



Summer 2018 – Newsletter of the NOW Foundation Family Law Ad Hoc Advisory Committee

Dear Friends,

The purpose of the NOW Foundation Family Law Ad Hoc Advisory Committee Newsletter is to provide continuing education on family court issues to the general public and supporters of NOW Foundation. The newsletter contains current news and information regarding the ongoing crisis for mothers and children in family courts. As many of our readers are aware, protective parents – primarily mothers – are losing custody of minor children in court proceedings that often ignore evidence of battering or child abuse and grant custody or unsupervised visitation to the abusive parent.

We hope you find the information we share with you of value as you go about your work advocating for women and their children.

General Information

A clearinghouse of materials the committee has compiled can be found at the NOW Foundation web site at this link, <http://now.org/now-foundation/crisis-in-family-courts/>. There are additional materials at the Chapters only web site on the NOW, Inc. website.

Family Law Advisory Committee Brochure is available at this link: <http://now.org/wp-content/uploads/2015/02/familylawbrochure7-08final.pdf>

Why Family Court Custody Case Recordings Should be Mandated

Adele Guadalupe

Every state and each county in the United States has different rules for recording hearings and trials. In Florida recordings of custody cases is arbitrarily up to the judge or the Chief Justice of that court to make the determination. Although Florida Law states that at a hearing or trial when a parent is being denied custody of their child, mandatory recordings are required. It came to light in my research and many conversations with attorneys and judges, that they were unaware of this law. This is what I found:

- Family court hearings routinely involve child custody and timesharing decisions which significantly impact a child's life well beyond age 18. Divorce is stressful enough for children who have to adapt to two homes, and the physical and emotional adjustment related to the back and forth between each parent's residences. The judge's decision on how that time is divided, along with education, religion and medical care, will affect that child throughout life. These decisions are far too important to be made without recording all facts, testimony, and evidence presented at any of those family court proceedings. Court reporters and transcripts are very costly and many parents just can't afford them. The ability to appeal such an important decision is limited, if not impossible, without a record or a transcript of a hearing/trial;
- By having these Mandated Court Recordings available, should judges change during the litigation process, an undisputed record exists thereby saving time for judges, as well as litigants and attorneys, thus reducing costs for all and insuring fairer and more rational decisions;
- Even if the same judge presides over the same case, it can take months or even years to fully resolve all outstanding matters before the court, which would require a judge to recall a large volume of information, which inevitably changes over time. A recording which can then be transcribed, if necessary, can be of great benefit in aiding the judge on all facets of any particular case, saving a judge time, and thereby, saving tax payer dollars;
- Ensuring a child of the civil rights they are entitled to of having access to both parents, considering that neither one is harming him/her, only makes sense and helps the child adjust to the difficulties of a break-up or divorce. Thereby, less traumatic stress and possible abuse is placed upon that child.

Lack of Uniformity

- Not all of The Unified Family Courts (UFCs) of the 15th Circuit Court are equipped with both audio and video recording capabilities.
- Yet all family court hearings before a general magistrate are presently required to be recorded.
- Family court proceedings before a judge may or may not be recorded, if the courtroom is properly set-up with recording devices, but only at the judge's discretion.
- According to our findings during our 15 years of volunteer court watching and reporting, many family court judges choose not to record, and are thereby denying many impoverished litigants who are attending pro se, the right to a fair and impartial proceeding and/or appeal.

Child abuse by the court

When a parent is claimed to be an abuser, be it physically, mentally, or sexually, it is imperative that proceedings be recorded. Since many parents run out of money to afford the paid court reporter, it is incumbent upon the justice system to provide all necessary elements to insure a fair and unbiased trial. Without a recording this is not possible, and results in denying both parents and children their civil rights to their families.

Information request from other states

CHILD SUPPORT GUIDELINES LEGISLATION IN OHIO REFLECTS NATIONAL PUSH FOR LOWER CHILD SUPPORT ORDERS

In May 2018, the Ohio legislature passed far-reaching legislation, House Bill 366 (HB 366), which will drastically lower many child support orders in Ohio. Some of the changes to the Ohio child support guidelines will harm many mothers and children. The state office of child support, child support agency directors, and “fathers’ rights” advocates pushed for passage of these bills while NOW, legal aid attorneys, and domestic violence advocates opposed this legislation.

As mandated by federal law, all 50 states have adopted child support guidelines – mathematical formulas – which are used by courts and administrative child support agencies to calculate child support orders. The stated purposes of child support guidelines are to establish adequate levels of child support payments, promote consistency in child support orders, and facilitate negotiated settlements in divorce and legal separation cases involving children.

