Letter from the Chair
By Stuart Wilson-Patton

The TBA Family Law Section has been busy over the past six months. Most of our activities have been in the areas of the new child support guidelines and family law legislation. The new income shares guidelines, which became effective on January 18, 2005 represent the single biggest change in child support law since 1988. Our Family Law Code Commission and the TBA leadership had unprecedented access to the DHS officials who were drafting the new guidelines. DHS made a number of substantial changes to the guidelines in response to TBA’s concerns. While TBA continues to have concerns about the new guidelines, such as, the substantial understating of the cost of child-rearing and the significant increase in litigation they will cause, TBA is committed to continuing to work with DHS to make improvements. TBA also supports a comprehensive review of the guidelines by a task force made up of all affected groups as soon as possible.

Our Section has been very active in producing quality CLE programs that are of interest to Tennessee family law practitioners. This past Fall, the Section partnered with the YLD and the Juvenile Law Section to produce a major CLE program on the new child support guidelines all across Tennessee. This was the only seminar that brought participants face-to-face with both nationally recognized legal and economic guidelines experts and with the DHS lawyers who drafted the new Tennessee income shares guidelines. Based on the evaluations we received after the seminar, we moved to address the need for more specific hands-on guidelines training. TBA’s CLE staff and DHS have put together a one hour online program available through TennBarU designed to walk you through the guidelines worksheets and teach you how to do manual guidelines calculations for your cases. The program offers six different scenarios to illustrate the mechanics of the guidelines. Further, the Section has recently agreed to partner with the TBA ADR Section to produce a CLE program this Fall on the guidelines and mediation.

On the legislation front, the Family Law Code Commission has undertaken a bold initiative to separate Tenn. Code Ann. § 36-5-101 into two separate statutes. One would contain the child support provisions, while the other would contain the alimony provisions. Neither statute would have any substantive changes; however, each would be reorganized with helpful subject headings. Obsolete provisions would be eliminated. I have personally been involved in several similar attempts to revise this statute over the past 15 years. Unfortunately, each one of those attempts eventually bogged down. This year, because of the leadership and dedication of our Code Commission members, the work has been completed and TBA is going to shepherd this long overdue statutory clean-up effort through the General Assembly.

In closing, I am excited about the energy and enthusiasm of the Section. We are engaged in relevant and important work for Tennesseans. We can always use more help, so get involved today!

Best Wishes,
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Income Shares — Tennessee’s New Child Support Guidelines
By Kim Beats

The Tennessee Department of Human Services has received approval from the state Attorney General and has filed new Child Support Guidelines with the Secretary of State’s Office. The proposed rules change the Department of Human Services’ Child Support Guidelines currently found in Chapter 1240-2-4 from a Flat Percentage of Net Income Model, which has been in effect since 1989, to an Income Shares Model now used in some form by thirty-three (33) other states. Once the proposed rules take effect on January 18, 2005, all new or modified child support orders in Tennessee will be calculated under the Income Shares Model, which requires consideration of the income of both parents and other major expenditures, including child care costs and medical insurance premiums, when calculating the amount of a child support order.

Under the current Flat Percentage Model, only the net income of the Alternate Residential Parent (F.K.A. non-custodial parent) is used to calculate the amount of child support. Once the net income of the Alternate Residential Parent (ARP) is determined by subtracting income tax and FICA, a percentage, based upon the number of children for whom the order is being calculated, is applied to the net income. Neither the income nor any additional expenses of the Primary Residential Parent (F.K.A. the custodial parent) is considered in the calculation of the support obligation. The Flat Percentage Model does not provide a specific adjustment to the support obligation of the ARP for significantly more or less parenting time with the child(ren).

Tennessee’s new Income Shares Model uses the gross income of both parents to calculate the support obligation, using the Child Support Worksheet and Credit Worksheet required under the rules. Gross income will be calculated the same as under the Flat Percentage Model. Like the current model, deductions against gross income will be allowed for support provided to other children for whom that parent is legally responsible. Unlike the current model, these deductions are available under Income Shares to either parent. These deductions from gross income result in the parent’s adjusted gross income (AGI). To determine the amount of the Basic Child Support Obligation (BCSO), the AGI of each parent is combined and cross-referenced on the CS Support Schedule with the number of children for whom support is being calculated. Each parent is then responsible for a share of the BCSO in the same proportion as his/her adjusted gross income is to the combined adjusted gross income.

