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Comment

Missouri Child Support Guidelines

I. INTRODUCTION

The fact that divorce is often economically devastating for women and children can hardly be disputed.¹ Such statistics have become quite familiar. One study of the economic effect of divorce in California revealed that immediately upon divorce, the standard of living of divorced women and their children declined seventy-three percent, while that of their ex-husbands rose forty-two percent.² Single-parent families headed by females make up one-sixth of households nationwide, but constitute one-half the number of families living in poverty.³ One out of every five children and one out of every four preschoolers live below the poverty level.⁴

Faced with statistics such as these, Congress passed two important pieces of legislation. The Child Support Enforcement Amendments of 1984⁵ and the Family Support Act of 1988,⁶ are designed to improve the adequacy, consistency, and collectibility of child support awards.⁷ These two laws require states to develop specific guidelines providing a numerical formula for the determination of child support award amounts⁸ and require that the guidelines be presumptive.⁹ Following the federal mandate, the Missouri Supreme Court enacted child support guidelines which have been mandatory since April 1, 1990.¹⁰

Part II of this Comment addresses child support guidelines in general and briefly examines the four basic types of guidelines.¹¹ Part III focuses on the

1. See James B. McLindon, *Separate But Unequal: The Economic Disaster of Divorce for Women and Children*, 21 FAM. L.Q. 351 (1987).

2. Charles Brackney, *Battling Inconsistency and Inadequacy: Child Support Guidelines in the States*, 11 HARV. WOMEN'S L.J. 197, 199 (citing LENORE WEITZMAN, *THE DIVORCE REVOLUTION* 339 (1985)).

3. *Id.* at 199 (citing BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *CURRENT POPULATION REPORTS, CONSUMER INCOME, SERIES P-60, No. 154, MONEY INCOME AND POVERTY STATUS OF FAMILIES AND PERSONS IN THE UNITED STATES: 1985* at 4, 6 (1986)).

4. James D. Weill, *Child Poverty in America*, 25 CLEARINGHOUSE REV. 337, 337 (1991).

5. 42 U.S.C. §§ 651-667 (1988).

6. 42 U.S.C. §§ 666-669 (1988).

7. Loretta D. McDonald, *Child Support Guidelines: Formulas to Protect Our Children From Poverty and the Economic Hardships of Divorce*, 23 CREIGHTON L. REV. 835, 835 (1990). For a similar study of child support guidelines with an emphasis on Nebraska's guidelines, see Ms. McDonald's comment.

8. 42 U.S.C. § 667(a) (1988).

9. *Id.* § 667(b)(2).

10. MO. R. CIV. P. 88.01.

11. See *infra* text accompanying notes 14-59.

Missouri child support guidelines and case law addressing the guidelines.¹² Part IV is a critique of Missouri's system.¹³

II. CHILD SUPPORT GUIDELINES IN GENERAL

A. *The Function of Guidelines*

Prior to the required use of the guidelines, an award of child support was left to judicial discretion.¹⁴ Until recently, many judges believed that the wide variety of family lifestyles and economic situations made it impossible to reduce the determination to a "mere formula."¹⁵ However, as the connection between divorce and the fall of women and children into poverty became increasingly apparent, so did deficiencies in the traditional case-by-case system of figuring child support amounts.¹⁶ Child support awards have historically been grossly inadequate when compared to the actual cost of raising children.¹⁷ While \$10.1 billion in court-ordered child support was due in the United States in 1983, one study indicated that if either of two proposed guidelines had been in effect that year, the amount of child support due would have been two and one-half times greater, or \$25.5 billion.¹⁸

Further, child support orders have traditionally been inconsistent. Similarly-situated obligors often paid widely different amounts, which led to a perception that child support levels were unfair.¹⁹ Finally, the case-by-case determination of child support resulted in the inefficient adjudication of many support orders.²⁰ Without guidelines, parties had little knowledge of what support level to expect. Fewer settlements were reached, and the judicial process moved slowly.²¹

The congressionally mandated guidelines were thus intended to have three essential functions: (1) to bridge the "adequacy gap" in child support awards; (2) to improve the consistency of awards ordered; and (3) to improve the efficiency of court award processes.²²

12. See *infra* text accompanying notes 60-144.

13. See *infra* text accompanying notes 145-93.

14. Marianne Takas, *The Treatment of Multiple Family Cases Under State Child Support Guidelines*, U.S. DEP'T OF HEALTH & HUM. SERVICES, ADMIN. FOR CHILDREN AND FAMILIES, OFF. OF CHILD SUPPORT ENFORCEMENT 1 (1991).

15. *Id.*

16. Robert G. Williams, *Guidelines for Setting Levels of Child Support Orders*, 21 FAM. L.Q., 281, 282 (1987).

17. *Id.*

18. *Id.* at 283. The guidelines used in the study were the Melson formula and the percentage of income standard. *Id.*

19. *Id.* at 285.

