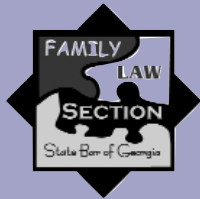


The Family Law Review

A publication of the Family Law Section of the State Bar of Georgia

July 2004



Executive Council

Richard M. Nolen, Chair
rnolen@wmbnclaw.com

Stephen Steele,
Vice-Chair
scs@mijs.com

Shiel Edlin,
Secretary-Treasurer
shiel@stern-edlin.com

Kurt A. Kegel,
Editor
kkegel@dmqlaw.com

David N. Marple,
Assistant Editor
dmarple@dmqlaw.com

Thomas F. Allgood Jr.,
Immediate Past Chair
tomallgood@augusta-lawyers.com

Members-at-Large

Christine C. Bogart
bogarlit@aol.com

Edward J. Coleman III
edward.coleman@psinet.com

John F. Lyndon
jlyndon@lawlyndon.com

Tina Shadix Roddenbery
troddenbery@kolaw.com

Carol Ann Walker
attywalker@mindspring.com

Karen Brown Williams
thewilliamsfirm@yahoo.com

Reflections on Child Support After the 2004 Institute: A Pro-Reform Perspective

by Daryl G. LeCroy
The Law Office of Daryl G. LeCroy

A positive aspect of the 2004 Family Law Institute was that almost a third of the program dealt with the issues of child support and alimony. There was a general feeling that change was in the air – despite the setbacks from the Georgia Supreme Court in the *Georgia Department of Human Resources v. Sweat, et al*, 276 Ga. 627(2003), and *Ward v. McFall*, Ga. Sup. Ct. No. S03A1365, cases.

Since the *Sweat* and *McFall* decisions, and the undisturbed Findings of Fact by Judges C. Dane Perkins and Sydney Nation, there is a growing awareness of the inequities of our current child support guidelines. Most attorneys now know that Georgia's guidelines were based upon a Wisconsin Study by Jacque Van der Gaag in 1982.¹ The guidelines were designed specifically for the recovery of welfare money in poverty cases and, while the Georgia Supreme Court has found them to be constitutional, they were never intended to be applied to a general population with incomes higher than about \$23,000 (in 2003 dollars).² As a result of the recent attention to the guidelines, including the efforts of organizations

such as Georgians for Child Support Reform, three bills were introduced in the 2004 General Assembly which would have vastly improved the equity and consistency of child support awards in Georgia.

However, since our current guidelines generally result in awards which not only are excessive, but frequently equate to undeclared alimony, attorneys who generally represent custodial parents prefer to keep the status quo.

Lyndon/Walker Presentation

John F. Lyndon of Athens and Carol Walker of Gainesville presented an excellent program on how to convince a court or a jury to utilize the special circumstances. The introduction to their paper notes their purpose:

Although the statute and case law provide obstacles to obtaining deviations from the guidelines, these materials are designed to provide you with assistance so that *you possibly can persuade* the judge (or jury) that a deviation from the guidelines might be justified. [emphasis added]

see Child Support on page 3

Inside This Issue

Note From the Chair	2	Child Support Reform Survey	17
Case Law Update	4	2004 Family Law Institute	26
Using Technology in Your Argument	8	The Editor's Corner	28

Note from the Chair

By Richard M. Nolen.

Warner, Mayouse, Bates, Nolen & Collar, P.C.

Dear fellow Family Law Section Members:

I would like to thank the following individuals for their efforts in making the 2004 Family Law Institute a success:

- Our board (they all worked so hard to make this program possible);
- The Supreme Court Justices (who shared their thoughts with us);
- The trial judges (from throughout the state, they help family lawyers);
- Our sponsors (they truly gave unselfishly to help the program);
- All of our speakers (they all worked very hard on their written materials and their presentations);
- All attendees (your presence was very much appreciated);
- Steve Harper with ICLE (he did a wonderful job);
- Brian Davis and all of the staff at ICLE (they put together a phenomenal technical program);
- Eileen Thomas (she is a "fundraiser extraordinaire" who helped raise all the money for the sponsorships);

- Judge Mel Westmoreland, John Lyndon, and Carol Walker (they formulated the concept of the interactive session and suggested it to me);
 - Randy Kessler (for coordinating several speakers and lining up the case law update);
 - Elizabeth Lindsey, Sandy Bair and Bob Boyd (they were a great source of information, and helped tremendously with the planning of the program);
 - Tom Allgood (he did a great job as chair of the section this past year);
 - My firm, Warner, Mayoue, Bates, Nolen & Collar, P.C. (the firm and the staff worked overtime to support the section this year);
 - Helen Mobley and Shannon Tucker (they spent the last year planning for the Institute almost every day);
- Most Importantly,
- My family – my wife, Alice; my son, Richard Jr., 4, and my daughter, Elizabeth, 1 (it was a long year – but I enjoyed it!)

Thanks again for helping to make the 2004 Institute a success.

Past Chairs of the Family Law Section

Thomas F. Allgood Jr.	2003-04	Hon. Elizabeth Glazebrook	1989-90
Emily S. Bair	2002-03	Barry B. McGough	1988-89
Elizabeth Green Lindsey	2001-02	Edward E. Bates Jr.	1987-88
Robert D. Boyd	2000-01	Carl Westmoreland	1986-87
H. William Sams	1999-00	Lawrence B. Custer	1985-86
Anne Jarrett	1998-99	Hon. John E. Girardeau	1984-85
Carl S. Pedigo	1997-98	C. Wilbur Warner Jr.	1983-84
Joseph T. Tuggle	1996-97	M.T. Simmons Jr.	1982-83
Nancy F. Lawler	1995-96	Kice H. Stone	1981-82
Richard W. Schiffman Jr.	1994-95	Paul V. Kilpatrick Jr.	1980-81
Hon. Martha C. Christian	1993-94	Hon. G. Conley Ingram	1979-80
John C. Mayoue	1992-93	Bob Reinhardt	1978-79
H. Martin Huddleston	1991-92	Jack P. Turner	1977-78
Christopher D. Olmstead	1990-91		

Child Support

Continued from page 1

The most obvious obstacle built into the guidelines is the requirement that the finder of fact include and state the amount of the presumptive amount or range of amounts in an order or verdict.

In the Lyndon/Walker materials, they include a jury verdict form that placed the rebuttal language at the end of the verdict, rather than at the beginning. The verdict form had more than 70 blanks to be considered and filled in by the jury. They also included a checklist for the initial determination of child support under our current guidelines, which had some 72 blanks to be filled in.

Lyndon and Walker repeatedly made the point that our guidelines do not, and should not, replace the substantive law in Georgia, which has been firmly established as need versus ability to pay³.

At the end of their paper, Lyndon and Walker make the following optimistic statement:

It may take a little more time and a little more work, but in the long run it [their approach] should provide us with support orders which are tailored to the individual facts of each case, not upon a presumptive range which may or may not meet the particulars of the case, balancing the needs of the children and the ability of the parents to pay.

In other words, they told us that if we worked very hard, and used all of their suggestions, we might be able to avoid the presumptive results of our current guidelines despite the obstacles in the statute and in the case law.

Congress and the Federal Mandate Intended and Expected States to Establish Guidelines Based on Need vs. Ability to Pay

Congress, in 42 U.S.C. § 667, and HHS, in 45 C.F.R. § 302.56, intended that state child support guidelines result in awards reflecting need and ability to pay. To be effective in setting appropriate awards, therefore, a guideline must yield outcomes consistent with need and ability to pay in most cases.

This goal requires guidelines to be based on economic data and case outcomes over the range of typical circumstances of divorcing and divorced parents and their children and be sufficiently sophisticated to limit the need to deviate to achieve fair awards. HHS thus requires that states analyze economic data on the cost of raising children and case data on the application of, and deviations from, their guidelines, and revise them “to ensure that deviations ... are limited.” 45 C.F.R. § 302.56(h) (2004).

Washington’s Court of Appeals has held that Congress intended appropriate child support awards to reflect need and ability to pay:

[The] legislative history...reflects that Congress was concerned that ...consideration must be given both to the needs of the child and the ability of the absent parent to pay....
In re Marriage of Gilbert, 945 P.2d 238, 243-244 (Wash. App. 1997).

The District of Columbia Court of Appeals, in invalidating D.C.’s original guidelines on the ground that a judicial rules committee exceeded its authority by adopting rules that changed underlying substantive law, held that guidelines based only on obligor gross income and number of children are inherently inconsistent with need and ability to pay. *See Fitzgerald*, 566 A.2d at 729-32. Read together, these decisions directly conflict with Georgia’s ruling that its guideline formula based only on obligor’s income and number of children satisfies the federal mandate to set appropriate awards.

In 1984, Congress amended Title IV-D to require participating states to study their child support systems, “giving particular attention to...the establishment of appropriate objective standards for support,” and to establish advisory child support guidelines. *See Child Support Enforcement Amendments of 1984*, Pub. L. No. 98-378, sec. 1, 15 & 18, 98 Stat. 1305, 1320-1 (1984) (codified as amended at 42 U.S.C. § 667).

The Senate report on the 1984 amendments reveals Congress’ intent that guidelines reflect need and ability to pay:

Present law. – Federal law ... does not ... address itself to the adequacy or reasonableness of support...

see Child Support on page 9

Georgia Case Law Update

by Sylvia A. Martin
Sylvia Martin, Attorney at Law

Alimony

Hipps v. Hipps,
2004 WL 1237060, S04F0842 (6/6/04)

Several years before the parties' marriage, the husband retired from the military. Upon their divorce, the trial court ordered the husband to pay monthly alimony to the wife until her remarriage or death, and also awarded the wife the right to any survivor's benefits available as a result of husband's service in the military. On appeal, the husband complained that the trial court erroneously awarded the survivor benefit to wife because any of his military retirement accounts would be non-marital and not subject to division. The Supreme Court disagreed and found that a court order awarding a survivor benefit is not a transfer of property but is in the nature of alimony in the form of an annuity. The Court found that because the benefit is contingent on the wife outliving the husband, determination of the present value of such benefit is impossible and thus renders the benefit a form of periodic alimony. Furthermore, the Court noted that the wife's right to receive such benefit terminated upon her death or remarriage, thereby reinforcing the characterization of such award as alimony rather than property division.

