

**Child Support Guidelines Review Panel**  
**November 5, 2012**  
**10:00 a.m. – 2:00 p.m.**  
**House Room 1, State Capitol**

**Meeting Minutes**

**Members Present:**

The Honorable A. Ellen White, Chair  
Amy Atkinson  
Craig M. Burshem, Esq.  
Heather A. Cooper, Esq.  
Hilton W. Graham, II  
Delegate G. Manoli Loupassi  
Reeves W. Mahoney, Esq.  
Paul McLean  
Jennifer D. Oram-Smith, Esq.  
The Honorable Wilford Taylor, Jr.  
Delegate Vivian E. Watts  
Michael Woods

**Members Not Present:**

Jennifer Crown  
Senator Richard H. Stuart  
Delegate Ronald Villanueva

**Staff Members Present:**

Alice G. Burlinson, Esq.  
Cynthia G. Coiner  
Melody C. McKinley  
C. Robert Owen

- I. Welcome** **Judge White**
- Judge White welcomed Panel members and staff to the meeting, and Panel members introduced themselves to Dr. Venohr.
- II. Introduction of new member: Senator Stuart** **Judge White**
- Judge White advised the Panel that Senator Stuart was unable to attend today's meeting.
- III. Brief recap of June meeting** **Alice Burlinson**
- At its June 2012 meeting, the Panel went over results of the child support guidelines survey sent to stakeholders and, based on participants' responses and input from staff on each issue, determined whether to pursue the issue; pursue the issue and seek expert from the Family Bar Coalition, Dr. Venohr and/or other experts; or not pursue the issue. The Panel hopes to receive comment from the Family Law Coalition by early March.
- Ms. Burlinson introduced Jane Venohr, Ph.D., Economist/Research Associate from the Denver-based Center for Policy Research.

#### IV. Briefing of preliminary updated schedules and selected guideline factors

Jane Venohr, Ph.D.

Dr. Venohr went over a powerpoint presentation which summarized the two reports she prepared for the Panel, one providing preliminary, updated guidelines schedules and the other providing expert advice on specific guideline factors. Dr. Venohr noted that of the 1.8 million children in Virginia, 26% live with one parent and are eligible for child support. Virginia is one of just a few states that has never updated its guideline schedule.

##### *Schedule Briefing*

Dr. Venohr emphasized that the main issue for the Panel is to decide what it wants to do with the schedule. She prepared two different schedules, one based on 2012 tax rates (Schedule A) and the other based on 2013 rates (Schedule B). We will know more about 2013 tax rates after Congress addresses the “fiscal cliff” – tax cuts which will expire at the end of 2012 and, if not avoided, will affect incomes by significantly increasing taxes. This is an important consideration since measurements of child-rearing expenditures are expressed as a percentage of total expenditures and backed into gross income using prevailing tax rates. Dr. Venohr recommends that the Panel decide as early as possible which schedule it would like to use so there will be sufficient time to prepare the Panel’s report, which is due to the General Assembly in December 2013.

Dr. Venohr noted that the Panel previously decided to keep the income shares model as the basis of its guideline schedule. This model is premised on the idea that children are entitled to the same expenditures as they would have had if their parents were together. It uses both parents’ incomes to calculate the support obligation. Dr. Venohr also reviewed methodologies underlying the existing schedule and her proposed schedules. The current schedule is based on the Espenshade-Engel methodology, while the proposed schedules are based on the more current Betson-Rothbarth methodology, which is the most commonly used nationwide (29 states). This methodology calculates child-rearing expenditures as a percentage of total family income (a ratio of expenditures:after-tax income). The USDA data is another potential methodology, but it produces higher schedule amounts than Betson-Rothbarth.

Dr. Venohr went over changes in federal income tax brackets, employee tax rates for Social Security and Medicare taxes since 1986 and noted that Schedule A (2012 tax rates) would result in higher obligations than Schedule B (lower tax rates would mean more after-tax income available for child support). After-tax income is lower than 20 years ago because of FICA (Federal Insurance Contributions Act) increases.

