

Letter Commenting on Support Guidelines

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BY FACSCIMILE AND FEDERAL EXPRESS

Patricia A. Miles, Esquire
Counsel, Domestic Relations Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

Re: Comments on Recommendation 67: Support Guidelines Review

Dear Ms. Miles:

The Women's Law Project opposes adoption of Recommendation 67 because the cumulative effect of the revisions to the support guidelines is to significantly reduce support paid for children, while generating extensive amounts of costly support and custody litigation. While Pennsylvania is required to review its child support guidelines every four years, revisions are required *only if necessary to the determination of appropriate child support awards*. 45 C.F.R. § 302.56(e) (2003). As discussed below, the proposed changes do not result in appropriate child support awards. To the contrary, as a result of reductions in the schedule, an increase in the Self Support Reserve (SSR), and changes in the custody adjustment, the proposed guidelines sharply reduce support for low-income single parents and their children.

The Women's Law Project, a public interest law firm dedicated to improving the lives of women and their children, comments from the perspective of decades of experience working with single parents striving to provide for their children. We were key players in the original implementation of support guidelines in Philadelphia and have regularly commented upon proposed revisions to the statewide guidelines. We have a long history of advocacy on child support issues, including litigation and policy work with the Philadelphia Family Court. Through our Telephone Counseling Service, we learn first-hand about the impact of support policies and procedures on parents pursuing support through the courts.

I. The Guidelines Should Not Reduce Child Support

A. Recommendation 67 Sharply Reduces Support for Children in Low Income Families

Recommendation 67 both downwardly revises the awards generated by the grid and increases the amount of money to be retained by the non-custodial obligor. The effect of the downward shift to the grid is to reduce the amount of support to be paid in most cases involving low income parents where the parties' combined net incomes are between 0 and \$1750 per month, an average decrease of 38%. While the new grid results in significant decreases in support for upper income families as well, the impact for low income single parents with little to begin with, is most severe.

To illustrate the impact of the proposed guidelines revisions on low income families, we have hypothesized an example in which the obligor's net income is \$750 per month, the custodial parent earns net income of \$300 per month, and there are 3 minor children. Table 1 below reflects a comparison of total child support, relative parental shares of that support (based on relative net income), and amounts retained by each parent for the support of themselves and the children under the current and proposed guidelines.

In this example, the current schedule sets the support amount at \$184 per month. Under the grid for the proposed guidelines, however, child support is reduced to \$50 per month, resulting in a loss of \$134 per month or a 73% reduction in support. This loss of support *by itself* will have drastic consequences for low income children.

Even more troubling, however, is the fact that , with the increase in the Self Support Reserve (SSR) under the proposed rule, the support awarded to the children in the above example is more likely to be \$0. Proposed Rule 1910.16-2 (e)(1)(A) of Recommendation 67 would increase the SSR for the obligor from \$550 per month to \$748 per month. As set forth in proposed Rule 1910.16-2 (e)(1)(C), the court may award support in the above example "only after consideration of the obligor's actual living expenses," which the proposed Explanatory Comment to the rule suggests will lead to a minimal or \$0 support obligation:

The guidelines assume that at this income level the obligor is barely able to meet basic personal needs. In these cases, therefore, entry of a minimal order may be appropriate. In some cases, it may not be appropriate to order support at all.

Explanatory Comment to Proposed Rule 1910.16-2 (e)(1)(C). The result is that the court is not likely to award support in the example. In fact, application of this rule may eliminate support in most cases in which the obligor's income falls below \$748 per month.

Some courts, however, may continue the practice of straightforward application of the grid without focusing on the narrative instructions contained in the rule, a practice anecdotally noted to take place in many counties, most often as a matter of practical expediency. These differing applications will lead to unpredictable amounts of child support for Pennsylvania's poorest families, even though they are similarly situated to one another. Such an outcome directly contravenes the intent of support guidelines to assure that similarly situated families have similar amounts to live on. There is no question that either application of the proposed guidelines will substantially and adversely affect very low income families.