Bankruptcy

Daniel v. Daniel,
2004 WL 1144014, S04A0740 (5/24/04)

The final divorce decree provided that the husband pay the wife "\$3750 in 'alimony' for a 36-month period, and then \$1500 per month until her death or remarriage." The husband later attempted to have the award of \$3750 per month modified downward, which action was dismissed based on a finding by the trial court that such amount was lump sum alimony and thus nonmodifiable. When the husband refused to pay such sum to wife, she filed for contempt. When he was found in contempt,

the husband filed for bankruptcy. The bankruptcy court lifted the automatic stay for the trial court to determine whether the \$3750 per month was alimony and thus nondischargeable. The trial court found that such payment was for the maintenance and support of the wife and was not dischargeable in bankruptcy. The Supreme Court upheld the trial court's order finding that there was sufficient evidence to uphold the court's order. The Supreme Court held that the label in a decree is not dispositive of whether a payment is actually in the nature of support, or in the nature of a property settlement. In making such a determination, a trial court is allowed to look behind a judgment to determine from the facts and circumstances whether a payment in question was for a former spouse's support and maintenance, regardless of what it is labeled in the decree. In its decision, the Supreme Court cited the case of *Manuel v. Manuel*, 239 Ga. 685 (1977), and the case of *Horner v. Horner*, 222 BR 918 (S.D. Ga. 1998). The *Horner* case gives several factors a trial judge may consider when determining the true intent and purpose of certain payments between spouses. Said factors include the following: (1) the amount of alimony; (2) the need for support and relative income of the parties at the time of the award; (3) the number and ages of children; (4) the length of the marriage; (5) whether the obligation terminates upon death or remarriage; (6) the term of the obligation; (7) the age, health, education and work experience of the parties; (8) whether the payments are intended as economic security or retirement benefits; and (9) the standard of living during the marriage. Daniel at page 1704, citing *Horner* supra at 922.

Child Custody

Welch v. Welch,
596 S.E.2d 134 (Ga. 2004)

Right before she filed for divorce, the wife relocated to Greensboro, N.C., due to

the loss of her job in Rabun county. The main contested issue at trial was the custody of the parties' two children. The trial court found that both parents were able to adequately care for the children. After determining that joint custody would not work due to the parties' geographical distance from each other, the trial court awarded custody to the husband upon finding that the children's best interests were served by staying in Rabun county where they were actively involved, and that the children's lives would be least disrupted by awarding custody to the husband. The wife contended on appeal that the trial court erred by failing to consider evidence of family violence committed upon her by the husband that would obligate the court to consider the effect of such violence on the welfare of the children. The Supreme Court upheld the trial court's order and found that there was no specific finding of family violence. Although there was uncontroverted evidence presented of the husband's violence upon the wife, the Supreme Court held that there was sufficient evidence for the trial court to award custody to the husband and thus no abuse of discretion.

***Jones v. Burks*, 4 FCDR 1650; 2004 WL 1058441, A04A1109 (5/12/04)**

The parties in this custody action were the biological father and the maternal grandmother of the two minor children involved. The action was filed by the grandmother soon after the children's mother passed away. The father had maintained consistent contact with the children and legitimated them in the same cause of action. The trial court awarded custody of the children to the grandmother and found that such award was in the children's best interest, without any further findings. The Court of Appeals reversed the trial court's order and remanded the case, finding that pursuant to O.C.G.A. § 19-7-1 (b.1), the court order must have specific findings that the third party requesting custody (in this case the grandmother) has established by clear and convincing evidence the following: (1) that custody in the biological parent would physically or emotionally harm the children; and after meeting that burden, (2) that an award of custody to

such third party would best promote the children's health, welfare and happiness.

Child Support

***Bisher v. Jones*, 4 FCDR 1651; 2004 WL 1058436, A04A0999 (5/12/04)**

The mother filed a change of custody and child support action, seeking a modification of the award of joint physical custody in the original divorce decree to physical custody in her, visitation with the father and child support to be paid by the father. The juvenile court changed custody from joint physical custody to

physical custody in the mother. The superior court, in determining whether the father should pay child support, refused to award the mother any child support. The trial court also refused to delete a provision from the original decree that ordered the mother to turn over to the father the dependency payments received for the benefit of the children as a result of the father's receipt of social security disability benefits. The Court of Appeals found that because there was no transcript of the hearing, it had to conclude that the trial court was correct in awarding no child support. However, the Court of Appeals held that the trial court erred in refusing to change the provision concerning the social security payments as such benefit was clearly intended, under federal law, to be for the benefit of the children. Because the mother was awarded custody of the children, then she should be receiving the children's lawful benefits on their behalf.

***Eleazer v. Eleazer*, 4 FCDR 1520, 2004 WL 956145, S04F0432 (5/3/04)**

The wife appealed the trial court's application of the child support guidelines in



deriving the award of child support. In its order, the trial court found that the gross income of the husband was \$118,560, and that wife had no income at the time. The court in its order further noted that for two children, the range was 23 to 28 percent, and it applied 25 percent to husband's total income to derive the presumptive award of \$2,495 per month. The trial court noted the existence of four different special circum-



stances, including the husband's child support obligation for another child, the husband's obligation to provide health insurance, and the travel expenses the husband would incur traveling to Virginia to exercise visitation. Based on the existence of the special circumstances

enumerated, the trial court decided to vary downward from the guidelines in determining husband's child support obligation. The court ordered the husband to pay \$1562.50 per month, which was 25 percent of \$75,000. On appeal, the wife complained that the trial court improperly capped the child support award at \$75,000. The Supreme Court upheld the trial court's order, finding that such order did not indicate that the court was bound by the \$75,000 figure. The Supreme Court found that the definition in the guidelines of unusually high income to be in excess of \$75,000 is not meant to be a cap on awards but is merely a guideline for the trier of fact to use when determining the appropriate award under the circumstances of each case. In this case, the Supreme Court found that the trial court was proper in determining that, in light of all the circumstances then existing, a child support award based on a percentage of \$75,000 in annual income was fair.

***Southerland v. Southerland*,
2004 WL 1144051, S04F0101 (5/24/04)**

The Supreme Court found that the trial court was correct in finding that cash gifts made to the wife by her family were her

non-marital property. The evidence showed that the gifts were made to her alone and not to the parties and thus the order was supported by the evidence. The Supreme Court found that the trial court was correct in finding that various commercial properties that the wife purchased with funds given to her by her family were the wife's separate assets. The husband testified that he helped to find the properties and negotiate the sales price, but he presented no evidence of how such efforts contributed to the value or increase in value of such properties. Also, the husband testified that he participated in the construction of the marital residence, but there was no evidence of any marital funds being contributed to the residence, and thus, the trial court was found to be correct in awarding the marital residence to wife as her separate property. The Supreme Court found, however, that the trial court's order of child support was insufficient as the trial court included a finding of the husband's income but failed to include a finding of the wife's income. The case was remanded solely for the trial court to make a finding of the wife's income, to reconsider the award of child support based upon such finding and to enter a new child support award accordingly.

***Todd v. Todd*, 4 FCDR 1591, 2004 WL 953831, A04A0137 (5/5/04)**

After a hearing on the father's petition for a downward modification of child support, the trial court noted in its order certain findings of fact, including findings that the father was on permanent total disability with the Social Security Administration and received a certain amount each month as a result. The order further noted that the mother received dependency support from Social Security for the minor children as a result of the father's disability, which was paid directly to her. In determining the amount of child support, the trial court awarded the mother an amount that equaled 54 percent of the father's income, without written findings of special circumstances to support the award. The Court of Appeals reversed the trial court's judgment and remanded the case for further findings. Specifically, the trial court was directed by the Court of Appeals to include specific findings in its order as to the reason it was varying from the guidelines by awarding

more than the presumptive amount of child support.

Civil Practice-Jurisdiction

Conrad v. Conrad,
2004 WL 1237048, S04F0304 (6/7/04)

The parties lived in DeKalb county, Georgia, from 1995 until 1999 at which time the parties moved to South Africa due to the husband's job relocation. While in South Africa, the wife attended university there, and in 2002, the parties sold their residence in Georgia. The wife retained a Georgia driver's license and voter registration card, using her daughter's address for such documents. In 2003, the wife filed for divorce in DeKalb county, and the husband moved to dismiss based on lack of jurisdiction. The trial court held an evidentiary hearing on the matter of jurisdiction. The wife had submitted an affidavit that the move to South Africa was intended to be temporary and that she always intended to return to the Atlanta area to be closer to her children. However, attached to her affidavit, the wife submitted federal tax forms for 2001 that listed the couple's residence to be in South Africa and that they did not maintain a home in the United States at the time. Because of the contradictory evidence presented by the wife, the trial court construed the evidence most strongly against her as is allowed in a motion for summary judgment, and found that the wife had no intent to retain residency in DeKalb. Thus, the trial court dismissed the divorce action for lack of jurisdiction, which was upheld by the Supreme Court.

Cooke v. Cooke, S04F0347 (3/29/04)

The wife was a citizen of Great Britain, and the husband was a citizen of Ireland. The parties lived in Fulton County, Georgia, during their marriage from 1992 through 1999. The parties had a business in Georgia, owned a residence and raised their children in Georgia during that time. In 1997, the parties obtained permanent resident status in the United States. The wife and children moved back to Great Britain in 1999, while the husband continued to reside in Fulton County. The parties filed joint tax returns in Georgia for 2000, 2001 and 2002 and declared themselves to

be year-round residents of Georgia to the tax authorities. In 2003, the husband filed an action for divorce, which was dismissed by the trial court upon a finding that the wife was not subject to personal jurisdiction in Georgia and that Fulton County was not the proper venue. The Supreme Court reversed the trial court and found that the wife was subject to the domestic relations long-arm statute as she purposely availed herself of the privilege of maintaining a marital residence in Georgia, which was her last domicile before returning to Great Britain. As such, the Court found that the wife had sufficient minimum contacts with Georgia to allow the exercise of long-arm jurisdiction over her. The Court also found that venue was proper in Fulton County as the husband had continued to maintain his residence in that county.

