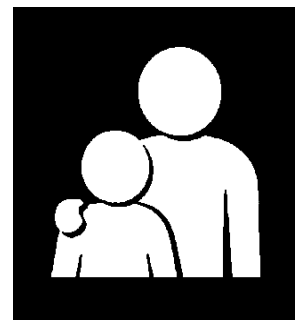


PACE

Parents And Children for Equality

Bulletin



Number 13

The "Best Parent" is Both Parents

September, 2002

Child Support Guideline Deviations: General Issues and Individualized Economic Analysis

In 1975, the first federal child support and paternity legislation was enacted as Title IV, Part D of the Social Security Act. Amendments to that act in 1984 required that each state develop child support guidelines that would serve an advisory function. Further amendments to the act in 1988 required that these guidelines be applied to establish presumptively correct levels of child support for divorce and paternity cases.

Current federal law (45 C.F.R. § 302.56) states:

(f) ... the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. ...

To comply with the federal requirement to establish criteria for a finding warranting a deviation, Ohio law lists 16 factors a court *may* consider in determining whether to order an amount of child support that deviates from the guideline amount, including the "catch-all" clause of "any other relevant factor." ORC §3119.23(A)-(P).

Despite the wide range of factors that could ground a deviation from guideline amounts, Ohio courts have been reluctant to order such deviations. According to a recent study commissioned by the Ohio Child Support Guidelines Advisory Council, less than 10% of Ohio cases between 1996 and 2000 involved deviations from guideline amounts. This study, conducted under the supervision of Professor John Guidubaldi of John Carroll University, found that less than 2% of these deviations were imposed by the courts.

One interpretation of the low incidence of deviations in Ohio child support cases would be that the guidelines, themselves, are so carefully crafted that deviations are seldom warranted. However this appears not to be the case. The Guidubaldi study found, for example, that while "(e)xtended parenting time or extraordinary costs associated with parenting time" is one statutorily recognized deviation factor (ORC §3119.23(D),

deviations were ordered in only 24% of the cases of shared parenting involving significant periods of physical custody by the obligor. That is, in over three-quarters of the cases where parents were truly sharing parental responsibilities, the obligor was paying full, guideline child support—what would be presumed to be correct if she or he had *no* direct expenses on the children.

A number of factors are responsible for the low level of deviations in Ohio's child support orders. Factors limiting Ohio deviations:

1. *Judicial Misunderstanding:* Part of the explanation for the dearth of deviations is judicial misunderstanding of child support law.

a. Until recently, many Ohio judges and magistrates believed that guideline child support levels presumed "standard parenting time." (See *PACE Bulletin #1.*)

b. According to testimony before the Ohio Child Support Reform Shareholders' Group some judges are under the misimpression that Ohio will receive reduced federal funds if there are too many deviations from guideline amounts.

2. *Noncompliance with Federal Law:* Ohio law does not conform to the federal mandate that a finding that the guideline amount of child support would be unjust or inappropriate be *sufficient* to rebut the presumption established by the guidelines. While federal law requires that a child's best interest be considered in determining whether an amount of child support is unjust or inappropriate, Ohio establishes the best interest of the child as a separate, mandatory consideration in justifying a deviation. And, as Russell Steiner, former President of the Ohio Association of Domestic Relations Judges testified before a senate committee two years ago, Ohio judges have difficulty seeing how it can ever be in a child's best interest to "lower child support".

If Ohio courts were to realize that what they are calling "child support" is not the total support for children but only the amount transferred from one parent to the other, they would have less difficulty seeing how it could be in a child's best interest to lower this amount. A lowered transfer payment does not mean that there are fewer financial resources available to children. Frequently, it means that the financial resources are better distributed between the children's two homes. There is, then, an element of judicial misunderstanding in this factor, as well.

3. *Vagueness of deviation criteria, lack of specification of the basis for the guideline amounts and the unclarity about the effect of rebutting the presumption:* While Ohio law

specifies many deviation factors, these are vague and there is no indication of how these factors should affect a deviation decision. Furthermore, since Ohio law does not include any specification of the basis for the guideline amounts, attorneys do not have a strong basis for rebutting the presumptions. Finally, it is unclear what the legal effect of such a rebuttal is: after rebuttal, do the guideline amounts still provide a "starting point" for setting child support or do the guideline amounts "go away" when they've been rebutted, requiring the court to make a *de novo* determination of proper child support?

In arguing for a deviation in a client's child support transfer payment, an attorney must address the preceding factors that function to limit court ordered deviations. There is now a potentially useful tool in addressing one of the most difficult of these problems: challenging the appropriateness of the guidelines to the individual case.

R. Mark Rogers, an economic consultant with vast experience in the area of child support is offering, at a very affordable cost, economic analyses of the applicability of Ohio child support guideline assumptions to the circumstances of individual Ohio parents. Such analyses can serve as the basis for negotiated or litigated deviations from guideline amounts.

To learn more about this potentially useful service, visit Rogers' web site at:

www.GuidelineEconomics.com

or e-mail him at:

RMRogers@mindspring.com.

PACE believes that the key to promoting shared parenting is promoting a reasonable sharing of resources to provide for children. Because Ohio has still not enacted a parenting time adjustment, the only way to do this is to make a deviation argument. Having a sound economic evaluation strengthens such an argument.

After a summer hiatus, the PACE Bulletin is returning to its normal bi-monthly publication schedule.

All back issues are available at www.PACEgroup.org.

To be added or deleted from this list, please send e-mail to dhubin@pacegroup.org.

For more information on the Guidubaldi study commissioned by the Ohio Child Support Guidelines Advisory Council, see "Report to the General Assembly: Child Support Guidelines," March 2001, available upon request from the Ohio Department of Jobs and Family Services, Office of Child Support Enforcement.

Don Hubin, Bulletin Editor

This *PACE Bulletin* is distributed for educational purposes only. It does not constitute legal advice. © 2002 Parents And Children for Equality

A non-profit, tax-exempt educational organization supporting parents and children of divorce and separation

Parents and Children for Equality, Columbus Chapter, P.O. Box 16066, Columbus, OH 43216
(614)475-4292

PACEgroup.org