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SEP 15 2017
CHESTERFIELD CIRCUIT COURT
JUDGES CHAMBERS

September 13, 2017

Honorable Edward A. Robbins, Jr.
Circuit Court for the County of Chesterfield
City of Colonial Heights
P.O. Box 57
Chesterfield, VA 23832-00057

Re: Virginia Child Support Guidelines Review Panel

Dear Judge Robbins:

In October 2016 you asked the Virginia Family Law Coalition to examine certain issues regarding child support in complex family situations. I asked some members of the Coalition and other stake holders to take a look at the questions presented in your October 2016 letter and report back to the Coalition. I enclose with this correspondence a Report of the Committee on Mixed Custody Guidelines with Exhibits A-C and Proposed Legislation for Mixed Custody Child Support Cases.

Please keep in mind that this report is subject to review by the Coalition at our meeting on November 20, 2017. However, I wanted to provide this information to you in advance of your next Virginia Child Support Guidelines review panel.

The subcommittee members listed on the first page of the report worked tirelessly to put together information to be of assistance to the Child Support Guidelines Review Panel. I appreciate all of the time and effort they put into the evaluation of the issues and the proposed legislation. I will be in contact after our meeting in November to let you know if there are any changes to the report and proposed legislation. If we can be of assistance to you in the future, please let me know.

Sincerely,

Cheshire I'Anson Eveleigh

CIAE/amt
Enclosures

cc: Steven L. Raynor
         Lawrence D. Diehl
         Brian M. Hirsch
         Daniel L. Gray
         Mitchell D. Broudy
         Beth J. Edwards
         Alice G. Burlinson
         Jeff Palmore
         Yvonne McGhee
         John Ayers

REPORT OF COMMITTEE ON MIXED CUSTODY GUIDELINES

Committee: Steven L. Raynor, Chair
Lawrence D. Diehl, Esq.
Brian M. Hirsch, Esq.
Daniel L. Gray, Esq.
Mitchell D. Broudy, DCSE
Beth J. Edwards, DCSE
Alice G. Burlinson, DCSE

Scope of Committee Assignment:

The Child Support Guidelines Review Panel requested that the Family Law Coalition of the Virginia Bar Association and the Virginia Trial Lawyers Association review and make suggestions to address the issue of mixed custody child support guidelines. At the present time, there are no guidelines in Virginia Code § 20-108.2, the child support statute, addressing mixed custody situations. The lack of such guidelines has caused inconsistency with the bar and courts as well as a broad variety of proposed methods to address the issues. The committee unanimously agreed that uniformity of such guidelines would greatly add to statewide consistency and fairness in such situations. A statutory approach to provide presumptive guidelines for such arrangements would well serve the bar, the Division of Child Support Enforcement (DCSE), the courts, and, most importantly, the children of parents who are subject to these varied custody arrangements.

The committee would at the outset recognize our Chair, Steve Raynor, for the exemplary job he performed in organizing the meetings, approaching the issues in a fair and independent manner and permitting input and comments on all issues. Mitchell Broudy should be recognized for his tireless efforts in providing voluminous charts, guideline calculations and approaches to the implementation of the proposed guidelines for this committee. His input as a "master number cruncher" was thorough and supports the committee's recommendations. Mitch should also be recognized as the primary individual whose approach has formed the economic foundation of the committee's recommendations. Lawrence Diehl, as usual, performed the task of drafting the proposed recommendations with the assistance and editing of all members of the committee. This was truly a full committee effort on what at the outset was a formidable task.

Studies of the Committee:

The committee started its approach by reviewing the existing resources that addressed the issues. The committee reviewed statutes of other states, but very few addressed the issue. The closest approach which Mitch later suggested was Maine's statute, but the committee believes our approach is more sound both in the organization of the statute and the underlying economic basis. The committee also reviewed the VADER comments of Richard Byrd who provided various suggested approaches to mixed custody statutes and his preferences for which ones made more sense economically. The committee recognized that his approaches have probably been the main Virginia source and approach to these issues used to date by the bar and courts.