Table 1. Comparison of Child Support Under Current and Proposed Guidelines, Assuming 3 Children, Net Income to Non-Custodial Parent of \$750 per Month and Net Income to Custodial Parent of \$300 per Month.			
	Current Guidelines, Application of Grid	Proposed Guidelines, Application of Grid	Proposed Guidelines, Application of Rule
Total Child Support	\$184	\$50	\$0
Amount of Support Owed by Non-Custodial Parent	\$184	\$50	\$0
Amount of Support Attributed to Custodial Parent	\$0	\$0	\$0
Non-Custodial Parent's Net Income After Paying Child Support	\$566	\$700	\$750
Custodial Parent's Total Dollars to Support Self and Children	\$484	\$350	\$300
Percentage of Total Dollars (After Child Support) Retained by Non-Custodial Parent	54%	67%	71%
Percentage of Total Dollars Available to Custodial Parent and Children	46%	33%	29%

While there is no dispute that the obligor must have money on which to live, no similar protection is afforded to custodial parents and children. No SSR is provided to the custodial parent, who is also obligated to support the children. The SSR then weighs in favor of the obligor over children. *See* Marsha Garrison, *Child Support Policy: Guidelines and Goals*, 33 FAM. L. Q. 157, 162 (1999). Providing only the obligor with an SSR undermines the goal of the guidelines to support children. While the non-custodial parent in our example retains \$748 a month to live on, the custodial parent and the three children are left with \$300 per month on which to survive.

Elimination of the SSR and the associated shaded area of the grid would result in a more equitable outcome for the children. For purposes of discussion, we rely on the same example – a family with 3 children, where the non-custodial parent has a net monthly income of \$750 and the custodial parent has a net monthly income of \$300 – and illustrate our results in Table 2 below.

Disregarding the SSR (and therefore calculating support based on both parents' incomes), the current guidelines for this example set total support at \$367; the non-custodial parent would contribute 71% of this amount, or \$261 in support, leaving him or her with \$489 to live on and providing the custodial parent with \$561 (\$300 in net monthly earnings, from which \$106 is allocated to child support and the \$261 in child support from the non-custodial parent) to support him or herself and the three children.

Under the proposed guidelines (but again disregarding the SSR and counting both parents' income), child support would be decreased to \$278 per month; the non custodial parent would contribute \$197 to child support, leaving him or her with \$553 per month to live on. The custodial parent would have \$497 to support her or himself and the children (\$300 in net monthly earnings, from which \$81 is allocated to child support, and the \$197 in child support from the non-custodial parent.)

Either of these scenarios represents a more equitable allocation of available resources than application of the proposed SSR, and therefore we favor elimination of the SSR altogether. Because the new grid results in a 25% reduction in child support in this example and is likely to produce similar reductions in other scenarios, we also oppose the downward revision of the guidelines.

<p style="text-align: center;">Table 2. Comparison of Child Support Under Current and Proposed Guidelines, Disregarding the SSR and Counting Both Parents' Income. Assumptions: 3 Children, Net Income to Non-Custodial Parent of \$750 per Month and Net Income to Custodial Parent of \$300 per Month.</p>		
	Current Guidelines, Without Application of SSR and Shaded Area	Proposed Guidelines, Without Application of SSR and Shaded Area
Total Child Support	\$367	\$278
Amount of Support Owed by Non-Custodial Parent	\$261	\$197
Amount of Support Attributed to Custodial Parent	\$106	\$81
Non-Custodial Parent's Net Income After Paying Child Support	\$489	\$553
Custodial Parent's Total Dollars to Support Self and Children	\$561	\$497
Percentage of Total Dollars (After Child Support) Retained by Non-Custodial Parent	47%	53%
Percentage of Total Dollars Available to Custodial Parent and Children	53%	47%

The practical result of the proposed application of the SSR is to drive custodial parents and their children onto public assistance. When AFDC was an entitlement, it provided guaranteed income and was therefore a reliable option under this scenario. Since the implementation of TANF, however, public assistance is no longer an entitlement. TANF is limited to 5 years and imposes significant employment and training requirements on adult recipients with the goal of pushing people into self-sufficiency. Since 1998, the number of PA families receiving TANF has dropped from 140,446 to 81,832. Families who have left TANF are not necessarily employed, employed steadily, or receiving a living wage; moreover, research into this population reveals multiple barriers to employment. MDRC, Summary Report, Welfare

Reform in Philadelphia: Implementation, Effects, and Experiences of Poor Families and Neighborhoods, 17-18 (September, 2003). While Pennsylvania has been generous in developing programs to continue assistance after the time limit, there is no guarantee that these programs will continue with Congress debating the future of TANF. Therefore, support policies and procedures cannot be developed based on the assumption that custodial parents and children will be able to fall back on public assistance. Rather, they must be designed to provide adequate support on their own.

