

Child Custody, Visitation and a Sprinkling of Child Support

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LEGAL FRAMEWORK

Family Law can vary significantly from state to state; however, there are a few uniform acts that strongly influence a significant number of state statutes. The National Conference of Commissioners on Uniform State Laws developed a Uniform Reciprocal Enforcement of Support Act, URESA, and later revision of the model statute, the RURES. Each state has a statute modeled after URESA or RURES; however, the differences among these statutes are small enough that they allow reciprocity in virtually any other state. These enforcement statutes allow a support recipient to initiate an enforcement action in one state and then pursue it in any other state.

In the 1950s and 60s, the National Conference of Commissioners on Uniform State Laws uniform statute, the Uniform Child Custody Jurisdiction Act, was enacted in all 50 states, the District of Columbia, and the Virgin Islands. The federal government enacted the Parental Kidnapping Prevention Act in 1982 to address custody problems between states that continued to exist after adoption of the UCCJA. The PKPA provides guidelines for jurisdictions, modifications, later proceedings, and notice requirements that are similar to those contained in the UCCJA; however there were some differences and conflicts among several state statutes and the PKPA.

To help settle the differences between the PKPA and the UCCJA, the National Conference of Commissioners on Uniform State Laws drafted and published the Uniform Child Custody Jurisdiction and Enforcement Act in 1997. It has since been adopted by all states except Massachusetts. As enacted by each state, the statute helps settle actions establishing child support, child custody, and other related matters in which parties are living in different states. It determines what state has the appropriate jurisdiction for hearing child custody issues.
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The American Law Institute has also published a review and analysis of divorce and other family law issues in the United States, which it calls the Principles of the Law of Family Dissolution. A comprehensive survey of American law pertaining to child custody, child and spousal support, and other family law issues, ALI's Principles summarizes different state approaches to various issues and makes recommendations based on its analysis.

Constitutional Law

Although the Supreme Court traditionally pays significant deference to state family law, the Court has also recognized constitutional protections for privacy and family life against intrusions by state and federal governments. In particular, the Court has held that constitutional guarantees of due process, equal protection, freedom of association, and implied rights of privacy protect family life from overreaching by state actors, and restrict the government's authority to interfere with the parent-child relationship. The Supreme Court's recognition of a constitutional guarantee of family privacy has led the court to invalidate state laws restricting parents' decisions about their children's education and healthcare, and other restrictions on family life affecting marriage, family living arrangements, procreation, contraception, and abortion.

Equal Protection

The Equal Protection Clause of the 14th Amendment prohibits states from denying equal protection of the law to any person within its jurisdiction. Equal protection cases are based on classifications of persons who are directly affected by legislation or government action. If a state law or action applies to a particular classification of persons, the group must be reasonably defined and the law must apply equally to all persons included in it. A state's laws must reasonably define groups affected and apply equally to all members of the group. The focus of equal protection analysis is the classification or differential treatment. Due process analysis generally asks whether the government has a sufficiently compelling justification for restricting an aspect of the parent-child relationship generally, while equal protection analysis will ask whether the government has a sufficiently compelling justification for restricting the relationship of some parents and children, while treating others more favorably.

Interstate Remedies – URESA and RURESA

Many state statutes require parents to reimburse the state for any support the state has furnished to their children, but only to the extent of the parents' means. URESA and RURESA are civil statutes. They do not have provisions for extradition. The only remedies are civil. The person or agency claiming support may bring a suit in his or her home state, and take a judgment for support in the state in which the obligor is present. If there is an outstanding support judgment in another state, the beneficiary may register it in the state where the obligor is located and have the judgment enforced as if it were a judgment of a court of that state. The same procedure may be used when the parties are in different counties in the same state.

The primary purpose is to provide for enforcement of support across state and county lines. The chief purpose is to reach a spouse or parent that runs out on the support obligation. They may also be used by a child that has moved to another state against a parent who has remained at home. They don't determine liability for child support; rather, they provide a way to enforce support orders against a parent who is in another state or county.

CUSTODY

The common law has traditionally imposed a number of disabilities on minors. A child obtains full legal capacity at the age of majority. The law creates disabilities and privileges to protect the child against the consequences of his or her lack of judgment, or to prevent him from acting where he is not considered to have sufficient maturity. As a result, a minor requires an adult to provide certain services and to make certain decisions. We call the rights and responsibilities collectively "custody."

Types of Custody

Custody involves a number of rights and responsibilities that can be placed in the hands of a single parent or guardian, or divided among several. Physical custody is both a right and responsibility to provide a child with a place to live and make decisions regarding the child's day-to-day activities. A person with physical custody is generally charged also with providing for the minor's support, including food, shelter, and clothing. A person with physical custody of the child is the person with whom the child resides.

Legal custody of a child is the right and responsibility to make particular decisions regarding a child's health and well-being. This type of custody generally requires decisions regarding education, medical care, religious practices, and other important aspects of the child's life outside of day-to-day activities. While physical custody may be temporary in some instances, legal custody is separate and may be retained by an individual with or without physical custody of the child.

Various types of custody arrangements can be imposed by courts or agreed upon, involving different sharing or non-sharing of both physical and legal custody of a child. In some divorces, a single parent will have exclusive rights to both physical and legal custody of a child, while the other parent will only have visitation rights. What is commonly called "joint custody" may involve varying degrees of sharing by the parents of either physical custody or legal custody, or both.

Best Interests of the Child

Most courts today have rejected custody presumptions in favor of examining a number of factors relevant to the custody arrangement that is in the "best interests of the child." In determining the best interest of the child, the court will examine a number of factors that contribute to the child's physical and mental health, happiness, and development. Determination of the best interest of the child is a very broad inquiry that gives a judge wide discretion in ultimately determining custody issues. Appellate courts give trial judge a great deal of leeway. It is also the standard with which the "best interest of the child" language in the original UCCJA was widely confused. As a standard for determining child custody disputes, the best interest of the child requires a court to make a substantive evaluation of the child's home environment, relationship with parents, siblings, and friends, the appropriateness of contesting custodians, and other factors that inform the court's ultimate determination of a custody issue.

