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# Support Issues

ADDRESSING TOPICAL ISSUES RELEVANT TO SUPPORT AND MAINTENANCE TO ENSURE NECESSARY REFORM.

*Welcome to the very first issue of the Support Issues Committee's Newsletter. The Newsletter should provide you with information on what the committee has done thus far and the upcoming plans.*

*Your input, suggestions, and articles are always welcome. Please send emails to Tonya Walker at [Twalker@sslawfl.com](mailto:Twalker@sslawfl.com).*

## Alimony Guidelines

It appears, lawyers have been seeking guidance and requesting alimony guidelines since at least 1975.<sup>1</sup> In 1979 an Ohio judge even created a formula from which to determine the appropriate amount of alimony to order.<sup>2</sup> However, the formula was somewhat complex and convoluted, permitting the trial court to consider no more than one half the marital assets.<sup>3</sup>

In the State of Florida, it seems the call for guidelines began when Judge Farmer said, "broad discretion in the award of alimony is no longer justifiable and should be discarded in favor of guidelines, if not an outright rule."<sup>4</sup> Farmer suggests 35% of the payor's income "could be reasonable".<sup>5</sup>

Some states that have guidelines, allow local jurisdictions to determine the appropriate alimony guidelines. In Johnson County Kansas, the guidelines amount from which the trial court starts is 20% of the difference between the income of the parties. In Maricopa County, Arizona, the trial court uses a method that considers the length of the marriage and the difference in income. The formula multiplies .015 by the number of years of marriage. The resulting fraction is then multiplied by the difference in the income of the parties.

While Michigan does not have alimony guidelines, trial court and attorneys use several computer programs that determine the alimony amount.

Thus, there may be a case when each side is advocating the judge accept the guidelines provided by one or more computer program without having the way in which the figure was calculated at hand.<sup>1</sup>

The Support Issues Committee is tasked with the responsibility to investigate the issue of alimony guidelines. This means considering: whether the duration of the marriage should be a factor; whether standard of living should remain the focus; whether as Judge Farmer suggests the paying spouse's net income should be the starting point; whether the difference in the parties' incomes should be the starting point, whether the region of the state should be taken into consideration; or whether some yet to be discussed factor should be taken into consideration.



## Upcoming Items for Committee Review

- Formation of Subcommittee to review Child Support Guidelines Worksheet
- Formation of Subcommittee to make a recommendation on alimony guidelines
- Formation of Subcommittee to study application of child support guidelines to disabled and those at poverty level

## FOOTNOTES FROM ALIMONY GUIDELINES

FN 1 Haskell C. Freedman, Guidelines for Alimony and Support Orders, 19 Boston Bar Journal 3 (1975).

FN 2 Guidelines in Alimony and Support for Ohio, Hon. John R. Milligan. 52 Ohio St B Ass'n Rep 2009 (1979).

FN 3 Deckerd v. Deckerd, WL 6629 (Ohio App. 1983) (not reported).

FN 4 Bacon v. Bacon, 819 So. 2d 950, 954 (Fla. 4th DCA 2002).

FN 5 Id.

FN 6 See Schwartz v. Schwartz, WL 13439830 (Mich. App. 2003) (note reported); Chrissman v. Chrissman, WL 356328 (Mich. App. 2003) (not reported).

### **Proposed Change in Fla. Stat. § 61.30**

The committee is seeking to approve proposed changes of Fla. Stat. § 61.30 as it applies to a temporary change in child support. While the committee initially sought to draft language for a temporary decrease in child support, based upon concerns voiced by the members, the committee determined the temporary change in child support should apply to both increases and decreases.

This proposed change in the statute will provide temporary (not to exceed 90 days) relief when a permanent change in circumstances can not yet be demonstrated.

At the last committee meeting this issue was sent back to the committee for more discussion as to the retroactive nature of this relief and

## Implications of Alois v. Alois

### *Reduction in Child Support Due to Expenses*

In August 2006, the Fourth District Court of Appeal, issued an opinion in Alois v. Alois,<sup>1</sup> that created a stir in the family law community. The issue pertinent to this committee is whether the obligor's support can be reduced due to his living expenses.

Now that rehearing has been denied and neither party has sought invocation of jurisdiction from the Florida Supreme Court, the masses, will begin to pontificate; at some point in the near future the Support Issues Committee will look at what whether it will make a recommendation for or against the a reduction in one's support obligations based upon his living expenses.

Alois is probably not the case most would think of when conjuring up a case where the payor simply cannot make ends meet. In Alois, the payor—the mother indeed had a modest income with a monthly net income of just over \$2300.00. However, she was also living in a \$330,000 home with her boyfriend

who was contributing to the monthly expenses. The mother was ordered to pay 34% of her monthly income to the father as support for their three children. The percentage was comprised of basic child support, uncovered medical expenses and private school tuition.

Judge Taylor, writing the opinion for the court, says, “[o]ne of the basic rules of fairness is that a court cannot order a parent to pay child support, which the parent cannot afford to pay.”<sup>1</sup> Interestingly, though the opinion notes the mother wanted the children to continue in private, parochial school.

However, it is incongruous for a parent, as in Alois, to say she wants her child to participate in an activity or school that has an extraordinary expense, but then not want to pay for it. It is in the same vain as asking for relief, then objecting when it is granted. It does not make sense.

## MEMBER HIGHLIGHT



In the future, this section will be utilized to highlight a member of the Support Issues Committee. It will specifically describe what the individual is doing to further the goals of the committee.

If you would like to be included in the member highlight, please email Tonya Walker at [Twalker@sslawfl.com](mailto:Twalker@sslawfl.com).



## Upcoming Family Law Functions

Family Law Section Spring Retreat in Key West April 18-22, 2007

- For more information, see the Family Law Section website.

Next Support Issues Section Telephone Meeting May 11, 2007 at noon

- Check your email for telephone number and dial in instructions.

Florida Bar Meeting at the World Center Marriott in Orlando

- For more information, see the Florida Bar's website.