20. *Id.* at 282.

21. *Id.* at 286.

22. *Id.* at 282-86.

B. Basic Guidelines Models

While federal law requires states to adopt presumptive guidelines, it does not specify a particular guideline model.²³ Though each state is free to set its own guidelines, the guidelines currently in use are based on four predominant models: (1) percentage of income, (2) Delaware Melson formula, (3) equal living standard ("income equalization model"), and (4) income shares model.²⁴ All the models reflect the general policy that "parents have a shared responsibility to support their children, based upon their own ability to pay, and upon the children's needs."²⁵ The models vary in the number of factors each takes into account in setting awards and in their resulting degree of simplicity or complexity.²⁶

The percentage of income model is the simplest type of guideline.²⁷ Under this formula, the noncustodial parent pays a set percentage of his or her income²⁸ as child support based on the number of children.²⁹ For example, in Wisconsin, the noncustodial parent pays seventeen percent of his or her income for one child, twenty-five percent for two, twenty-nine percent for three, thirty-one percent for four, and thirty-four percent for five or more.³⁰ The income of the custodial parent is not considered under this model; however, the support levels are set so that both parents will share the costs of raising the children.³¹ It is assumed the custodial parent will spend a matching amount equal to the designated percentage on the child directly.³²

The percentage of income model has two advantages. Its simplicity makes it easy to calculate the support award and to determine the award in advance, which encourages settlement.³³ Judicial resources are saved by the increased number of settlements, and support amounts are more consistent since the only variables in the formula are the number of children.³⁴ However, as a side effect of its simplicity, the model fails to consider several important factors, such as custodial parent income, child care and extraordinary medical expenses, joint or split physical custody, and subsequent children of the obligor.³⁵ A second type of child support guideline is the Delaware

23. Takas, *supra* note 14, at 5.

24. *Id.*

25. *Id.*

26. Williams, *supra* note 16, at 290.

27. *Id.*

28. The level of income may be measured as gross income or net income, depending upon the state. *Id.*

29. *Id.*; Takas, *supra* note 14, at 5.

30. Takas, *supra* note 14, at 5.

31. *Id.*

32. Williams, *supra* note 16, at 291.

33. Brackney, *supra* note 2, at 203.

34. *Id.*

35. *Id.*; Williams, *supra* note 16, at 290. Wisconsin does have special guideline provisions for joint physical custody situations. Brackney, *supra* note 2, at 203; Williams, *supra* note 16, at 290.

Melson formula, originally developed by Judge Elwood F. Melson of the Delaware Family Court.³⁶ The Melson formula starts with the net income of each parent and subtracts a "self-support reserve" to provide for the parent's basic needs.³⁷ This self-support amount is periodically updated, and if a parent is married or living with another working adult, the reserve is reduced to half the level for two people to account for reduced living expenses.³⁸ Then, the court deducts the amount necessary to provide for the basic needs of the children (including child care and extraordinary medical expenses).³⁹ The remaining income is divided between the parents and the children, creating a "standard of living allowance" so that the children share the living standards of both parents.⁴⁰

The Melson formula considers multiple families because it provides for a deduction from the obligor income for the primary support of other children living with the obligor who are not covered by another support order.⁴¹ The Melson formula also makes adjustments for joint and split custody arrangements.⁴² Separate child support obligations are calculated for each parent and then prorated according to the time the child spends in the physical custody of the other parent.⁴³ The remainder left after netting out the two obligations is the support amount that must be paid by the parent with the greater obligation.⁴⁴

A third, rarely followed guideline model is the equal living standards model developed by Dr. Judith Cassety of the Texas Attorney General's office.⁴⁵ The goal of the Cassety model is to insure that the custodial and noncustodial family units maintain similar standards of living,⁴⁶ reflecting a policy that children should enjoy a standard of living "as close to the original pre-divorce level as possible."⁴⁷ While the Cassety and Delaware Melson formulas are similar because they both provide for children to share in the living standards of their parents, the Cassety model is designed to provide a more exact equalization of living standards.⁴⁸ Calculation under the Cassety

36. Takas, *supra* note 14, at 7.

37. Williams, *supra* note 16, at 295.

38. *Id.*

39. Brackney, *supra* note 2, at 204.

40. *Id.* at 204-05.