Most states (37 states at last count) have implemented child support guidelines based on the so-called “income shares” model. Income shares-based child support guidelines take into account both parents’ incomes and the number of children subject to the child support order, and calculate the noncustodial parent’s (payor’s) child support obligation based on his or her share of the combined parent income. The higher the parents’ combined income and the higher the share of that income received by the payor, the higher will be the payor’s child support obligation calculated under the guidelines. There may be further adjustments and either upward or downward deviations from the presumptive amount of child support because of adjustments for the children’s health insurance and daycare costs or for such deviation factors as extraordinary parenting time (visitation) expenses, the parents’ in-kind contributions to the support of their children, children’s earnings, and extreme disparity in the parents’ financial circumstances. Some states, including Ohio, also incorporate a “self-sufficiency reserve” (SSR) adjustment into the initial child support guidelines calculation in order to protect low income payers by disregarding some of the payor’s income and thereby lowering the payor’s child support obligation.

Every state has to review its existing child support guidelines and consider possible changes to those guidelines every four years. In many states that has turned out to be a very difficult and politically controversial process. The Ohio legislation is the first comprehensive update of the state’s child support guidelines since 1993 and the existing child support tables are badly out of date. All stakeholders agreed that the Ohio child support tables and SSR needed to be updated, and that other changes to the state’s child support guidelines were necessary.

HOWEVER, the Ohio legislation goes too far in reducing many child support orders at various income levels and thus puts at risk the welfare of many children in lower income households receiving child support payments. Various changes – including a new parenting time adjustment, a cap on the daycare expense adjustment, and a smaller adjustment for the children’s health insurance expenses – will significantly lower child support orders. But the most drastic reductions in child support payments will result from a radical expansion of the self-sufficiency reserve (SSR). Under the expanded SSR, a substantial part of the income of lower income and many middle income payors will be disregarded (not counted) in the child support guidelines calculation. In the typical scenario, where the father is the child support payor and the mother and children are the child support recipients, the father’s standard of living will dramatically improve and the mother and children will experience a sharp decline in their standard of living. Poorer, female-headed households will be hit hard by these changes. On the other hand, some fathers with annual incomes exceeding \$100,000 will get to pay a lower amount of child support.

The philosophical assumption underlying the income shares-based child support guidelines used by Ohio and most other states is that each parent will be responsible for the support of their children based on their proportional shares of the combined parent income. However, that principle is seriously undermined if much (or in some cases most) of the payor's income is not counted in the child support calculation. As a result, the primary custodial parent (often the mother) will bear a disproportionate burden of financially supporting the children. At the same time, the social safety net which in the past might have cushioned the impact of reductions in child support income has been severely eroded in many states because of cuts to welfare cash assistance and food stamp benefits and greater barriers to accessing affordable healthcare insurance under the Affordable Care Act (ACA).

What is happening in Ohio is a forerunner of what is likely to happen in other states around the country. The federal government is pushing the states to implement or expand existing SSRs and adopt other measures to reduce the accumulation of unpaid child support arrears and to make payment levels "more realistic" (affordable) for lower income payers. State and local child support agencies are making a similar push, motivated by a desire to improve their child support collection performance ratings – not by collecting more child support, but by reducing unpaid arrears through the issuance of lower child support orders. The state and local child support agencies and child support payors (mostly fathers) will be big winners. Children and primary custodial parents (mostly mothers) will be big losers.

What does this Ohio legislation need for other states? Other states will see similar legislation introduced. Other states will try to accomplish similar results through administrative or court rule changes.¹ Several states – including Connecticut, Iowa, New York, and Washington – have substantially expanded their SSR adjustments, but they did not go as far as the Ohio legislation goes in reducing child support obligations.² NOW members and children's advocates should closely monitor developments in their states.

To review or obtain copies of the Ohio legislation and the official bill analyses, go to: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-366>, or <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-125>.

¹ States have taken different approaches to adopting in revising their child support guidelines. Some states have statutory guidelines, while other states have implemented their child support guidelines through administrative or court rules. Ohio has statutory guidelines, but the Ohio legislation gives the Ohio Department of Job and Family Services the legal authority to make all future changes to the guidelines administratively without going through the legislature.

² A study of child support payment compliance in Washington State found that lowering child support orders did not result in improved compliance.

THE NEW GOP TAX LAW MEANS NASTIER DIVORCES, LOWER ALIMONY PAYMENTS

BY MICHAEL R. SMALZ

In December 2017, President Trump signed the Republican tax bill – the so called “Tax and Jobs Act.” It is primarily aimed at reducing taxes for corporations and wealthy Americans, but it encompasses a wide range of changes to federal tax laws. Although most provisions of the new tax law take effect for the 2018 tax year, the changes to the taxation of alimony payments take effect on January 1, 2019.