For example, if the ARP’s monthly AGI is $5,730 and the monthly AGI of the Primary Residential Parent (PRP) is $3,820, the ARP’s proportion of the combined monthly adjusted gross income is 60% of the total adjusted gross income of $9,550 ($5730 ÷ $9550). The PRP’s share is 40% ($3820 ÷ $9550). The combined obligation from the child support schedule for 2 children, based upon the monthly combined adjusted gross income, is $1,504 per month. The ARP is responsible for $902.00 per month ($1504 x 60%) and the PRP is responsible for $602 per month ($1504 x 40%).

Under Income Shares, the ARP’s support obligation is subject to adjustment based upon parenting time that is significantly more or less than what is considered standard parenting time. The adjustment for decreasing the obligation begins at 121 days, and the adjustment for increasing the support obligation begins at 53 days. For parenting time between 53 and 121 days, there is no adjustment available.

Expenses for work-related childcare and health insurance premiums attributable to the child are divided between the parents in the same proportion in which the parents share the BCSO, i.e., from the previous example, 60% and 40%. These additional
expenses are added to the BCSO established by the Schedule and become part of the ordered amount of child support. For instance, if the PRP is paying $500 per month for childcare expenses, 60% of this amount, or $300 per month, will be added to the ARP’s order amount. Continuing with the same example from above, the ARP’s child support obligation would then become $1,202 per month ($902 + $300).

At this point in the calculation, the support obligation is limited by the statutory threshold to the amounts provided by the current Guidelines, i.e., $2100 for one child, $3200 for two children, $4100 for 3 children, $4600 for 4 children, and $5000 for 5 or more children. This limitation can be rebutted and an additional amount may be added to the obligation as a deviation.

Extraordinary expenses may also be added as a deviation to the obligation calculated above in the discretion of the court.

The ARP pays to the PRP his/her share of the child support obligation, and the PRP is deemed to spend his/her share of the obligation directly on the child.

The Income Shares Model for determining the amount of child support is predicated on the concept that the child should benefit from the financial resources of both parents and receive the same proportion of parental income that the child would have received if the parents lived together.

According to Commissioner Gina Lodge of the Department of Human Services, “the Department and its partners have spent countless hours developing these Guidelines. They are based on the best economic studies and methodologies available at this time for calculating the costs of raising a child. Times and families have changed over the last several years. The current flat percentage formula is no longer the best way to calculate support. Income Shares is a fairer method of calculating support for all parties involved.”

Based upon these economic studies, it was determined that as parental income rises, the percentage of income allocated to child-rearing expenses begins to decrease, even though the actual dollar amount spent may continue to increase. For this reason, a support obligation based upon a flat percentage of parental income at all income levels may be too low at low incomes and too high at high incomes. The basic support amounts under Income Shares reflect this economic reality, reducing the percentage of parental income allocated to child-rearing expenses as parental income increases.

The Income Shares model may also result in more equitable allocation of support in cases where one parent has an extremely high income and the other earns a very low income by imposing on the parent with the larger income the larger percentage of the support obligation, whether that parent is the ARP or the PRP. The rules attempt to address the most common parenting situations and provide an alternative method for calculating the support obligation when all of the children for whom support is being calculated are not living primarily with the same parent.

Kim Beals, is Assistant General Counsel with the Department of Human Services. Kim Graduated from University of Maryland School of Law in May 1999. She has been employed by the State of Tennessee since July 1999. Kim worked for the Tennessee Attorney General’s Office for 2-1/2 years representing the Child Support Division of the Department of Human Services. After leaving the AG's Office, Kim worked as Deputy Legal Counsel to Governor Sundquist and as Assistant General Counsel at the Tennessee Regulatory Authority. Kim has been employed by the Department of Human Services since June 2004.
Dawn Coppock Honored as a Congressional Angel in Adoption

On September 23, 2004, Strawberry Plains attorney Dawn Coppock was honored at a national ceremony held in Washington, D.C. as a Congressional Angel in Adoption. U.S. Rep. John J. Duncan, Jr., selected Coppock after nominations submitted by the Pro Bono Project of Legal Aid of East Tennessee, the Sheltering Tree Fertility Support Group, and an individual with whom Coppock had worked in securing an adoptive child.