41. Williams, *supra* note 16, at 301.

42. *Id.*

43. *Id.*

44. *Id.*

45. Takas, *supra* note 14, at 8.

46. *Id.*

47. Williams, *supra* note 16, at 302.

48. Takas, *supra* note 14, at 8. For example, the Cassety model includes the income of subsequent spouses in net income and deducts poverty level amounts for subsequent spouses and children in the same step such deductions are made for other members of the two households. Williams, *supra* note 16, at 302-03. The Melson formula does not include subsequent spousal income, does not provide for a "self-support reserve" for future spouses, and makes a deduction for the support of subsequent children only after providing for the current children. *Id.* at 295,

model begins with the net income of each household (including the income of subsequent spouses) and exempts a poverty level of support for each member of each household, including subsequent spouses and children.⁴⁹ The remaining income is allocated between the two households in proportion to the number of persons in each.⁵⁰

The Cassety model can accommodate joint physical custody arrangements by varying the family unit size according to the amount of time the child spends with each family (by "dividing" the child between households for the purpose of allocating income to each).⁵¹ Subsequent spouses and children are factors in this formula. Child care expenses and extraordinary medical expenses are not provided for; however, they would probably be deducted from the net income of the parent who incurred the expense.⁵²

A majority of states, including Missouri, have adopted guidelines based on a fourth model, the income shares method.⁵³ Developed by the Institute for Court Management of the National Center for State Courts under the Child Support Guidelines Project,⁵⁴ this guideline implements the policy that parents should pay as child support an amount as nearly equal to the amount the parents would have spent on the child if the family had remained together.⁵⁵ There are three basic steps to computing child support under the income shares model:

1. Income of the parents is determined and added together.
2. A basic child support obligation is computed based on the combined income of the parents. This obligation represents the amount estimated to have been spent on the children jointly by the parents if the household were intact. The estimated amount, in turn, is derived from economic data on household expenditures on children. A total child support obligation is computed by adding actual expenditures for work-related child care expenses and extraordinary medical expenses.
3. A total obligation is then prorated between each parent based on their proportionate share of income. The obligor's computed obligation is payable as child support. The obligee's computed obligation is retained and is presumed to be spent directly on the child.⁵⁶

The basic child support obligation discussed in step two is calculated through the use of a chart that accounts for the basic obligation by the number of children and the level of the parents' combined incomes.⁵⁷ The formula

301.

49. Williams, *supra* note 16, at 302.

50. *Id.*

51. *Id.*

52. *Id.* at 302-03.

53. Brackney, *supra* note 2, at 201.

54. Williams, *supra* note 16, at 291.

55. Takas, *supra* note 14, at 7.

56. Williams, *supra* note 1, at 292-93.

57. *Id.* at 294; see MO R. CIV. P. Form 14, Schedule of Basic Child Support Obligations.

may not apply for families whose incomes are below the poverty line; rather, a minimum award may be determined on a case-by-case basis.⁵⁸

The flexible design of the income shares model allows states to tailor guidelines to provide for net or gross income as a base, age adjustments, treatment of prior or subsequent dependents, and shared or split custody arrangements.⁵⁹

III. THE MISSOURI CHILD SUPPORT GUIDELINES

Following the federal mandate, the Missouri General Assembly directed the Missouri Supreme Court to create a rule establishing guidelines to be used to determine child support amounts awarded in any judicial or administrative proceeding.⁶⁰ The guidelines were to contain "specific, descriptive, and numeric criteria which [would] result in a computation of the support obligation."⁶¹ There is a rebuttable presumption that the amount of child support calculated under the Missouri guidelines is the correct amount to be awarded; only a written finding or specific finding on the record that such an amount is unjust or inappropriate in a particular case is sufficient to rebut the presumption.⁶²

The guidelines currently in use in Missouri are based largely on the findings of a task force funded by the Family Law Section of the Missouri Bar and the Missouri Department of Social Services.⁶³ The guidelines are based on the income shares model.⁶⁴ The Missouri formula attempts to ensure that the child receives the same proportion of parental income that the child would have received if the parents had not divorced, and calculates child support as a share of each parent's income.⁶⁵

A. *How to Determine the Basic Support Order: Statutory Provisions*

Missouri Supreme Court Rule 88.01 provides that the child support amount calculated by using Civil Procedure Form 14 is the amount presumed to be correct in every case.⁶⁶ Form 14 includes a worksheet for calculating the presumed amount, directions for using the worksheet, and a schedule of

58. Williams, *supra* note 16, at 293. In Missouri, the guidelines start at combined parental income of \$100 per month. See MO. R. CIV. P. Form 14, Schedule of Basic Child Support Obligations.

59. Williams, *supra*, note 16, at 292-94.

60. MO. REV. STAT. § 452.340.7 (Supp. 1991).

61. *Id.*

62. MO. REV. STAT. § 452.340.8 (Supp. 1991).

63. 1 Mo. Family Law § 14.15 (Mo. Bar 4th ed. 1988).

