



FAMILY LAW PRACTICE

# ALERT

## PENNSYLVANIA'S NEW SUPPORT GUIDELINES

By Mark R. Ashton

The Pennsylvania support guidelines, much like our selection of a president, are subject to revision every four years. Drafts of proposed changes to the guidelines were published in July and December of 2008, and comment from the legal community and public was invited in each instance. But for more than a year now, we have been left to wonder how the guideline changes would look once finally completed.

The wait is over. On January 12, 2010, the Pennsylvania Supreme Court issued Order 519 amending the guidelines effective May 12, 2010. While the existing rules prevail until that date, since the changes in the guidelines are themselves a change in circumstance, any order issued between now and May 12 is subject to further amendment at that time. So for practical purposes, the guidelines are here today.

One of the major changes to the guidelines impacts child support for households with combined net incomes exceeding \$20,000 a month. Under the last set of guidelines, any case in which income exceeded \$20,000 was to be decided based upon proven expenses under the 1984 case of *Melzer v. Witsberger*. The data and calculations required to do a complete *Melzer* analysis were complicated and often produced wildly varying results from case to case and judge to judge. So a decision has been made to take the guideline grids to \$30,000 a month. Where income is higher than \$30,000, a formula is provided from which a presumptive amount of support may be calculated.

There are changes in the guidelines themselves, although our initial review of those changes do not portend much radical change. Here are some examples:

Combined Monthly Net Income	One Child	Two Children
\$10,000	\$1390 (old)	\$1840 (old)
	\$1385 (new)	\$1965 (new)
\$15,000	\$1741 (old)	\$2253 (old)
	\$1782 (new)	\$2319 (new)
\$20,000	\$2301 (old)	\$2877 (old)
	\$2144 (new)	\$3018 (new)
\$25,000	Melzer analysis required (old)	Melzer analysis required (old)
	\$2443 (new)	\$3389 (new)
\$30,000	Melzer analysis required (old)	Melzer analysis required (old)
	\$2756 (new)	\$3777 (new)

Many members of the bar are critical of what they see as an inherent stinginess in these guideline amounts. In each instance, where combined net income triples from \$10,000 to \$30,000 a month, the

amount of child support essentially doubles even though the parents presumably have much more free money (beyond their own core needs) to contribute to child support.

In cases where the income exceeds \$30,000 per month net, formulae are employed to calculate the support amount. Where one child is involved, the support will increase by 6.5 cents for each dollar of income beyond the \$30,000. In the case of two children, the support increases by 8 cents for each dollar over the \$30,000 threshold. So, if combined net monthly income was an astronomical \$50,000 per month, two children would warrant a monthly award of \$5,377. One child would warrant \$4,056.

Another significant area of change affects shared custody. Historically, to qualify for a discount from the standard guideline amount premised upon significant custodial time spent by the child(ren) with the non-primary parent, that parent had to have custody for 40 percent of the year or 146 nights. Reaching that threshold entitled the parent to a discount upon his share of the support amount by 10 basis points. Thus, if the father had the child 146 nights and earned 60 percent of the combined net income of both parents, his percentage obligation would be reduced by 10 basis points from 60 percent to 50 percent.

The new regime assumes that a parent who does not have primary custody still has the child 30 percent of the time or 109 nights. If that parent has less than that amount, support may be adjusted upward on the theory that the non-custodial parent is not paying his/her share. This concept did not make it into the rule itself; it is in the commentary to the rule so that the issue needs to be raised before the court and argued. As before, once the 40 percent custody level is attained there is a 10 basis point reduction. At 50 percent, it is a 20 basis point reduction. So if the non-custodial parent has 78 percent of the net income, the support will be 58 percent and not 78 percent. The new rules now state clearly that under no circumstances shall support of any kind be awarded to a spouse where the result would have the payee with more income than the payor. The commentary states that courts are to be less concerned about who has the child overnight and more focused upon what child expenses each parent is contributing.

Where each parent has primary custody of one or more children, it has now been clarified that in calculating the support amounts the court does not include the child support due to a parent as part of his/her income when doing the calculation for the other child or children. It is only that parent's net income before any child support award that is utilized.

In a rare case of the Rules of Civil Procedure reversing case precedent, the new rules state that mortgage adjustments in the amount of support for high mortgage cases shall only apply in cases where the parties are not yet divorced.

There are changes to the amount of spousal support and alimony pendent elite (pre divorce alimony) that warrant attention as well where the income of the couple exceeds \$30,000 a month net. In those cases, the commentary directs trial courts to apply the governing formula (30 percent to 40 percent of the difference in incomes depending upon whether there are minor children subject to support payments) but adds that the grounds to deviate from the guidelines recited in Rule 1910.16-5 as well and make a record of whether deviation was warranted. To that end, the commentary states that income and expense statements are to be filed in these cases so that the record may be developed.

Among the smaller changes worth mentioning, in low-income cases, the amount of income a person must have to support him or herself before a child support order may be entered has been raised. Orders must be tailored so that any obligor retains \$867 a month to support him or herself.

The use of earning capacity data (e.g., Dept. of Labor earnings reports) to calculate support orders is being discouraged. The use of this data is relevant only when the court finds that the obligor has willfully failed to secure employment consistent with abilities and that finding must be on the record. Earning capacity is to be based on a single full-time job rather than some hypothetical construct of how and when a person could work. The rule does not go so far as to exclude overtime or second job income from consideration in making an award where that income is actually paid. Whether this means that a litigant could decline additional hours or quit a second job and use that as a basis to seek a reduction in an order

premised upon historical overtime or supplemental employment is not really clear.

The guidelines themselves are appended to this summary with the following link:  
<http://www.aopc.org/OpPosting/Supreme/out/519ci.v.attach.pdf>

A new day begins...

For more information, please contact Mark R. Ashton at 610.458.4942 or [mashton@foxrothschild.com](mailto:mashton@foxrothschild.com) or any other member of the firm's [Pennsylvania Family Law Practice Group](#).

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