

Child Support Guidelines Review Panel

May 3, 2013

10:00 a.m. – 2:00 p.m.

House Room 1, State Capitol

Meeting Minutes

Members Present:

The Honorable A. Ellen White, Chair
Craig M. Burshem, Deputy Commissioner and
Director, Division of Child Support Enforcement
Heather A. Cooper, Esq.
Delegate G. Manoli Loupassi
Reeves W. Mahoney, Esq.
Karen Sampson
Jennifer D. Oram-Smith, Esq.
Senator Richard H. Stuart
The Honorable Wilford Taylor, Jr.
Delegate Vivian E. Watts
Michael Woods

Members Not Present:

Amy Atkinson
Hilton W. Graham, II
Paul McLean
Delegate Ronald Villanueva

Staff Members Present:

Alice G. Burlinson, Esq.
Melody C. McKinley

I. Welcome

Judge White

Judge White welcomed Panel members and staff to the meeting.

II. Introduction of new members

Judge White

Judge White introduced new members Senator Richard H. Stuart and custodial parent representative Karen Sampson and welcomed them to the Panel. Panel members introduced themselves.

III. Brief recap of November meeting

Alice Burlinson

At the November 2012 meeting, Dr. Jane Venohr, Ph.D., from the Center for Policy Research in Denver, went over a powerpoint presentation which summarized the two reports she had prepared for the Panel, one providing preliminary, updated guideline schedules and the other providing expert advice on specific guideline factors. Dr. Venohr noted that the schedules were not finalized because of pending tax changes in Congress. The Panel asked Dr. Venohr to provide statistical comparison data from states with guidelines similar to Virginia, as well as more information on some of the selected factors. The Panel also requested that staff contact the Family Bar Coalition for input on the proposed guidelines and selected factors.

IV. Review of “Updating for 2013 Economic Data and Other Issues” Alice Burlinson from Jane Venohr, Ph.D., and

V. Report from Family Bar Coalition

Alice Burlinson presented a powerpoint summary of Dr. Venohr’s February 2013 report to the Panel, which addressed several selected factors and provided proposed guideline schedules.

Selected Factors

The Panel had asked for information from Dr. Venohr and input from the Family Bar Coalition on several selected factors:

Shared custody multiplier and threshold

The Coalition agreed that the 1.4 multiplier and the threshold greater than 90 days be kept the same. They might consider raising the multiplier to 1.5 but need to see the final guideline schedule before making that recommendation. Senator Stuart asked Ms. Burlinson who suggested changing the 1.4 multiplier; she replied that it was one of several issues raised in the survey from fall 2011 and the Panel had decided to seek more information and input.

Complex Cases

Currently the Virginia Code provides no specific direction on multiple family complex cases. Generally, attorneys run several guidelines and present them to the court for a determination. The Coalition agreed that it would be very difficult to draft statutory language to cover a multitude of scenarios and contingencies.

Unpaid, Ordered Health Care Costs

This issue addresses whether a noncustodial parent who receives credit for paying health care coverage but does not provide the health insurance should have the credit automatically added back in to his/her support obligation. The Coalition agreed this is not an issue for them as it is effectively addressed via the contempt process. Ms. Sampson disagreed, noting that the contempt process is lengthy and employers have specific windows within which to make changes. Judge White pointed out that by law employers must add dependents pursuant to a court order regardless of the open enrollment period.

Unreimbursed Medical Expenses

The Coalition strongly agreed that unreimbursed medical expenses are a significant problem, particularly in shared custody cases, and suggested eliminating the \$250 limit and splitting costs pro-rata. Judge Taylor likes this recommendation. Judge White agreed; however, she advised that if the \$250 is built into the proposed guideline and the Panel decides to eliminate it, that data would need to be backed out of the guideline. Ms. Burlinson will follow up with Dr. Venohr to see if that is possible.

Regional Differences in Cost of Living

Dr. Venohr advised that no state adjusts for intra-state regional differences in cost of living. Federal law requires one guideline that applies across the state.

Guidelines Based on Age of Children

Michigan is the only state with guidelines based on children’s age. Judge White pointed out that Virginia already has a deviation factor that can be used to address this issue.

Updating for 2013 Economic Data

Dr. Venohr's briefing provided updated guideline schedules based on 2013 federal and state income tax rates, FICA and price levels, as well as additional information to consider for low-income adjustments. She also included data from North Carolina, Pennsylvania and Michigan for comparison.

The Panel looked first at Schedule C, which includes a low-income adjustment reflecting research showing parents are more likely to pay their support obligation if it does not exceed approximately 20% of income, and Schedule D, which includes a self-support reserve based on the current federal poverty level (FPL). Judge White pointed out that the research shows and we acknowledge that the existing guidelines are too high at low incomes and too low at high incomes.

Senator Stuart stated that the Panel must consider the effect on custodial parents of providing noncustodial parents with a low-income adjustment or self-support reserve. He does not want to adjust the guidelines downward to assist noncustodial parents who are often hiding money or working for cash. The Panel should not do anything which would limit noncustodial parents' responsibilities or be detrimental to custodial parents and children.

Mr. Burshem pointed out that guidelines should be accurate and based on current economic data to provide realistic orders. Based on the U.S. Supreme Court's decision in *Turner v. Rogers*, present ability to pay is a key factor in determining whether a noncustodial parent can be held in contempt and jailed for failure to pay support. If obligations are set too high, it will be difficult to argue that the noncustodial parent has the ability to pay.

Ms. Burlinson directed the Panel's attention to Appendix F, which includes Schedules C and D, along with schedule E — updated guidelines with no low-income adjustment, self-support reserve or \$65 minimum monthly obligation — and Schedule F — updated guidelines which include the existing FPL and \$65 minimum.