64. *Id.*

65. *Id.*

66. MO. R. CIV. P. 88.01.

basic support obligations.⁶⁷ Both the custodial and the noncustodial parent must complete a separate worksheet.⁶⁸

There are three basic steps in determining child support amounts using the Missouri Child Support Guidelines.⁶⁹ The first step is to calculate the combined parental income. The Missouri guidelines figure the support amount based on the monthly *adjusted gross income* of each parent.⁷⁰ *Gross income* includes income from almost any source except public assistance benefits and child support received for other children.⁷¹ Gross income can include imputed income if either parent is unemployed or under-employed.⁷² *Adjusted gross income* is determined by subtracting from gross income other court- or administratively-ordered child support or spousal support payments actually being made.⁷³

The second step is to calculate the total child support obligation. This calculation combines the child support obligation from the schedule (using the total parental adjusted gross income and the number of children) and the custodial parent's reasonable child support costs, less any federal income tax credit.⁷⁴

Figuring the presumed child support amount is the third step. The proportionate shares of the combined income are calculated by dividing each parent's adjusted monthly gross income by the combined adjusted monthly gross income.⁷⁵ The court derives each parent's child support obligation by multiplying the total child support obligation by the proportionate shares of combined income.⁷⁶ The noncustodial parent's share of support is the

67. Mo. R. Civ. P. Form 14. Note that this is an amended version of Form 14.

68. *Id.* at Worksheet and Directions for Use, MO. R. Civ. P. Form 14.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* See *Foster v. Foster*, 537 S.W.2d 833, 836 (Mo. Ct. App. 1976), where the court of appeals noted "a court may, in proper circumstances, impute an income to a husband according to what he could have earned by the use of his best efforts to gain employment suitable to his capabilities." See also *Devries v. Devries*, 804 S.W.2d 825 (Mo. Ct. App. 1991). The court of appeals refused to decrease child support despite the husband's decreased income where the husband had voluntarily put himself in a position of diminishing his income and had cashed in assets. *Id.* at 827.

73. Worksheet and Directions for Use, MO. R. Civ. P. Form 14. For example, if the noncustodial parent was already paying \$200 per month in maintenance and child support payments for the support of a former spouse and the children of a former marriage, \$200 per month would be deducted from the noncustodial parent's gross income.

74. *Id.*

75. *Id.*

76. *Id.* For example, assume the custodial parent had a monthly adjusted gross income of \$1000 and the noncustodial parent had a monthly adjusted gross income of \$2500, for a combined total of \$3500 per month. Assume the parents had one child and incurred no work-related child care costs. To determine the support obligations, figure the proportionate shares of combined income (\$1000/\$3500 or 29% for the custodial parent and \$2500/\$3500 or 71% for the noncustodial parent) and multiply the shares by the charted support amount for one child (\$498). The custodial parent would contribute \$144.42 per month and the noncustodial parent

presumed child support amount;⁷⁷ the custodial parent's share is presumed to be spent directly on the child.⁷⁸

The Comments to Form 14 note that the worksheet excludes the costs of health insurance for the child in the support order, but that "consideration should be given to provision of adequate health insurance coverage for the child."⁷⁹ "Special needs" expenses, such as educational expenses and extraordinary medical expenses, are also excluded in the guidelines, and the Comments include no similar directive to consider them.⁸⁰

B. *How to Determine the Basic Support Order: Judicial Interpretations*

1. Mandatory Nature of Rule 88.01 and the Standard of Review

Rule 88.01 states that there is a rebuttable presumption that the amount of child support calculated by using Form 14 is the correct amount to be awarded in every case.⁸¹ Although Rule 88.01 is a rule of procedure, it implements the substantive law of section 452.340,⁸² governing the original determination of child support awards, and section 452.370,⁸³ governing child support modifications.⁸⁴ Accordingly, in *Campbell v. Campbell*,⁸⁵ the Missouri Court of Appeals, Western District, held that it was evident from these statutory sources, as well as "the function of adjudicative efficiency the rule addresses," that the terms of Rule 88.01 are *mandatory*.⁸⁶ The *Campbell* court found that the proviso that "[a]n adjudication of an amount other than as calculated under Rule 88.01 is ineffective without 'a written finding or a specified finding on the record that the amount so calculated, after consideration of all relevant factors, is unjust or inappropriate'" is also mandatory.⁸⁷ Thus, courts must either make an award equal to the result obtained by using

would pay \$353.58 per month as child support. *Id.*

77. *Id.*

78. Comments, Mo. R. Civ. P. Form 14.

79. *See id.*

80. *Id.*

81. Mo. R. Civ. P. 88.01. Note that the presumption is *rebuttable*. The Missouri Court of Appeals, Western District, has held that the presumed amount is rebuttable "downward" as well as "upward." *Harding v. Harding*, 826 S.W.2d 404, 407 (Mo. Ct. App. 1992). In *Harding*, the court found that the custodial parent's testimony that her child care expenses were less than the guideline amount rebutted the presumed amount.