Trial Practice

Wilson v. Wilson,
596 S.E.2d 392 (Ga. 2004)

The trial court refused to allow wife's counsel, after request, to make closing argument at the end of the parties' divorce bench trial. The Supreme Court held that such refusal by the trial court constituted reversible error. The Supreme Court found that Georgia takes an intermediate approach to the right to make closing argument. In some states, the right in a civil case is absolute, while in other states the right is only discretionary. In Georgia, parties have the right to make closing arguments in civil trials, but the court can limit the argument as to length and content. As part of its order, the trial court required the husband to employ the wife in his corporation at a stated salary and to continue the medical insurance benefits. The order stated that if the wife were terminated by the husband or his corporation for any reason, then the stated amount would convert to alimony. The Supreme Court found that in this case the requirement of one party to employ the other was acceptable but noted that upon the retrial of the case, the trial court should allow the wife to terminate her employment at any time without losing the right to receive the alimony thereafter. ♦

Using Technology to Make an Effective, Concise Argument

by Randy Kessler
Kessler & Schwarz, P.C.

Microsoft has developed a program known as PowerPoint and Corel has developed a similar program known as Presentations. For those of you that have used these programs before, this article may seem very rudimentary. However, some things are worth hearing and reading again. The biggest benefit of PowerPoint or Presentations is that it allows you to not only tell the court what you want, but to also show the court. Studies have shown that human beings learn much more visually than they do by hearing. PowerPoint-type programs can make it much simpler for the trier of fact to understand the point you are trying to make.

Before getting into any of the specifics of PowerPoint or Presentations, I want to clarify that the purpose of these type of programs is not to get things from your computer to a screen but rather to help you organize what you will put on the screen. Putting on a display has nothing to do with PowerPoint. Whatever you can see on your computer, you can project before the court. Please read that sentence again. If you have a financial affidavit on your computer in Excel or in spreadsheet fashion or in WordPerfect or some other program, if you can see it on your screen, you can connect a cord to a projector and project that image onto a screen for the court. This has absolutely nothing to do with PowerPoint. That one concept is probably the most important concept in this entire article. If you can download a picture or photograph onto your computer, it can be projected onto a screen. There are no boundaries to how you can use this to help your clients.

Now let me move on to more of the specifics (but not the technicalities) of PowerPoint and Presentations. These programs simply provide a format for you to organize your thoughts into slides. They are user-friendly and allow you, and in fact

encourage you, to narrow down the amount of words that you want to use so that when they appear on the screen they are concise and convey the essence of your argument. These programs also make it easy to transition from one slide or image to another. While I did say that you could put any image that you want on the screen, the benefit of PowerPoint or Presentations is that you can put many images on the screen and can transfer them from one program to another.

If you have purchased Microsoft Office or if it came with your computer, the good news is that you likely have PowerPoint. If you purchased Corel Office when you were purchasing WordPerfect, you likely already have Presentations. I would highly recommend that if you have either of these programs, you play around with them and learn how to use them by using the included self-guiding tutorials.

Finally, and most importantly, I want to reemphasize the benefit of telling and showing the court the point you want to make. When you have that one great line from a witness, why not repeat it to the judge verbally and visually. Why not show it during opening statement, or even closing argument and say it and show it at the same time. Think about it. When you hear a line such as "I did not have sex with that woman" do you not immediately have a mental picture? That's because we remember the vision of what we saw as well as the words we heard. Even if we are not technologically advanced enough yet to have a video of the person testifying, just putting the words on the screen (just as you have just read them) will make the point much more powerfully.

Please don't be afraid of technology. It is here to help and it is here to stay. ♦

Child Support

Continued from page 3

Committee Amendment. – Although the child support enforcement program has greatly strengthened the ability of children to have support orders established and collected, there remains a continuing problem ... to provide reasonable funds for the needs of the child in the light of the absent parent's ability to pay ... [T]he existence of the guidelines tends to assure that there is reasonable consideration given both to the needs of the children and the ability of the absent parent to pay...

... It is the view of the Committee ... that the very existence of a set of guidelines in each State will tend to improve the reasonableness and equity with which support orders are established.

Georgia's Supreme Court has never held that its guideline formula is consistent with need and ability to pay, and instead relegates that objective to deviations from the formula. *See, e.g. Eleazer v. Eleazer*, ___ Ga. ___, (2004) Ga. LEXIS 339 (Ga. Sup. Ct., May 3, 2004); *Betty v. Betty*, 274 Ga. 194, 552 S.E.2d 846 (2001); *Hoopendyl v. Reason*, 268 Ga. 194, 552 S.E.2d 750, 751 (1977); *Ehlers v. Ehlers*, 264 Ga. 10,11, 485 S.E.2d 840 (1994).

In contrast, the D.C. Court of Appeals has held that a guideline formula based only on obligor gross income and number of children, relegating all other factors to deviations from the formula, is inherently inconsistent with need and ability to pay, *Marriage of Gilbert*, 945 P.2d 238, 243-244 (Wash. App. 1997).

Georgia has never recognized Congress's intent that child support guidelines reflect need and ability to pay. In *McFall v. Ward*, No. 02-CV-2287 in Rockdale County, Georgia's Supreme Court, quoting 42 U.S.C. § 651, asserted that "the federal interest is in obtaining child support orders to enforce the obligations of non-custodial parents." Its opinion never mentions need and ability to pay. The 1991 report of Georgia's initial child support commission indicates that it similarly failed to consider need and ability to pay in recommending Georgia's originally enacted guidelines:

The purposes of child support guidelines and the purposes sought to be served by the

guidelines recommended to the Legislature by the Commission and largely enacted by the Legislature are:

- (a) Because of shortfalls in court orders, to increase the amount of child support being ordered;
- (b) To make awards more consistent (i.e., treat people similarly situated similarly); and
- (c) To improve the efficiency of court processes by enhancing ease of settlement and ease of adjudication.

Roddenberry/Gordon Presentation

In another presentation, Tina Shadix Roddenberry and Sarah T. Gordon gave a well-researched presentation on how to present evidence of special circumstances to try to get the court away from the guidelines. They still note, in their first paragraph, that:

"... the courts tend to blindly apply the guideline percentages to the obligor parent's income without serious consideration of the special circumstances."

Neither the Lyndon/Walker nor the Roddenberry/Gordon presentations gave any guidance as to how the trial court should vary from the guidelines upon the finding of a special circumstance. Implicit, however, in both presentations was the understanding that the guidelines are inequitable and good lawyers should be able to avoid them if we work hard enough, and presumably if our clients can afford the uphill battle.

Schiffman/Huddleston Presentation

Of all the programs on child support, by far the most entertaining and controversial was presented by Richard W. Schiffman and H. Martin Huddleston, both of Atlanta, and both with years of ICLE experience.

Schiffman and Huddleston seemed to believe that our current guidelines were acceptable and that real change should be strongly resisted. They seemed to assume that the attendees and the panel of judges would agree. They used humor and ridicule to criticize two of the pending child support bills before the General Assembly; the income shares model, House Bill 38, which is used by most states, and the cost shares model, or substitute Senate Bill 17.

When one of the judges on the panel was asked for his opinion, he responded that he was being asked to express an opinion on bills he hadn't studied and knew very little about. It seemed as if the judge was speaking for most of the 250 or so attendees. We didn't know either of the prospective bills, and we wanted to understand them.

The thrust of Schiffman and Huddleston's argument included three points:

First, they claimed that the two bills would require a math major or computer program to determine an amount. (They actually do involve some arithmetic and inexpensive software can be available, as it is in the 33 income shares states.)

Second, they claimed that the bills are not based upon valid economics and are designed to benefit obligors. (Our current guidelines do not have an economic basis, other than for collecting welfare payments in poverty cases, and then only if there is a self-support reserve, which there is not.)

The presenters and their supporters strongly want to retain the current guidelines because they benefit obligees. There are no economic studies that show child costs increase as a share of gross or net income – in fact all economic studies show that child costs decrease as a share of income as income increases⁴.

The cost shares model is based primarily on survey data by the U.S. Department of Agriculture as to what intact families spend on children. It assumes an equal duty of support by both parents, according to their ability to pay. It is further affected by the parenting time of the parties and considers the tax benefits accruing to the primary custodian. It has a self-support exclusion for the obligor, like the Wisconsin plan. (This is a feature Georgia omitted when she adopted the Wisconsin model.) The cost shares model also has self-support for the obligee, and is designed to be updated at least every four years in accordance with the federal mandate.

Third, they claim that the pending bills will reduce child support awards. The income and cost shares models reduce money *paid to the custodial parent*. They do

not reduce money expended on child costs if the custodial parent lives up to her/his *own obligation to support their children*, in accordance with O.C.G.A. § 19-7-2. Only the hidden alimony component is deleted.

Schiffman and Huddleston write:

The easiest approach to attacking the Basic Child Costs espoused by substitute Senate Bill 17 is to reject the amount of expenditures for children as inadequate. However, considerably more research on that subject had to have been taken into consideration in formulating the Basic Child Costs tables than was considered in establishing the obligor only percentages in the current guidelines.

Schiffman and Huddleston said they spent two hours determining an award amount using the cost shares method. Presumably they could become more proficient on their second attempt. They ridiculed the fact that an author of one of the bills had inputs into the software which could calculate the child support amount, as if such were somehow a bad thing.

The cost shares bill in the House was drafted by economist R. Mark Rogers – probably the most knowledgeable expert on child support costs and guidelines in the United States.⁵

In their argument that the two bills were too complex for lawyers, judges and juries to figure out, Schiffman and Huddleston noted that the cost shares model had 15 steps to arrive at a child support amount. These 15 steps to reach an equitable amount should, in all fairness, be compared to the 72 blanks in the Lyndon/Walker worksheet for our existing guidelines, which do not result in an amount of child support. More importantly, there are only a handful of actual inputs in typical cost shares cases. The needed and economically sound inputs for cost shares (such as income, parenting time shares, who pays for medical insurance, who gets which child-related tax benefits) are far fewer and more useful than the dozens of inputs currently required in the standard financial affidavit.