Other important points:

- The “core schedule” means obligations for parents whose income is in the range above the low-income adjustment and below \$10,000 per month.
- 76% of cases in the IV-D caseload are for 1 child; 19% for 2 children; 4% for 3 children; and 1% for 4 or more children.
- Participants in 35-40% of IV-D cases are at poverty level.
- Research shows that noncustodial parents whose child support obligations are more than 20% of their income are less likely to pay.

- The average schedule-wide increase under Schedule A is \$75/month; for Schedule B, \$30/month. For cases with 1 child, those increases affect all incomes above the low-income adjustment; there are instances at a few income levels in cases with more than 1 child where there are pockets of decreased obligation due to FICA.
- Dr. Venohr used census data to provide comparisons of monthly obligation amounts based on earnings by educational attainment under Virginia’s current schedule, proposed schedules A and B, Maryland, D.C. and North Carolina. She also provided comparisons for high-income levels.
- Maryland and D.C. both have schedule-wide adjustments based on their higher than average housing costs.

Dr. Venohr said the Panel needs to make a policy decision regarding the low-income adjustment. She noted that 42% of survey respondents indicated a desire to raise the current \$65 minimum monthly obligation, which applies to incomes of \$0-\$599. There is a self-support reserve of \$480 per month built into the current schedule—this was the federal poverty level in 1988. Under proposed Schedule A, the minimum applies to incomes of \$0-\$799 and would be \$65 per month for 1 child, \$70 for 2 children and \$75 for 3 or more children (total obligation, not per child). A self-support reserve would not apply. Under proposed Schedule B, the minimum order would be \$65 regardless of the number of children for incomes of \$0-\$1,250 (current income for workers working 40 hours/week and earning minimum wage of \$7.25/hour). The self-support reserve would be \$931 per month—the federal poverty level in 2012. The Panel should base its policy decision on what it determines should be of primary importance—the child’s needs or the parent’s need for a subsistence level income; ability to pay; and various safety nets available for families (SNAP, TANF, etc.). Safety nets vary from state to state.

Dr. Venohr provided low-income examples comparing Virginia’s current obligation amounts to proposed obligations under Schedules A and B, and Maryland, D.C. and North Carolina amounts.

Dr. Venohr stressed that some may argue the guidelines do not need to be changed because with doubled incomes and doubled expenses (from time of initial guideline implementation), the current schedule would still work; however, this is not accurate because the schedule is not perfectly linear.

### ***Briefing on Selected Factors***

#### Shared Custody: Multiplier and Threshold

Virginia uses a 1.4 multiplier, while most states use 1.5, and Virginia’s 90-day timesharing threshold is lower than most states. Dr. Venohr suggested increasing the multiplier or using a 2-tier formula to create a small adjustment near the timesharing threshold and applying a cross-credit formula for near-equal timesharing. A 1.6 multiplier creates the most gradual decrease and produces the least “cliff effect.” The “cliff effect” is partially a result of the parents’ relative incomes and is more precipitous if the custodial parent has a higher income.

#### Complex Families

Many survey respondents indicated a desire for the guidelines to include guidance on how to deal with complex and varied family situations. Virginia’s current approach is commonly used in

other states: income deduction for other children based on an existing order/agreement and/or a deduction from the schedule based on a “theoretical” order. Dr. Venohr explained a few methods used by other states: Washington’s “whole family formula” and Pennsylvania’s proportionate reduction on each order. Some states use a combination of shared and split guidelines for complex families. Some states provide a deviation factor; Dr. Venohr will provide language to Ms. Burlinson for the Panel’s consideration.

#### Unpaid, Ordered Healthcare Costs

Survey participants were interested in ways to deal with noncustodial parents who are ordered to provide healthcare and receive an adjustment to their support obligation for healthcare cost, but then do not actually provide the coverage. Oregon and Ohio orders contain 2 amounts—1 if the parent provides coverage and 1 if he or she does not; however, this is very difficult to administer and track. In addition, the Affordable Care Act may affect any approach.

