

INSIDE LOOK

Family Law Section • Summer 2023

“New” Child Support Guidelines... Where Are They?

By Leigh B. Sellars, Esquire

After being published in the “State Register” last October, the new child support guidelines were proposed to the legislature and if approved, would have been effective January 1, 2024. The proposed 2022 child support guidelines [have been published](#).

The Palmetto Automated Child Support System guidelines calculator and other materials provided by DSS must be updated. It was estimated that the length of time to perform those upgrades would also play a small role in the effective date of the revised guideline; however, while the regulations made it out of the House subcommittee and committee, they did not receive any attention before the full House. The regulations made it on the agenda for the Senate Judiciary committee; however, other matters before the guidelines on the agenda consumed all the time allotted. Clarification is required to know whether the proposed guidelines need to be resubmitted through the publication process of the “State Register,” or if the guideline regulations are carried over to the next term or timed out. In either event, we will not be implementing them in 2024. The effective date, if passed next year, will be January 1, 2025.

Are the changes enough to care whether they are effective 2024 or 2025? The last time guidelines were revised was in 2014, using economic data from 2009 through 2012. By January 2025, the committee’s proposed guideline updates will be two-and-a-



half years old.

The schedules of basic support are updated in the new proposed guidelines to cover combined incomes of up to \$40,000 a month. These guidelines incorporate a self-support reserve of \$1,010.50 instead of \$748.00. As a result, the number of income levels that fall into self-support reserve in the new tables will increase substantially. Additionally, child support order amounts at the lower end of the tables see a modest increase (5-15%) for incomes up to \$12,500 (combined gross monthly). Generally, there are higher increases at some of the higher income levels, especially for cases involving more than two children.

The committee adopted the language promulgated by the Federal Office of Child Support with additional factors for imputing income for unemployed or underemployed parents. Many of the changes (below) were to

bring South Carolina guidelines in compliance with federal regulations on child support, specifically incarceration, imputation of income, verification of income and modifying terminology concerning health insurance. Without the changes, South Carolina is still not compliant with the most recent federal child support regulations.

Potential income

Incarceration may not be treated as voluntary unemployment in establishing or modifying a child support order. A determination of willful or voluntary unemployment or underemployment shall not be made when an individual’s incarceration prevents employment.

B. In order to impute income to a parent who is unemployed or underemployed, the court should determine the employment potential and probable earnings level of the parent based on that parent’s recent work

history, occupational qualifications, and prevailing job opportunities and earning levels in the community: take into consideration the specific circumstances of the parent to the extent known, including such factors as the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earning level in the community, and other relevant factors in the case.

Income verification

....current earnings, preferably for at least one month, using such documents as pay stubs, employer statements, or receipts and expenses if the parent is self-employed, and oral testimony provided under oath.

Health Insurance

The court shall consider provisions for the children's health care needs through health insurance care coverage and/or cash medical support. The court should require coverage by one or both parents who can obtain the most comprehensive coverage through an employer or otherwise, at the most reasonable cost. If either or both parents carry health insurance care coverage for the child(ren) who is to receive support, the cost of the coverage should be added. This allows the court to ensure that Medicaid or self-payment could be considered.

There are subtle changes in the section on childcare costs and shared parenting arrangements; for instance, changing daycare to childcare and adjustments of the threshold for childcare adjustments.

Finally, there are items that the Child Support Guideline Committee did not address. Among them: how to treat bonus or non-recurring income and how to determine if reasonable needs were being met by voluntary support.

In the Field

Service Opportunities...

Family Law Mentors Needed!

The SC Bar admits about 300-350 new members each year, and typically 1/3 of them want to do family law. As such, we need more experienced family law practitioners to be mentors.

Mentorship requires one year of your time, and you get four hours of CLE credit (including two hours of ethics) for being a mentor. There is a special need for mentors in Horry, Greenwood and the Denmark/Bamberg area, although they are needed in all sections of the state. You must have been in practice for five years to be a mentor.

[Click here to learn more about the mentorship program](#), and to sign up please email mentors@scbar.org.

Continue to Learn....

Family Law Essentials – Friday, August 25

MCLE: 6.75

Ethics: 0.50

SAMH: 1.00

Join the SC Bar CLE Division on August 25 for **Family Law Essentials**. Jonathan Lounsberry and Mary Fran Quindlen have planned a full day program featuring practitioners and authorities in their fields whose goal is to provide you with practical advice on how to handle cases in the family arena.