In their argument that these new approaches would result in lower child support awards, they noted the feature which would exclude 1.33 times the pover-

ty level to ensure that the obligor could have sufficient funds to live on.⁶ During legislative hearings, it was noted that the 133 percent was recommended by a federal panel, but a lower self support reserve can be chosen—such as one equal to the poverty level.

They noted a feature which would allow a ten percent reduction in support if the obligor exercised his or her visitation. Apparently they assume that all child costs are incurred by the custodial parent – an unlikely scenario. They noted a feature which would prevent a complete accrual of arrearage in the event the obligor lost his or her employment—an event with a significant impact on ability to pay.

The truth is that application of our present guidelines has resulted in such excessive awards for so many years that an economically appropriate award based upon both incomes, parenting time and appropriate sharing of tax benefits is not recognizable by most Georgia attorneys. We invariably compare alternative guideline outcomes to our current guidelines, as if they were valid and reasonable. We have now lived with a lie for so long that we believe it to be true. This encourages more jury trials because jurors, unlike judges, are more inclined to at least give the special circumstances as much weight as they give the guidelines because jurors have not lived with the guidelines for 15 years.

We have all fallen down the rabbit hole where we think fantasy is reality; where custodial parents and their counsels – as well as most judges – think outrageous awards are a sacred entitlement to custodial parents, lest we all be arrested by the P.C. police. It is time for us all to wake up. It is time for all of us to say in unison, “The Emperor has no clothes!”

We were told by the presenters that the Council of Superior Court Judges requested that we be asked the transponder questions and that they receive the results. The implicit statement by the Council of Superior Court Judges was: “We need feedback regarding what is required. Tell us what the lawyers would do.” We should tell them that the current pattern charges on special circumstances are inadequate. We should tell them that the current finan-

cial affidavit form collects irrelevant information and fails to collect relevant information in a fashion that bears any relationship to need vs. ability to pay, and that new, economically correct, guidelines will greatly reduce their need to make decisions.

While the presenters told us they spent two hours arriving at the correct amount based upon the cost shares method, with our current guidelines, we only get a presumptive award if we pick the midpoint of the range and ignore all 18 special circumstances. The Wisconsin study upon which our guidelines are based assumed the non-custodial parent (read: father) had no visitation other than the equivalent of a Saturday afternoon trip to the park (based on the “absent parent” mentality) and the custodial parent had no other income (based on the welfare mother mentality). However, in the typical case adjudicated in this state today, both parents have jobs and the non-custodial parent has at least 25 percent of the parenting time.⁷ Yet our guidelines give no guidance as to how to deviate from the presumption of no visitation for the non-custodial parent, no income for the custodial parent, or joint custody arrangements.

The guideline study also assumed the total income of the parties was \$12,000 per year, or about \$23,000 in 2003 dollars. The study stated that if the guidelines were to be applied at higher incomes, lower percentages should be used.⁸

The bottom line is that the presumptive amount at the middle of the range, or even at the low end, is generally higher than the total child costs, and becomes increasingly excessive as obligor income rises.

Schiffman and Huddleston tell us in their paper that our current guidelines make deviation mandatory wherever special circumstances are found.

In fact, substitute Senate Bill 17 discourages deviation, requiring that the Court may consider eleven reasons for deviation, whereas the current guidelines make deviation mandatory wherever special circumstances are found.

This is a misstatement of the law. Deviation from our current guidelines is

only permissible upon proof by a preponderance of the evidence that the existence of the special circumstance results in the presumptive award being excessive or inadequate. Yet our current guidelines provide no objective standard for making such a determination. More importantly lawyers do not know what to recommend, and judges generally do not deviate in the vast majority of such circumstances.

This is an illustration of how the Child Support Commissions have violated federal regulations by failing to conduct mandated studies to see how judges actually apply the guidelines and special circumstances.

Georgia has made no attempt to evaluate the impact these special circumstances have on just and appropriate child support awards or to revise its formula to account for them. The very fact that the existence of a special circumstance does not automatically require an adjustment to the presumptive award requires the trier of fact to exercise discretion in whether or not to deviate. However, the guideline statute offers no criteria for evaluating if the presence of a special circumstance makes a presumptive award calculated under its formula excessive or inadequate. The only factor other than obligor gross income and number of children Georgia has ever added as an automatic adjustment is the cost of life insurance maintained by the obligor for the benefit of the children. See O.C.G.A. § 19-6-34.

Schiffman and Huddleston apparently intended for the *coup de grace* in their presentation to be their questions for the audience, which we answered with transponders. A typical question would be, "What amount do you think the cost shares model would result in under the following facts?" The apparent expectation was that the attendee conclusions would be all over the map. Instead, since the audience didn't know how to use the cost shares program, they picked the answer which, intuitively, seemed fair and reasonable. To the apparent disappointment of the presenters, for all of the questions, the attendees' majority answer was the correct cost shares model answer. This result was ironically an endorsement of the cost-shares bill by the

attendees, upsetting an apparent strategy designed by its opponents.

Why Have We Resisted Change?

It is very easy to see why the receivers of child support would oppose reform if such results in lower awards, but why do we find attorneys resisting such obviously needed reform?

For motive, we frequently look for where the money flows. If you are of the opinion that more child support is better child support, and you don't care how such affects the obligor or his or her new family, or, if you are a judge who may value simplicity over fairness and trust that they result in fairness, you have motivation to keep our present guidelines. However, as an advocate, you might also ask yourself, "Why should I spend two hours with another lawyer figuring out an appropriate amount of child support when I can spend fifty to a hundred hours litigating special circumstances with a biased presumptive range of possibilities?"

You Can't Get There From Here

So the federal government expected the guidelines to result in appropriate awards, more equitable awards, and that they be based upon need vs. ability to pay. Yet Georgia's first child support commission said they were to increase awards, make awards more consistent, and improve the efficiency of court processes. Georgia's guidelines certainly increased awards. They also made awards more consistent and improved efficiency as long as there were no deviations.

However, because our guidelines are biased toward unrealistically high awards, good attorneys are devising strategies for getting a fair award despite the guidelines. Thus only parties who can afford good lawyers and/or those who are fortunate enough to draw judges who may listen, will receive fair awards. The indigent, those without lawyers, and those subject to DHR, will suffer the unreasonable presumptive awards, making consistency impossible.

The Lyndon/Walker and Roddenberry/Gordon approach will be necessary until

we get new guidelines. However, these attorney time intensive approaches will guarantee different results for the same fact patterns across the state and will most likely result in more jury trials to avoid judges who will not deviate from the guidelines or consider them to be rebutted.

A person's success in overcoming the presumed amount will be directly related to the skill, preparation, and willingness to take flak, of his or her attorney.

Our Current Guidelines Are Fundamentally Flawed

From the questionnaires passed out at the seminar, there was an apparent attempt to have attendees indicate that our current guidelines should be "clarified." Yet because our guidelines have no valid economic basis other than collecting welfare money in poverty cases (after self support set-aside), no amount of "clarification" can make them economically rational or appropriate. After all, there is absolutely no economic study that shows child costs rising as a share of net income as net income increases. Child costs—according to all professional studies—actually decline as a share of net income.⁹ Our guidelines are the opposite of what economic studies show. The claim that the guidelines are valid has been nothing more than a dishonest façade for almost 15 years.

Most people resist change, but if something is clearly, irreparably broken we should replace it with the fairest available alternative. No one wants to replace something bad with something worse. We have seminars to discuss options and get information in order to guide bench, bar and lawmakers in plotting the future course of the law.

Regardless of legal theory, Georgia's guidelines daily work injustice in the lives of millions of individuals. Georgia's failure to ensure its guidelines result in appropriate child support awards causes irreparable harm to divorced parents who pay child support, and to their subsequent children.

The Pending Legislative Models Are Not Too Complex For Georgia Lawyers

According to the Schiffman/Martin presentation, the 15 steps that the cost shares method requires are way beyond the aver-

age lawyer's or judge's capability or tolerance. Yet, on the last day of the seminar, we heard an excellent presentation by Melvyn B. Frumkes on "Divorce Taxation Aspects of Property Transfers, Alimony and Child Related Exemptions, Credits and Deductions." While the subject is complex, it was felt that it was important enough for a half-day or a whole day at the next Institute.

It is clear that no economically appropriate guideline will be as simple as our current guidelines without deviations. They cannot be. The proposed income shares and cost shares guidelines are about average in complexity with the 33 states that already use income shares. Tennessee is currently switching from a Georgia type of obligor-only guideline to income shares. By the end of the year, Georgia will be the only state in the Southeast using obligor-only guidelines.

In light of the modern trend, we are left with the question: Are the judges and attorneys in the neighboring states smarter (or at least more progressive) than those in Georgia? Why is Georgia among the last states to reform its laws in this important field in light of the changed role of non-custodial parents? On one hand, the law strongly favors active roles for both parents in divided families, while on the other hand it treats active non-custodial parents as if they had little or no role in their children's lives. It is clearly appropriate for the child support law of this state to be consistent with the changing role of non-custodial parents and it is past time for Georgia to catch up with her neighbors.

It should also be understood that no economically appropriate guidelines will have awards as high as our current guidelines. Therefore, it can be expected that Schiffman and Huddleston or someone else would use the same arguments against any other models which might be proposed. Even the national advisory panel appointed by HHS in 1987 advised the states not to use the Wisconsin percentage of obligor income model, because it conflicts with child cost studies.

New, Economically Appropriate Guidelines Will Benefit Everyone

Children

With equitable guidelines, children will no longer be the financial prizes to be

fought over with the “winner takes all” system we now have.

Second Families

In the *Sweat* decision, our Supreme Court held: “Clearly, the Guidelines are designed to further the important and highly reasonable objective of ensuring that adequate support is provided for Georgia’s children whose parents have divorced or separated.” In contrast, the federal mandate states that their objective was to set “appropriate” child support awards. We interpret “appropriate awards” to mean appropriate for all concerned, including second families of obligors.¹⁰ The children of second families are not “children of a lesser god” and can also be supported when we have equitable guidelines. See *Gallaher v. Elam*, 2002 Tenn. App. LEXIS 94, *reversed*, 104 S.W.3d 455 (Tenn. 2003).

