

Memorandum

To: Family Law Section of the State Bar
From: Jill O. Radwin, Staff Attorney, Child Support Commission
Date: 9/1/2009
Re: Low Income Deviation Section of the Worksheet and Data Entry Form

Family Law Section Members,

In advance of the low income deviation provision of 19-6-15(i) going into effect on Tuesday, September 1, 2009, I wanted to send you a memo regarding how to use the new low income deviation section of Schedule E or the Data Entry Form. In trying to be compliant with the wording of the statute, and in particular the minimum order requirements, we found some interesting results which we had not previously anticipated. I have tried to outline the basics and some of these possible unexpected results. If you have any additional questions, please feel free to contact me at radwinj@gaaoc.us.

Below is how the Low Income Deviation Section will appear on Schedule E and Section E of the Data Entry Form. It was designed with the assistance of the Electronic Worksheet Task Force. One member pointed out that we should provide some type of guidance as to whether the court's or the parties' deviation amount would be less than the minimum order amount (as set forth under the new low income deviation provision). If so, then the deviation amount would change to ensure that the minimum order amount was met.

Below is an example of the low income deviation provision of Schedule E (standard Excel version) without any dollar amounts entered. Also, note that the opt-in for the deviation must be checked in order for the calculation to occur and to appear on Line 10 and Line 13 of the Worksheet. As a reminder, the low income deviation, as with all of the other deviations, are discretionary. The court or the parties will have to opt-in, in order for the low income deviation to calculate.

NOTE: Low Income Deviation is entered as a positive number but treated as a subtraction when included with all other deviations. By use of this deviation, court or jury is not prohibited from granting an increase or decrease to the presumptive amount of child support by use of another deviation.				<u>Court or Jury Allowable Deviations</u> Only the Court or Jury may enter an amount under column (c) or (d).	
<input checked="" type="checkbox"/>	To request Low Income Deviation, click in box at left-check mark will display. Uncheck box to remove request. Continue to Line 1a.	(a) Mother	(b) Father	*(c) Mother	*(d) Father
1a.	Enter "Proposed Low Income Deviation amount" AS A POSITIVE NUMBER under noncustodial parent's column. Amount will be used unless Line 1b applies.	\$0.00	\$0.00	\$0.00	\$0.00
1b.	>If amount entered in Line 1a will make final child support obligation less than minimum order amount allowed when Low Income Deviation is granted, new deviation amount will display in Line 1b and be used in calculations. >If entry in Line 1a results in amount equal to or greater than minimum order allowed, Amount in Line 1a will automatically be used in the calculations.	\$0.00	\$0.00	\$0.00	\$0.00
<input type="checkbox"/>	DISCRETIONARY CHECK BOX FOR COURT OR JURY ONLY: Use to exclude or change deviation amount that displays in Line 1b. Enter "Discretionary amount allowed by Court/Jury" AS A POSITIVE NUMBER under noncustodial parent's column. (See Bubble Box for details.)				

As you will note from above, that the first line is the opt-in button: "To request Low Income Deviation, click in the box at left..."

1a. above is where the court or the parties will enter in the deviation amount. The parties can enter the amount in columns "a" or "b". If the parties have not entered anything in this area but the court wants to grant a low income deviation, the court may enter an amount in columns a or b, dependent on whichever parent is the noncustodial parent. In columns, "c" or "d," the court can override the proposed deviation amount entered by the noncustodial parent or the parties in agreement. If the court does enter an override amount in columns "c" or "d," then the court needs to check the bottom button which states: "Discretionary check box for court or jury only..."

1b. above is where the calculator will tabulate whether the deviation amount entered above is equal to or greater than the minimum child support order amount (which normally appears on line 13).

For example, the revised 19-6-15(i)(2)(B) provision allows that for the purpose of calculating a low income deviation, "the noncustodial parent's minimum child support for one child shall not be less than \$100.00 per month..." If the amount entered on Line 1a will make the final child support obligation amount less than \$100 for the noncustodial parent, a new deviation amount will appear here. Yet, if the amount in line 1a provides an order amount that is greater than \$100, the amount entered in Line 1a will be used in the calculation. Note, the calculator is taking the minimum order amount, such as \$100 for one child, and subtracting that amount from the presumptive amount of child support to ensure that the deviation amount listed in line 1a is that amount or a greater amount.

Yet, here are some interesting scenarios:

Scenario 1: Below is an example which demonstrates how the newly revised low income deviation works when the presumptive amount of child support is higher than or equal to the minimum order amount for the number of children in the case. This may be the typical case in which the court determines that the noncustodial parent would benefit from a low income deviation. Three children are included in this calculation. Please note that the new revisions allows that if there are three children, then the minimum order amount when calculating a low income deviation shall not be less than \$200.

Under this scenario, there are three children and the father is indicated as the noncustodial parent. Mother's income is minimum wage of \$7.25 per hour (\$1261.50/month). Father's income is \$2100 per month.

