

2011 Child Support Workgroup
Children Not Before the Court Subcommittee (Children from Other Relationships)
Teleconference Notes
June 28, 2011

Participating on the call: Subcommittee members Ed Pesik, Kris Amblad, Kevin Callaghan, Kristie Dimak, and Janet Skreen; Ellen Nolan, DCS; members of the public: Greg Howe and Pat Lessard.

Agenda Item 1: Do we need to address the 45% limitation in our recommendations to the Workgroup?

- How does the 45% limitation rule affect our recommendation with regard to CNBC?
- Perhaps treat in same fashion as self-sufficiency reserve
- Even after applying many fact situations, difficult to see how 45% rule would apply in these situations
- Definitions in statutes should parallel definitions to be used regarding CNBC if full workgroup adopts our recommendations. Identified statutes include RCW 26.19.011 (definitions section), 26.19.065 and 26.19.075. There may be others. Members are asked to watch out for other statutes that need to be amended to reflect definition of CNBC.
- Any statutory language should be included in workgroup recommendations – the more specific and clear the language, the more likely the legislature is to take any action on those recommendations. We should not expect the legislature to clean up our recommended language. DCS will be able to provide some support, but the report, and its recommendations, belongs to the workgroup.
- One approach might be to say something like CNBC credits apply, notwithstanding application of self-sufficiency reserve or 45% rule.

Agenda Item 2: Does the obligor who is claiming a CNBC based on a court order of support need to prove any level of payment in order to successfully claim presumptive treatment?

- For CNBC residential children, there won't be an order requiring the parent to pay support for those children.
- One member wants presumption to be a true presumption: all that is needed is to show the order is established and is collectible; some orders from foreign countries may not be enforceable.
- One member feels strongly that at least a good faith showing of payment needs to be made to qualify for the CNBC credit. It is bad policy to reward a nonpaying parent with a CNBC credit. It is too easy to avoid enforcement efforts by getting paid under the table, for example. If no or minimal effort is made, then CNBC credit should not be available.
- One approach might be to use contempt finding within last one or two years as an indicator that good faith has not been shown.
- A problem with contempt is that it is often used as a motivation to get past-due obligors to modify their support orders to a more realistic amount.

- Contempt is too easily and often obtained to serve as a good indicator of not making a good faith effort to rebut CNBC presumption.
- Goal is to provide consistency and predictability. Judicial officer/ALJ discretion without clear guidance may work against that goal.
- Regardless of standard used to rebut presumption, we must make it clear that sufficient resources must be in both households to support children.
- Ed asked that members draft suggested language and route it to the subcommittee in time for comment before the next meeting July 12.

Comments from members of the public:

- Greg Howe believes that demonstration of a duty to pay support for CNBC should be sufficient and commended the subcommittee for its good work on the issue.

Next meeting: Teleconference July 12, 2011 12noon-1PM.

Respectfully Submitted,

Janet Skreen