Courts

Economically appropriate guidelines will encourage settlement without protracted hearings or jury trials. Because it will be fairer, the establishment of a correct amount in an initial determination by consent or at a temporary hearing will tend to reduce not only jury and bench trials, but will also reduce modifications.

Federal Mandate

By adopting guidelines which result in an amount, rather than a range of possible amounts with 18 factors for possible deviation, Georgia will finally be in compliance with the federal mandate, which discourages deviations (and requires that regularly occurring deviation factors be incorporated into the guidelines presumptively).

Child Support Enforcement

A child support award that is perceived to be fair will be easier to collect because most people want to support their children, but they resent being unfairly treated by the system.

Lawyers

Our willingness to recognize the defects in our current guidelines and support their replacement will be something we can all be proud of, and will enhance our image in the eyes of the public. For us to choose the

status quo is to confirm to the public the stereotypical image of lawyers we would most like to dispel.

General Public

A predictable, fair child support award that results in a fixed amount that is perceived to be fair, will substantially reduce the cost of divorce for all cases involving children. In higher income cases, there will likely be more emphasis upon alimony after we have new guidelines.

Cost Shares = Uniformity and Fairness

While the oral presentation by Schiffman and Martin was highly critical of both the income shares and cost shares models before the legislature, their last paragraph before their conclusion is noteworthy:

The shared cost approach codified by substitute Senate Bill 17 is complex and would require the courts and attorneys to become far more knowledgeable as to tax issues such as child care credits and earned income credits. However, the calculation procedure and application of the worksheet would ensure precise and uniform application of the special circumstances that are now largely ignored under the current guidelines.

Isn’t this what we want? In fact, isn’t this one of the objectives of the guidelines? To insure their precise and uniform application throughout the state so people can know what to expect – even without huge attorneys fees or jury trials?

CONCLUSION

The last paragraph in “A Lawyer’s Creed” states:

To the public and our system of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

Under “General Aspirational Ideals,” it states:

As a lawyer, I will aspire:
(d) To preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.

Under our “Specific Aspirational ideals,” it states:

As to the public and our system of justice, I will aspire:

(c) To improve our laws and legal system by, for example:

- (3) Commenting publicly upon our laws; and,
- (4) Using other appropriate methods of effecting positive change in our laws and legal system.

We now have the opportunity, and the ethical duty, to improve the law. We owe it to our clients, to the public and to our profession. Changing our child support guidelines is the right thing to do. ♦

Endnotes

1. Jacques Van der Gaag, “On Measuring the Cost of Children,” *Child Support: Technical Papers, Volume III, SR32C*, Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982. Curiously, one of the issues raised in *Ward v. McFall* (Ga. Sup. Ct. No. S03A1365) but but ignored by the Supreme Court of Georgia was whether the guidelines comply with the federal requirement that guidelines be based on current economic data on the cost of raising children. One’s first impression is that Van der Gaag’s study is a little over 20 years old in terms of data on child costs. However, his study’s child cost figures were composites of a dozen earlier studies—he conducted no new, independent research. Most data were from the 1960s and 1970s. However, one study upon which Van der Gaag’s numbers are based comes from a 1950 publication by A. M. Henderson using 1937 data, and another study by S. Dubnoff using data from 1860 through 1909! Georgia’s guidelines are based on child cost data no less than 25 years old and in part as much as 140 years old. See Table 1 and References in Van der Gaag’s study.

2. The guidelines were never intended to be applied to more of the obligor’s gross income than was necessary for recovery of a modest welfare payment made to the mother. That there was intended to be a low ceiling for application to gross income, see *Institute for Research on Poverty, University of Wisconsin-Madison*. “Documentation of the Methodology Underlying the Cost Estimates of the Wisconsin Child Support Program,” *Child Support: Technical Papers, Volume III, SR32C, Special Report Series*, 1982, pp. 143-144. Essentially, the \$75,000 high income special circumstance O.C.G.A. Section 19-6-15 belies the intent that the ceiling should be closer to \$25,000 in annual gross income—and then lower percentages are economically appropriate (and only after setting self-support income aside).

3. O.C.G.A. § 19-6-1(c) (child support “is authorized, but is not required, to be awarded to either party in accordance with the needs of the party and the ability of the other party to pay”); O.C.G.A. § 19-6-15(a) (“the trier of fact shall specify in what amount and from which party the minor children are entitled to permanent support”); O.C.G.A. § 19-6-15(c)(10) (“a party’s own extraordinary needs” may be a special circumstance); O.C.G.A. § 19-6-15(c)(15) (“income of the custodial parent” may be a special circumstance); CSCJ Pattern Jury Instruction nos. II-L (7/91 version) (“Your duty is to allocate resources based upon need and ability to pay”) & II-K (3/95 version) (“Child support is a matter for you to fix and determine from the evidence taking into consideration the needs of the children and the parents’ ability to pay”); *Esser v. Esser*, 277 Ga. 97 (2003) (“the trial court [must] . . . determine whether [an agreed child support award] is sufficient based on the child’s needs and the parent’s ability to pay”); *Georgia*

Department of Human Resources v. Sweat, 276 Ga. 627, 631 (2003) (“The trial court is obligated to consider . . . the children’s needs and the parent’s ability to pay”); *Swanson v. Swanson*, 276 Ga. 566, 567 (2003) (when “parties enter into a settlement agreement . . . which includes an award of child support, courts remain obligated to consider whether the child support award is sufficient based on the needs of the child and the non-custodial parent’s ability to pay”); *Betty v. Betty*, 274 Ga. 194 (2001); *Hoodenpyl v. Reason*, 268 Ga. 10, 11 (1997) (“the trial court will be able to make a determination of support that best balances the children’s needs and the parent’s ability to pay”); *Arrington v. Arrington*, 261 Ga. 547 (1991) (“The trial court is obligated to consider . . . the children’s needs, and the parent’s ability to pay”); *Walker v. Walker*, 260 Ga. 442, 443 (1990) (“The trial court’s duty is to allocate resources based upon need and ability to pay”); *James v. James*, 246 Ga. 233 (1980) (the trial court may order the custodial parent to pay child support to the non-custodial parent to provide for the children’s needs on visitation with the non-custodial parent); *McClain v. McClain*, 237 Ga. 80, 83 (1976) (child support is subject to the court’s “wide discretion . . . taking into consideration the needs of the child and the station in life of the parties”).

4. Even before the guidelines were enacted, experts on the 1984 Federal Advisory Panel on Child Support stated that Wisconsin-style guidelines (fixed percentages of obligor gross income) should not be used as general presumptive guidelines because the presumptive awards rise as a share of net income and conflict with economic studies that show child costs decline as a share of net income. See Office of Child Support Enforcement, U.S. Department of Health and Human Services, entitled *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report*, September 1987. From page II-126, “Because the Wisconsin standard is designed as a constant percentage of gross income, it also has the effect of setting orders as an increasing percentage of net income, as obligor income rises. This effect is contrary to the economic evidence on actual child rearing expenditures.”

5. R. Mark Rogers is an economic consultant based in Peachtree City. He is the only economist to have served on any of the Georgia Commissions on Child Support and wrote the minority report for the 1998 commission, arguing that economics and legal principles supported replacing the guidelines. Previously, Rogers was an economist at the Federal Reserve Bank of Atlanta and is a nationally recognized expert on economic data, being one of McGraw-Hill’s published authors. He has testified before a number of guideline commissions outside of Georgia as well as state legislatures and U.S. Congress.

6. The 133 percent of poverty level for self support was recommended by Federal advisory panel. See U.S. Department of Health and Human Services, “21 Million Children’s Health: Our Shared Responsibility, The Medical Child Support Working Group’s Report, Full Report,” June 2000, p. 70.

7. In fact, when the current guidelines were enacted, joint physical custody was not even an option the court could consider when awarding custody. Hence, the guidelines could not have contemplated being used in joint physical custody situations. The option for joint physical custody only was enacted in 1990 when the General Assembly passed Senate Bill 477 which defined and created “joint custody, joint legal custody, joint physical custody and sole custody” as equal and specific options for the court.

8. See Linda Reivitz, “Percentage of Income Standard for Setting Child Support Awards,” memorandum by Secretary, Department of Health and Social Services, State of Wisconsin, to members of the Wisconsin Judiciary, December 20, 1983, *Improving Child Support Practice, Volume One, The American Bar Association*, 1986, pp. I-221. See also Jacques van der Gaag, “On Measuring

the Cost of Children," *Child Support: Technical Papers, Volume III, SR32C*, Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982, p. 21.

9. Some examples of studies that show child costs decline as a share of net income as net income rises include: Thomas Espenshade, *Investing in Children: New Estimates of Parental Expenditures*, the Urban Institute Press, 1984; David Betson working with Policy Studies, Inc., Denver, CO. See Robert G. Williams, "Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches," *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, p. I-8; Mark Lino, "Expenditures on Children by Families, 2003 Annual Report," U.S. Department of Agriculture, 2004; R. Mark Rogers and Donald J. Bieniewicz, "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," Reading #20 in *Assessing Damages in Injuries and Deaths of Minor Children*, ed. by Thomas R. Ireland and John O. Ward, Lawyers & Judges Publishing Co., Tucson, AZ, 2002, pp. 333-380; Virginia General Assembly, "Technical Report: The Costs of Raising Children," Virginia General Assembly, Nov. 7, 2000, the Joint Legislative Audit and Review Commission (JLARC); Michael R. Ruble et al, "Patton-Nelson Personal Consumption Tables 1997-98 Update," *Journal of Forensic Economics* 13(3), 2000, pp. 303-

307. This last citation is one standard used for personal injury cases. For estimating economic losses in personal injury cases, courts have accepted well-established economic expertise that marginal and average expenditure rates decline as net income rises.

