

Family Law

The newsletter of the Illinois State Bar Association's Section on Family Law

Chair's Column

BY SALLY K. KOLB

This month, I would like to take the opportunity to introduce the Family Law Section to Stephanie Tang. Stephanie is currently the secretary of the Section Council. She is an amazing person to know and is extremely hard working. It's been an honor to work with her on the Section Council this year in our respective roles. She's funny, clever, kind, and has an amazing work ethic. She has recently made partner at Kogut & Wilson, L.L.C. in Chicago where she practices in the area of

family law.

Stephanie began her legal career at the University of Illinois College of Law. She graduated magna cum laude back in 2015. She did her undergraduate studies at Northwestern University, graduating in 2012 with departmental honors in Legal Studies. Perhaps academia comes naturally to her since her parents are both professors. Stephanie's mother is a professor of microbiology-immunology at

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Child Support Guidelines and Shared Care Parenting Formulas

BY MARGARET A. BENNETT & NANCY CHAUSOW SHAFER

On July 1, 2017, Illinois joined 39 other states, and the District of Columbia, Puerto Rico, and Guam in adopting the income shares model for determining child support. In 2020 the Arkansas Supreme Court established income shares child support guidelines bringing the total number of U.S. states utilizing the income shares model to 40 states.

The income shares model uses the economic data of child-rearing costs based on the income level of the parents. Most income share states obtain child-rearing financial data from the Bureau of Labor

Statistics for that region. In Illinois that data is used to create the Schedule of Basic Child Support Obligation promulgated by the Illinois Department of Healthcare and Family Services. Calculating child support based on actual child-rearing costs attempts to maintain the standard of living a child would have enjoyed if the parents had not divorced or separated.

Currently, 37 states utilize a presumptive shared care parenting formula adjustment, and of those states, 20 states utilize a cross-credit formula with a 1.5 multiplier including Illinois.

The cross-credit multiplier formula involves multiplying the basic child support obligation as determined by the Schedule of Basic Child Support Obligation times 1.5 (150 percent), calculating support for each parent and offsetting the support owed against each parent based on the percentage of overnights. The rationale for increasing the basic child support obligation by 150 percent is to account for the increased housing, food, transportation and other basic costs required to maintain two

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Northwestern University and her father is a professor of microbiology at the University of Chicago. Even though Stephanie chose a career in law, she still follows in the family tradition by teaching legal writing as an adjunct professor for Loyola University School of Law.

Stephanie met her husband Mark Scott in law school. He saved her during a particularly brutal cold call from the professor in class one day and the rest is history! He is a litigation attorney at Kelley Drye & Warren, L.L.P. Their first child, a son named Connor, just turned one earlier this year. He's absolutely the most adorable baby on the planet and occasionally makes a very brief Zoom appearance at our Section Council meetings, bringing levity and joy to all with his abundance of cuteness! Stephanie says she finds herself, as a new mom, hyper-focused during the workday. This helps her make sure she can get as much work done as possible so she can be home and be present with Connor after work. Following in the footsteps of working mom-lawyers before her, she replies to emails with her phone in one hand while he sleeps at 3:00 a.m.!

Stephanie chose family law after interning at CARPLS Legal Aid. She helped conduct client intake at their domestic relations legal aid help desk. She was able to see firsthand how the CARPLS volunteer attorneys were able to assist individuals on a daily basis and help them gain access to justice they otherwise would not have.

Stephanie has found enjoyment and satisfaction in family law. She enjoys it because she gets to develop a personal connection with clients and see how her work impacts their lives directly. She also really enjoys that family law intersects with so many other fields of law and other professions. In one week, she may find herself speaking to a therapist, tax attorney and financial planner all for one case. She enjoys continuing to grow and learn more as she practices.

Stephanie also is currently secretary for

the Center for Disability and Elder Law Young Professionals Board. As secretary, she helps fundraise for CDEL's events and plan Senior Center Initiatives to help pro bono elderly populations complete Powers of Attorney and Living Wills. This is in addition to being an adjunct professor, partner in a law firm, new mom, Secretary of the Family Law Section Council and about a million other things.