Appellate courts will reverse a judge's determination of the best interest of the child only on a clear showing of abuse of discretion. In practice, individual judges may be persuaded or influenced by a wide variety of theories, expert opinions, and personal intuitions and opinions. However, some general, widely recognized principles on which a large majority of courts rely can be identified. For example, a preference for continuity in the child's environment and permanence in the child's personal attachments are universally favored when possible. In particular, courts are usually concerned with personal conduct and factors not only of the child, but those of any potential custodians seeking favorable resolution of a child custody issue.

Parental Authority

Historically, a father had almost complete autonomy over a child until the age of majority, 21. With very few exceptions, American common law still adheres to the concept that parents have broad authority over minor children. The US Supreme Court has ruled that parents are constitutionally entitled to make decisions concerning the care, custody, and control of their children; however, there is a point where the state's interest overrules or supersedes the parent's. Courts and legislatures mostly agree that government should step in and protect a child when the child is in danger or is being severely neglected. Cases weigh and compare interests of children, parents, and the government in disputes concerning education, medical care, custody, corporal punishment, and other issues bearing directly on the welfare of individual children.

Uniform Marriage and Divorce Act

The Uniform Marriage and Divorce Act (UMDA) was published by the NCCUSL in 1970 as part of an effort to make marriage and divorce laws more uniform. Although the UMDA has only been adopted by a few states, some of its provisions, particularly those dealing with determination of child custody issues, have had a significant influence on the law and practice of

the courts in all states. In particular, states today utilize the UMDA factors for determining the best interest of the child in a custody case, which emphasize:

- the wishes of the child's parent or parents
- the wishes of the child as to his custodian
- the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest
- the child's adjustment to his home, school, and community
- the mental and physical health of all individuals involved.

Child's Wishes

Courts will usually give weight to the wishes of a mature child who can articulate a preference. The usual practice is for the judge to interview the child privately in chambers, to allow the child to express his or her feelings without the pressure of mom or dad listening. The child's wish does not automatically determine the court's custody decision, but can be very persuasive if the court feels the child has a mature and rational basis for the preference.

Experts and Evaluations

Custody disputes can be like any other litigation, in that they frequently involve participation and input of expert witnesses. When custody is at issue in any proceeding, a court will often consider the reports of experts who can evaluate psychological and other factors relevant to determining the best interest of the child. Experts will often observe and examine the child in various environments and in the context of interaction with custody candidates over a period of several weeks before compiling a report. The court may evaluate the experts report or the expert's testimony based on the report. As with any other proceeding involving expert evaluation, opposing sides may present conflicting expert testimony and evidence.

Mediation and Counseling

Some jurisdictions recommend or mandate mediation in cases involving custody or visitation disputes. Most states also impose mandatory counseling for any parents involved in a divorce or other proceeding involving children, regardless of whether custody is disputed in the case. In those jurisdictions, a court may refuse to determine custody until the parties have completed counseling or an educational course, and may sanction a party for refusal to participate in either counseling or mediation, including awarding custody to the cooperating parent. Many states provide protection for victims of domestic abuse in custody mediation.

TYPES OF VISITATION

Courts can be very flexible in fashioning visitation arrangements as necessary in any given set of circumstances. Visitation may occur for a few hours or for several weeks. It may be as simple and short as company with the child for an hour or two. It could be for longer periods of time - for an evening, overnight, for a weekend, or months at a time. Different types of visitation are distinguished by frequency, duration, regularity, scheduling, and restrictions.

Reasonable Visitation

In some cases, a court order will simply provide "reasonable visitation" for a particular person, without any further details. Such an order leaves the parties to work out the time, place, duration, and frequency of visitation out of court. In practice, it leaves most of the decision-making in the hands of the custodian. However, courts expect all parties to approach the process in good faith. The visitor must make requests or attempt to negotiate arrangements from time to time with the custodian, and the custodian must make a good-faith effort to honor reasonable requests.

Reasonable visitation is very flexible and can work well if the parties can cooperate; if not, a lack of clear standards and guidelines may generate frequent disputes and return trips to the courthouse. If the custodian denies one or more requests, the court retains jurisdiction to resolve disputes. The burden will then be on the visitor to show that one or more requests for visitation have been denied, and that the denial was unreasonable. The person requesting visitation bears a significant burden to demonstrate that the custodian is being unreasonable. The court will generally favor the custodian as long as the custodian is providing some means of reasonable visitation and is not refusing reasonable requests.

Otherwise, the custodian may suggest visitation, to which the visitor may agree or disagree. The visitor in such cases is not obligated to exercise visitation, but failure to exercise the visitation may be viewed unfavorably later by the court.

Scheduled Visitation

A visitation schedule is a court order that establishes regular intervals and durations, and provides a framework for the parties to work together to facilitate additional or related visitation. Although scheduled visitation is usually a good idea in any situation, it is especially critical for parties to a contentious custody battle who may find it difficult to cooperate otherwise. Joint custody plans will almost always include A coordinated schedule for physical custody is almost always included in a joint custody plan, but it can serve the same function regardless of how legal custody decisions are divided.

Supervised Visitation

Visitation of a child is not an absolute right for anyone, including biological parents. Although the parent-child relationship is constitutionally protected, there are some instances when protection of the child outweighs a parent's right of visitation. But courts are extremely reluctant to completely bar a parent from visitation. A court will deny visitation to a parent only as a last resort, and only on a showing of imminent harm to the child.

Rather than deny visitation, a court will order supervised visitation if it is concerned that some behavior or history of the visitor indicates a possible danger to the child. Typical history invoking the courts caution includes indications of drug or alcohol abuse, physical, mental, or sexual abuse, the visitor's mental condition, or commission of a crime indicating danger to the child. Accusations of this sort are frequent in heated custody battles, and often without merit. A court will not impose supervised visitation on the uncorroborated testimony of the custodial parent unless it finds that evidence extremely credible.