The committee identified three (3) basic mixed custody situations that would cover most custody arrangements existing beyond those addressed in Virginia's current statute: (1) mixed shared custody arrangements – where all of the children are subject to shared arrangements (*i.e.,* each party has the children more than 90 days per year), but the number of days varies among the children, (2) sole and shared custody arrangements – where one or more children of the parties is subject to the sole or basic child support guidelines and at least one other child is subject to the shared custody arrangement and (3) split and shared custody arrangements, where the parents split custody of two or more children and at least one other child is subject to a shared custody arrangement.

Based on a review of all of the approaches, and thinking through the common sense economic assumptions and approaches for mixed custody arrangements, the committee has suggested and adopted what can be best characterized as the **"per child cost approach"** to mixed custody arrangements. The recommendations of the committee are to enact amendments for each of the three mixed custody situations that are attached to this report. Below is how this works and why the committee thinks it makes sense economically:

For **mixed shared custody arrangements**, the economics would be based on the average number of days each parent has the children when children do not spend the same number of days with each parent in a shared custody arrangement. The underlying method recognizes that an adjustment for each child should be made since all children subject to this guideline would stay more than 90 days with each parent. The proposed statute provides that one determine the total number of days that each parent has the children, then divides those days by the number for both parents, so that the result would add up to 365 days. Then, one would use the basic child support obligation number for those children (just as in the one shared method), multiply that basic child support obligation by 1.4, and proceed with the calculation. That number would be what one parent would owe to the other. By assuming that the days overall reflect the economic needs of all of the children, this makes sense and the results are fair in the calculations reviewed by the committee in providing a method coming with fair support numbers recognizing the variety of the economic needs of the children. It is a method that averages out all of the children's time with each parent, which should reflect their overall economic needs as is used in the current shared statute. A sample Mixed Shared Guideline Worksheet is attached as Exhibit A.

For "**sole and shared**" or "**split and shared**" **mixed custody arrangements** each method will start off by calculating the total basic child support for all of the children of the parties subject to the mixed custody arrangement. Then, a "per child cost" shall be calculated by dividing this total basic child support obligation by the total children of the parties. If there are four children and the total basic child support obligation from the table is $2,000 per month, that economically assumes that the cost per child is $500, pro-rating that amount for each child –thus, $2,000 divided by 4 = $500. That is the economic basis of the "cost per child" of the current total numbers in the guidelines. Let's assume mother has two children subject to the sole custody guidelines. The economic needs of those children where there are four children total would be assumed to be $500 per child x 2 sole custody children = $1,000. That is the number the sole custody guideline would use as the total basic number for just the two children subject to the sole custody part. And in the event of split custody, that would also be the starting point number that would be used to calculate

just the split custody part of the total support obligation for those children only subject to split custody.

Next, the parties would then take the "per child" number just like it is done for sole custody situations. In this case, there are two children subject to the shared so that would $500 x 2 shared custody children = $1,000. That is the assumed cost of the needs of those two children. That number would be used as the starting point which number would then multiplied by 1.4. Next, the shared custody calculation would be determined using the same method as set forth in the current statute. Again, this reflects the shared calculation using the assumed economic needs per child for those who are subject to the shared arrangement – a sound economic basis for this calculation. Thus, for sole or split + shared child support arrangement, only two calculations would need to be made – the sole or split obligation using the economic needs of those children only, and the shared calculation using the economic needs of those children only.

The end result of the total child support owed per month by a parent to the other would be the total of both the sole or split $ + the shared $ where both amounts are owed by the same parent to the other. Where each calculation has a different payor parent , the amount owed would be the difference of the two, with the parent owing the higher of the two paying the difference to the other.

Let's put this in English: For example, if dad owes both $356 for the sole support obligation portion and $138 for the shared custody obligation portion, the total support would $494 per month from dad to mom. But if dad owes $356 to mom for the sole custody obligation portion, and mom owes $138 to dad for the shared custody obligation portion, then dad pays mom $218, being the DIFFERENCE of the sole and shared calculation, or $356 - $138, or $218 from dad to mom. A sample Sole/ Shared Guideline Worksheet is attached as Exhibit B, and a sample Split/ Shared Guidelines Worksheet is attached as Exhibit C.