Several of the tax law changes will impact – directly or indirectly – divorcing couples in Ohio. These include the elimination of personal dependency exemptions, the doubling of the child tax credit – from \$1000 to \$2000 – for each qualifying child under the age of 17, and the expansion of the tax exemptions under Section 529 education savings accounts to cover expenses for a child’s pre-kindergarten to 12th grade education. However, the most dramatic changes involve the federal tax law treatment of alimony payments – also known (in some states) as “spousal support” or “spousal maintenance “payments.

The new tax law is expected to cost at least \$1.5 trillion in tax revenues and add nearly that amount to the federal debt. But one way Republican bill writers tried to recover revenue to compensate for the cuts was through the alimony-related changes. Under current law, alimony paid by one spouse to the other is tax deductible. Under the new law, alimony payments would no longer be tax-deductible by the payor and will count as income to the receiving spouse.

These tax law changes will likely harm both divorcing spouses in cases where alimony is ordered. The payor spouse could incur a much higher financial burden from alimony payments because of the loss of the tax deduction, and the receiving spouse could end up receiving significantly smaller alimony payments. The current tax law encourages wealthier spouses to agree to make reasonable alimony payments to the less well-off spouse because the payor spouse recoups part of the alimony payments through reduced federal income taxes. That will no longer be the case under the new tax scheme. In fact, the higher the income of the paying spouse, the greater will be the disincentive for that spouse to agree to significant alimony payments.

Madeline Marzano-Lesnevich, president of the American Academy of Matrimonial Lawyers (AAML) expressed concern about the impact of the new tax law:

“The new tax plan will most certainly alter the ways in which divorce cases are settled and couples need to be prepared for these changes. The elimination of the alimony tax deduction has removed a powerful negotiating tool and turned it into a difficult stumbling block for spouses trying to settle a divorce.”³

Divorce cases may become nastier and more difficult to settle without going to trial. The wealthier spouse, often (but not always) the husband, will push harder for lower (or no) alimony payments because of the greater financial burden of alimony payments. The other spouse will have to fight harder for reasonable and adequate alimony payments. The reduced likelihood of settlements will mean higher attorney fees and more protracted court litigation for both parties. Divorce attorneys will benefit from higher attorney fees, but both spouses (and their children) will be worse off.

³ Karla Bowsher, For Better or Worse,” Money Talks News, February 23, 2018, found at <https://finance.yahoo.com/news/better-worse-tax-overhaul-impacts-214239535.html> .

Other adverse or unintended consequences of the alimony-related tax law changes are likely. Those states that have implemented alimony guidelines (formulas or rules of thumb) will probably have to update and change those guidelines. In the meantime, divorce courts and parties will face greater uncertainty and inconsistency in setting or negotiating alimony payment levels. The new tax law could also undermine existing child support guidelines because alimony payments are sometimes considered in the child support guidelines calculation. Regardless of the impact on the child support guidelines computation, noncustodial parents and other child support payors may more frequently request and obtain downward deviations from the amount of child support calculated under the state's child support guidelines in order to compensate for the greater financial burden of the taxes due on alimony payments. Reduced child support payments will harm the parties' children by lowering the standard of living of the custodial parent's household.

Some couples contemplating divorce will rush to file and complete their divorce cases before January 1, 2019, in order to avoid the adverse tax consequences of the new law. Anecdotal reports suggest this is already happening. Moreover, some couples may prematurely file or complete their divorce cases without exhausting available opportunities for marriage counseling, therapy, or conciliation. In some cases, spouses with less power in the relationship may feel compelled to settle the divorce without adequate consideration or without adequate legal counsel. Premature or unnecessary divorces could also cause additional trauma for the children of those divorces.

In summary, the new federal tax law overhaul pushed through Congress by President Trump and the GOP will have serious unintended and adverse consequences for divorcing spouses and their children. The changes to the tax treatment of alimony payments are especially significant. Women, including stay-at-home moms and wives who sacrifice their financial prospects to put their husbands through professional training or to support their careers, are especially vulnerable. Divorces – especially the financial terms – will become more contentious and expensive.

[1] Karla Bowsher, "For Better or Worse," Money Talks News, February 23, 2018, found at <https://finance.yahoo.com/news/better-worse-tax-overhaul-impacts-214239535.html> .

A Call to Action

Share this newsletter with your Chapters and with other NOW leaders in your state. Research legislation in your state and consider the impact. Are family law proceedings required to be recorded in your state or local jurisdiction? Are they in fact recorded? Would protective mothers benefit from recording them? Are the costs of requesting the recordings or transcripts cost prohibitive for most mothers involved in custody proceedings? How can you have an impact on improving your court system, in these manners or others?

Start a local Chapter committee to research and educate others on these issues, hold a focus group, or conduct a survey on these issues in your area.

Contact National NOW to reach the Family Law Committee with any questions or to link with other advocates working on these issues.