Supervised visitation must be exercised in the presence of a third party designated for the purpose. The third party must be someone who can be trusted and who will be present at all times and monitor the visit and make sure that the child is safe. The third party could be an independent agent or an individual approved by the court, such as a grandparent. Supervised visitation may be limited to a few hours, or maybe extended to several days as long as the supervisor is present. If an independent professional service is used for the supervision, the visitor must usually make arrangements and bear the expense.

Restricted Visitation

Courts may place restrictions on any type of visitation, short of a requirement of supervision. Restrictions are most often placed on general reasonable visitation orders, beginning with "provided that" and then followed by something that is prohibited. Courts impose restrictions on visitation mostly in cases of infants and other children with special needs. A visitation restriction may be lifted at a later time on a showing that the circumstances requiring the restriction no longer exist.

Conditional Visitation

A court may also condition any type of visitation on the parties' participation in counseling, parenting classes or other types of education appropriate the circumstances. A typical example is a requirement that one or both parties agree to education or instruction on how to deal with children with particular types of emotional difficulties, medical conditions, or other special needs. A court may also condition visitation on its evaluation as to whether the noncustodial parent is able to take care of a child with special needs. Visitation may be conditioned on completion of a single requirement, or regular compliance on an ongoing basis.

CHILD SUPPORT

Civil obligations in the United States to support children are rooted in English “poor laws.” There was no common-law legal obligation for fathers to support a child. The common law assumed the cost of caring for children would be borne by parents, and the state would step in only when absolutely necessary, i.e., on the death or disability of the natural parents. English poor statutes imposed a duty of support on fathers, primarily to prevent the children from becoming a burden on society. The father's obligation was owed to the public. The parent’s duty was to prevent the public from the burden of providing for children. The state will pursue a parent or parents to recover funds expended to take care of a child.

The law and custom in the United States is different from most European democracies, which see rearing the child not as the individual duty of parents alone, but as a collective duty of society. In those countries, many of the costs of raising children are viewed as a social responsibility and are provided by the government. Some of these countries provide parents with children's allowances, paid maternal and/or paternal leave, and subsidized daycare in addition to public schools. The primary responsibility of parents in the United States, the provision of healthcare and higher education, are public responsibilities in those countries.

Persons Obligated

Until recently, the father was primarily responsible and liable for the support of children. Mothers were liable only if the father failed or refused. Today, both mothers and fathers are responsible for support of children, but only to the extent of resources and abilities. The amount of support is generally tied to the child's needs and the parents’ ability to provide. Some states have abrogated the common law by statute, others by judicial decision. Many states have an equal rights amendment in their state constitutions, which imposes equal responsibility on both parents. At one time this child support obligation was the father’s and father’s alone. The father's responsibility is an archaic concept that has been eliminated by constitutional considerations of equal protection and due process. Today, the law obligates any parent regardless of gender to provide for a child to the extent that the parent is able to pay and provide services they are able to provide.

Most jurisdictions impose a duty to support a child only on natural parents. A small minority treats stepparents as natural parents and extends the same duty to them. Those few states generally only impose the support obligation on the step parent during marriage to the natural parent, thereby ending the obligation on divorce or death of the natural parent. Some courts have imposed duties on stepparents and other adult caregiver's on equitable principles such as estoppel

or equitable adoption. Courts and legislatures are reluctant to do that because it would make nonparents reluctant to undertake any type of care for children at all. California extends the parental support obligation to same-sex partners of biological parents. Also, a few states hold grandparents liable for child support for children born to minor children living in the grandparents household.

A few states have enacted statutes imposing a duty of support upon stepparents. The Uniform Civil Liability for Support Act has been adopted by a few states. It has no provision for support liability of stepparents. At least one state has adopted the statute and added a step parent provision, putting stepchildren on the same footing for support purposes as natural or adopted children. Some statutes only impose liability if the stepchild is living in the stepparent's household, or terminate the support obligation when the marriage ends. The statutes have been construed to impose the obligation only if the natural parents are dead or are unwilling or unable to support the child. That support obligation is only statutory. A step parent may voluntarily take a stepchild into his family and assumes the duty of support, but the obligation is usually deemed to be terminable at the will of the stepparent.

Release

The point at which a parent or guardian is released from the obligation to support a child is not always clear. The obligation generally terminates when the child reaches the age of majority under state law. However, parents frequently dispute a duty to support a minor child who is disobedient or voluntarily leaves home against the parent's wishes. Some cases have held the father is not liable for support when the child leaves home against parents' wishes, especially if the child is near the age of majority and lives in a the parent disapproves. The law may also require a parent to support a child beyond the age of majority in particular situations or under certain conditions, as where child is still in high school or going to college. Courts typically require parents to continue supporting a child over the age of 18 until he or she graduates from high school. Courts are split on how to treat higher education costs, but there are a number that require a parent to pay college expenses. There are more that say that child needs to be supported past majority if the child is unable to support himself because of illness or incapacity.

Criminal Prosecution

Desertion and nonsupport were not crimes under common law. Today, all states and the federal government have statutes making desertion and nonsupport of a child a crime. About half the states have adopted a form of the Uniform Desertion and Nonsupport Act, providing penalties, which are usually misdemeanor, for failure to support that the parent is able to provide in which the parent knows he or she is obligated to provide to a child. Some of these also provide punishment for failure to support an incapacitated adult child. The statutes refer to the offense as abandonment, desertion, or nonsupport. While nonsupport is a continuing offense, desertion and

abandonment are discrete offenses that occur at a single point in time. States vary as to the age of the support a child for criminal purposes, but it is usually either 16 or 18.