The best advice she ever received was simple. To be professional and respectful to others and to listen to other peoples' viewpoints, even if they are different from your own. She has met many clients and other lawyers with whom she may disagree, but she thinks it is important to take the time to understand those other perspectives to help deepen her own understanding of the issues. Her best advice to law students is to plug into your alumni networks. She got her first job out of law school by being recommended for the job by someone she knew through her sorority in college. That individual was a senior when Stephanie was a freshman, but the Northwestern connection pulled through for Stephanie. She says she is always happy to do her best to help current undergraduate and law students if they reach out to her. She's happy to answer their questions about family law or just being an attorney in general and says you never know who those attorneys may be able to connect you with.

We are extremely lucky to have Stephanie Tang in leadership on the Family Law Section Council. She gives generously of her time and works extremely hard. She is dedicated to her service to the ISBA and her dedication is an asset to anyone lucky enough to work with her. It is an honor to provide her introduction to the Family Law Section. ■

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OFFICE

ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITORS

Matthew A. Kirsh
Robin R. Miller
William J. Scott, Jr.

PUBLICATIONS MANAGER

Sara Anderson
✉ sanderson@isba.org

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Child Support Guidelines and Shared Care Parenting Formulas

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households to accommodate a shared parenting plan. A multiplier of 1.5 is applied to the basic child support obligation in most states using the cross-credit formula to account for the duplicated child-rearing costs between the parents' household such as housing, food, transportation, clothing and other expenses. Generally, child-rearing costs are divided into three categories: variable costs, duplicated fixed costs, and unduplicated fixed costs. Variable costs are the costs that are transferable between the parents depending on which parent will incur the expense during their parenting time (e.g., food). Duplicated fixed costs are those child rearing costs both parents incur, and parenting time could directly impact the costs of those expenses (e.g., additional housing expense needed for consistently greater share of parenting time). Unduplicated fixed costs are child-rearing costs that are not affected by the parent's time, and they are not typically or necessarily duplicated (e.g., clothing).

In Illinois, the threshold for utilizing the shared care parenting formula is 146 or more overnights per year, which is 40 percent or more of the overnights in a year. This 146 overnights provision is often referred to as a "cliff." Any amount of parenting time from 1 to 145 overnights does not result in any modification of child support. However, at 146 overnights the shared care support formula is applied, with the child support amount changing with each additional overnight. The result of application of the shared care formula to child support computations can be a significant reduction in child support. The threshold for utilizing the shared care parenting formula varies from state to state. The majority of states utilizing this approach set the threshold for applying their shared-parenting formula when the parenting time arrangements consist of both parents having the children at least 25-35 percent of the time. Several states have recently lowered their shared care parenting formula thresholds (e.g., Maryland and Vermont) resulting in more complex mathematical computation. Both Kansas and Oklahoma change the basic child support obligation multiplier based upon the number

of overnights of the non-majority parent creating a stairstep child support graph.

Review of the data from technical documentation provided by HFS, the authors' analysis reveals the 1.5 multiplier is too low as it does not accurately reflect shifting and shared child-rearing expenses when parents enjoy a shared care parenting plan. Review of the statistical data by the authors reveal the actual shared care costs is more accurately reflected using a multiplier of 1.66.

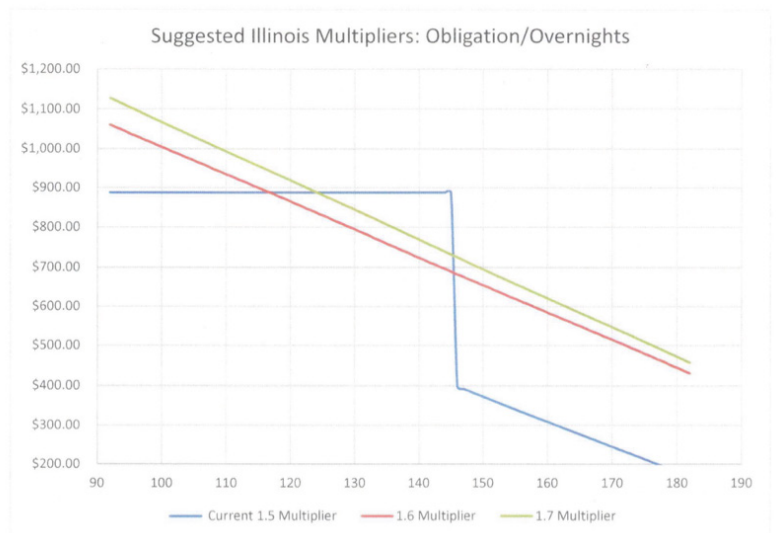
The basic child support obligation as impacted by shared care only if the overnights meet or exceed 40 percent was also based upon policy determination and reference to other states rather than specific statistical or empirical evidence. In the authors' opinion the duplicated fixed costs begin, and variable costs shift, beginning at a lower shared care parenting time than 146 overnights per year. However, to reduce support by applying the current shared care formula at a lower number of overnights would lead to inaccurately low child support orders insufficient for the recipient parent to adequately provide support for the child.

