

Notes for Child Support Commission meeting on 12/10
(Memorialized in writing by request)

Madam Chair, members of the Commission, thank you for this opportunity and your time. My name is Marshal Willick, I am the observer and liaison from the Nevada Chapter of the American Academy of Matrimonial Lawyers.

The American Academy of Matrimonial Lawyers is a national organization of qualified and experienced family law attorneys. The Mission Statement of the Academy is to preserve the best interests of the Family and of Society, improve the practice, elevate the standards, and advance the cause of Matrimonial Law. In Nevada, a lawyer has to already be a Certified Specialist just to apply to the Academy and take its qualification test.

The provisions submitted were circulated to and approved by the Nevada AAML Chapter with no negative votes.

This Commission directed that, rather than simply identify problems with the existing regulations, it sought specific wording changes to address the identified concerns.

The Academy working group, starting with a detailed analysis from Shawn Meador, sought to do so.

In the time allotted it is not possible to detail each proposed change, but they have been submitted in writing in the form of proposed changes, a red-line, and an explanatory memo, and fall into three main areas. Those are:

Structural Re-ordering.

Terminology

Amendment of specific problematic wording

First, we suggest a structural re-ordering of steps to correct the repeated problem of judges not agreeing on what to do in which order, which leads to very different results in similar situations.

Essentially, just making sure that courts do their analysis in the same procedural order should largely rectify that problem.

In shorthand, the Chapter recommends that a court first determine *whether* it is to determine Guideline Schedule support, by looking for an agreement and, if there is one, determining its validity, and then testing for poverty-level support.

If Guideline Schedule support is to be determined, then the math is done.

Next, the adjustment factors are looked at, if any are applicable.

Then, medical and child care are individually determined and allocated.

The Terminology changes mainly just provide uniformity from one regulation to another to clarify the meaning of the terms used.

Some terms that are not defined have caused problems in the real world of family court cases, like the term “basic needs” which has been interpreted by some to modify the meaning of what the regulations as a whole set out in detail as to Guideline Schedule, then Adjustments, then consideration of medical and child care.

We recommend elimination of some undefined terms, using normative language to specify the procedures set out in the regulations.

Specific Wording Changes are intended to address the specific problems that have been reported from practitioners.

Specifically:

Clarification that “imputed income” addresses the earning capacity of the individual obligor, and not the income of a new spouse or cohabitant.

Addressing the language in existing 425.150(f), which has had wildly different interpretations:

Some people believe that the reference to “Other party” means the parent other than the obligor.

Other have argued that the term means the obligor’s spouse.

And still others argue that the term refers to the obligor *himself* for purposes of a an adjustment (i.e., permitting a doubling of any guideline schedule amount).

Our suggested re-phrasing specifies that the amount of an adjustment on that factor is not to be more than the obligation of the other parent, presuming it was intended for *Wright v. Osburn* offset situations, but if the Commission meant something else by those words, the language should be clarified to specify that intention.

At least as part of the “Legislative History” of this Commission, there should be a record that “relative household income” was never intended to simply be a *carte blanche* to judges to ignore the Guideline Schedule amount when one parent has a significantly greater income than the other – what *was* intended to be addressed by “relative household income” should be at least discussed and a record made of it.

Finally, we have submitted a couple of the papers submitted at the recent Advanced Family Law Seminar, one dealing with the relationship between child support and alimony, each way the math might be done, and the other addressing the relationship between child support and parenting time in multiple scenarios, which includes a recap of the various steps in development of our current child support law, both legislatively and in the case law, for anyone who is interested in either topic.

We have addressed the alimony and multiple-family issues by explaining the mathematical effect of the current regulations in both primary and joint custody situations, and suggesting implementation of an explicit first-mortgage approach addressing prior, but not subsequent, obligations, as recommended by the 1985 Governor’s Commission and the 1992 and 1996 Child Support Statute Review Committees.

The Chapter stands ready to provide any further information or assistance that this Commission might solicit, and to answer any questions that this body, or any members of it, might have.