

Virginia Child Support Guidelines Review Panel
April 24, 2017
10:00 a.m. – 2:00 p.m.
House Room 1, State Capitol

Meeting Minutes

Members Present:

The Honorable Edward A. Robbins, Jr., Chair
The Honorable Deborah V. Bryan
Craig M. Burshem, Deputy Commissioner for Child Support
Lawrence (Larry) D. Diehl, Esq.
Carol B. Gravitt, Esq.
Dennis M. Hottell, Esq.
Delegate James A. (Jay) Leftwich, Jr.
Christian R. Paasch
Kim-Marie A. Pigott-Brown
Karen H. Sampson
Delegate David J. Toscano (by phone from 9:55 a.m.–11:20 a.m.)

Members Not Present:

Christine (Christie) E. Marra, Esq.
Russell J. Smith
Senator Glen H. Sturtevant, Jr.
Delegate Vivian E. Watts

Panel Staff Members Present:

Alice G. Burlinson, Esq.
Melody C. McKinley, Panel Administrator

Others Present:

Britt Olwine, Esq., Legislative Services

I. Welcome

Judge Robbins

Judge Robbins welcomed Panel members. Recording of the meeting began.

II. Review of Issues from October 2016 Meeting

Alice Burlinson

Ms. Burlinson reminded members that the Panel's report to the General Assembly is due in December 2017. Panel staff will draft the report for the Panel's review and approval. Ms. Burlinson facilitated discussion of the following issues with a PowerPoint presentation:

a. Requiring Attachment of Guidelines Worksheets to Orders

The Panel agreed at its last meeting that it would recommend to the General Assembly that Va. Code § 20-108.2(B) be amended to require that the guidelines worksheet relied upon by the court or agency to reach its computation of an obligation be attached to all child support orders. Recommended language will be: "The guidelines relied upon by the court or agency to reach its computation shall be attached to the order." This language is broad enough to accommodate various local practices in different jurisdictions. Attaching the guidelines worksheet will assist parties in understanding how obligations are calculated.

b. Update on Guidance for Complex Cases from Family Law Coalition

Ms. Burlinson noted that, in response to the Panel's request, the Family Law Coalition has formed a committee to consider guidance for complex cases. The committee met on April 19, 2017, to begin looking at various options. In addition to Family Law Coalition members, the committee also includes legal counsel from the Division of Child Support Enforcement (DCSE).

Mr. Diehl provided an update of the committee's work thus far. The group is looking at various multiple custody scenarios (i.e., parties have split custody of 2 children but share custody of a

third child) and different options for calculating obligations in those cases. The committee is circulating language and will meet again in May. They plan to make a report to the Family Law Coalition chairperson in August and then forward the final recommendation to the Panel for its consideration.

Judge Robbins noted that it is difficult to come up with one specific way to handle these cases, especially because they occur infrequently. Any guidance the Coalition can provide will be helpful in creating consistency in handling these issues throughout the state.

III. Right-Sizing Order Trend

Craig Burshem

At its last meeting, the Panel requested more information on the national trend toward right-sizing orders. Mr. Burshem presented research on this approach, noting that it actually began in the late 1990s when child support professionals on the national level began to recognize that establishing support orders based on actual ability to pay results in higher order compliance, less accumulation of arrears, and increased parental involvement. Research over the last 20 years has consistently shown that parents are more likely to pay reliably if their support obligation is set at about 20% of their income or lower. Mr. Paasch stated that the discussion should not be about "what's the maximum amount of money we can get out of non-custodial parents before they stop being able to pay"; instead, it should be about how much child support a child needs to begin with, and *then* have a discussion about percentage of income. Otherwise, it just supports the belief that the child support system only exists to squeeze out the maximum amount of dollars, instead of the amount of child support children *actually* need.

Ability to pay and barriers to payment are important considerations in determining obligations, particularly for low-income parents. In addition, imputing income (typically at full-time minimum wage) in cases where parents have little/no ability to pay results in markedly lower compliance.

Panel members discussed imputation of income in light of the dearth of full-time minimum wage jobs. Judge Robbins noted that the main problem with low/no income cases appears to be imputing income. Courts still impute income based on long-standing Virginia case law regarding voluntary unemployment or underemployment. We would need a statutory change to alter the precedent set by this case law.

Members noted that incarcerating parents for failure to pay support can have a coercive effect for parents who have assets, but many obligors serve their entire sentence without purging because they have no ability to pay. We need to get those parents engaged in the process. Mr. Burshem noted that DCSE now has family engagement programs in all its district offices to work with parents who have barriers that prevent them from paying. However, the right-sizing order trend and the new federal rule do not provide guidance on setting obligations for people who are able to work but refuse to do so or who will not participate in family engagement programs.

Ms. Sampson pointed out that custodial parents want consistent payments; it is better to have a \$50 order that gets paid than a \$1,000 order that does not get paid.

The Panel discussed the difficulty of determining gross income based on the statutory definition (Va. Code § 20-108.2(C)), particularly non-monetary benefits and retained earnings. The Panel may wish to consider recommending a change to the definition of gross income.

Delegate Leftwich pointed out that both the judiciary and DCSE face funding issues. A judicial time study is currently underway to examine whether the number of judges is sufficient. Ms. Pigott-Brown asked whether the same judge looks at the same case throughout the lifetime of the case. While that is a best practice, it varies in different jurisdictions based on the number of judges and other factors.

IV. Overview of the Federal Final Rule

Alice Burlinson

Ms. Burlinson provided information regarding the federal final rule, *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs*, which revises existing federal child support regulations. Several changes affect the Guidelines Panel's work; however, these changes will be addressed by the next Panel since the compliance dates are in 2022 and 2026. The final rule focuses on ensuring obligations are realistic and based on parents' ability to pay. One major change is that incarceration may no longer be treated as voluntary unemployment in establishing or modifying orders. The final rule also expands the types of economic data the Panel must consider and the case data analysis it must conduct in reviewing the guidelines.

V. New Business

Judge Robbins

No new business. Judge Robbins noted that the next Panel will need to address changes based on the requirements in the final rule.

VI. Administrative Items

All

- a. Panel emails from October 1, 2016 through April 15, 2017: Panel members were provided with a list of all emails sent to the Panel and responses from staff.
- b. Schedule next meeting: Panel staff will coordinate possible dates in October 2017 with Judge Robbins and will send a Doodle survey to Panel members.
- c. Travel vouchers: Mileage and parking costs will be reimbursed. Samples, forms and postage-paid envelopes were provided.
- d. Questions: Ms. Gravitt asked about changes to contempt proceedings based on the final rule. Ms. Burlinson advised those changes primarily involve DCSE's policy in determining a parent's ability to pay before filing a contempt action and should not require action by the next Panel.

VII. Adjourn

The Panel adjourned at 12:25 p.m.

Action Items for Staff:

- Post the following items on the Panel's website:
 - Minutes, upon approval of Panel
 - PowerPoint presentation
 - Panel emails from October 1, 2016 through April 15, 2017
- Coordinate possible October meeting dates with Judge Robbins and send Doodle survey to Panel members to select date.