82. MO. REV. STAT. § 452.340 (Supp. 1991).

83. *Id.* § 452.370.

84. *Campbell v. Campbell*, 811 S.W.2d 504, 506 (Mo. Ct. App. 1991).

85. *Id.*

86. *Id.*

87. *Id.* (quoting Mo. R. Civ. P. 88.01).

Form 14 or make a finding on the record that awarding such an amount is unjust or inappropriate.⁸⁸

The standard of review for an appeal from a child support award is the *Murphy v. Carron*⁸⁹ standard.⁹⁰ A party arguing that the guideline child support amount is unjust or unfair must prove the award represents an abuse of discretion. The abuse of discretion standard is satisfied by proving that the award is not supported by substantial evidence, the award is against the weight of the evidence, or that the court erroneously declared or applied the law.⁹¹ The burden of proving that an awarded amount is an abuse of discretion is on the appellant.⁹²

2. Below the Chart and Above the Chart Adjusted Monthly Gross Income

The guidelines do not provide the monthly obligation for parents whose incomes fall below the minimum combined monthly gross income in the schedule (\$100) or above the maximum scheduled amount (\$10,000).⁹³ One opinion from the Eastern District of the Missouri Court of Appeals suggested that "a rational extension of the schedule" could be used when parental income exceeds the charted amount.⁹⁴ Recently, however, the Missouri Supreme Court decided a case involving the determination of child support when the parents had a combined monthly income greater than the \$10,000 maximum amount provided for in the guidelines.⁹⁵ In *Mehra v. Mehra*,⁹⁶ the Missouri Supreme Court held that a child support award could go "off the chart" where the parents' income exceeded \$10,000 per month, but only if the court made a specific finding that the chart amount was "unjust or inappropriate."⁹⁷ The majority found the trial court's use of a "straight line extrapolation" of the support-to-income ratio from the maximum figures on the chart⁹⁸ to be an improper interpretation of the guidelines.⁹⁹ The majority stressed that court-

88. *Hamilton v. Hamilton*, 817 S.W.2d 937, 939 (Mo. Ct. App. 1991) (citing *Campbell v. Campbell*, 811 S.W.2d 504, 506 (Mo. Ct. App. 1991)).

89. 536 S.W.2d 30 (Mo. 1976).

90. *Mehra v. Mehra*, 819 S.W.2d 351, 353 (Mo. 1991) (en banc).

91. *Id.* (citing *Murphy*, 536 S.W.2d at 32).

92. *See id.* at 353.

93. *See* MO. R. CIV. P. Form 14.

94. *Ryder v. Ryder*, 795 S.W.2d 411, 412-13 (Mo. Ct. App. 1990).

95. *Mehra*, 819 S.W.2d at 353.

96. *Id.*

97. *Id.* at 354; Bryan Hettenbach, "Off-Chart" Child Support Allowed, MO. L. WKLY., Nov. 25, 1991, at 1, 1.

98. The trial court had figured the child support amount by taking the ratio of child support-to-income for two children at the \$10,000 income per month chart maximum (15.5%) and multiplying that by the combined monthly income (\$19,935). The trial court thus found the total child support amount to be \$3,000, with 65.6% of that to be paid by the noncustodial parent. *Mehra*, 819 S.W.2d at 354.

99. *Id.*

ordered child support must be what is "reasonable or necessary" for support of the child, "not to provide an accumulation of capital,"¹⁰⁰ and that the amounts indicated on the schedule are the presumptively proper levels of support.¹⁰¹

In a separate opinion,¹⁰² Judge Covington disagreed with the majority's holding that the problem involved interpretation of the guidelines.¹⁰³ Rather, she said that since the guidelines do not specify what to do when monthly family income exceeds \$10,000, the guidelines do not apply.¹⁰⁴ Judge Covington feared that the majority opinion would discourage courts from entering appropriate awards above the guideline amount.¹⁰⁵ Judge Covington contended that instead of providing a presumed proper amount when monthly parental income exceeds \$10,000, the schedule should serve, if anything, as a presumed minimum amount.¹⁰⁶ Judge Covington concluded that rather than looking to the schedule, a trial court should rely on traditional statutory considerations.¹⁰⁷

3. Extraordinary Expenses

The Missouri guidelines do not provide for extraordinary expenses such as educational and medical costs. The Comments to Form 14 note that these expenses, labeled "special needs" expenses, have not been factored into the schedule, but include no instruction on how to account for them.¹⁰⁸

However, courts in Missouri have taken extraordinary medical and educational costs into consideration when fashioning child support amounts according to the guidelines. Most courts have adopted the view that Form 14's presumed child support amount is a starting point from which a court may make upward adjustments to accommodate a child's special needs.¹⁰⁹

100. *Id.* (citing MO. REV. STAT. § 452.340 (1986); *Heins v. Heins*, 783 S.W.2d 481, 483 (Mo. Ct. App. 1990)).

