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June 9, 2004

VIA HAND DELIVERY

Ms. Barbara Broersma
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Citizens Plaza Building
400 Deaderick St.
Nashville, TN 37248-0006

RE: Child Support Division Rulemaking, Chapter 1240-2-4, Child Support Guidelines

Dear Ms. Broersma:

Attached please find an original and five copies of the Comment of the Tennessee Bar Association in the above matter. These written comments will supplement and extend our oral presentation at the hearings and during our other conversations with Department officials.

Thank you for your attention to and consideration of these comments.

Sincerely,

Allan F. Ramsaur
Executive Director

Cc:

Commissioner Gina Lodge, TN Department of Human Services
Bill Russell, General Counsel, TN Department of Human Services
John Tarpley, President, Tennessee Bar Association
Gail Ashworth, General Counsel, Tennessee Bar Association
Barry Gold, Chair, Family Law Section, Tennessee Bar Association
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BEFORE THE TENNESSEE DEPARTMENT OF HUMAN SERVICES

IN RE: CHILD SUPPORT DIVISION RULEMAKING, CHAPTER 1240-2-4,
CHILD SUPPORT GUIDELINES

COMMENT OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association is an 8,800 member professional society representing all facets of the legal profession. Through its President, John R. Tarpley, General Counsel, Gail Ashworth, Chair of its Family Law Section, Barry Gold and Executive Director, Allan F. Ramsaur, for the reasons detailed below, the TBA recommends that the income share model as it has been proposed by TDHS in the above matter, not be adopted. The TBA recommends further study prior to changing the current child support guidelines.

The TBA does not oppose an income share model *per se*, as long as the model (i) does not reduce the child support Tennessee children are currently receiving, and (ii) is sufficiently fair, understandable, and determinate, so as to avoid the expense, delay, and uncertainty associated with contested proceedings.

1. THE PROPOSED GUIDELINES ARE IN DIRECT CONFLICT WITH THE STATED PURPOSES OF THE RULE.

The stated purposes of the rule are to:

- o Decrease the number of impoverished children living in single parent families;
- o Make child support awards more equitable by ensuring more consistent treatment of persons in similar circumstances...;
- o Improve the efficiency of the tribunal process by promoting settlement...;
- o Ensure that when parents live separately, the economic impact on the child is minimized, and to the extent that either parent enjoys a higher standard of living, the child shares in that higher standard...

2. THE COMPLEXITY AND LENGTH OF THE PROPOSED GUIDELINES WILL MEAN MORE LITIGATION, EXPENSE, AND DELAY, RESULTING IN LESS SUPPORT AVAILABLE FOR TENNESSEE'S CHILDREN.

Application of these proposed guidelines will result in inconsistent awards among families with the same household incomes, and will treat children differently. Results will not be predictable and therefore settlement will be more difficult. Too many areas in the proposed rule call for judicial discretion, such as the requirement that in determining the appropriate amount of

childcare expenses, the court must determine what level of expenses are “appropriate to the parents’ financial abilities and to the lifestyle of the child if the parents and child were living together...”

3. THE METHODOLOGY FOR DETERMINING CHILD-REARING EXPENDITURES UNDERSTATES CHILD-REARING EXPENSES.

The current guidelines are based on the Epenshade-Engel economic estimates of child rearing that have been used for over 20 years. The proposed guidelines are based on the Betson economic estimates that are modified from the Betson-Rothbarth economic model (which understates child rearing expenses). Only Oregon and North Carolina use the Betson estimates.

4. TDHS CALCULATIONS ARE PREMISED UPON THE COST OF RAISING CHILDREN IN AN INTACT HOUSEHOLD, NOT UPON THE COST OF RAISING CHILDREN IN A DIVORCED HOUSEHOLD.

In the Department's own handout, page 5, second paragraph, TDHS states: ". . . the economic studies show that under \$15,600 per year net annual income, a family must spend approximately 38.20% of its income to support 2 children. At \$52,000-62,000 per year net income, the family spends 30.14% of its annual net income for 2 children. And at net annual incomes exceeding \$130,000 per year, the family spends only 18.65% of its net annual income for the care of 2 children."