Child Support Worksheet - Enter amounts/data in yellow fields only. Calculations will automatically display in the appropriate white fields.					
Beside the numbers below, enter the Name and Birth Date of all Children for Whom Support is Being Determined in This Case					
Included	Name	Birth Date	Included	Name	Birth Date
1. <input checked="" type="checkbox"/>	Child 1		7. <input type="checkbox"/>	Child 7	
2. <input checked="" type="checkbox"/>	Child 2		8. <input type="checkbox"/>	Child 8	
3. <input checked="" type="checkbox"/>	Child 3		9. <input type="checkbox"/>	Child 9	
4. <input type="checkbox"/>	Child 4		10. <input type="checkbox"/>	Child 10	
5. <input type="checkbox"/>	Child 5		11. <input type="checkbox"/>	Child 11	
6. <input type="checkbox"/>	Child 6		12. <input type="checkbox"/>	Child 12	
Total Number of Children:		3	Noncustodial Parent		<input type="checkbox"/> Mother
					<input checked="" type="checkbox"/> Father

Schedule A - Gross Income	(a) Mother	(b) Father
If a parent receives TANF, click in box, check mark will appear; click again to remove check mark; otherwise leave blank. Do not include monthly TANF check amount as income.	<input type="checkbox"/>	<input type="checkbox"/>
Use Schedule A to enter Gross Income of each parent. Enter amounts/data in yellow fields on Calculations will automatically display in the appropriate white fields.		
Convert all amounts to a monthly average.		
1. Salary and Wages (Do not include means-tested public assistance, such as TANF or food stamps.)	\$ 1,261.50	\$ 2,100.00

How does this play out on the low income deviation section on Schedule E or Section E on the Data Entry Form if the noncustodial parent requests that the deviation amount be \$200?

NOTE: Low Income Deviation is entered as a positive number but treated as a subtraction when included with all other deviations. By use of this deviation, court or jury is not prohibited from granting an increase or decrease to the presumptive amount of child support by use of another deviation.				Court or Jury Allowable Deviations Only the Court or Jury may enter an amount under column (c) or (d).	
<input checked="" type="checkbox"/>	To request Low Income Deviation, click in box at left-check mark will display. Uncheck box to remove request. Continue to Line 1a.	(a) Mother	(b) Father	*(c) Mother	*(d) Father
1a.	Enter "Proposed Low Income Deviation amount" AS A POSITIVE NUMBER under noncustodial parent's column. Amount will be used unless Line 1b applies.	\$0.00	\$200.00	\$0.00	\$0.00
1b.	>If amount entered in Line 1a will make final child support obligation less than minimum order amount allowed when Low Income Deviation is granted, new deviation amount will display in Line 1b and be used in calculations. >If entry in Line 1a results in amount equal to or greater than minimum order allowed, Amount in Line 1a will automatically be used in the calculations.	\$0.00	\$497.79	\$0.00	\$497.79

In this example, \$200 as a deviation amount works as shown below on line 10 and 13 of the Worksheet below: The final child support obligation or order amount is \$498, rather than the presumptive amount of \$697.79. The amount of \$498 is greater than the \$200 minimum order amount allowed for three children.

9.	Presumptive Amount of Child Support Line 8 subtracted from Line 7.	\$ 419.21	\$ 697.79
The amount on Line 9 is the Presumptive Child Support Amount.			
		Mother	Father
10.	Deviations from Presumptive Child Support Amount Amounts from <i>Schedule E, Line 14</i> will automatically display. Deviation type(s) used: "Low Income Deviation"	\$ -	\$ (200.00)
11.	Subtotal (Line 9 plus Line 10)	\$ 419.21	\$ 497.79
12.	Social Security Payments (excludes Supplemental Security Income (SSI)) If a child receives Title II Social Security benefits as a dependent on a parent's account, enter that monthly amount here in that parent's column. If none, leave blank. (See <i>User Guide</i> .)	\$ -	\$ -
13.	Final Child Support Amount (rounded to a whole number) If the amount on Line 12 is equal to or greater than Line 11, the child support responsibility is met and no further obligation is owed.	\$ 419.00	\$ 498.00

However, the low income deviation may not be appropriate for every case. What if the allowed minimum order amount by the low income deviation provision is greater than the presumptive amount of child support?

Scenario 2: In this example, the minimum order amount as allowed by the revised low income deviation provision is larger than the presumptive amount of child support. Here, there are twelve children that the parents claim in this particular case. The father is the noncustodial parent. For the purpose of calculating child support when there are twelve children being claimed, the minimum child support order shall not be less than \$650.00. Yet, in this case, the presumptive amount of child support is \$603.33 which is less than the

minimum order amount. This may be a case in which the court will determine that the low income deviation is not appropriate. If the court wants to provide relief from the presumptive amount of child support, the court may want to consider another specific or nonspecific deviation.