ESTABLISHING PATERNITY

All states have various purposes and methods for establishing the paternity of a child. Establishing the paternity of the child is invariably a prerequisite step in an effort to assert the rights of the child, the parents, a government agency, or other interested party. Any child's paternity must be established to:

- qualify the child for inheritance through the father's will or state intestacy laws
- qualify the child for workers' compensation, Social Security, and other government benefits payable to the father's children
- establish and enforce a parent's obligation to support the child financially
- obtain reimbursement for medical expenses associated with the child's birth
- reimburse a government agency for expenses for caring for a child
- punish a parent for failure to support a child
- establish and enforce the father's parental rights to custody or visitation
- rebut a presumption of paternity

Acknowledgment

An acknowledgment is a man's voluntary declaration of paternity and acceptance of responsibility for a child. Each state has statutory requirements describing the form, method, and effect of a valid acknowledgment. In some states, a valid acknowledgment need only be made orally to witnesses, but most require a written statement with at least the father's signature. Many states go further to require a specific number of witnesses, notarization, and/or other formalities, similar to a will and other official documents. A significant number of states require the document to include the mother's consent, or a valid reason why it could not be obtained.

Acknowledgments are completely voluntary, but statutes and courts place some limitations on their availability and effectiveness. Some courts will not recognize an acknowledgment of a man who knows he is not the biological father of the acknowledged child. Some statutes do not allow acknowledgment of a child born to a woman who was married to another man at the time of the child's birth, and those that do usually require the consent of the mother's husband. Similarly, in most jurisdictions, a man cannot establish paternity by acknowledgment if another man has previously qualified as a presumed father under state statute, unless the previous presumed father formally denies paternity.

Blood Typing

Identification and matching of blood and DNA of father and child gives us a far greater ability to determine a child's paternity independently from testimonial evidence, and with far greater objective certainty. Through simple tests, any person's blood can be identified as a particular type or group. A child's blood type is genetically inherited from the child's parents. The blood types of a mother and father predict with absolute certainty a finite set of blood types that their child could have, thereby conversely excluding any other blood types.

Admission of Blood Typing Evidence

The majority of states have statutes authorizing admission of blood tests as evidence in paternity suits. States following either the Uniform Act on Blood Testing to Determine Paternity or the UPA 2002 allow courts discretion to admit blood testing evidence, either to exclude the putative father or to show a statistical probability that he could be the father. However, the majority of states only allow blood evidence to show exclusion. In many jurisdictions, an indigent defendant is entitled to have blood type analysis paid for by the state, especially if the proceeding is in the nature of a criminal prosecution.

DNA Evidence

Methods of testing and matching DNA of fathers and children have developed rapidly in the last several decades. DNA evidence is far more conclusive in excluding paternity and in determining the likelihood of paternity to a high statistical probability. DNA testing also expands the possibilities of sources of genetic material. If necessary, courts may obtain samples from close relatives or the body of a deceased putative father. However, DNA testing is much more expensive and is not available in many areas. In most cases, the parties begin with blood testing and then proceed to DNA testing only if the blood tests do not exclude the putative father.

Judgment or Decree

On a finding of paternity in a civil suit, the court makes an order for support of the child, for the medical expenses incurred as result of the birth, and in some states attorney's fees. The payments are most often paid monthly, and the amount usually in accordance with state child support guidelines. The father may also be ordered to reimburse the mother or agency for costs of the childbirth and the paternity action, and in some jurisdictions the winning party is entitled to attorney's fees. Most jurisdictions now determine the support of non-marital children in the same manner as marital children, in accordance with the child's needs and the mother and father's ability to pay. In some jurisdictions, the support decree is modifiable on change in circumstances as with divorce child support orders.

EXERCISE 1

EXERCISE # 1

Using the topics listed prepare a Checklist to prepare for a hearing to modify custody and child support.

DOCUMENTS TO OBTAIN FROM THE CLIENT:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

DOCUMENTS TO SUBPOENA FROM THE ADVERSE PARTY:

- 1.
- 2.

DOCUMENTS TO BE FILED WITH THE COURT:

- 1.
- 2.
- 3.

TO PREPARE FOR COURT:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

EXERCISE 2

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
____ CvD ____

MOTION TO MODIFY VISITATION

NOW COMES THE _____

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This the ____ day of April, 2013.

JOSEPH LAWYER, Esquire
Attorney for Plaintiff

Of Counsel:
Better Yet Law Firm
Anywhere, USA
(336) 227-8851 Office
(336) 226-3866 Fax

VERIFICATION

STATE OF NORTH CAROLINA

COUNTY OF _____

_____, first affirming, says that she is the Plaintiff in the above-entitled action, and that the foregoing Motion to Modify Visitation is true of her own knowledge, except as to matters and things therein stated upon information and belief, and as to those matters and things verily believes them to be true.

Affirmed and subscribed before me, this the ____ day of _____, 200__ by _____.

Notary Public

Notary Printed Name

My commission expires:

EXERCISE #3

North Carolina Child Support Guidelines

Effective January 1, 2011

Introduction

Section 50-13.4 of the North Carolina General Statutes requires the Conference of Chief District Judges to prescribe uniform statewide presumptive guidelines for determining the child support obligations of parents, and to review the guidelines periodically (at least once every four years) to determine whether their application results in appropriate child support orders.

These revised guidelines are the product of the ongoing review process conducted by the Conference of Chief District Judges. The Conference conducted a public hearing to provide interested citizens an opportunity to comment on the guidelines and also considered written comments from agencies, attorneys, judges and members of the public.

Applicability and Deviation

These revised guidelines are effective January 1, 2011, and apply to child support actions heard on or after that date.

North Carolina's child support guidelines apply as a rebuttable presumption in all legal proceedings involving the child support obligation of a parent (including orders entered in criminal and juvenile proceedings, orders entered in UIFSA proceedings, orders entered in civil domestic violence proceedings pursuant to G.S. Chapter 50B, and voluntary support agreements and consent orders approved by the court). The guidelines do not apply to child support orders entered against stepparents or other persons or agencies who are secondarily liable for child support. If a child's parents have executed a valid, unincorporated separation agreement that determines a parent's child support obligations and an action for child support is subsequently brought against the parent, the court must base the parent's child support obligation on the amount of support provided under the separation agreement rather than the amount of support payable under the child support guidelines unless the court determines, by the greater weight of the evidence taking into account the child's needs and the factors enumerated in the first sentence of G.S. 50-13.4(c), that the amount of support under the separation agreement is unreasonable.