The proposed guidelines are using lower estimates of the cost of rearing children than our current model. There are only two states using this economic methodology. The TDHS has based its concept of economic fairness on calculations established for an intact family household, not a post-divorce household.

5. THERE WILL BE A FLOOD OF PETITIONS TO MODIFY CHILD SUPPORT AND THERE ARE NOT SUFFICIENT COURT CLERK RESOURCES, STAFF, OR JUDGES TO ACCOMMODATE THE INCREASE IN THE NUMBER OF CASES.

Current guidelines require a certain benchmark before a litigant may receive a modification of child support (15% variance in the amount of child support the obligor is paying and that which the obligor should be paying based on their new income). Proposed guidelines do not require any benchmark before the obligor asks the Court to review his/her child support orders.

Giving every payor the right to have his or her child support order examined in the hope of a reduction of child support will create chaos for obligee parents and children who are relying upon the current amount of child support to cover expenses already in place and which cannot be met if the support is reduced.

6. THE BURDEN WILL BE PLACED ON THE PRIMARY RESIDENTIAL PARENT TO RETURN TO COURT FOR MONIES FOR EXTRACURRICULAR ACTIVITIES, ATHLETIC, SOCIAL AND CULTURAL EXPERIENCES.

Current guidelines require the payor to pay for expenses such as extracurricular activities, tutoring and the like, because it is factored into the support award. The proposed guidelines only require the payor to pay for basic necessities of food, clothing, and housing. The payor does not have to pay for extracurricular activities, unless the parents agree otherwise, or the recipient petitions the Court to require said payment.

This proposed approach will result in more contested hearings on child support and less support for the children. The proposed guidelines require more litigation on matters that are currently not subject to debate. There is a loss of efficiency and increased use of judicial resources. Every extra benefit for a child will have to be negotiated or litigated, as the amount of health insurance premiums or child care expenses change, or with the addition or subtraction of such things as music lessons and sports activities.

7. IN CASES WHERE A PARENT IS INTIMIDATED BY THE OTHER PARENT IN NEGOTIATION, OR LACKS FUNDS TO LITIGATE, THE CHILDREN WILL SIMPLY DO WITHOUT. PRO SE LITIGANTS WOULD HAVE TO CONDUCT DISCOVERY TO DETERMINE REASONABLE AND NECESSARY EXTRACURRICULAR ACTIVITY EXPENSES, INCOME OF THE OTHER PARENT, ETC.

8. THERE WILL BE MORE DEVIATIONS BY THE COURTS AND THERE WILL BE MORE LITIGATION BY THE OBLIGOR TO OBTAIN A 92-DAY THRESHOLD SO THAT CHILD SUPPORT CAN BE REDUCED.

Current guidelines require Courts to deviate from the child support guidelines when the days the alternate residential parent has the child exceeds 120-130 days per year. Proposed guidelines allow the deviation when the alternate residential parent has the child over 92 days per year.

The Department's unilateral decision to adopt the 92nd day as the dividing point when child support begins to be reduced based on shared parenting will harm children by making it impossible for a low or modest income-level primary residential parent to agree to more than 91 days simply because that parent cannot take care of the children on any fewer child support dollars.

9. AN OBLIGOR MAY LEAVE HIS OR HER EMPLOYMENT TO RETURN TO SCHOOL TO ENHANCE THEIR EARNING POTENTIAL.

Current guidelines not do require the parties to divide child care expenses. Proposed guidelines allow the parties to divide child care costs associated with a parent's job search or the training or education of either parent necessary to obtain a job or enhance the earning potential of that parent and incur child care expenses that the primary residential parent may have to pay.

10. AN OBLIGOR DOES NOT HAVE TO WORK TO HIS OR HER EARNING CAPACITY WHEN THE GUIDELINES HAVE A PROVISION FOR THOSE MAKING LESS THAN \$748.00 PER MONTH.

Current guidelines do not provide for a self support reserve for those obligors making less than \$748.00 per month. The proposed guidelines allow alternate residential parents making less than \$748.00 per month to pay a substantially lower amount of child support than what is currently being ordered. The primary residential parent does not receive a self support reserve.

