

Children from Other Relationship Subcommittee –  
Conference Call: 3/21/11

Members Present: Ed Pesik, Kevin Callaghan, Ken Levinson, Janet Skreen

Members Absent – Angela Gregracht, Kristie Dimak, Kris Amblad

DCS Staff Present: Ellen Nolan

Member of the Public: Greg Howe

## **Preliminary Discussion re notes**

Notes – should be consistent throughout entire workgroup as to whether or not personal attributions are included. Will discuss with entire workgroup on Friday, March 25. (See comment from public below.)

## **Which children should be counted in terms “Children from other relationships”?**

Discussion revolved around various issues such as:

- Defining term “children from other relationship”
  - Suggestions:
    - Include all children for whom there is a duty to support where there is a legal affidavit or court order that establishes paternity.
    - Children of the marriage unless another presumption has been proven. Outside of marriage would have to be paternity affidavit or judicial determination of paternity.
- “Children not before the court” vs. “Children from other relationships”
  - Children not before the court better term as children from other relationships ignores reality that “other children” are often from same relationship just later in time.
- Which children should be included in presumptive calculation vs. children who may be included in “below the line” deviation.
  - Present deviation system allows judges to hear evidence about nature of other children in residences of both parents to find out about the support they receive so that it can be factored into an equitable deviation.
- Whole Family Formula
  - No judicial officer is currently required to use whole family formula. Rather, current standard is that it is necessary to take into account situation of whole family.

- Concern: If we use whole family formula than aren't we just substituting a one-size fits all above the line solution.
- Other children of obligor vs. other children of obligee
  - No consensus yet reached on this issue. Some members feel equity issue on its face if obligor's other children are included but not those from the obligee. Others feel that only obligor's other children should be included so as not unfairly reduce the ordered amount.
  - Suggestion that more research needs to be done to identify if there are other formulas that fairly address this issue.
- First-born vs. subsequent born children
  - What about the timing of the children. If all children not before the court of obligor should be included in establishment what if there are additional children subsequent to the first-born child. Are those subsequent born children grounds for modification of earlier entered order?
  - Example: Mary Smith, obligor, has 2 biological children born to her in second marriage and she already has order obligating her to pay for first child from first marriage. Can she file for modification? I.e. My support should be lowered because I have to pay for my two new children.
    - In other words, does this rise to level of substantial change of circumstances?
      - Public policy says no – parents voluntarily chose to have additional child knowing they had obligation towards first child already. But if there is another basis for modification, then it should be sufficient.
      - Other members argue that if other children taking into account as above the line calculation for establishment, then only logical to take position that subsequent born child is sufficient for modification.
- Bell case provides that all children can be before the case at the same time but procedurally, that is very difficult to pull off.
- Method used in other states
  - One of the methods used in other states for child support paid for other children from the net income of the parent whose income is being established.
  - But also take extra step by adding all the support obligations together and dividing by number of children to come up with each individual amount.
- Stepchildren – agreement that they not be included in presumptive calculation.

- Not all stepchildren are getting support from their biological parents. Need to retain ability for parents to argue about stepchildren but don't think they should be included in presumptive calculation.
- Suggestions floated for further discussion via email after conference call:
- Definition of "other children/children not before the court"
  - Adopted children; children born during a marriage and the presumption (under 26.26.116) has not been rebutted; children born outside of a marriage where parentage has been legally established through a registered paternity acknowledgment or a court order or where a court order has established de factor parentage. Step-children shall not be included in this definition.
- CHILDREN NOT BEFORE THE COURT

Perhaps we could create a system that keeps some of the features of the present "deviation for CFOR" process but also allows for an "above the line" presumptive calculation for some of the more common and (perhaps) more easily agreed-upon situations.

For the "above the line" presumptive calculation:

The children to be counted are:

1. Biological children residing with the obligor,
2. Adopted children residing with the obligor,
3. Children residing with the obligor for whom the obligor is the *de facto* parent in accordance with *In Re: Parentage of L.B.*, 155 Wn. 2d 679, 122 P. 3d 161 (2005).
4. Biological, adopted, and *de facto* children not residing with the obligor but for whom the obligor is paying monetary child support pursuant to a court or administrative order of support.

Children not to be counted "above the line" include:

Stepchildren,  
Any biological, adopted, or *de facto* children for whom the obligor is not providing support either through a support order or through co-residence,

For a "below the line" deviation calculation:

The children who may be counted are:

1. The obligor's biological and adopted children for whom the obligor is not presently providing monetary support;
2. Stepchildren residing with the obligor who are not receiving any support from their biological parents, including the obligor's spouse (the biological or adoptive father or mother of the stepchildren);

3. The obligee's biological and adopted children for whom the obligee is not receiving any monetary support from a person other than the obligor, but only to the extent that they may *offset* children for whom the obligor is claiming a deviation ("below the line").

Both parents before the court or administrative tribunal have the burden of proving by a preponderance of the evidence that their circumstances qualify them for either an above the line presumptive calculation or a below the line deviation.

### **Comments from the public:**

- Appreciates obligor/obligee language being used – gender neutral
- Would be helpful to have minutes posted prior to the meetings
- Big question: should the kids of obligee be considered in an equity position but if obligor has to compensate for actions of obligee's actions, that is not fair. Obligor has financial obligation for his/her own children, and his/her own children only, not other person's kids. If you have kids of your own, then everybody's standard of living goes down. This issue is similar to issue surrounding abortion – only woman has right to terminate a pregnancy but it takes two people to have a child. If obligors are asked to compensate for actions of other parent, that will be an issue we will fight.
- About personal attribution of comments – would like to see these comments be attributed to speakers.