The committee further reviewed many calculations (Mitch Broudy's voluminous charts) that were performed at various income levels, income disparities and varying numbers of children for each of the arrangements set forth above. The numbers reflected consistent fairness in the end results and reflected reductions in overall support from what would be the basic support obligations without the adjustments for the shared or partially shared arrangements. The numbers actually came very close to those produced by Richard Byrd's complex VADER program – but uses fewer calculations.

Not only is the economic basis believed to be sound and the numbers fair, but this proposal limits the number of calculations needed (two at most) from the often extensive number of calculations needed to use the VADER recommendations on these mixed arrangements. The simplicity of the method and the clarity of how this works is a superior method and that once adopted and used by bar, courts and the DCSE, will provide a fair approach to calculate child support in mixed custodial arrangements. The committee therefore recommends the adoption of its statutory proposal attached.

Mixed Shared Guideline Worksheet

Guideline Calculation		Mother			Father			
A. Income								
A1 Monthly Gross Income	1	$1,250.00		8	$1,570.00			
A2 Adjustments for Spousal Support	2	$0.00		9				
A3 # of other children residing with the party	3			10				
A4 Mother _____ Father _____	4	$0.00		11	$0.00			
A5 Other child support obligations	5	$0.00		12	$0.00			
A6 Combined Monthly Available Gross Income	6	$1,250.00	+	13	$1,570.00	15	$2,820.00	
A7 Percentage of combined gross income	7	44%		14	56%			

B. Shared Child Support Needs		Mother			Father			
B1 Number of children		15	2					
B2 Basic child support obligation	16	$711.00		30	$711.00			
B3 1.4 Multiplier applied to line above	17	$995.40		31	$995.40			
B4 Total # of days each year parent has custody of child 1	18	137		32	228			
B5 Total # of days each year parent has custody of child 2	19	274		33	91			
B6 Total # of days each year parent has custody of child 3	20			34	0			
B7 Total # of days each year parent has custody of child 4	21			35	0			
B8 Total # of days each year parent has custody of child 5	22			36	0			
B9 Total # of days each year parent has custody of child 6	23			37	0			
B10 Total # of Days each year parent has with children	24	411		38	319			
B11 Average # of days each year parent has custody of children	25	206		39	160			
B12 Each parent's custody share	26	56%		40	44%			
B13 Shared Custody basic support obligation owed to the other parent	27	$434.98		41	$560.42			
B14 Parent's Shared Custody Support Obligation owed to other parent	28	$192.81		42	$312.01			
B15 Net Shared Custody Support Obligation	29	$192.81	−	43	$312.01	44	$119.20	
B16 Payable to Mother [X] Father [ ]								

D. Health Care/Work-Relaed Day Care Calculation		Mother		Father			
D1 Father's cost for health care coverage	45	$0.00	51	▓▓▓			
D2 Mother's cost for health care coverage	46	▓▓▓	52	$0.00			
D3 Father's cost for work-related daycare	47	$0.00	53	▓▓▓			
D4 Mother's cost for work-related daycare	48	▓▓▓	54	$0.00			
D5 Total = Line D1+Line D2+Line D3+Line D4	49	$0.00	55	$0.00			
D6 Parent's Obligation to the other (Line D*Line A5) needs work	50	$0.00	56	$0.00			
D7 Payable to Mother [ ] Father [ ]					57	$0.00	

E. Combined Child Support Amount		Mother			Father			
E1 Parent owing the net basic monthly amount per shared custody	58	$0.00		61	$119.20			
E2 Parent owing the net health care/work-related day cost	59	$0.00		62	$0.00			
E3 Calculate: Add E1+E2 in each column then subtract the amounts	60	$0.00	−	63	$119.20	64	$119.20	
E4 Payable to Mother [X] Father [ ]								