B. The Proposed Regulations Will Overwhelm Litigants and Courts with Support Litigation

If the proposed guidelines are implemented, current obligors can be expected to seek reductions in their support obligations. These petitions will overwhelm courts and force custodial parents into costly litigation in their efforts to preserve current support levels for their children. To the extent that the reduction is mandated by the revised grid and custodial parents have no basis for objecting to the reduction, the revision will penalize those with existing orders by reducing the children's established standard of living. This will work a profound and unjust hardship on those children who are most vulnerable and in need of support.

II. The "Substantial or Shared Physical Custody" Reduction Should Not Be Changed

Proposed Rule 1910.16-4 (c) makes two changes to the way in which direct expenditures by non-custodial parents during visitation are addressed: it changes the threshold for taking such expenditures into account from 40% of the time to 4 days and it shifts the method for counting time from overnights to increments as small as 4 hours. This represents a drastic change from current practice without any basis in research. It will also result in overwhelming increases in litigation regarding both custody and support and create a new arena for parental conflict, which is inconsistent with the public policy of this Commonwealth that all custody and support matters are guided by the best interest of the child.

A. There Is No Research Supporting the New Accounting Method

The premise for the changes made in the proposed rule is a dramatic shift in the underlying assumption for the guidelines, which were previously considered to assume that the obligor had regular contact with the children. The premise of the new rule is that, because the underlying economic data is drawn from expenditures by intact families, the guidelines do not take into account direct expenditures by the obligor. This reasoning is faulty. While the guidelines may be based on intact family expenditures, this does not automatically lead to the conclusion asserted in the rule that, "[w]hen the children are with the non-custodial parent, a portion of the costs normally expended for them by the custodial parent shifts to the non-custodial parent." Proposed Rule 1910.16-4 (c)(1). This premise is flawed, because it assumes that the custodial parent incurs fewer expenditures on behalf of the children when the children

are with the non-custodial parent. No such research is cited in Recommendation 67 and no research exists to support reductions or increases in costs by either parent or by how much:

There is an absence of credible studies on the impact of custody arrangements on expenditures for children, so we do not know how differing levels of parenting time affect a parent's direct childrearing costs. Jane Venohr, Robert Williams, *The Implementation and Periodic Review of State Child Support Guidelines*, 37 FAM. L. Q. 7, 33 (1999).

If a non-custodial parent incurs visitation related costs, the custodial parent's costs may not be likewise reduced. Rather, costs are simply duplicated in two households. In addition, costs are in fact likely to be variable and unpredictable. While some non-custodial parents may incur additional visitation related costs, others do not.

Reduction of the thresholds as proposed by the Recommendation 67 will have the effect of drastically reducing the support available to the custodial parent without basis, subjecting children to greater impoverishment.

B. The Proposed Custody Adjustment Will Generate Conflict and Litigation

The changes proposed by Recommendation 67 will engender increased support and custody litigation and force children to become witnesses in the ensuing legal battles, and overwhelm single parents.

This new proposal will give great incentive to non-custodial parents to ask for additional time with the children in order to reduce their support obligations, an incentive that runs directly counter to the best interests of the child. Many parents have custody orders that do not specify the details of visitation, sometimes failing to provide specific drop-off and pick-up times and locations and other times being vague about which weekends are to be used for visitation. Some parents keep children beyond the time permitted by the custody and visitation order and some fail to visit as provided at all.

All of these variables will likely lead to legal disputes about the exact amount of time the children spend with their non-custodial parent. With the possibility of counting 4 hour increments, the stakes are high and the outcome is guaranteed to be driven, not by the best interest of children, but by money. Once it becomes clear through lengthy and costly support proceedings that agreement often cannot be reached, parents will need to return to custody court in order to modify their custody orders to achieve the needed degree of specificity. Once they have achieved this objective, they will need to return to support litigation to assure that the support order reflects the custody order. The disputes that will arise will create acrimony and conflict in families and tie up the courts with endless litigation. For families in which there is domestic violence, the batterer's efforts to control the victim and children will create another

battleground for harassment. Neither families nor the courts can or should have to handle this overwhelming burden.

Thank you for your consideration of these comments.

Respectfully Submitted,

Terry L. Fromson

Dabney Miller