The event was hosted by the Congressional Coalition on Adoption Institute (CCAI). CCAI is a non-partisan, nonprofit organization dedicated to raising congressional and public awareness about the tens of thousands of foster children in this country and the millions of orphans around the world in need of permanent, safe and loving homes; and to eliminating the barriers that hinder these children from realizing their need of a family. In the United States alone, there are more than 550,000 children in the foster care system with tens of thousands available for adoption. The “Angels in Adoption” program provides a unique opportunity for federal legislators to recognize individuals from their home states who have improved the lives of foster children and orphans.

Coppock is recognized across the State of Tennessee as the primary authority on Tennessee adoption law and is the author of Coppock on Tennessee Adoption Law, noted as the indispensable resource on adoption. In addition to a thriving private practice and active pro bono participation, Coppock also finds time for speaking engagements addressing attorney, judges, fertility support groups in an effort to increase awareness of adoption issues.

“I am honored to be selected,” Coppock said. “In a country as blessed and compassionate as ours, children should not grow up without parents. Most Americans have no idea how many children live in temporary situations, with no permanent family. CCAI and others are attempting to draw attention to these waiting children. I am confident that when the American people learn about this juvenile underclass, the problem will be solved. Americans will open their homes to these children and demand policy changes for them as well. It is already beginning to happen. I am lucky to have such exciting and rewarding work. To be recognized for it as well is an embarrassing abundance of blessings.”

TBA Family Law Section Alimony Committee Proposes Alimony Statute Changes to TBA Board of Governors

During the January Mid-Year meetings of the TBA House of Delegates and Board of Governors, Barry Gold, former Chair of the TBA Family Law Section, requested that the TBA approve changes to existing alimony statutes. The Alimony Committee of the TBA Family Law Section, through its Chair, Amy Amundsen, proposed the following changes:

“The proposed alimony statute was designed to eliminate the lengthy 12 pages of the current statute 36-5-101 which has both the child support and alimony statutes included. What our committee did was extract the alimony portions of the current law out of the child support statute and made a new statute 36-5-121.

The proposed alimony statute is more organized and easier to follow with each type of alimony defined, with each type of alimony having their separate paragraphs for modification and termination. The statute is much like the current alimony statute.”

Both the TBA House of Delegates and the Board of Governors approved the recommended changes.
On-Line Child Support Guidelines Assistance

If you are looking for help in understanding and applying Tennessee's new income shares guidelines, look no further than DHS's web site: http://www.state.tn.us/humanserv/is/income-shares.htm. The web site has a wealth of free information available to the public at no charge:

You can access an online automated calculator that prints out the completed worksheets when you input the data.

You can download an Excel spreadsheet version of the child support and credit worksheets, with many automated functions to simplify the completion of the forms.

You can review DHS's training materials, including, a PowerPoint presentation, interactive worksheets, and numerous case examples that illustrate how to apply the guidelines to various scenarios.

You can take a detailed step-by-step walk-through of the process of filling out the income shares worksheets.

You can read DHS's answers to the most frequently asked questions regarding income shares and the new worksheets.

You can print copies of the new Rules themselves, the new Child Support Schedule, and the Child Support and Credit Worksheets.

Finally, you can send general questions about the new guidelines to DHS by e-mail, and they will post their answers on the web site.

All of these tools, and several other items, such as, DHS's recent Policy Memorandum # OGC/CS-05-01, which addresses the application of the income shares guidelines to cases pending on January 18, 2005, are available to TBA Family Law Section members either directly online or through links on the TBA web site. This is just one more tangible benefit of Section membership.

Coming Soon ...

Another benefit of your membership in the TBA Family Law Section …

The December 31, 2004 Edition of The Alimony Bench Book

TBA Family Law Section members and Tennessee's Family Law Judges will be notified via email when this updated book is available. We will also announce availability of the updated book in the Tennessee Bar Journal. The updated book will be offered free in downloadable format or you may order the printed version for $30.
TBA Family Law Section Executive Council 2005

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