F. Adjustment for Parent's SSDI derived benefit paid to other parent							
F1 Mother's SSDI derivative benefit paid to the father	65	$0.00	67	▓▓▓			
F2 Father's SSDI derivative benefit paid to the mother	66	▓▓▓	68	$0.00			
F3 Net SSDI derivative benefit					69	$0.00	
F4 Credited to: Mother [ ] Father [ ]							
Should the child support be recalculated due to the derivative benefit	70	No					

G. Total Adjusted Monthly Child Support Obligation						
G1 Parent owing the combined child support amount	71	NA	73	NA		
G2 Parent credited the derivative benefit	72	NA	74	NA		
G3 Payable to Mother [ ] Father [ ]					75	NA

Sole/Shared Guideline Worksheet

Guideline Calculation		Mother				Father			
Number of Children		1	4						

A. Income

A1 Monthly Gross Income	2	$1,257.00			8	$1,570.00			
A2 Adjustments for Spousal Support	3	$0.00			9				
A3 # of other children residing with the party									
A4 Mother _____ Father _____	4	$0.00			10	$0.00			
A5 Other child support obligations	5	$0.00			11	$0.00			
A6 Combined Monthly Available Gross Income	6	$1,257.00	+		12	$1,570.00	14	$2,827.00	
A7 Percentage of combined gross income	7	44%			13	56%	15	$955.00	
A8 Per child guideline schedule amount							16	$238.75	

Sole Child Support Needs

B1 Sole Custody: # of children		17	2						
B2 Sole Custody: pro rata basic child support obligation							20	$477.50	
B3 Sole Custody: child support obligation	18	$212.32			19	$265.18			
B4 Payable to: [Mother]							21	$265.18	

C. Shared Child Support Needs

		Mother				Father			
C1 Shared Custody: # of children		22	2						
C2 Shared Custody: pro rata basic child support obligation	23	$477.50			30	$477.50			
C3 1.4 Multiplier to line above	24	$668.50			31	$668.50			
C4 Total # of days each year parent has custody of child(ren)	25	225			32	140			
C5 Each parent's custody share	26	62%			33	38%			
C6 Shared Custody basic support obligation owed to the other parent	27	$256.41			34	$412.09			
C7 Parent's Shared Custody Support Obligation owed to other parent	28	$114.01			35	$228.86			
C8 Net Shared Custody Support Obligation	29	$114.01	-		36	$228.86	37	$114.85	
C9 Payable to Mother [X] Father [ ]									

D. Health Care/Work-Related Day Care Calculation

		Mother				Father			
D1 Father's cost for health care coverage	38	$0.00			44	▓▓▓			
D2 Mother's cost for health care coverage	39	▓▓▓			45	$0.00			
D3 Father's cost for work-related daycare	40	$0.00			46	▓▓▓			
D4 Mother's cost for work-related daycare	41	▓▓▓			47	$0.00			
D5 Total = Line D1+Line D2+Line D3+Line D4	42	$0.00			48	$0.00			
D6 Parent's net obligation to the other (Line D*Line A7)	43	$0.00			49	$0.00			
D7 Payable to Mother [ ] Father [ ]							50	$0.00	

E. Combined Child Support Amount

		Mother				Father			
E1 Parent owing the sole custody support obligation	51	$0.00			55	$265.18			
E2 Parent owing the net shared custody support obligation	52	$0.00			56	$114.85			
E3 Parent owing the net health care/work-related day cost	53	$0.00			57	$0.00			
E4 Calculate: Add E1+E2+ E3 in each column then subtract the amounts	54	$0.00	-		58	$380.03	58	$380.03	
E5 Payable to Mother [X] Father [ ]									

F. Adjustment for Parent's SSDI derived benefit paid to other parent

F1 Mother's SSDI derivative benefit paid to the father	59	$0.00			61	▓▓▓			
F2 Father's SSDI derivative benefit paid to the mother	60	▓▓▓			62	$0.00			
F3 Net SSDI derivative benefit							63	$0.00	
F4 Credited to: Mother [ ] Father [ ]									
Should the child support be recalculated due to the derivative benefit	[No]								