The guidelines must be used when the court enters a temporary or permanent child support order in a non-contested case or a contested hearing.

The court upon its own motion or upon motion of a party may deviate from the guidelines if, after hearing evidence and making findings regarding the reasonable needs of the child for support and the relative ability of each parent to provide support, it finds by the greater weight of the evidence that application of the guidelines would not meet, or would exceed, the reasonable needs of the child considering the relative ability of each parent to provide support, or would otherwise be unjust or inappropriate. If the court deviates from the guidelines, the court must make written findings (1) stating the amount of the supporting parent's presumptive child support obligation determined pursuant to these guidelines; (2) determining the reasonable needs of the child and the relative ability of each parent to provide support; (3) supporting the court's conclusion that the presumptive amount of child support determined under the guidelines is inadequate or excessive or that application of the guidelines is otherwise unjust or inappropriate; and (4) stating the basis on which the court determined the amount of child support ordered. (One example of a reason to deviate may be when one parent pays 100% of the child support obligation and 100% of the insurance premium.)

The guidelines are intended to provide adequate awards of child support that are equitable to the child and both of the child's parents. When the court does not deviate from the guidelines, an order for child support in an amount determined pursuant to the guidelines is conclusively presumed to meet the reasonable needs of a child considering the relative ability of each parent to provide support, and specific findings regarding a child's reasonable needs or the relative ability of each parent to provide support are therefore not required.

Regardless of whether the court deviates from the guidelines or enters a child support order pursuant to the guidelines, the court should consider incorporating in, or attaching to, its order, or including in the case file, the child support worksheet it uses to determine the supporting parent's presumptive child support obligation under the guidelines.

Retroactive Child Support

In cases involving a parent's obligation to support his or her child for a period before a child support action was filed (i.e., cases involving claims for "retroactive child support" or "prior maintenance"), a court may determine the amount of the parent's obligation (a) by determining the amount of support that would have been required had the guidelines been applied at the beginning of the time period for which support is being sought, or (b) based on the parent's fair share of actual expenditures for the child's care. However, if a child's parents have executed a valid, unincorporated separation agreement that determined a parent's child support obligation for the period of time before the child support action was filed, the court shall not enter an order for retroactive child support or prior maintenance in an amount different than the amount required by the unincorporated separation agreement.

Self-Support Reserve; Supporting Parents With Low Incomes

The Guidelines include a self-support reserve that ensures that obligors have sufficient income to maintain a minimum standard of living based on the 2009 federal poverty level for one person (\$902.50 per month). For obligors with an adjusted gross income of less than \$999.00, the Guidelines require, absent a deviation, the establishment of a minimum support order (\$50). For obligors with adjusted gross incomes above \$999.00, the Schedule of Basic Support Obligations incorporates a further adjustment to maintain the self-support reserve for the obligor.

If the obligor's adjusted gross income falls within the shaded area of the Schedule and Worksheet A is used, the basic child support obligation and the obligor's total child support obligation are computed using only the obligor's income. In these cases, childcare and health insurance premiums should not be used to calculate the child support obligation. However, payment of these costs or other extraordinary expenses by either parent may be a basis for deviation. This approach prevents disproportionate increases in the child support obligation with moderate increases in income and protects the integrity of the self-support reserve. In all other cases, the basic child support obligation is computed using the combined adjusted gross incomes of both parents.

Determination Of Support In Cases Involving High Combined Income

In cases in which the parents' combined adjusted gross income is more than \$25,000 per month (\$300,000 per year), the supporting parent's basic child support obligation cannot be determined by using the child support schedule.

In cases in which the parents' combined income is above \$25,000 per month, the court should set support in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case, as provided in the first sentence of G.S. 50-13.4(c). The schedule of basic child support may be of assistance to the court in determining a minimal level of child support.

Assumptions And Expenses Included In Schedule Of Basic Child Support Obligations

North Carolina's child support guidelines are based on the "income shares" model, which was developed under the Child Support Guidelines Project funded by the U.S. Office of Child Support Enforcement and administered by the National Center for State Courts. The income shares model is based on the concept that child support is a shared parental obligation and that a child should receive the same proportion of parental income he or she would have received if the child's parents lived together. The schedule of basic child support obligations is based primarily on an analysis by the Center for Policy Research of economic research regarding family expenditures for children.

The child support schedule that is a part of the guidelines is based on economic data which represent adjusted estimates of average total household spending for children between birth and age 18, excluding child care, health insurance, and health care costs in excess of \$250 per year. Expenses incurred in the exercise of visitation are not factored into the schedule.

The schedule assumes that the parent who receives child support claims the tax exemptions for the child. If the parent who receives child support has minimal or no income tax liability, the court may consider requiring the custodial parent to assign the exemption to the supporting parent and deviate from the guidelines.

Income

The Schedule of Basic Child Support Obligations is based upon net income converted to gross annual income by incorporating the federal tax rates, North Carolina tax rates and FICA. Gross income is income before deductions for federal or state income taxes, Social Security or Medicare taxes, health insurance premiums, retirement contributions, or other amounts withheld from income.

(1) Gross Income. "Income" means a parent's actual gross income from any source, including but not limited to income from employment or self-employment (salaries, wages, commissions, bonuses, dividends, severance pay, etc.), ownership or operation of a business, partnership, or corporation, rental of property, retirement or pensions, interest, trusts, annuities, capital gains, social security benefits, workers compensation benefits, unemployment insurance benefits, disability pay and insurance benefits, gifts, prizes and alimony or maintenance received from persons other than the parties to the instant action. When income is received on an irregular, non-recurring, or one-time basis, the court may average or pro-rate the income over a specified period of time or require an obligor to pay as child support a percentage of his or her non-recurring income that is equivalent to the percentage of his or her recurring income paid for child support.