101. *Id.* For a critique of the *Mehra* decision, see *infra* text accompanying notes 147-56.

102. Judge Covington concurred in part, concurred in the result in part, and filed a separate opinion in which Chief Judge Robertson and Judge Blackmar joined. *Mehra*, 819 S.W.2d at 358.

103. *Id.* at 358-59.

104. *Id.* at 358.

105. *Id.*

106. *Id.*

107. *Id.* at 358-59. The statutory considerations are contained in MO. REV. STAT. § 452.340.1 (Supp. 1991) and include:

- (1) The financial needs and resources of the child;
- (2) The financial needs and resources of the parents;
- (3) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (4) The physical and emotional condition of the child, and his emotional needs.

Id.

108. See MO. R. CIV. P. Form 14.

109. *Mistler v. Mistler*, 816 S.W.2d 241 (Mo. Ct. App. 1991).

In *C.E.S. v. D.D.S.*,¹¹⁰ the court of appeals approved child support in excess of the guidelines where two of the parties' three children living with the custodial parent had muscular dystrophy.¹¹¹ In *Czapia v. Czapia*,¹¹² the court of appeals upheld a child support award for two children that was \$37 per month higher than the guidelines because (1) one child had chronic sinus and allergy problems and a vision problem requiring surgery, (2) the other child had feet and ankle difficulties requiring medical attention, (3) both children were undergoing counseling, and (4) each had yearly educational expenses totalling \$3,500.¹¹³

4. Split Custody

Although Form 14 does not specifically provide for split custody cases,¹¹⁴ both the Eastern and Western Districts of the Missouri Court of Appeals have found that Form 14 must also be completed in split custody cases.¹¹⁵ Both districts found that one form should be submitted on behalf of all the children involved.¹¹⁶ The Western District in *Sinclair v. Sinclair*¹¹⁷ found that the proper way to determine the award in a split custody situation was to calculate the total support obligation for all the children based on both parents' incomes, prorate the obligation according to the number of children in the custody of each party, and then offset the two amounts against each other.¹¹⁸

5. Uniform Parentage Act¹¹⁹ Cases

In *M.L.H. by D.R.H. v. W.H.P.*,¹²⁰ the Western District of the Missouri Court of Appeals found that Rule 88.01 is applicable to child support awards in paternity actions, since the rule provides that child support be calculated using Form 14 in "any judicial proceeding . . . for child support."¹²¹ However, Form 14 is to be used to calculate *prospective* child support only.

110. 783 S.W.2d 458 (Mo. Ct. App. 1990).

111. *Id.* at 460.

112. 801 S.W.2d 785 (Mo. Ct. App. 1991).

113. *Id.* at 788.

114. See MO. R. Civ. P. Form 14. In a split custody arrangement, each parent has physical custody of at least one child. Williams, *supra* note 16, at 294.

115. Boudreau v. Benitz, 827 S.W.2d 732, 736 n.11 (Mo. Ct. App. 1992); Sinclair v. Sinclair, No. 45267, 1992 WL 196574, at *2 (Mo. Ct. App. Aug. 18, 1992).

116. Boudreau, 827 S.W.2d at 736 n.11; Sinclair, 1992 WL 196574 at *3.

117. Sinclair, 1992 WL 196574 at *3.

118. *Id.* at *3; Bryan Hettenbach, *Support Calculations Mandated and Explained in Split Custody Cases*, MO. L. WKLY., Aug. 24, 1992, at 1, 3.

119. The Uniform Parentage Act, MO. REV. STAT. §§ 210.817-852 (Supp. 1991), is applicable to all paternity actions brought on or after July 15, 1987. MO. REV. STAT. §210.852 (Supp. 1991).

120. 831 S.W.2d 677, 683 (Mo. Ct. App. 1992).

121. *Id.*, Mo. R. Civ. P. 88.01.