G. Total Adjusted Monthly Child Support Obligation

G1 Parent owing the combined child support amount	64	NA			66	NA			
G2 Parent credited the derivative benefit	65	NA			67	NA			
G3 Payable to Mother [ ] Father [ ]							68	NA	

Exhibit C

Split/Shared Guideline Worksheet

Guideline Calculation		Mother			Father			
Number of Children		1		5				
A. Income								
A1 Monthly Gross Income	2	$1,257.00		8	$1,570.00			
A2 Adjustments for Spousal Support	3	$0.00		9				
A3 # of other children residing with the party								
A4 Mother 0 Father 0	4	$0.00		10	$0.00			
A5 Other child support obligations	5	$0.00		11	$0.00			
A6 Combined Monthly Available Gross Income	6	$1,257.00	+	12	$1,570.00	14	$2,827.00	
A7 Percentage of combined gross income	7	44%		13	56%	15	$1,051.00	
A8 Per child guideline schedule amount						16	$210.20	

Split Child Support Needs		Mother			Father			
B1 # of children Mother has sole custody of & Father owes support for:	17	▓		23	1			
B2 # of children Father has sole custody of & Mother owes support for:	18	2		24	▓			
B3 Split Custody: Parent's pro rata basic child support obligation	19	$420.40		25	$210.20			
B4 Split Custody Child Support Obligation	20	$186.93		26	$116.74			
B5 Split Custody Net Support Obligation	21	$186.93	-	27	$116.74	28	$70.19	
B6 Payable to Mother [ ] Father [X]						29	$70.19	

C. Shared Child Support Needs		Mother			Father			
C1 Shared Custody: # of children		30	2					
C2 Shared Custody: Parent pro rata basic child support obligation	31	$420.40		38	$420.40			
C3 1.4 Multiplier applied to the line above	32	$588.56		39	$588.56			
C4 Total # of days each year parent has custody of child(ren)	33	137		40	228			
C5 Each parent's custody share	34	38%		41	62%			
C6 Shared Custody basic support obligation owed to the other parent	35	$367.65		42	$220.91			
C7 Parent's Shared Custody Support Obligation owed to other parent	36	$163.47		43	$122.69			
C8 Net Shared Custody Support Obligation	37	$163.47	-	44	$122.69	37	$40.79	
C9 Payable to Mother [ ] Father [X]								

D. Health Care/Work-Relaed Day Care Calculation		Mother			Father			
D1 Father's cost for health care coverage	38	$0.00			▓			
D2 Mother's cost for health care coverage		▓		42	$0.00			
D3 Father's cost for work-related daycare	39	$0.00			▓			
D4 Mother's cost for work-related daycare		▓		43	$0.00			
D5 Total = Line D1+Line D2+Line D3+Line D4	40	$0.00		44	$0.00			
D6 Parent's net obligation to the other (Line D*Line A7)	41	$0.00		45	$0.00			
D7 Payable to Mother [ ] Father [ ]						46	$0.00	

E. Combined Child Support Amount		Mother			Father			
E1 Parent owing the basic monthly amount per split custody		$70.19			$0.00			
E2 Parent owing the net basic monthly amount per shared custody	47	$40.79		50	$0.00			
E3 Parent owing the net health care/work-related day cost	48	$0.00		51	$0.00			
E4 Calculate: Add E1+E2 +E3 in each column then subtract the amounts	49	$110.98	-	52	$0.00	56	$110.98	
E5 Payable to Mother [ ] Father [X]								

F. Adjustment for Parent's SSDI derived benefit paid to other parent		Mother			Father			
F1 Mother's SSDI derivative benefit paid to the father	53	$0.00			▓			
F2 Father's SSDI derivative benefit paid to the mother		▓		54	$0.00			
F3 Net SSDI derivative benefit						55	$0.00	
F4 Credited to: Mother [ ] Father [ ]								
Should the child support be recalculated due to the derivative benefit		[No]						
G. Total Adjusted Monthly Child Support Obligation								
G1 Parent owing the combined child support amount	56	NA		58	NA			
G2 Parent credited the derivative benefit	57	NA		59	NA			
G3 Payable to Mother [ ] Father [ ]						60	NA	