Here is how this scenario plays out with twelve children included and the father is indicated as the noncustodial parent:

Beside the numbers below, enter the Name and Birth Date of all Children for Whom Support is Being Determined in This Case					
Included	Name	Birth Date	Included	Name	Birth Date
1. <input checked="" type="checkbox"/>	Child 1		7. <input checked="" type="checkbox"/>	Child 7	
2. <input checked="" type="checkbox"/>	Child 2		8. <input checked="" type="checkbox"/>	Child 8	
3. <input checked="" type="checkbox"/>	Child 3		9. <input checked="" type="checkbox"/>	Child 9	
4. <input checked="" type="checkbox"/>	Child 4		10. <input checked="" type="checkbox"/>	Child 10	
5. <input checked="" type="checkbox"/>	Child 5		11. <input checked="" type="checkbox"/>	Child 11	
6. <input checked="" type="checkbox"/>	Child 6		12. <input checked="" type="checkbox"/>	Child 12	
Total Number of Children:		12	Noncustodial Parent	<input type="checkbox"/>	Mother
				<input checked="" type="checkbox"/>	Father

The mother's income is \$800; the father's \$1261.50. See below:

<i>Schedule A - Gross Income</i>	(a) Mother	(b) Father
If a parent receives TANF, click in box, check mark will appear; click again to remove check mark; otherwise leave blank. Do not include monthly TANF check amount as income.	<input type="checkbox"/>	<input type="checkbox"/>
Use Schedule A to enter Gross Income of each parent. Enter amounts/data in yellow fields on Calculations will automatically display in the appropriate white fields.		
Convert all amounts to a monthly average.		
1. Salary and Wages (Do not include means-tested public assistance, such as TANF or food stamps.)	\$ 800.00	\$ 1,261.50

The noncustodial parent requests a deviation of \$150, but look what happens:

NOTE: Low Income Deviation is entered as a positive number but treated as a subtraction when included with all other deviations. By use of this deviation, court or jury is not prohibited from granting an increase or decrease to the presumptive amount of child support by use of another deviation.			Court or Jury Allowable Deviations Only the Court or Jury may enter an amount under column (c) or (d).		
<input checked="" type="checkbox"/>	To request Low Income Deviation, click in box at left-check mark will display. Uncheck box to remove request. Continue to Line 1a.	(a) Mother	(b) Father	*(c) Mother	*(d) Father
1a.	Enter "Proposed Low Income Deviation amount" AS A POSITIVE NUMBER under noncustodial parent's column. Amount will be used unless Line 1b applies.	\$0.00	\$150.00	\$0.00	\$0.00
1b.	>If amount entered in Line 1a will make final child support obligation less than minimum order amount allowed when Low Income Deviation is granted, new deviation amount will display in Line 1b and be used in calculations. >If entry in Line 1a results in amount equal to or greater than minimum order allowed, Amount in Line 1a will automatically be used in the calculations.	\$0.00	(\$46.67)	\$0.00	(\$46.67)
<input type="checkbox"/>	DISCRETIONARY CHECK BOX FOR COURT OR JURY ONLY: Use to exclude or change deviation amount that displays in Line 1b. Enter "Discretionary amount allowed by Court/Jury" AS A POSITIVE NUMBER under noncustodial parent's column. (See Bubble Box for details.)				

It indicates below that by choosing \$150, the deviation amount reverts to a negative \$46.67. The amount that will appear on line 13 becomes the \$650 minimum order amount if the low income deviation is opted in the above illustration. This would most likely not be what is sought by the noncustodial parent nor the court. Also, note that the negative \$46.67 displayed above converts to a positive number to correctly calculate the minimum order amount, which as demonstrated here is higher than the presumptive amount of child support.

See how this is displayed on both line 10 and line 13 on the Worksheet:

9.	Presumptive Amount of Child Support Line 8 subtracted from Line 7.	\$	382.67	\$	603.33
The amount on Line 9 is the Presumptive Child Support Amount.					
			Mother		Father
10.	Deviations from Presumptive Child Support Amount Amounts from <i>Schedule E, Line 14</i> will automatically display. Deviation type(s) used: "Low Income Deviation"				
		\$	-	\$	46.67
11.	Subtotal (Line 9 plus Line 10)	\$	382.67	\$	650.00
12.	Social Security Payments (excludes Supplemental Security Income (SSI)) If a child receives Title II Social Security benefits as a dependent on a parent's account, enter that monthly amount here in that parent's column. If none, leave blank. (See <i>User Guide</i> .)	\$	-	\$	-
13.	Final Child Support Amount (rounded to a whole number) If the amount on Line 12 is equal to or greater than Line 11, the child support responsibility is met and no further obligation is owed.	\$	383.00	\$	650.00

The inclusion of 12 children in this scenario may not be realistic for the majority of cases, but the same result can occur in cases with fewer children.

One further note, that in creating this new section for Schedule E of the electronic standard Worksheet and Section E of the electronic Data Entry Form, we are utilizing Visual Basic

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code and the capabilities of Excel to its maximum ability. You will notice that when selecting several of the buttons, such as when using the “opt in” and “opt out” features, there is a great deal of movement that one can see on the screen. There is nothing wrong with the computer or the Excel program. It is the employment of Visual Basic code and math calculations behind the numbers entered that causes this movement.