10. It is interesting that under federal regulations, Georgia was required to include additional dependent children in the guideline formula. See 45 CFR 302.53 (1988 through 1991). Georgia claimed tens of millions of dollars of federal child support enforcement monies based on Georgia complying with this regulation. Georgia never complied in terms of modifying the guidelines. The Georgia Department of Human Resources pretended to comply by having internal (administrative) guideline procedures that were submitted to the federal government as proof of compliance but were never promulgated to the guidelines used by the courts. An example is Georgia Child Support Enforcement Agent Procedure 330, promulgated by DHR. Code section 45 CFR 302.53 has since been merged with 45 CFR 302.56. Additionally, the Ehlers decision by the Supreme Court of Georgia (*Ehlers v. Ehlers*, 264 Ga. 668, 1994) flew in the face of these federal regulations in part by stating that any multiple family deviation formula was not presumptive—ignoring federal requirements for additional dependents to be in the guidelines presumptively.

Thank You to Our Institute Sponsors!

- John F. Lyndon, Esquire
 - Simmons & Szczecko
- Steinfield & Steinfield, P.C.
- Warner, Mayoue, Bates, Nolen & Collar, P.C.
 - Bennett Thrasher & Co.
- Davis, Matthews & Quigley, P.C.
 - HPI, Inc.
 - Kidd & Vaughan, LLP
- McGough, Huddleston & Medori
- Thurman Financial Consulting, Inc.
 - Stern & Edlin, P.C.
- Emily S. Bair & Associates, P.C.
 - Bogart & Bogart, P.C.
 - Donovan Reporting, P.C.
- Macy, Wilkensky, Cohen, Wittner & Kessler, LLC
- Allgood, Childs & Mehrhof, P.C.
 - Kessler & Schwarz, P.C.
- Moore, Ingram, Johnson & Steele, LLP
 - Robinson, Jampol, Aussenberg & Schleicher
- Alden and Associates, Professional
 - Liability Insurance
- E. Noreen Banks-Ware, Esquire
- The Collaborative Law Office of
 - Lauren G. Alexander
 - Janis Dickman, P.C.
 - Eileen Thomas, LLC
 - Levine & Smith, LLC
 - Anita H. Lynn, Esquire
- The Nadler Company, Inc.,
 - Professional Process Servers
 - Athens BMW
 - Thomson West
- The Investigative Accounting Group, LLC

Child Support Reform Survey Results

by Judge Louisa Abbot
Chatham County Superior Court

At the 2004 Family Law Institute Conference, 118 attorneys responded to a survey on the current child support statute in Georgia (O.C.G.A. § 19-6-15). The survey required participants to answer whether they agreed or disagreed with a series of questions. The questions were (1) whether the participant is satisfied with the current child support guidelines, (2) whether the participant is dissatisfied with current guidelines; and, (3) whether the current guidelines need to be clarified or interpreted. Lastly, the survey asked for the respondents' opinions as to whether the legislature or the appellate courts should clarify the statute and which sections of the statute need clarification. Below is a compilation of the participants' answers.

Satisfied With the Current Guidelines

Seventy-six of those surveyed are satisfied with the current child support guidelines. Their comments reflect a desire to maintain an easily understood formula. Many commented that the guidelines should be updated and/or modified but that any changes should be within the current framework. A number indicated that they valued the discretion given to Judges under the current guidelines and believed that taking special circumstances into consideration would result in appropriate child support awards. However, according to those surveyed, some modifications or directions are needed which clearly inform the trial judge about how to utilize those special circumstances. Others expressed concern that the recently introduced legislation would drastically reduce the amounts awarded ultimately, creating quality of life issues for the children.

Dissatisfied With the Current Guidelines

Thirty-two of those surveyed are not satisfied with the current child support guide-

lines. A prevailing theme for these responders is the need to take the custodial parent's income into account to create an equitable system. Others complained that the guidelines were adopted in a hurried fashion without researching the validity of the percentages applied to the noncustodial parent's income. Of those who are dissatisfied, a number did express some concern that the language and methodologies contained in the bills introduced in the last session are too complicated. Another concern expressed is the use of the noncustodial's gross income rather than net income in computing the award. A goodly number of responders believe that much of the problem with the current scheme is that judges fail to follow the guidelines and fail to deviate from the presumptive award when justice demands. In particular, this group mentioned that special circumstances such as shared custody, multiple households and child tax credits are not being taken into consideration.

Ambiguous About the Guidelines

Ten of those surveyed were ambiguous about their opinion of the current child support guidelines. They submitted comments but failed to clearly indicate whether they are satisfied or dissatisfied. In general, their comments seemed to indicate that they believed the guidelines would work if the judges considered all deviations and some changes were made within the current framework. Another aspect mentioned by this group was the use of gross income rather than net income in computing the award.

Agree that the Statute Needs Clarification

Eighty-seven of those surveyed agreed that the statute needs clarification. The majority of their responses expressed a need for the guidelines to identify more

precisely when judges must deviate and the intended effect of the various special circumstances on the amount awarded. Among the special circumstances mentioned in this category were high income, high debt, income of custodial parent, child care and private school expenses, shared custody, medical expenses, and travel costs for visitation.

Disagree That Statute Needs Clarification

Nineteen of those surveyed did not agree that the statute needs clarification. The majority of the nineteen continued the theme raised by many surveyed that if the judges apply deviations from the current guidelines properly, the legislature would not need to intervene. However, two of the nineteen disagreed that the statute needs clarification because they contend that the current guidelines are beyond repair. Their comments were that "clarification efforts would only produce more litigation while failing to make a uniform system across the state." In addition, these two commented that the current guidelines came from a study which assumed that the custodial parent was an unemployed mother, the noncustodial parent was a father who did not visit the child, the total income was about \$22,000 a year, and the noncustodial father received all the tax benefits and had a self-support reserve.

Ambiguous About a Need For Clarification

Twelve of those surveyed were ambiguous as to whether they agreed or disagreed that the statute needs clarification. From those twelve, only one participant submitted a comment in regard to the need for clarification, which was "To use real cost to raise children and to change that with a divorce is the right of both parents. The parents have the right to raise the children not the state of Georgia. The state has the right to protect the children."

Conclusion

Of the 118 surveyed, 63.5 percent are satisfied with the current guidelines and 28.8 percent are not satisfied. Proponents of the current guidelines in Georgia argue that a new system would be too complicated and

unnecessary because the current guidelines provide enough flexibility to address any special circumstances that may arise. However, many of those surveyed commented that judges are not using their discretion to address special circumstances.

Georgia's child support guidelines include 18 factors which allow the courts to deviate from the child support guideline range. Proponents argue that if the courts would use the 18 factors to adjust the amount awarded to the needs of the particular case, then the current system would work fine. According to William C. Atkins, author of "Why Georgia's Child Support Guidelines Are Unconstitutional," the problem with the 18 factors is that there is no guidance as to how they are to be applied. Atkins, William C., "Why Georgia's Child Support Guidelines Are Unconstitutional," *Georgia Bar Journal*, Vol. 6, No. 2 (2000). The relative lack of appellate decisions with respect to deviations from the guidelines may be a factor which has contributed to overly mechanical application of the presumptive award.

Consideration of special circumstances by the judges was also a concern of the opponents of the current Georgia percentage of income model. Opponents argue that the failure to employ judicial discretion in setting awards has created inconsistencies and has prevented the kind of predictability which should be a hallmark of the model. In addition, they argue that it is unfair to ignore the custodial parent's income. They contend that noncustodial parents are forced to pay large amounts based on arbitrary percentages, which have not been thoroughly researched.

In the survey, most respondents agreed that the current guidelines need clarification. In fact, 73.7 percent of those surveyed agreed that the statute needs clarification while 14.4 percent felt that no clarification is necessary. As to which branch of government should perform the clarification, 72 percent of those surveyed agreed that clarification of the statute should be performed by the courts while 36 percent felt that it was the job of the legislature. On page 24 there is a chart that highlights specific sections of the statute that those surveyed believe need to be addressed.

With respect to recent legislative efforts to change the child support model in Georgia, the majority of those who commented on the proposed bills did not agree that the proposed bills are the answer to the problem. A number of respondents expressed a concern that, as presented, the cost shared model would be too complicated and would lack the kind of ease of application found in the percentage of income model.

The survey results certainly support the continued pursuit of study of child support in Georgia, whether for the purpose of improving the percentage of income model or of adopting another model. It is fair to say that the Family Law Institute participants surveyed support a child support scheme which not only promotes equity but also recognizes economies of time. The thoughtfulness and lucidity of the responses demonstrate that this is a very important matter for family law clients and practitioners.

Comments of Those Satisfied With the Current Guidelines

Below are the comments submitted by those who agreed with the first statement of the survey, which is restated below:

In general I am satisfied with the current child support guidelines statute and would prefer to keep the current method for determining child support.

- Change the definition of "high income."
- The guidelines allow for deviations based on facts and circumstances of each case.
- Most of my clients (on both sides) are lower income citizens. The new formulas would be too complicated and irrelevant.
- Although it is not completely fair, it is far less complicated and much easier to grasp than the new ones being offered; the value of the current guidelines are their simplicity.
- Needs modifications which clearly direct the trial judge to consider "other factors." Emphasis needs to be on judges; deviations outside the guidelines are oftentimes justified.
- Consideration of "special circumstances," if properly presented by the attorneys, produces similar results more equitably; the judges need to specify in final orders and

attorneys need to clarify the specific circumstances to the court for consistency.

- The current child support guidelines provide consistency and predictability.
- Although the guidelines apply to all situations, they work most for middle income divorce cases. The lower or higher end income cases require more deviation, which occurs sometimes with higher income cases, but rarely in lower income cases.
- Judges need discretion and should exercise it; if you understand how to make the calculations, the guidelines provide for equitable discretion.
- There are probably a couple extra factors to enumerate to make sure they are considered, but within the present framework.
- The guidelines have not been upgraded and refined over the years. Joint custody, second families, and incomes over \$75,000 a year are much more common now and the guidelines are no help. The "\$75,000 cap" myth needs to be eliminated. Needs to be increased to at least \$100,000.
- However, taxes need to be considered.
- With no minimum specification in self-employment income when the custodial parent's income should be considered and what is "high debt structure?"
- Do need to add some method of adjusting for multi-"family" situations.
- We need more case law on implementing standard determinations for deviation under the 15 factors now in place, in particular in cases such as shared custody. Otherwise all the judges need is a W-2 and a calculator.