One of the primary purposes of the change in child support law to the income shares approach was to encourage compliance by viewing child support as an obligation of both parents. The intent is to then allocate that obligation between the parents based

not only on their respective incomes, but also to adjust that amount and allocation based on the shared parenting time. The resulting increase in duplicated fixed costs, and the reallocation of variable costs form the basis of the shared parenting time approaches used in the various states. As of this writing, there is no state which has a child support formula free of criticism.

After extensive study and research by the authors, a relatively simple fix to the current child support shared care formula is advocated. By reducing the shared care child support formula threshold to 92 overnights or 25 percent of annual overnights and increasing the shared care parenting formula multiplier to 1.66, the current child support cliff would be eliminated. Efforts by non-majority parents to achieve 146 overnights would be reduced resulting in fewer parenting time disputes. For comparison, attached is a graph utilizing a multiplier of 1.5 in comparison with multipliers of 1.6 and 1.7 beginning at 92 overnights per year. ■

For comparison, this is the graph for the same family in Illinois, with including lines for each the current 1.5 multiplier (Starting at 146 overnights) and the proposed 1.6 and 1.7 multipliers (Starting at 92 overnights).



Note on graphs: All calculations were done with facsimile families of four where the father had a gross yearly income of \$50,000 and the mother had a gross yearly income of \$25,000, for a combined total of \$6250 gross monthly income. The calculations are also done from the father's point of view: the dollar amounts represent his payments and the overnights represent his overnights.

Third Stimulus Check Issues and Family Law Matters: What Practitioners Should Know

BY JESSICA C. MARSHALL

Congress recently enacted the American Rescue Plan Act of 2021, which has recently provided and will continue to provide thousands of dollars in stimulus funds to many families. The bill provides different amounts to different people who fall into different adjusted gross income brackets, and also varies by filing status.

Single Filers

Filers who file “single” may receive up to \$1,400 if their adjusted gross income is \$75,000 per year or less. Single filers who earn between \$75,000 and \$80,000 in adjusted gross income will also receive a check, but at a reduced amount.

Married Joint Filers

Married couples filing jointly can receive up to \$2,800, so long as their adjusted gross income is \$150,000 or less. If they earn an adjusted gross income of more than \$150,000 but less than \$160,000, they will still receive a reduced amount, but not the full \$2,800, subject to a phase out completely at an adjusted gross income of \$160,000. An eligible married joint filer is a couple whose adjusted gross income is \$150,000 or less. Married joint filers are also able to receive money for qualifying dependents, as further explained below.

Head of Household Filers

Head of Household filers who have an adjusted gross income of \$112,500 or less will receive the full \$1,400 for themselves. There is a phase out, however, for head of household filers who reach \$120,000 in adjusted gross income. Head of Household filers are also entitled to additional sums for qualifying dependents, as set forth below.

Dependents

In addition to these funds, eligible dependents of any age will receive an additional \$1,400 per eligible dependent. The dependents can be any age, which is different than previous rounds of stimulus funds, and the funds are given to the party who claims the dependents on the relevant year’s tax returns which are utilized to determine the stimulus funds awarded. (See Section 6428B. of H.R. 1319, the “American Rescue Plan Act of 2021.”)

Which Tax Year Is Used for Determining the Third Round of Stimulus Checks?

The individual federal tax filing deadline has been extended this year from April 15, 2021 to May 17, 2021. This means that clients do not have to file their 2020 federal tax returns until May 17, 2021, and depending upon their 2019 income and who claimed the relevant dependents in 2019 and 2020, some clients may want to wait to file, while others may want to rush to file.