The proposed guidelines do not allow for a self support reserve for the primary residential parent-only the alternate residential parent. For instance, an obligor earning \$950 per month will pay a maximum of \$100 per month to children in the same family, no matter how many children there are. If the obligee parent of those children also earns \$950 per month, no self-support reserve is allowed and that parent will carry the full brunt of supporting the children except for the \$100 coming from the other parent. An obligee parent earning \$950 per month will probably not be eligible for aid to families with dependent children. Primary residential parents in low-income cases will be severely harmed.

11. THE AMOUNT OF INCOME THAT IS IMPUTED IS BASED ON THE MEDIAN INCOME FOR ALL TENNESSEANS. THE MEDIAN INCOME FOR WOMEN IS LESS THAN THAT FOR MEN IN THE STATE.

Current guidelines impute income for obligors when an obligor is willfully unemployed or under employed. Proposed guidelines impute income for both parents if a parent does not produce evidence of income and there is no reliable evidence of a parent's income or income potential.

A parent staying home with the parties' child may be imputed a sum of \$31,946.00 per year. When that parent receives no earned income or substantially less income, two separate figures should be used. A parent who stays home to care for a child cannot impute the value of the child care and require the other parent to assist in that expense.

12. THE DEPARTMENT'S PROPOSAL FOR REDUCING CHILD SUPPORT BASED ON MULTIPLE FAMILIES IS INCONSISTENT WITH INCOME SHARES IN THAT IT DOES NOT TAKE INTO ACCOUNT THE INCOME OF THE OTHER BIOLOGICAL PARENT OF THE CHILD FOR WHOM CREDIT IS SOUGHT.

Current guidelines allow the Court discretion to determine whether income or expenses paid by the obligor's new spouse should be considered in determining the obligor's ability to pay child support. Proposed guidelines provide for a credit (reduction of support) due to having additional children for whom that parent is legally responsible but does not provide the Court discretion to consider income of the new spouse.

An obligor may receive a reduction in the payment of child support for children for whom he or she is legally responsible yet that child's other parent has substantial income to provide for that child. The other biological parent of the child for whom credit is sought may very well be a high-income individual and the household income of that intact family may be extraordinarily high relative to the household income of the family where the children will lose child support because of the new child.

13. THE PROPOSED GUIDELINES WOULD RESULT IN A SIGNIFICANT DECREASE IN THE AMOUNT OF CHILD SUPPORT ORDERED.

The current guidelines do not provide preferential treatment for the lower income payors. The proposed guidelines provide for a low-income credit to the alternate residential parent if that parent's income is low enough.


For example, the basic child support obligation where the parents combined monthly income is \$950 or less is \$100 per month no matter how many children the support is for. Where both parents are working full time making \$6.00 per hour, the proposed guidelines would ordinarily require a basic child support obligation of \$616 with each parent having responsibility for half of that amount. This means that the alternate residential parent would have a child support obligation of \$308.00 per month. However, because of the low-income credit, the alternate residential parent only has an obligation of \$150 per month.


14. CASES INVOLVING CHILDREN WILL BE FAR HARDER TO RESOLVE IN MEDIATION AS A RESULT OF INCREASED UNCERTAINTY AND HOSTILITY OVER THE DETERMINATION OF THE APPROPRIATE AMOUNT OF SUPPORT.

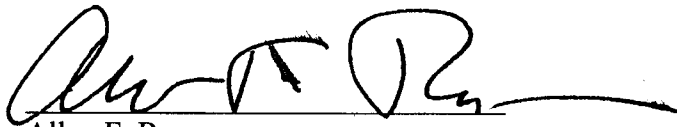
Fewer cases will settle. Many obligor parents will take the position that they will pay the amount set out in the guidelines and if the obligee parent wants a penny more, that parent will have to go to court.


The multitude of problems with the proposed guidelines suggests that DHS should empanel a committee made up of representatives of each of the affected groups, to try to arrive at guidelines which will be simple to apply, treat children of similar circumstances similarly, and be fair, consistent and predictable.

Respectfully Submitted,

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