Comments of Those Not Satisfied With the Current Guidelines

Below are the comments submitted by those who disagreed with the first statement of the survey, which is restated below:

In general I am satisfied with the current child support guidelines statute and would prefer to keep the current method for determining child support.

- Get real.
- The current guidelines favor only one side. I constantly get complaints about the unfairness of current guidelines by noncustodial parents. Custodial's income should be considered in the award.

- Inadequate with respect to support awards involving children in multiple households.
- More specific for shared custody.
- No evidence that the percentages in the guidelines are based on any economic data of the costs of raising children in Georgia. Why do we have the percentages we have?
- Appears to me, given the history of the statute, that legislators gave hurried examination of alternatives to insure federal money and selected the most simple-minded one.
- Few federal judges take extraordinary circumstances into consideration because they are not required to, which creates hostility and despair in non-custodial parents.
- The current system is a disgrace and is totally confined to the non-custodial parent. The judges are not following the statute and pay virtually no attention to special circumstances.
- Need to look at net income.
- I would like to see some sort of cost sharing like many other states – Louisiana and Alabama.
- Like everything in Georgia law – too indeterminate. Everyone wants to litigate due to so much possible variation.
- In general, I find few judges vary from the presumptive award of child support unless there is another household obligation (has to pay child support to another house).
- Does not consider tax implications.
- The guidelines often result in harsher than necessary economic impact on the obligor - the actual needs of the child and after-tax income need to be given greater emphasis.

Comments of Those Dissatisfied with the Current Guidelines

Below are the comments submitted by those who agreed with the second statement of the survey, which is restated below:

In general I am dissatisfied with the current child support guidelines statute and would prefer to change to a different method for determining child support.

- The current income of the custodial parent should be taken into consideration.
- The two bills pending before the legislature are computational nightmares – calculations

thereunder, which are in error, will make it open season on family lawyers. What will our E&O carriers do? I do not like either of the two bills now before the legislature. I believe we can modify our current statute. (Hey, it's simple!)

- There should be some allowance for income taxes paid by the parent paying child support.
- There needs to be some way of showing that both parents are contributing financially and not an inference that the custodial parent is paying toward the costs of the children.
- I would want a decent analysis of what is done in our sister states to see what has worked and what has not. When lawyers write pleadings we take no great pride in ownership – only clarity. If we are interested in something that works, why not borrow good ideas.
- Adopt Florida's incomes share guidelines.
- Either of the two bills would be a huge improvement. The presenters were a force on this topic. "Too complicated?" Come on. It's arithmetic.
- Income sharing model.
- Do not like discretion with judges.
- Perhaps a grid considering net income after mandatory deductions as in Michigan – not tax shelter and optionals – only taxes and dues required by employer.

Comments of Those Not Dissatisfied With the Current Guidelines

Below are the comments submitted by those who disagreed with the second statement of the survey, which is restated below:

In general I am dissatisfied with the current child support guidelines statute and would prefer to change to a different method for determining child support.

- Do not fix what ain't broke unless it's not so complicated.
- If the special circumstances are considered and pointed out, appropriate child support can be obtained.
- Though not a hyper-technical formula, it is case-specific and has common sense elements.
- The bills that have been offered as alterna-

tives appear to be focused on drastically reducing awards and serving that agenda above all other considerations. There must be some well-considered, balanced models out there that the legislature can consider.

- Proposals generally would have a disproportionate effect on quality of life issues for children while in lower-income parent's home.

Comments of Those Ambiguous About the Current Guidelines

Below are the comments submitted by those who failed to clearly mark whether they agreed or disagreed with either the first or second statement of the survey.

- My only concern is utilizing gross income. This leaves many of my clients with few resources to live. Due to lack of resources, (he) is typically unable to enjoy activities with the children.
- If judges would truly consider all deviations (as "shall") implies, and not slavishly adhere to the "middle," the guidelines would work. However, it should be for "support" not income redistribution designed to give "custodial" parents a greater "lifestyle." This is an alimony consideration.
- Judicial training needed more than statutory changes.
- Agree and disagree – however, if it is changed, would not want it to be so confusing as to make it more difficult to calculate.
- Think it could work with some clarifications.

Comments of Those Who Agree the Statute Needs Clarification

Below are the comments submitted by those who agreed with the third statement of the survey, which is restated below:

Some aspects of O.C.G.A. § 19-6-15 (the current child support statute) need to be clarified and/or interpreted.

- Both parent's income should be considered as Alabama uses. It also includes day care and medical insurance expenses.
- As a member of the executive committee, I think it is important for the bench and bar to coordinate efforts in preventing inappropriate legislation from being passed and developing appropriate legislation to be presented to the legislature.

- What is the effect of high income – a downward deviation or an upward deviation?

- More uniformity in giving credit for cost of health insurance; better definition/ more clarification of what is included in gross income; more guidance on how to handle children of prior marriages – for example how do guidelines apply to set child support for child when non-custodial parent is paying 17 percent each for two children from prior marriages.

- There must be a mandatory requirement that once evidence of any of the factors is presented, the court must deviate outside the guidelines. Right now the court may elect to stay in the guidelines even after proper evidence of the existence of factors affecting the payer's ability to pay has been entered, thereby resulting in an excessive amount of child support and eliminating the whole purpose of the factors; I would like something to state that Judges must consider the special circumstances such as high income, high debt, income of custodial parent. I would like to see some sort of cap on income to consider child support, such as \$75,000. Additional problem area is bonuses that are not guaranteed.

- A fear we had with the guidelines at the beginning was that it allowed triers of fact to hide behind a chart instead of looking at the evidence of income, income suspension, job perks, (and yes, I can spell "perquisites") and historical spending in the family. Maybe "historical needs and spending" ought to be printed in boldface.

- There should be some factors like tax impact, travel for visitation and other circumstances that must be considered.

- If judges would actually deviate when special circumstances are present, the current law would suffice. Since they do not, it should be replaced.

- Name a statute in O.C.G.A. that does not need to be clarified.

- Need guidelines when the non-custodial earns more than \$75,000 because Judges are all over the map on this.

- Clear guidelines of the intended effect of each special circumstance would be useful.

- Insurance costs need to be clarified and should add special circumstances if both parties earn within 25 percent of each other.

- Overtime income and net versus gross income are issues that need clarification.

- We should look to the experience of other

states with various child support award legislation. Surely we can get guidance from these without passing some nightmare scenario law on child support such as HB 38 or SB 17. The law should be less complicated, not more. Ordinary people should be able to understand it without a lawyer or CPA.

- The “defacto ceiling” for child support calculations at least in southeast Georgia should be over \$100,000; clarification of what triggers upward and what triggers downward deviations; the “other household” obligation formula needs clarification.
- Need some method for adjusting for multi-“family” situations.
- Shared legal and/or physical custody; day care/school expenses; medical insurance; dental and other non-traditional medical expenses like counseling.
- Yesterday’s results need to be looked at (variables between judges and lawyers).
- Guidelines need to better account for shared physical custody and dual income families.
- Need to clarify that the \$75,000 high income is not a cap but a circumstance that allows for a deviation from the guidelines.
- The exemption should be awardable to either parent. Other states do that. Clarification is needed for higher income custodial parents.
- First families should not be penalized when the non-custodial parent has more children.
- Need to clarify what “financial status” means.
- The guidelines need to specifically address exclusion of alimony and pre-existing support payments from gross income as well as the inclusion of alimony received. Incomes over \$75,000 must be addressed. The dependency exemption must be assignable. Daycare and private education expenses, etc. should be add-ons. Judges need to do their jobs and not automatically award mid-point guidelines.

Comments of Those Who Disagree The Statute Needs Clarification

Below are the comments submitted by those who disagreed with the third statement of the survey, which is restated below:

Some aspects of O.C.G.A. § 19-6-15 (the current child support statute) need to be clarified and/or interpreted.

- I think the judges, based on the individual facts of each case, should be the ones to apply any deviations from the current guidelines and are very capable of doing that without any help from the legislature.
- Our guidelines are beyond repair. The “clarification” efforts only invite more litigation and guarantee that results will not be uniform across the state.
- They must be replaced. Our guidelines came from a study which assumed mom had no other income, dad has no visitation, total income was about \$22,000 a year, dad would have tax benefits, dad had a self-support reserve. The Wisconsin study stated that if applied to higher incomes, percentages should be lower.

Comments of Those Regarding Clarification of the Statute

Below is a chart reflecting which agent those surveyed prefer to perform the clarification. Following the chart are comments submitted in response to the fourth statement of the survey, which is restated below:

The clarification/interpretation of the statute should be performed by:

	Agree	Disagree
Legislature	43	48
Appellate Courts	85	15

Comments:

- The legislature is the best place for the comprehensive change but it is so political that effective legislation is not possible, so the courts must act. For example, the Bodne case allowed for change in relocation issues which the legislature could not get passed.
- Georgia is required to have guidelines which result in “an amount.” No amount of clarification/interpretation can make them do that.
- Clarification by the legislature is very scary because they do not understand the issues and the legislature in general is unaware of the problems their attempts to pass legislation cause for the courts, families, and legal practitioners. They are too busy obsessing on the “flag du jour.” Courts seem to do a better job.
- Appellate courts need to give specific direc-

tion as opposed to general comments – there are very few amplifying cases. The legislature needs to have input from impartial, informed sources, not from angry obligors.

- Legislators act by politics, not the interest of the whole system; the courts individualize, but also sometimes construe too narrowly.

- The courts would be better suited since they are all previously practicing attorneys who understand the complications of the law.

- Need a blend/balance between the two options – not a good idea to go too far down the path of judicial legislation. Need both for insight. Perhaps the two could work together and the court could advise the legislature.

- The three recommended revisions to the guidelines in the current bills are a nightmare!

- The role of the judiciary is to interpret legislation passed by the legislature. This has worked since 1776.