In *Schulze v. Haile*,¹²² the Western District determined that the trial court erred in calculating retroactive child support in a paternity action by multiplying the amount of prospective child support (figured by using the guidelines in Form 14) by the number of months from the child's birth to the entry of the order determining paternity.¹²³ The court of appeals stated that back support is limited to the reasonable value of necessities supplied by the custodial parent, which the trial court may divide between both parents.¹²⁴ The parent claiming entitlement to back support has the burden of proving the value of past necessities.¹²⁵

6. Modification

Section 452.370 of the Missouri Revised Statutes addresses the modification of child support amounts.¹²⁶ Child support awards may be modified only upon a showing of changed circumstances so substantial and continuing as to make the terms of the current award unreasonable.¹²⁷ The guidelines can be used to establish a case for modification, for if the guidelines as applied to the financial circumstances of the parties would result in a change from the existing award by twenty percent or more, a prima facie showing of substantial and continuing change of circumstances has been made.¹²⁸ When a party has shown modification is warranted, that party is entitled to a new award calculated according to Rule 88.01.¹²⁹

7. Agreements

Although parties cannot enter into agreements for support which preclude or limit court modification of the terms of those agreements,¹³⁰ parties are free to agree to child support amounts above the amounts suggested by the guidelines. If parties enter an agreement providing for a higher level of support, the noncustodial parent may not be automatically entitled to a reduction in a later modification proceeding.¹³¹ In *In re Marriage of Deane*,¹³² the Southern District of the Missouri Court of Appeals found that to obtain a reduction, the noncustodial parent must comply with the statutory requirements and show a change in circumstances so substantial and

122. D. No. WD45657 (Mo. Ct. App. Oct. 13, 1992).

123. *Id.*, slip. op. at 5-8.

124. *Id.*, slip. op. at 7.

125. *Id.*

126. MO. REV. STAT. § 452.370 (Supp. 1991).

127. *Id.* § 452.370.1.

128. *Id.*; See *Beeler v. Beeler*, 820 S.W.2d 657, 661 (Mo. Ct. App. 1991); *Campbell v. Campbell*, 811 S.W.2d 504, 506 (Mo. Ct. App. 1991).

129. MO. REV. STAT. § 452.370.2 (Supp. 1991); *Campbell*, 811 S.W.2d at 506.

130. *Kocherov v. Kocherov*, 775 S.W.2d 539, 540 (Mo. Ct. App. 1989).

131. *In re Marriage of Deane*, 798 S.W.2d 732, 736 (Mo. Ct. App. 1990).

132. *Id.*

continuing as to make the current amount in the dissolution decree unreasonable.¹³³

8. Stepchildren

The guidelines have never been used to set awards for stepchildren. Missouri courts have found that "a father's remarriage and voluntary assumption of support of his stepchildren is immaterial to the determination of his obligation to support his own children."¹³⁴

9. Child Support Received for Other Children

Amounts received for the support of other children are not included as gross income for purposes of calculating child support, according to Form 14.¹³⁵ In fact, these amounts are expressly excluded.¹³⁶ However, in *Howerton v. Howerton*,¹³⁷ the Missouri Court of Appeals, Southern District, affirmed an award beneath the guideline amount where the fact that the custodial parent received some support for two children from a prior marriage factored in the lower award.¹³⁸

C. What Neither the Guidelines Nor Judicial Interpretation Has Settled

1. Joint Physical Custody

The guidelines provide no instruction for determining child support when parents have joint physical custody,¹³⁹ and case law has shed little light on the matter. In *Norwood v. Norwood*,¹⁴⁰ the Missouri Court of Appeals, Eastern District, seemed to indicate that the appropriate method to account for joint physical custody in child support awards would be to rebut the Form 14 presumed amount.¹⁴¹ Any party arguing to pay less than the presumed amount because of shared custody would, according to this court, introduce

133. *Id.*; MO. REV. STAT. § 452.370.1 (Supp. 1991).

134. *Deane*, 798 S.W.2d at 735 (citing *Young v. Young*, 762 S.W.2d 535, 536 (Mo. Ct. App. 1988); *Donnelly v. Donnelly*, 648 S.W.2d 898, 900 (Mo. Ct. App. 1983)).

135. See Worksheet and Directions for Use, MO. R. CIV. P. Form 14.

136. *Id.*

137. 796 S.W.2d 665 (Mo. Ct. App. 1990).

138. *Id.* at 670. The rationale of the court of appeals was that the schedule reflects the fact that the cost per child declines with additional children in the home, but that no similar provision is made when the custodial parent has children from a prior marriage living in the same home. *Id.*

139. See MO. R. CIV. P. Form 14.

140. 813 S.W.2d 29 (Mo. Ct. App. 1991).

141. *Id.* at 31.

evidence of his or her direct expenses, and ask the court to adjust the award to reflect them.¹⁴²

2. Multiple (Second) Families

The Missouri guidelines favor "first" families; the calculation of the parents' gross incomes is not adjusted to account for the support of subsequent children unless there are court or administrative support orders for those children in existence at the time the order for the previous children is made.¹⁴³ Other orders generally are not in existence because the subsequent children have not been born at the time of the prior dissolution. No case has addressed what considerations, if any, should be made for later children of the noncustodial parent.¹⁴⁴

IV. A CRITIQUE OF THE MISSOURI CHILD SUPPORT GUIDELINES

By requiring states to promulgate mandatory child support guidelines, Congress hoped to correct the deficiencies inherent in the traditional case-by-case method.¹⁴⁵ Specifically, Congress intended to improve the adequacy, consistency, and efficient processing of child support awards.¹⁴⁶ Do the Missouri Child Support Guidelines achieve those goals? There seem to be four areas where the Missouri guidelines fall short. The four areas inadequately addressed by Missouri's child support guidelines are: (1) situations where monthly parental income exceeds \$10,000; (2) extraordinary expenses; (3) split and joint physical custody cases; and (4) multiple family situations.