Specifically excluded from income are benefits received from means-tested public assistance programs, including but not limited to Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), Electronic Food and Nutrition Benefits and General Assistance. Also specifically excluded from income are 1) child support payments received on behalf of a child other than the child for whom support is being sought in the present action, 2) employer contributions toward future Social Security and Medicare payments for an employee and 3) amounts that are paid by a parent's employer directly to a third party or entity for health, disability or life insurance or retirement benefits and are not withheld or deducted from the parent's wages, salary or pay.

Social security benefits received for the benefit of a child as a result of the disability or retirement of either parent are included as income attributed to the parent on whose earnings record the benefits are paid, but are deductible from that parent's child support obligation. If the disability benefits exceed the child support obligation, no order for prospective child support should be entered, unless the court decides to deviate.

Except as otherwise provided, income does not include the income of a person who is not a parent of a child for whom support is being determined regardless of whether that person is married to or lives with the child's parent or has physical custody of the child.

(2) Income from self-employment or operation of a business. Gross income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Ordinary and necessary business expenses do not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income. In general, income and expenses from self-employment or operation of a business should be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes.

Expense reimbursements or in-kind payments (for example, use of a company car, free housing, or reimbursed meals) received by a parent in the course of employment, self-employment, or operation of a business are counted as income if they are significant and reduce personal living expenses.

(3) Potential or Imputed Income. If the court finds that a parent's voluntary unemployment or underemployment is the result of the parent's bad faith or deliberate suppression of income to avoid or minimize his or her child support obligation, child support may be calculated based on the parent's potential, rather than actual, income. Potential income may not be imputed to a parent who is physically or mentally incapacitated or is caring for a child who is under the age of three years and for whom child support is being determined.

The amount of potential income imputed to a parent must be based on the parent's employment potential and probable earnings level based on the parent's recent work history, occupational qualifications and prevailing job opportunities and earning levels in the community. If the parent has no recent work history or vocational training, potential income should not be less than the minimum hourly wage for a 40-hour work week.

(4) Income Verification. Child support calculations under the guidelines are based on the parents' current incomes at the time the order is entered. Income statements of the parents should be verified through documentation of both current and past income. Suitable documentation of current earnings (at least one full month) includes pay stubs, employer statements, or business receipts and expenses, if self-employed. Documentation of current income must be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period. Sanctions may be imposed for failure to comply with this provision on the motion of a party or by the court on its own motion.

Pre-Existing Support Obligations And Responsibility For Other Children

Current child support payments actually made by a parent under any pre-existing court order, separation agreement or voluntary support arrangement are deducted from the parent's gross income. Payments on arrearages are not deducted. The court may consider a voluntary support arrangement as a pre-existing child support obligation when the supporting parent has consistently paid child support for a reasonable and extended period of time. A pre-existing support order is one that is in effect at the time a child support order in the pending action is entered or modified, regardless of whether the child or children for whom support is being paid were born before or after the child or children for whom support is being determined. **The fact that a parent pays child support for two or more families under two or more child support orders, separation agreements, or voluntary support arrangements may be considered as a factor warranting deviation from the child support guidelines.** When establishing, reviewing, or modifying a child support order, the court shall consider during the same session of court if possible, all other requests to establish, review, or modify any other support order involving the same non-custodial parent.

Actual payments of alimony are not deducted from gross income but may be considered as a factor to vary from the final presumptive child support obligation.

A parent's financial responsibility (as determined below) for his or her natural or adopted children who currently reside with the parent (other than children for whom child support is being determined in the pending action) is deducted from the parent's gross income. Use of this deduction is appropriate when a child support order is entered or modified, but may not be the sole basis for modifying an existing order.

A parent's financial responsibility for his or her natural or adopted children who currently reside with the parent (other than children for whom child support is being determined in the pending action) is equal to the basic child support obligation for these children based on the parent's income.

Basic Child Support Obligation

The basic child support obligation is determined using the attached schedule of basic child support obligations. For combined monthly adjusted gross income amounts falling between amounts shown in the schedule, the basic child support obligation should be interpolated.

The number of children refers to children for whom the parents share joint legal responsibility and for whom support is being sought.

Child Care Costs

Reasonable child care costs that are, or will be, paid by a parent due to employment or job search are added to the basic child support obligation and prorated between the parents based on their respective incomes. Other reasonable child care costs, such as child care costs incurred while the custodial parent attends school, may be the basis for a deviation.

When the gross monthly income of the parent paying child care costs falls below the amounts indicated below, 100% of child care costs are added.

1 child	= \$1,850	4 children	= \$3,100
2 children	= \$2,500	5 children	= \$3,400
3 children	= \$2,800	6 children	= \$3,700

At these income levels, the parent who pays child care costs does not benefit from the tax credit for child care. When the income of the parent who pays child care costs exceeds the amounts indicated above, only 75% of actual child care costs are added (because the parent is entitled to the income tax credit for child care expenses).

Health Insurance and Health Care Costs

The amount that is, or will be, paid by a parent (or a parent's spouse) for health (medical, or medical and dental) insurance for the children for whom support is being determined is added to the basic child support obligation and prorated between the parents based on their respective incomes. Payments that are made by a parent's (or stepparent's) employer for health insurance and are not deducted from the parent's (or stepparent's) wages are not included. When a child for whom support is being determined is covered by a family policy, only the health insurance premium actually attributable to that child is added. If this amount is not available or cannot be verified, the total cost of the premium is divided by the total number of persons covered by the policy and then multiplied by the number of covered children for whom support is being determined.

In any case, including those where the parent's income falls within the shaded area of the child support schedule, the court may order that uninsured medical or dental expenses in excess of \$250 per year or other uninsured health care costs (including reasonable and necessary costs related to orthodontia, dental care, asthma treatments, physical therapy, treatment of chronic health problems, and counseling or psychiatric therapy for diagnosed mental disorders) be paid by either parent or both parents in such proportion as the court deems appropriate.

The court may order either parent to obtain and maintain health (medical or medical and dental) insurance coverage for a child if it is actually and currently available to the parent at a reasonable cost. Health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of delivery mechanism. If health insurance is not actually and currently available to a parent at a reasonable cost at the time the court orders child support, the court may enter an order requiring the parent to obtain and maintain health insurance for a child if and when the parent has access to reasonably-priced health insurance for the child.