Pursuant to SCACR Rule 408(a)(3), newly admitted members are **required** to complete **one** (not all) of the SC Bar CLE Essentials Series courses unless you fall within one or more of the exemptions outlined in Rule 408 (a)(3)(A)-(D). Why not this one? With these presenters it will never be dull! [Click here for more information and to register.](#)

2023 Family Law Hot Tips – Friday, September 22

MCLE: 6.00

Ethics: 1.00

Family Law Hot Tips features updates on key substantive, procedural and evidentiary issues for the domestic practice attorney, as well as practical insights from distinguished members of the Family and Appellate Courts. Always fast-paced, always practical, and always entertaining, Hot Tips features the latest trends in family practice! [Click here for more information and to register.](#)

Family Law Intensive – October 27-29

Join us at the Hyatt Place + Hyatt House Charleston/Historic District for three days of fun, facts and fellowship! This year's focus will be alimony. [Click here for more information and to register.](#)



A Better Way to Schedule Weekend Visitation

By Thomas F. McDow, *Esquire*

Other than a provable denial of the contempt, the single best defense to a rule to show cause is that the underlying order is vague and ambiguous. It must tell the parties in plain and unambiguous language what they must or must not do.

What does this have to do with weekend visitation? Visitation schedules are frequently vague and ambiguous. Schedules requiring alternating weekends rarely state the starting date of the first weekend or what happens after a disruption of the weekend schedule. If one does not know the starting date, one cannot calculate future weekend visitation.

Consider these scenarios:

- The father has the last half of the

Christmas holidays, ending on Sunday, January 1. Which parent has the weekend of January 6-8?

- The mother has the weekend of November 18-20, 2022. She also has Thanksgiving Holidays in even-numbered years. Thanksgiving falls on November 24. Whose weekend is December 1-3, 2022?
- The mother's alternating weekends in May include May 5-7 and May 19-21, 2023. She also gets Mother's Day weekend. Did anyone intend for the mother to have three consecutive weekends?
- A parent wants to plan for a specific weekend six months or a year in the future. If the weekend does not fall on a specified and allocated holiday, can the parent plan the weekend with any degree of certainty?

A simple weekend schedule easily resolves these puzzles conundrums. This schedule is the Judge Morehead schedule, as Judge A. E. Morehead III first developed the concept. He was probably the first South Carolina lawyer or judge to recognize the problem; he was certainly the first to do anything about it.

Regardless of which parent is the primary custodian, the father receives the first, third, and fifth weekends of each month. One determines the weekend by the date on which Sunday falls. If Sunday falls on the first through the seventh, it is the first weekend; the eighth through the fourteenth, the second weekend; the fifteenth through the twenty-first, the third weekend; the twenty-second through the twenty-eighth the fourth weekend; and the twenty-ninth through the thirty-first,

the fifth weekend.

Regardless of which parent is the primary custodian, the mother receives the second and fourth weekends of each month. If one wishes to fine-tune this, the fifth weekend can be apportioned equally, giving one parent the fifth weekend in the months of January through June and the other parent the fifth weekend in the months of July through December, or one parent the fifth weekends in the first and third quarters and the other parent the second and fourth quarters.

Why is Sunday the determinative day? Why does the mother get the second weekend while the father gets the third weekend? Mother's Day and Father's Day, those Hallmark card holidays treated by family court practitioners as more sacred than Christmas Day or Independence Day, fall on Sunday—Mother's Day the second weekend in May, and Father's Day the third weekend in June.

I participated in one appellate case involving contempt that would never have occurred had the Judge Morehead Schedule been used in the 33-page Marital Settlement Agreement. I lost the appeal but that did not change my assessment in any way.

When I propose this schedule, I meet with incredible resistance from lawyers and mediators who want cookie-cutter forms without considering the benefits and simplicity of this schedule. The judges and former judges with whom I have discussed this view it favorably. I hope you will consider it when negotiating custody schedules.

Originally published on April 29, 2023 to Mr. McDow's blog, Debating Family Law. See more at <https://debatingfamilylaw.com/>

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A Quick Discussion on the Mortgage Interest Deduction

By Marie Spearman, CPA

The mortgage interest deduction is an itemized deduction you can take on your individual income tax return that can help lower your taxable income and income taxes owed. You can deduct the interest paid on a mortgage secured by your primary residence if the proceeds were used to buy, build or improve the residence. You can also deduct interest paid on the mortgage used to buy, build or improve a second home if it is used exclusively by the owner(s).

The Tax Cuts and Jobs Act that was passed in December 2017 changed this deduction in two significant ways. The law now only allows taxpayers to deduct the home mortgage interest on the first \$750,000 of a mortgage loan (\$375,000 if married filing separately) if incurred after December 16, 2017. If the mortgage was incurred prior to that date, the prior \$1 million limitation (\$500,000 if married filing separately) is still used to determine the mortgage interest deduction.

The law also disallows any interest paid on a home equity loan no matter when the loan was incurred unless the proceeds were used to buy, build or improve your residence. The mortgage limit to determine the mortgage interest deduction is still capped at the first \$750,000 of all mortgage and qualified home equity loans combined.

One special situation that often causes questions with the mortgage interest deduction is when a spouse buys out the equity in the marital home of the other spouse during a divorce. This mortgage refinance is treated as acquisition indebtedness since the spouse is purchasing the other portion of ownership. The mortgage interest will be deductible for the tax deduction up to the first \$750,000 of indebtedness. If the spouse refinances and takes equity greater than the equity buyout, the interest that is paid on that portion of the mortgage will be treated as a home equity loan and may not be deductible under current law.

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