paying child support – which is factored into determining the child support obligation. Judge White pointed out that the income used (\$0-\$599 per month) for the minimum \$65 per month obligation is in effect a self-support reserve, but the income amounts should be adjusted based on more current economic data. Mr. Burshem asked whether the self-support reserve would still be applied if it would result in poverty for the child. This issue will be included on the stakeholder survey.

Policy Issue #5 – Phase-In Increase

Mr. Burshem noted that some states use a phase-in increase when the updated guidelines result in a drastic change so that the noncustodial parent is not faced with sudden significant increase. Mr. Diehl suggested that one approach would be to allow the phase-in but only when there is an additional reason as well – the guideline change by itself

would not justify the phase-in. The Panel would also like to consider whether the current material change in circumstances criteria – 10% or \$25 – needs to be defined differently. This issue will be included on the stakeholder survey.

Policy Issue #6 – Modifications

Mr. Burshem suggested an expedited modification process for noncustodial parents who are laid off to minimize arrears accumulation. Since the Division often knows when a noncustodial parent loses employment, should the Division contact him/her and file a motion to amend or is this solely the noncustodial parent's responsibility? The Division would only be able to do this in Division cases.

Judge White suggested that judges should have discretion to make a modification effective back to the date of filing of the motion, rather than just back to the date notice was provided to the non-moving party. Mr. Burshem said this is a viable option and that Virginia would still be in compliance with the Bradley Amendment. Ms. Atkinson noted that the custodial parent must receive notice. Mr. McLean asked what would happen in cases where the custodial parent could not be located. Senator Quayle suggested in those cases that the noncustodial parent be given the relief requested since it the responsibility of both parties to keep the court apprised of address changes.

Mr. Mahoney pointed out that, due to budget cuts, there are serious backlogs in clerks' offices. In some places it takes 6-7 weeks just to start the process of getting the motion on the docket; in those cases, the opportunity to effect service may be lost. Mr. Mahoney believes it is important for orders to state in bold letters that the child support obligation remains in effect until modified or terminated by another order. Mr. Burshem suggested that this language be added to the notice provisions in Va. Code Ann. § 20-60.3. Mr. Mahoney noted that, particularly in the economic downturn of the last two years, he has seen more fathers who are reluctant to ask for a reduction because they want to support their children and feel a sense of shame that they are unable to do so. This issue will be included on the stakeholder survey.

Mr. Burshem asked if the Panel would like to consider setting a minimum percentage for a change in the noncustodial parent's income which by itself would justify a modification. There was discussion about whether this would apply to custodial parents as well, but Mr. Burshem pointed out that, pursuant to federal law, the Division only has access to income data for noncustodial parents. Mr. McLean asked about situations where the custodial parent may not have a job when the obligation is determined, then finds employment but does not advise the court or the Division. In those cases, the noncustodial parent would need to bring this to the attention of the court and/or the Division. The minimum percentage would not be the only factor, just a supplement to the existing modification scheme. This issue will be included on the stakeholder survey.

Policy Issue #7 – Automatic Guideline Updates

Mr. Burshem asked whether the Panel would want to consider a built-in mechanism for yearly updates to the guideline schedule based on annual economic data (i.e., cost of living adjustment) or a statutory change to require that the schedule be updated every four years. Mr. Diehl asked if this idea contradicts the material change in circumstances

criteria. The Panel decided to turn this issue over to CPR to advise us whether it makes sense to have a built-in adjustment and, if so, how it would work.

Policy Issue #8 – Location of the Guidelines

Mr. Burshem asked whether the Panel would like to consider a location other than the Code (i.e., website) for posting of the guidelines. The Panel decided to make no change. Judge White suggested adding on-line access, perhaps through the Supreme Court website, in addition to publishing in the Code. This issue will not be included on the stakeholder survey.

Policy Issue #9 – Miscellaneous

The following issues will be included on the stakeholder survey:

- *Multiplier/ number of days for shared custody cases.* Mr. Diehl noted that two years of study led to the current calculation and that it works very well; Judge White agrees.
- *Complex families.* Should there be a set of guiding principles to consider in complex family cases? Judge White pointed out that the guidelines cannot anticipate every scenario. In these instances, guidelines should be calculated for each situation and the judge can decide.
- *Add-ins.* Mr. Diehl suggested a stand-alone order for child care expenses since it is more variable than other factors. That way, a change in the child care expense would not affect the support obligation.
- *Visitation.* Judge White noted that visitation can already be considered as a deviation factor. Currently, the guidelines contemplate no visitation expense. Should it consider any and, if so, how? Or should visitation remain a deviation factor?
- *Minimum obligation.* Should there be an increase in the \$65 per month minimum?
- *Private school expenses.* These expenses are now a discretionary deviation factor. Should they remain a deviation factor or should there be a presumption? Mr. Mahoney pointed out the rapidly escalating costs of private school. He also noted that CivilWare and VADER consider this issue differently when calculating the support obligation. Recent legislation, which did not pass, proposed a presumption that the child would continue to go to the same school he attended at the time the parents separated.
- *Cost of extracurricular activities.* Mr. Diehl suggested adding the issue of sharing costs of extracurricular activities in cases where one parent pays for an extracurricular activity but the activity occurs during the other parent's time. The parents should share both time and the cost of the time.

V. Schedule 2011 Meetings

Alice Burlinson

Ms. Burlinson polled Panel members as to their availability for meetings for 2011. The Panel will meet on the following dates: Thursday, June 16, 2011; Monday, September 26, 2011; and Wednesday, November 16, 2011. All meetings will begin at 10:00 a.m. and

will be held in House Room 1 or another space in the Capitol. Meeting dates and times will be published on the Panel website and members will receive reminder emails.

VI. Introduction of Commissioner Brown

Nick Young

Senator Quayle introduced Nathaniel L. Young, Jr., Deputy Commissioner and Director of the Division of Child Support Enforcement. Mr. Young advised the Panel that Commissioner Brown was unable to attend the Panel meeting due to another commitment but plans to attend a meeting in the future.

Mr. Young thanked the Panel members for their participation. He also noted that the current Administration is particularly focused on strengthening Virginia's families.

VII. Housekeeping

Alice Burlinson

Ms. Burlinson discussed travel vouchers and W-9 forms for Panel members. Those members who did not return forms to Ms. Burlinson at the end of the meeting may do so in the stamped, addressed envelopes provided. At Ms. Atkinson's suggestion, Ms. Burlinson will contact Bruce Jamerson, Clerk of the House of Delegates, to make parking arrangements for future meetings.

Action Items for Staff:

1. Gather complete contact information for stakeholders, draft and circulate introductory letter, send to stakeholders upon Panel's approval.
2. Draft and circulate survey of policy issues for stakeholders. Send to stakeholders upon Panel's approval.
3. Continue process to engage CPR for research and development of guidelines. Advise CPR that the Panel and stakeholders are creating a list of various policy issues for CPR to factor into its analysis.
4. Prepare and circulate minutes of March 31, 2011 meeting. Post final version to Panel website upon approval.
5. Circulate 2011 meeting dates, times and location.
6. Send March 31, 2011 meeting handouts to panel members not in attendance.
7. Contact House Clerk to determine process for parking for future meetings.
8. Submit travel vouchers and W-9 forms.

Adjourned at 12:15 p.m.