Other Extraordinary Expenses

Other extraordinary child-related expenses (including 1. expenses related to special or private elementary or secondary schools to meet a child's particular educational needs, and 2. expenses for transporting the child between the parents' homes) may be added to the basic child support obligation and ordered paid by the parents in proportion to their respective incomes if the court determines the expenses are reasonable, necessary, and in the child's best interest.

Child Support Worksheets

A parent's presumptive child support obligation under the guidelines must be determined using one of the attached child support worksheets.

The child support worksheets must include the incomes of both parents, regardless of whether one parent is seeking child support from the other parent or a third party is seeking child support from one or both parents. The child support worksheets may not be used to calculate the child support obligation of a stepparent or other party who is secondarily liable for child support. Do not include the income of an individual who is not the parent of a child for whom support is being determined on the worksheets.

Use Worksheet A when one parent (or a third party) has primary physical custody of all of the children for whom support is being determined. A parent (or third party) has primary physical custody of a child if the child lives with that parent (or custodian) for at least 243 nights during the year. Primary physical custody is determined without regard to whether a parent has primary, shared, or joint legal custody of a child. Do not use Worksheet A when (a) a parent has primary custody of one or more children and the parents share custody of one or more children [instead, use Worksheet B] or (b) when primary custody of two or more children is split between the parents [instead, use Worksheet C]. In child support cases involving primary physical custody, a child support obligation is calculated for both parents but the court enters an order requiring the parent who does not have primary physical custody of the child to pay child support to the parent or other party who has primary physical custody of the child.

Use Worksheet B when (a) the parents share custody of all of the children for whom support is being determined, or (b) when one parent has primary physical custody of one or more of the children and the parents share custody of another child. Parents share custody of a child if the child lives with each parent for at least 123 nights during the year and each parent assumes financial responsibility for the child's expenses during the time the child lives with that parent. A parent does not have shared custody of a child when that parent has visitation rights that allow the child to

spend less than 123 nights per year with the parent and the other parent has primary physical custody of the child. Shared custody is determined without regard to whether a parent has primary, shared, or joint legal custody of a child. Do not apply the self-sufficiency reserve incorporated into the shaded area of the schedule when using Worksheet B.

In cases involving shared custody, the parents' combined basic support obligation is increased by 50% (multiplied by 1.5) and is allocated between the parents based on their respective incomes and the amount of time the children live with the other parent. The adjustment based on the amount of time the children live with the other parent is calculated for all of the children regardless of whether a parent has primary, shared, or split custody of a child. After child support obligations are calculated for both parents, the parent with the higher child support obligation is ordered to pay the difference between his or her presumptive child support obligation and the other parent's presumptive child support obligation.

Use Worksheet C when primary physical custody of two or more children is split between the parents. Split custody refers to cases in which one parent has primary custody of at least one of the children for whom support is being determined and the other parent has primary custody of the other child or children. Do not use Worksheet C when the parents share custody of one or more of the children and have primary physical custody or split custody of another child instead, use Worksheet B. The parents' combined basic support obligation is allocated between the parents based on their respective incomes and the number of children living with each parent. After child support obligations are calculated for both parents, the parent with the higher child support obligation is ordered to pay the difference between his or her presumptive child support obligation and the other parent's presumptive child support obligation. Do not apply the self-sufficiency reserve incorporated into the shaded area of the schedule when using Worksheet C.

Modification

In a proceeding to modify the amount of child support payable under a child support order that was entered at least three years before the pending motion to modify was filed, a difference of 15% or more between the amount of child support payable under the existing order and the amount of child support resulting from application of the guidelines based on the parents' current incomes and circumstances shall be presumed to constitute a substantial change of circumstances warranting modification of the existing child support order.

North Carolina Schedule of Basic Support Obligations

Combined Adjusted Gross Income	Effective January 1, 2011					
	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
9250	1037	1576	1898	2120	2331	2534
9300	1039	1579	1901	2123	2336	2539
9350	1041	1582	1904	2127	2340	2543
9400	1043	1585	1907	2130	2344	2547
9450	1045	1588	1911	2134	2348	2552
9500	1047	1590	1914	2138	2352	2556
9550	1052	1598	1922	2147	2362	2567
9600	1057	1605	1931	2157	2372	2579
9650	1061	1612	1939	2166	2383	2590
9700	1066	1619	1948	2176	2393	2601
9750	1071	1626	1956	2185	2404	2613
9800	1075	1633	1965	2195	2414	2624
9850	1080	1640	1973	2204	2424	2635
9900	1085	1647	1982	2213	2435	2647
9950	1089	1654	1990	2223	2445	2658
10000	1094	1661	1999	2232	2456	2669
10050	1099	1668	2007	2242	2466	2681
10100	1103	1675	2015	2251	2476	2692
10150	1108	1682	2024	2261	2487	2703
10200	1113	1689	2032	2270	2497	2714
10250	1117	1696	2041	2280	2508	2726
10300	1122	1703	2049	2289	2518	2737
10350	1127	1710	2058	2299	2528	2748
10400	1131	1717	2066	2308	2539	2760
10450	1136	1724	2075	2317	2549	2771
10500	1141	1731	2083	2327	2560	2782
10550	1145	1738	2092	2336	2570	2794
10600	1150	1745	2100	2346	2580	2805
10650	1155	1753	2109	2355	2591	2816
10700	1159	1760	2117	2365	2601	2827
10750	1164	1767	2125	2374	2612	2839
10800	1169	1774	2134	2384	2622	2850
10850	1173	1780	2141	2391	2631	2859
10900	1176	1784	2146	2397	2637	2866
10950	1179	1789	2151	2403	2643	2873
11000	1182	1793	2157	2409	2650	2880
11050	1185	1798	2162	2415	2656	2887
11100	1188	1802	2167	2421	2663	2894
11150	1191	1807	2172	2427	2669	2901
11200	1194	1811	2178	2432	2676	2908
11250	1197	1816	2183	2438	2682	2915

INSTRUCTIONS FOR COMPLETING CHILD SUPPORT WORKSHEET A OBLIGEE WITH SOLE CUSTODY OF CHILD(REN)

Worksheet A should be used when the obligee has physical custody of the child(ren) who are involved in the pending action for a period of time that is more than two-thirds of the year (more than 243 days per year). However, if the non-custodial parent's income falls within the shaded area of the Schedule, determine the basic child support obligation based on the non-custodial parent's monthly adjusted gross income, rather than the combined income of both parents, and do not proceed further on the worksheet.