PROPOSED LEGISLATION for MIXED CUSTODY CHILD SUPPORT CASES

Add following paragraphs as new §20-108.2(G) (4), (5) and (6) after the shared custody section (G) (3) as follows:

"4. Multiple shared custody support. In cases with different shared custody arrangements for two or more minor children of the parties, the procedures in subdivision G 3 as well as the definitions in §20-108.2 shall apply except that one shared guideline calculation shall be used to determine the amount of child support owed by one parent to the other by:

(a)   Adding the total number of days for each child of the parties for each parent and dividing that total number of days by the number of children.

(b)   Using the average number of shared custody days determined in subsection (a) above for each parent to determine the child support paid in accordance with the provisions of subdivision G 3 using the total number of children.

5. Sole and shared custody support. In cases where one parent has sole custody of one or more minor children of the parties and the parties share custody of one or more other minor children of the parties, the procedures in subdivisions G 1 and G 3 as well as the definitions in §20-108.2 shall apply—except that one sole guideline calculation and one shared guideline calculation shall be used to determine the amount of child support owed by one parent to the other by:

(a)   Calculating the sole custody child support obligation by:

    i.   Calculating the per child monthly basic child custody support obligation by determining for the number of children the scheduled monthly basic child support obligation and dividing that amount by the number of children.

    ii.   Calculating the sole custody pro rata monthly basic child support obligation by multiplying the per child monthly basic child support obligation determined in subsection (i) above by the number of children subject to the sole custody support obligation.

    iii.   Applying the sole custody pro rata monthly basic child support obligation to the procedures in G 1.

(b)   Calculating the shared custody child support obligation by:

    i.   Calculating the per child monthly basic child custody support obligation by determining for the number of children the scheduled monthly basic child support obligation and dividing that amount by the number of children.

    ii.   Calculating the shared custody pro rata monthly basic child support obligation for each parent as the noncustodial parent by multiplying the per child monthly

basic child support obligation as determined in subsection (i) above by the number of children subject to the shared custody support obligation for whom physical custody is with the other parent.

    iii.   Applying the shared custody pro rata monthly basic child support obligation to the procedures in subdivision G 3, which includes using the shared custody multiplier.

  (c)   Determining the total amount of child support owed by one parent to the other. Where one parent owes both the sole and shared obligations to the other parent, total both obligations calculated in subsections (a) and (b) above. Where one parent owes one of the calculations and the other parent owes the other calculation to the other parent, the parent owing the greater calculation to the other parent shall pay the difference between the calculations to the other parent.

6. Split and shared custody support. In cases where the parents have split custody of two or more children and there is a shared custody arrangement with one or more other minor children of the parties, the procedures as set forth in subdivisions G 2 and G 3 as well as the definitions in §20-108.2 shall apply to this subdivision—except that one split guideline calculation and one shared guideline calculation shall be used to calculate the amount of child support owed by one parent to the other by:

  (a)   Calculating the split custody child support obligation by:

    i.   Calculating the per child monthly basic child custody support obligation by determining for the number of children the scheduled monthly basic child support obligation and dividing that amount by the number of children.

    ii.   Calculating the split custody pro rata monthly basic child support obligation for each parent as the noncustodial parent by multiplying the per child monthly basic child support obligation as determined in subsection (i) above by the number of children subject to the split custody support obligation for whom physical custody is with the other parent.

    iii.   Applying the split custody pro rata monthly basic child support obligation for each parent to the procedures in subdivision G 2.

  (b)   Calculating the shared custody child support obligation by:

    i.   Calculating the per child monthly basic child custody support obligation by determining for the number of children the scheduled monthly basic child support obligation and dividing that amount by the number of children.