#### Unreimbursed Medical Expenses

Most states, including Virginia, do not specify which parent in an equal custody case is responsible for the first \$250 in unreimbursed medical expenses. Generally, the parent with more custody or who is owed support incurs the first \$250. It is best to have this specifically addressed in orders and/or parenting plans. Dr. Venohr will send some examples for Ms. Burlinson to share with the Panel.

#### Regional Differences in Cost of Living

Many states, including Virginia, have disparate housing costs among regions. Federal law requires states to have a single guideline schedule for the entire state, not one that varies from region to region. Maryland and D.C. have statewide adjustments because of their particularly high overall housing costs. Dr. Venohr suggests there is no real reason to create a statewide adjustment for housing. Other information:

- Virginia ranks 15-16 in housing costs and 8<sup>th</sup> in median family income
- Counties/cities with higher housing costs also have higher incomes
- The proportion of income spent for housing is close across incomes—wherever they live, people spend about 25-30% of their income on housing. There would be greater concern if there were a big gap in percentage spent in different areas of the state.

Dr. Venohr will email information about Kansas’ approach and the chart showing regional housing cost differences across Virginia to Ms. Burlinson for distribution to the Panel.

#### Child’s Age

The Panel asked for Dr. Venohr’s guidance on whether the guidelines should reflect the higher cost of raising older children. Dr. Venohr pointed out that, while teenagers are more expensive than toddlers, there is not an incremental increase between each age bracket. Florida allows a deviation factor to address this issue, while Kansas, Maine and Washington include an age adjustment in their presumptive guidelines.

### ***Next Steps***

The Panel needs to decide:

- the underlying methodology to use for the schedule
- the actual schedule it would like to propose
- price levels and tax rates (2012 or 2013)
- minimum obligation amount and whether it should be variable
- income threshold for minimum order
- low-income adjustment above the minimum order
- amount of self-support reserve (if any)
- highest income level considered by guidelines
- formula to determine obligation amount for very high incomes
- how to address the other selected factors

Craig Burshem moved to adopt the Betson-Rothbarth methodology; Heather Cooper seconded. The Panel agreed by a unanimous vote.

Mr. Burshem asked Dr. Venohr if she would provide the Panel with statistical comparison data from states with guidelines similar to Virginia's (Maryland and D.C. may not be the best comparisons because of their housing adjustment). Judge White added that it would be helpful to use states which have recently updated their guidelines.

Dr. Venohr will use most current prices, stay in touch regarding tax rates, and provide the following information:

- Statutory language from states which have complex family issues as a deviation factor
- Examples of language used to address unreimbursed medical expenses
- Virginia's regional differences in cost of living chart
- Kansas' housing adjustment
- Florida's language on deviation for child's age
- Charts with Virginia statistical data (current plus Schedules A and B) compared to North Carolina and 2 other states with recently updated guidelines and no housing adjustment

### **V. Administrative issues**

**Alice Burlinson**

- 2013 meetings — Ms. Burlinson proposed four meetings for 2013. She will obtain Judge White's available dates and send an online survey to the Panel for input.
- E-mails to the Panel — From May 16, 2012 through October 27, 2012, the Panel received 16 e-mails. Twelve were case-specific and were referred to the Division. Four contained general questions or comments; all were provided with a response. Ms. Burlinson will circulate the emails to the Panel and post them on the website.
- Travel vouchers — Please give travel vouchers to Ms. Burlinson for processing.

### **VI. Adjourn**

**Judge White**

The Panel adjourned at approximately 2:00 p.m.

**Action Items for Staff:**

- Post the following items on the Panel's website:
  - Dr. Venohr's briefings and powerpoint presentation
  - E-mails to Panel from May 16, 2012 through October 27, 2012.
  - Minutes, upon approval of Panel
- Ms. Burlinson will contact the Family Bar Coalition to ask for their comments by March 1, 2013. In addition to the issues the Panel has already asked the Coalition to comment on, Ms. Burlinson will ask the Coalition to provide input on whether the existing guidelines produce appropriate obligations in most cases.
- Staff will obtain:
  - Information from the Poverty Law Center on Virginia safety net levels (TANF, SNAP, etc.) and how Virginia compares to surrounding states
  - Wage data to determine how many Virginia workers are part-time, minimum wage