The stimulus funds are determined based upon the 2019 tax returns filed by each party unless they have already filed a 2020 tax return. So, if someone earned less money in 2019, wherein they were eligible for stimulus funds, and now they aren’t, they may want to wait to file until May 17, 2021, in hopes of receiving their stimulus check in the meantime. As it stands now, the money received from stimulus checks will not have to be repaid, and even if someone earned more money in 2020 (where they would not qualify for a stimulus check based upon their 2020 tax filings but would when based off their 2019 tax filings) they can still qualify for a stimulus check payment based upon their 2019 tax filings. This only can happen

so long as the 2020 taxes were not yet filed.

Additionally, the exact opposite is true, and may be more applicable to many clients. If someone had a banner earnings year in 2019, but in 2020, their income plummeted, they may be eligible for a stimulus payment in the third round of stimulus payments, where they would not have been for the first two rounds of stimulus payments. For those clients, they want to file as soon as possible, to try and obtain a third stimulus payment, since the stimulus check could be based off their 2020 tax returns instead of 2019 tax returns if the timing aligns.

Who Receives the Dependency Stimulus Check?

In short, the tax returns used to determine the amount of the stimulus check will also control who receives the dependent stimulus monies. So, for example, if Spouse A files in 2019 and claims the minor children, and then 2020 would be Spouse B’s turn to file and claim the children, you will have Spouse A hoping Spouse B does not file 2020 in time to receive the stimulus funds for the minor children. On the contrary, you will have Spouse B rushing to file for 2020 (so long as their income qualifies) so that they can receive the dependent stimulus funds during the third round of checks. We also may see arguments where Spouse A would qualify for a stimulus check with dependents, but Spouse B would not. In that scenario, Spouse A may want to ask Spouse B to wait as long as possible to file for 2020 taxes, because there is more of an opportunity for Spouse A to receive stimulus monies for the minor children whereas Spouse B wouldn’t, regardless.

To take this a step further, many parties argue over who should receive the dependent

stimulus funds, regardless of who claimed the minor children on their taxes in any given year. Some parties go so far as to file motions regarding this issue. Most parents who have the majority of parenting time believe that they should be the ones who receive the stimulus funds for the dependents, no matter who claimed the minor children on their taxes in any given tax year. Some judges have been inclined to award whatever the amount is that is allocated to the dependent, or a portion thereof, to the majority time parent, while some Judges have left it in the hands of the filer. In many scenarios, it is not cost effective for a party to file to ask for the child(ren)'s portion of the stimulus check.

The 2021 Child Tax Credit

This will become more complicated as 2021 continues. As part of the American Rescue Plan Act of 2021, families with dependent children are supposed to be receiving an advance on half of their 2021 Child Tax Credit, which will be determined based upon their 2020 income tax returns. This means that the parent who claims

the minor child(ren) on their 2020 federal income tax returns will seemingly also receive half of the 2021 Child Tax Credit in advance in monthly payments from approximately July 2020 through December 2020. The remaining half of the 2021 Child Tax Credit is anticipated to be received when the parties' 2021 income tax refund is received. This will create a headache for family law practitioners, particularly in cases where the parties alternate years of claiming the minor children on tax returns. (In situations where each party claims an even number of children each year, it would not matter, but for families where each parent takes a turn claiming all of the children, or where there are an uneven number of children, there may be some issues to anticipate.)

In 2019, the Child Tax Credit was \$2000 per qualifying child dependent. This has been increased to up to \$3,600 per qualifying child, but there is a phase out based upon income, just like stimulus checks. Because it is anticipated that half of the Child Tax Credit will be paid during calendar year

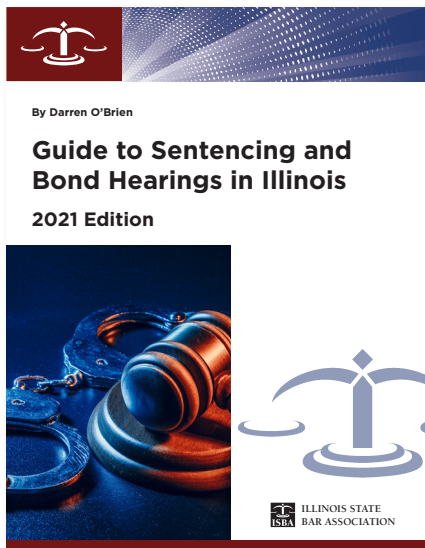
2021 to the person who claimed the minor child(ren) on their 2020 tax returns (but technically as a 2021 tax year benefit), and the remaining half will be paid to the person who claims the minor children on their 2021 tax returns, we as practitioners can anticipate many arguments about who should receive the July through December of 2021 payments (which are technically an "advance" on the 2021 tax filing refund). For parties who switch off years claiming their children, this will likely become an issue. (For more information, see section 9611 and 9612 of H.R. 1319, "American Rescue Plan Act of 2021.")■

Jessica C. Marshall is a partner at the law office of Anderson & Boback LLC.