Mr. Mahoney agreed with Senator Stuart and pointed out that, even if the obligation works a hardship on noncustodial parents, they are adults who can fend for themselves, while their children cannot. Senator Stuart pointed out that children need a subsistence level. Any allowance for a low-income noncustodial parent should not be built into the guidelines but should be left to the court's discretion.

Delegate Loupassi agreed with Senator Stuart as well and suggested that the Panel recommend Schedule E. Judge White noted that the Panel could suggest E but also give judges discretion to consider the federal poverty level if appropriate.

Christie Marra of the Virginia Poverty Law Center was in attendance at the meeting and agreed that the low-income adjustment and self-support reserve work a hardship on custodial parents. She suggested broader discretion for judges and perhaps a downward deviation if the custodial parent earns significantly more income than the noncustodial parent.

Ms. Sampson asked if Dr. Venohr's proposed schedules address the existing problem of obligations that are too low at high incomes. Judge White noted that they all include updates at

higher incomes. Ms. Burlinson pointed out that new schedules also go up to \$35,000 combined monthly income and include a new formula for incomes above that amount.

Delegate Watts agreed with Senator Stuart and pointed out that at poverty level, children have no options. Noncustodial parents should not be able to meet their own needs without consideration for the children's subsistence. She agrees with using a deviation if the custodial parent has higher income.

Mr. Burshem pointed out that at the lowest level, custodial parents on TANF receive \$100 disregard from any child support payment made. Of the Division's 330,000+ cases, about 70,000 are TANF cases; half of those are arrears-only and half are current TANF. In these cases, the custodial parent's income is \$0 or below poverty level. On the national level, research shows that very low-income or parents recently released from incarceration accrue higher and higher arrears. They are brought to court but have no ability to pay so cannot be jailed; this creates a vicious cycle and creates ever-increasing arrears, making it less and less likely a parent will pay. At very low income levels, there should be some balance. High obligations at low incomes will most likely not be paid.

Mr. Woods asked about income withholding orders for low-income parents; Mr. Burshem confirmed that these orders would be in place for parents who are employed and receiving a paycheck.

Judge White suggested that if the Panel decides on Schedule E, a deviation factor should also be added. She and Judge Taylor then agreed that the deviation factor at § 20-108.1(B)(10) would cover these situations.

Mr. Burshem noted some judges may order \$5/month; the new guidelines should include a minimum obligation to avoid this problem. The existing guidelines require a \$65 minimum unless the noncustodial parent meets one of three factors in § 20-108.2(B).

Ms. Sampson asked to clarify that the low-income figures represent combined income. Mr. Burshem noted that generally at very low incomes, the custodial parent earns \$0 and the noncustodial parent earns very little.

Members discussed the possibility of an arrears reduction program with regular payment to address noncustodial parents with large arrears; Mr. Burshem noted that the Division is currently looking at such options as well as suspending or reducing interest.

Delegate Watts pointed out that the Panel should use the best approach to move the guideline update forward in the simplest way; Mr. Burshem agreed and suggested that Schedule F would be the easiest, since it is a direct update of the existing guideline, including the \$65 minimum.

Judge Taylor made a motion that the Panel adopt Guideline E. Mr. Mahoney seconded. Ten Panel members voted in favor and one, Mr. Burshem, was opposed.

Ms. Oram-Smith pointed out an error on Schedule D for two children at incomes of \$2,850 and \$2,900. Ms. Burlinson will ask Dr. Venohr to make the correction.

Mr. Burshem suggested the Panel not address any issues other than the guideline update and the \$250 unreimbursed medical expenses. There was some discussion of obstacles in previous attempts to update the guidelines. Judge Taylor noted that the key difference this time will be impassioned legislators. Senator Stuart moved to address just the guideline update and the \$250 and save other issues for another year; Mr. Burshem seconded. All voted in favor.

Mr. Burshem said Panel staff will draft the proposed legislation and, upon approval of the Panel, send it to Senator Stuart, Delegate Watts and Delegate Loupassi, who agreed to introduce it.

VI. Plans for June 17th Meeting

Alice Burlinson

Dr. Venohr will come to the June 17th meeting. There will be a public hearing from 10:00 a.m. to 12:00 p.m., followed by the Panel meeting. Draft legislation will be provided. Ms. Burlinson noted that the Panel must present a report to the General Assembly in December 2013; Panel staff will draft the report. Judge White noted that the Panel can pick up on issues from the public hearing for any other recommendations.

VII. Administrative Issues

Alice Burlinson

- Reconfirm remaining 2013 meeting dates
After the June 17th meeting, there are two other meetings scheduled for 2013: September 24 and November 21. The Panel may or may not need to meet on both dates, but Ms. Burlinson suggests keeping them on the schedule.
- Emails to the Panel
Ms. Burlinson provided all emails received by the Panel from the end of October through mid-April. Older emails are on the Panel website: <http://dls.state.va.us/childsupport.htm>.
- Travel vouchers - turn in to Ms. Burlinson.

VIII. Adjourn

Judge White

The Panel adjourned at approximately 12:09 p.m.

Action Items for Staff:

- Post the following items on the Panel's website:
 - Dr. Venohr's briefings and appendices
 - Powerpoint presentation from today's meeting
 - E-mails to Panel from October 28, 2012 – April 17, 2013
 - Minutes, upon approval of Panel
- Ms. Burlinson will contact Dr. Venohr to ask about backing out the \$250 built into the guideline for unreimbursed medical expenses and about correcting the errors on Schedule E for 2 children at certain incomes.
- Staff will
 - Draft proposed legislation and provide it to the Panel for review
 - Begin drafting the report due to the General Assembly in December 2013.