- The legislature appears to be moving towards change somewhat. My preference would be legislative clarification but there appears to be an unwillingness by the lawmakers to do so. Appellate clarification may be faster but when the Supreme Court upheld the guidelines statute and brushed off the federal law ordering regular revisiting of the law, it seemed more intent to make policy than to force the state to obey the law. I suggest whatever process that would be more expedient.

- As long as someone does it. Just do it! We need help!

- This is an appropriate legislative function. The legislature would be better equipped to re-craft a more intelligent and realistic method - with the aid of skilled family law practitioners.

- The job of the appellate courts is interpretation. If a really “tough case (in the area of this statute) makes bad law,” then the legislature could probably clarify/adjust language or content (with appropriate input from all interested parties). “Special circumstances” could cover second family/household, the custodial parent’s income, high debt, and high income but these issues suggest social policy considerations that could merit specific attention, primarily to inform the public as to policy.

- Legislature needs to close gaps; court should handle in typical fashion.

- Both branches need to participate in addressing concerns, i.e. the legislature - later born children; the appellate courts - discretionary guidelines interpretation.

- I prefer that the legislature interpret the statute so long as the asinine versions now proposed are not adopted. Generally, I am opposed to legislation by the gench but legislature does not seem capable of handling the job at this point.

- Trust the court; do not trust the current legislature.

- The legislature has already crashed and burned. Unless, in Phoenix-fashion, the legislature arises from the ashes, the “Supremes” ought to have a crack at it.

- Unfortunately, the legislation that has been proposed is the result of special interest groups being upset with the current guidelines and various applications seen throughout the state with the reality being that the legislature is driven by the most vocal groups/lobbies and the end result is that the current proposed legislation not being focused on the best interest of the children but on the interest of the obligated parties. Therefore, I do not know that the legislature will pass new legislation that would be appropriate. With that said, I believe change is inevitable; the bar needs to be proactive to ensure the best legislation is obtained.

Comments of Those Regarding Specific Sections of the Statute

Below is a chart that highlights specific sections of the statute that those surveyed felt need to be considered. Following the chart are comments submitted in response to the fifth and final statement of the survey, which is restated below:

These sections of O.C.G.A. § 19-6-15 need to be addressed and changes or clarifications need to be considered:

	Agree	Disagree
Definition of income	62	35
Self-Employment income	76	21
Percentage of gross income	44	48
The percentages utilized	43	50
Deviation for second family/household	91	10
Deviation for custodial parent income	77	26
Deviation for high debt	66	35
Deviation for high income	81	23
High Debt Structure	2	
Definition of "high" in general	1	
Dependant tax benefit for custodial parent	7	
Alimony being paid by non-custodial parent	2	
Later born children; children of other marriages	1	
Visitation costs	1	
After tax income	1	
Actual needs of the child	1	
Shared Custody	4	
Income of the payer or payee's spouse	2	
Other sources used to pay living expenses such as residing with a parent or residing in a family-owned home	1	
Poverty threshold for non-custodial parent	1	
Near equal earnings of child's parents	1	

Comments:

- Clarify that alimony income is subtracted from one and added to the other's income.
 - Clarify how the budget in the financial affidavit is used in connection with the guidelines.
 - Do not divide the guidelines by number of children.
 - Consider, with respect to children in multiple households, a simplified modification action to be generated to bring before the court other custodial parents so that the court can even up the available support funds. Radical idea, yes? Firestorm to follow? Bet the farm. Is equal protection under the law for minor children obtainable in this fashion? I do not know but equal protection has not been adequately addressed to this point.
 - The charge the court gives the jury needs to change.
 - Need better choices for second family, such as ability to consolidate cases together.
 - Clearer standards for application of these special circumstances.
 - Absolutely terrible.
 - Need clarification on one parent "waiving child support" from a non-custodial parent who is not working.
 - Proper application of the deviating factors by attorneys and Judges will help save many perceived problems.
 - Why not more emphasis on historical spending so that the parties are forced to act less speculatively?
 - Some requirement should be imposed upon custodial parent to use child support for child and to justify/report as to its use.
- This disaster of a law was designed for welfare families where the wife has never worked and after the divorce the father has no visitation. It's so unfair to apply it to middle class and above families.
- The US Department of Agriculture surveys every year what it actually costs to raise a child. It's available online and updated every

year. Guideline accords, for incomes above poverty levels, consistently exceed these costs. The guideline percentages are too high for incomes above poverty level.

- Look at the shared income of North Carolina. Too much discretion and too harsh of percentages in Georgia law.
- How long must divorced fathers in Georgia be so mistreated before action is taken?
- Do you apply the presumptive amount then add health insurance, extracurricular, day care, school, etc. or subtract those amounts, or any percentage of those amounts?
- I strongly dislike any of the proposed bills being considered. We are either going to need an accountant or the computer program, which is a way for (somebody) to make money at the client and attorney's expense.
- I am not opposed to income share models if there is a better perception of fairness, provided the model results in fair child support. But after Congress's discussions with economists specializing in child support models, the economists ultimately agreed that the guidelines if not applied without deviations of high income levels were in line with most income share models and that the guidelines were easy to apply.
- Each case needs individual attention with the judges paying close attention to the specific circumstances. Rarely do judges specify if any special circumstances are considered in a final or temporary decision.
- Definition of income and self-employment income are specific areas where appellate courts have failed to build on the law, clarify and define. The legislature should examine percentages and address specific applications of shared custody, second families, etc.
- A few more cases interpreting them will take care of the unknowns, rather than starting over with a new set of formulas and variables.
- The "payer's" lobby is justified in its dissatisfaction of the application of the guidelines and more clarity and direction is necessary.

Most Judges correctly apply the common sense application of the guidelines; however to avoid inappropriate results from the minority of judges, better definitions and direction is essential.

- Define obligation of custodial parent to share in expense of raising the child and recognize that "normal" visitation (i.e. every other weekend, "long" weekends, holidays, etc.) results in a 75-25 split at worst.
- Current child support guidelines are generally fair. There seems to me to be a "public interest" in encouraging stability of marriage for children and discouraging change of partners and homes and children. Though I'm a firm believer in personal, individual rights, I also believe adults are responsive to social pressure and perhaps should be more pressed where begetting and nurturing of children is concerned. P.S. I have no children but come from a large family of origin. Sometimes divorce is best for children. Working parents have different problems from wealthy or poverty-stricken parents. Middle class values do not always produce the same results for these groups but constant change of control of a child does little good in my opinion in any group. We individuals generally have more control over our choices today. Eighteen years of today's average life span may justify (in a balancing of the parent's and the child's interest) some "incentive or pressure" (not coercive force) by the courts and legislature in this area. Best interest of the child in light of overall family satisfaction/interest (not merely on the issue of money). ♦

The survey was prepared and presented by Judge Louisa Abbot, Chatham County Superior Court, who also prepared the summary of the results with the assistance of Amelia Parker, juris doctor candidate, Washington School of Law, American University, Washington D.C.

Scenes from the Beach

Photos from the 2004 Family Law Institute



Members of the Family Law Section and its sponsors returned to the Hilton Sandestin Beach Golf Resort and Spa in Destin, Fla. May 27-29 for the 2004 Family Law Institute: Practical Family Law. The Institute is presented annually by the Section and ICLE. ♦

Left: Jerry Midden and Eliza Garrett



Above: Mary Jean Wilson and Tricia Lyndon



Above: 2000-2001 Family Law Section Chairman Robert D. Boyd and his wife Barrie Boyd.



Right: Jeffrey B. Bogart and Christine C. Bogart, who spoke on a panel regarding attorneys fees, are pictured with their son John Davis.



Left: Kurt A. Kegel, Susan Hurt Sumner, Brian Sumner and Kice H. Stone mingle at a reception for attendees.



Above Left: Justice Hugh P. Thompson, Jennie Simmons and M.T. Simmons

Above Right: Charlie Clark, Jeffrey B. Bogart, Barry McGough and Tamar Faulhaber.



Above: Kay A. Giese and Hon. David R. Sweat

Right: Presiding Justice Leah Ward Sears, Justice Carol W. Hunstein, Justice George H. Carley and Justice Hugh P. Thompson sit on one of the Institute's panel discussions.



The Editor's Corner

by Kurt A. Kegel
Davis, Matthews & Quigley P.C.

Once again, the Family Law Institute was a huge success with a total of 296 attendees, 52 speakers and 15 judges and Supreme Court Justices. With that type of attendance, there truly is no better opportunity available to discuss developments and trends in family law.

This year, for the first time in recent memory, the Institute presented a rare opportunity wherein Supreme Court Justices allowed for the presentation of questions from attendees. For those of you who missed it, you certainly missed an opportunity to hear for yourself the Court's commitment to continue to provide guidance to the bar through written opinions on the important issues we bring before the Court. The good news we received is that the Court has not been overburdened by the Pilot Project, as may have been feared, so an abrupt end to the Pilot Project does not appear likely. This is clearly a reflection on the fact that the Pilot Project has not been abused by the filing of frivolous appeals, which is a practice I hope we will continue.

As we all know, the current child support guidelines have recently been subject to attack in several trial courts and our Supreme Court has reviewed those decisions. At this year's Institute, there seemed to be a feeling that change may be coming to the guidelines through proposed legislation that has been presented in the state legislature.

As you can see from the survey results we have included, practitioners in Georgia have a variety of opinions about the guidelines and possible modifications. After the Institute, Daryl G. LeCroy, an attorney practicing in Atlanta, contacted me and he has submitted his article, providing a pro-reform perspective. Although the opinions of authors of articles do not necessarily reflect the opinions of the members of the State Bar of Georgia Family Law Section Executive Council or the State Bar, I welcome the opinions of all members of the Family Law Section on all issues that are important to us and to our practice. It is only through the presentation and debate of conflicting opinions that we are ultimately able to obtain results that have considered all views and options. ♦

Family Law Section
State Bar of Georgia
Kurt A. Kegel, Editor
104 Marietta St, NW
Suite 100
Atlanta, GA 30303

NON-PROFIT ORG
U.S. POSTAGE
PAID
ATLANTA, GA
PERMIT NO. 1447