Disclaimer: The information in this publication does not contain tax advice and is for informational purposes only. For more information on the American Rescue Plan Act of 2021, see the full contents of the bill. Further, this information is ever changing as we learn more about how the American Recuse Plan Act of 2021 will be implemented.

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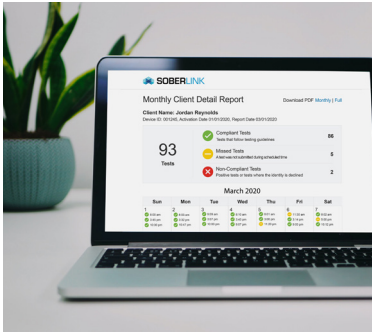
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Why Court-Admissible Documentation Matters in Child Custody Litigation

They say “all is fair in love and war,” but can the same sentiment be applied to child custody litigation? Practitioners know all too well what lengths parents will go to preserve relationships and maintain custody of their children, especially when threatened. Therefore, in Family Court, it’s not unusual to hear allegations of alcohol or substance abuse from opposing counsel. Given that 10% of children in the US live with a parent who abuses alcohol, it’s in some ways expected. To prepare for such allegations, Family Law Professionals should be advised of what resources are at their disposal to not only streamline their custody cases but ensure the child’s best interests remain at the core of every decision.

Unlike financial litigation in Divorce Court, co-parents aren’t awarded the opportunity to present tax returns, bank statements, and pay stubs to persuade a Judge that the children are safe in their care. Instead, co-parents must produce compelling evidence in the form of testimony or documents to substantiate their claims. In the event that one co-parent is accused of alcohol abuse, Judges may request court-admissible documentation to validate the allegation. Obtaining court-admissible documentation not only helps to streamline litigation but also serves to eradicate hearsay or he-said-she-said arguments.

So, what makes up credible evidence in a child custody case involving alcohol abuse? The answer from thousands of Family Law Practitioners is Soberlink’s Advanced Reporting. Designed with ease and legibility in mind, the intuitive system offers an abundance of unique features for simplified analysis of test results. First, the program automatically catalogs and showcases test results in an easily digestible

calendar format, a departure from the previous nebulous configuration and design. On any given day, Family Law Professionals can quickly see if a test was Compliant, Missed, or Non-Compliant, as the program automatically summarizes daily submissions. Outlining results on a daily, weekly, and monthly basis using universally understood red (non-compliant), yellow (missed), and green (compliant) icons, Advanced Reporting provides an all-encompassing snapshot of the client’s sobriety journey. Supplied with this new tool, Practitioners now can instantly sift through hundreds of test results to uncover meaningful insights faster than ever before.

Whether your client is falsely accused of alcohol abuse or in need of an accountability tool to maintain custody, technology like Soberlink can help. Not intended to penalize clients, Soberlink helps co-parents remain accountable, seeking to strengthen relationships with their children and improve communication with their ex-spouse. If a child is in danger while under the care of a parent, Soberlink’s real-time alerts and reports allow for swift interference, ensuring the child’s safety and well-being at all times.

Thanks to comprehensive remote alcohol monitoring systems like Soberlink, Concerned Parties are now equipped with court-admissible documentation to corroborate their claims. Additionally, Soberlink’s Advanced Reporting provides Practitioners another tool in their arsenal in their quest to defend or represent their client. Perhaps the best part—Soberlink’s innovative reporting system offers co-parents and Family Law Professionals confidence and peace of mind knowing the child’s best interests are being upheld while the family unit remains intact.



SOBERLINK,
Soberlink supports accountability for sobriety and child safety, streamlines litigation, and fosters peace of mind through a real-time alcohol-monitoring system with facial recognition and reports.

MF@SOBERLINK.COM
 817.797.7629
 WWW.SOBERLINK.COM