

CHILD SUPPORT

CHILD SUPPORT: A divorce decree must provide for the support of minor children. The parties **may not** agree to waive the right to support, and an agreement so providing is not enforceable. Support normally continues through the age of majority or emancipation, whichever first occurs; however, children who are incapable of self-support due to a mental or physical handicap may be entitled to support so long as the divorce is filed prior to the attainment of the age of majority. Additionally, as of 1989, parents may be required to provide post-minority support for college education so long as the action seeking same is filed before the child attains the age of majority. This award is discretionary with the court, taking into consideration the financial resources of the parents and the child, the child's commitment to and aptitude for college education, the standard of living the child would have enjoyed absent the divorce, the child's relationship with the parents, and the child's responsiveness to parental advice and guidance. The extent of the parent's obligation is normally defined as including tuition, books, fees and room and board.² The Court of Civil Appeals has mandated that a trial court must set reasonable limitations on the parent's postminority-support obligation, including a time period, a grad requirement and student status requirement (*i.e.*, full time).³

The method of determining the appropriate amount of child support was drastically changed when the Alabama Supreme Court adopted *Rule 32, Alabama Rules of Judicial Administration*, commonly known as the "child support guidelines". *Rule 32* provides a method of computing child support and creates a rebuttable presumption that the amount resulting from the application of the guidelines is the correct amount of child support to be awarded in both divorce and modifications of child support. Evidence establishing that the application of the guidelines would be manifestly unjust or inequitable would be sufficient to rebut the

presumption. If the child support award does not comply with the guidelines, the practitioner should demonstrate a reason for deviation from the guidelines that results in a benefit flowing to the child, such as the non-custodial parent's payment of mortgage payments on the home in which the child resides or an agreement to pay for certain non-curricular activities for the child on a regular basis.⁴

Child support can be modified at any time during the minority of the child. Modification is appropriate in many situations, both upward and downward. The non-custodial parents' negative financial change can be grounds for a downward modification of the support. Prior to the 1993 amendments to the guidelines, one clearly had to show a material change of circumstances in the needs, conditions and circumstances of the children in order to modify child support focusing upon their advancing age and the cost of living occasioned by inflation and an examination of the payor's ability to meet the needs of the children. However, the amendments provide that the guidelines shall be applied to child support modifications and create a rebuttable presumption that support should be modified when there is more than a ten per cent difference between the existing support and the amount determined by the application of the guidelines.

The guidelines operate as a sliding scale of child support obligation based on the parties' combined incomes and number of children. The first applicable factor is the parties' gross income. It is important to note that the parties' ability to earn and not his or her actual earnings controls on the issue of that parties' true gross income. Thus, the court may use the previous earnings of a person who quits a job for the purposes of avoiding child support. For the purposes of the guidelines, gross income includes money from any source and includes earnings, both regular and overtime, interest or dividend income, severance pay, etc. There are two deductions to gross income recognized by the guidelines: payments of periodic alimony or child support under a preexisting order in another case. The guidelines permit the court to deduct for "imputed preexisting child support." Where there are children from a current marriage,

case law **allows** (but does not mandate) the judge to deviate from the guidelines. Once these deductions are made, the chart provides a child support figure for parties at their combined incomes and number of children. One then divides the adjusted income of each party by the basic child support obligation to get a percentage for that party. Net child care cost is added to this basic child support obligation. This is not the actual child care cost, but, rather, comes from standards adopted and changed from time to time by the Department of Human Resources. The amount to be used for day care expense incurred due to employment or search for employment is the lesser of the actual cost or the amount allowed by the DHR standards. The practitioner should be able to obtain these figures from the appropriate clerk's and/or judge's office. To this is added the actual cost of health care insurance which covers the minor child.⁵ One then applies the percentages obtained to the total child support obligation (the total of the basic obligation, day care and health insurance). If the payor provides health insurance for the child, that amount is deducted from his or her child support obligation. If not, the figure obtained by application of the percentages is the payor's obligation.

There are four forms that must be completed and submitted to the court in order for any agreement regarding child support to be approved. A CS-41 (Income Statement/Affidavit) must be completed and sworn to by each party verifying his or her current income, last income if unemployed, medical insurance expenses for the minor child and day-care expense. In a default situation, the plaintiff must complete the form for the defendant based on knowledge or belief. The attorney may subpoena wage information or bring to court a prior W-2, tax return or other evidence of income for the defaulted party. A CS-42 (Child Support Guideline Form) must be completed showing the method of computing the child support under the guidelines and the resulting award from application of the guidelines. A CS-43 (Notice of Compliance) must be completed advising the court as to whether or not the guidelines have been followed, and if not, the reasons why they have not.

An Order of Continuing Withholding for

Support must be entered in every decree where child support is mandated. This is an order served on the employer directing it to deduct child support from the wages of the obligor and pay it to the appropriate clerk's office for payment to the recipient. The order does not have to be served on the employer, but a reason for not doing so should be included in the divorce decree. If the obligor becomes delinquent for one full month for more than thirty days, the recipient can file a motion asking that the order be served at that time.

Payments of child support are not taxable income to the recipient nor are they tax deductions for the payor. Child support obligations are not dischargeable in bankruptcy. The *Uniform Interstate Family Support Act* was passed by the legislature in 1997, and it contains sweeping changes as regards the method of collecting interstate child support.

In addition to child support, the practitioner should seek to ensure that the child will be covered by health insurance by at least one of the parties and that the non-custodial parent keeps life insurance in place during the child's minority with the minor child named as the irrevocable beneficiary during the minority.