On line 1, enter the monthly gross incomes of both parties in the appropriate column, subtract the payments made by each parent under previous child support orders for other children of that parent and the amount of the parent's financial responsibility for other children living with that parent, and enter the difference (monthly adjusted gross income) for each parent on line 2. Add the monthly adjusted gross incomes of both parents and enter the result in the third column (Combined) on line 2. Divide each parent's monthly adjusted gross income by the combined monthly adjusted income and enter each parent's percentage share of the combined income on line 3.

On line 4, enter the amount of the basic child support obligation for the child(ren) for whom support is sought by using the Schedule of Basic Child Support Obligations based on the combined income of both parents (line 3) and the number of children involved in the pending action.

On lines 5a through 5c, enter the amount of work-related child care costs, health insurance premiums for the child(ren), and extraordinary child-related expenses that are paid by either parent under the column for that parent. On line 5d, enter the sum of lines 5a through 5c for each parent, and in the third column (Combined) enter the total expenses paid by both parents. Add line 4 and line 5d (Combined) and enter the result on line 6 (total child support obligation).

On line 7, multiply line 6 by line 3 (percentage share of income) and enter the result in the appropriate column for each parent. On line 8, enter the amount of expenses paid directly by the non-custodial parent (line 5d) under the appropriate column; leave the custodial parent's column blank and do not enter any amount paid by the custodial parent. Subtract line 8 from line 7 for the non-custodial parent only and enter the difference on line 9 (recommended child support order) under the column for the non-custodial parent. Leave the column for the custodial parent blank.

NOTE TO PLAINTIFF AND DEFENDANT: *The information required to complete the worksheet is known only to the parties. It is the responsibility of the parties to provide this information to the court so that the court can set the appropriate amount of child support. The Clerk of Superior Court CANNOT obtain this information or fill out this worksheet for you. If you need assistance, you may contact an attorney or apply for assistance at the IV-D agency within your county*

STATE OF NORTH CAROLINA

File No.	IV-D Case No.
Case No. (Code)	UIFSA Case No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

☐ Civil: Plaintiff _____
☐ Criminal: STATE
VERSUS

Name Of Defendant _____

WORKSHEET A CHILD SUPPORT OBLIGATION PRIMARY CUSTODY

G.S. 50-13.4(c)

Children	Date Of Birth	Children	Date Of Birth

	Plaintiff	Defendant	Combined
1. MONTHLY GROSS INCOME	\$	\$	
a. Minus pre-existing child support payment	—	—	
b. Minus responsibility for other children	—	—	
2. MONTHLY ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (line 2 for each parent's income divided by Combined Income)	%	%	
4. BASIC CHILD SUPPORT OBLIGATION (apply line 2 to Combined Child Support Schedule. see AOC-A-162, Rev. 1/11)			\$
5. ADJUSTMENTS (expenses paid by each parent)			
a. Work-related child care costs (see instructions)	\$	\$	
b. Health Insurance premium costs-child(ren) portion only (total premium + # of persons covered x # of children subject to order = children's portion)	\$	\$	
c. Extraordinary expense (note duration at bottom if time for adjustment differs from duration of child support obligation)	\$	\$	
d. Total Adjustments (add two totals for combined amount)	\$	\$	\$
6. TOTAL CHILD SUPPORT OBLIGATION (add lines 4 and 5d combined)			\$
7. EACH PARENT'S CHILD SUPPORT OBLIGATION (line 3 X line 6 for each parent)	\$	\$	
8. NON-CUSTODIAL PARENT ADJUSTMENT (enter non-custodial parent's line 5d)	\$	\$	
9. RECOMMENDED CHILD SUPPORT ORDER (subtract line 8 from line 7 for the non-custodial parent only. Leave custodial parent column blank)	\$	\$	

Date _____

Prepared By (Type Or Print) _____

(NOTE: This form may be used in both civil and criminal cases.)

CHECKLIST TO MODIFY CUSTODY/CHILD SUPPORT ORDERS

OBTAIN FROM THE CLIENT:

1. Tax returns for last 3 years with all 1099 & W-2 forms.
2. Employment information on earnings affidavits completed by your employers.
3. A copy of your most recent pay stub
4. Testimony from people who see client children together, who know what kind of parent they are and can testify to your relationship with their children.
5. Name of their children's current school teacher(s), guidance counselor or anyone else in school with whom the children may have spoken & information as to how to contact that person.
6. Witnesses from church, clubs, etc., people who are involved in sports activities with the client and children.
7. Photographs showing the client's present residence, the children's rooms, pictures that show the things that the client and the children have done, photographs that show vacations and everyday activities to portray to the Court the relationship that they have with their children.

SUBPOENA FROM THE ADVERSE PARTY:

1. Current income, ~~tax~~ returns, all 1099s

DOCUMENTS TO BE FILED:

1. Prepare Motion to be signed by the client, attorney and filed with the Court.
2. Pay necessary fees to the Court
3. Prepare Notice of Hearing and file with the Court

TO PREPARE FOR COURT

1. Serve the adverse party or attorney for adverse party.
2. Interview witnesses prior to trial.
3. Serve subpoenas, if needed, for witnesses prior to trial
4. Subpoena school, medical, counselor or any other records needed for custody proceedings.
5. Set up depositions, if necessary, prior to trial
6. Compute child support, if necessary, prior to trial
7. Prepare exhibits for trial.