A. Parental Monthly Income Above the \$10,000 Chart Maximum

The guidelines do not provide standards where parental income exceeds \$10,000, and the Supreme Court has found that the amount of child support awarded at \$10,000 is the presumed proper amount for incomes of \$10,000 and above.¹⁴⁷ If the Missouri guidelines are an attempt to provide a child with the same share of parental income the child would have received if the parents had remained together, it is unfair to award the child whose parents

142. *Id.*

143. *See* MO. R. CIV. P. Form 14.

144. *But see* D.C. v. J.C., 802 S.W.2d 535 (Mo. Ct. App. 1991), in which the guidelines were used to award child support for the child of the noncustodial parent's second marriage without considering the needs of the parent's prior children. The court of appeals found that where the amount was less than the guideline amount and no effort had been made to get support from the other parent of the former marriage, the award was not an abuse of discretion. *Id.* at 537.

145. *See supra* notes 14-22 and accompanying text.

146. *Id.*

147. *See supra* notes 93-101 and accompanying text.

earn \$100,000 per month the same amount in child support as the child whose parents earn \$10,000 per month. Part of this discrepancy is inherent in the income shares model. Unlike the Delaware Melson and the Cassety formulas, which specifically provide for children to share in the increased standard of living enjoyed by their parents,¹⁴⁸ the income shares model uses charts of estimated household expenditures on children in intact households.¹⁴⁹ The chart amounts often underestimate the expenses of children in two-parent families.¹⁵⁰ In addition, using the expenses of children in intact families as a basis for statutory guidelines ignores the fact that with two households, total family expenses will be higher than they were when the family was together.¹⁵¹ Furthermore, the formula focuses on current consumption spending, and while wealthier parents may spend a smaller percentage of their income on current consumption, they tend to spend a significant part of their income on their children for non-current, non-consumption items like savings, trusts, and investments.¹⁵² The income shares model fails to factor this type of spending into its chart amounts.¹⁵³

However, part of the problem presented where monthly family income exceeds \$10,000 lies with the Missouri guidelines themselves. The Missouri guidelines simply provide no instruction in this area, opening up the possibility for the inadequate, inconsistent, and inefficient judgments the guidelines were intended to avoid. The Missouri Supreme Court has done little to find a solution.¹⁵⁴

The Delaware Melson and Cassety models clearly provide for high parental income.¹⁵⁵ Without entirely changing Missouri's model, the income shares formula could be adapted to address income amounts above the chart. Where parental income exceeds \$10,000 per month, the court could find the guidelines inapplicable and look to the traditional statutory considerations.¹⁵⁶ Amounts more in line with the standard of living of both parents would hopefully result; however, since the amount would be left to the discretion of the court, inconsistent judgments may be a side effect.

148. See *supra* notes 36-40, 45-50 and accompanying text.

149. See *supra* note 56 and accompanying text; 1 Mo. Family Law § 14.15 (Mo. Bar 4th ed. 1988).

150. Sally F. Goldfarb, *What Every Lawyer Should Know About Child Support Guidelines*, 13 FAM. L. REP. 3031, 3036 (1987). The study from which the income shares model was derived excluded gifts, charitable contributions, personal insurance, pensions, taxes, repayment of principal on home mortgages, and savings. As a result, the income shares formula does not include any portion of these items expended on children. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. See *supra* notes 93-101 and accompanying text.

155. See *supra* notes 36-40, 45-50 and accompanying text.

156. This was Judge Covington's suggestion in *Mehra v. Mehra*, 819 S.W.2d 351, 358 (Mo. 1991) (en banc) (Covington, J., concurring in part and concurring in result in part). See *supra* notes 102-07 and accompanying text.

Another way to account for high parental income within Missouri's income shares formula would be to expand the current schedule. While not a complete solution (parental incomes may still exceed an expanded chart, and adequate amounts depend on the chart being an accurate reflection of expenses), an expanded schedule would lead to larger awards while maintaining consistent judgments.

B. *Extraordinary Expenses*

Extraordinary expenses, such as extraordinary educational or medical costs, are not included in the calculation of child support set forth on the Form 14 worksheet.¹⁵⁷ Ignoring these kinds of expenses often leaves the custodial parents bearing the costs alone.¹⁵⁸ Custodial parents are usually women, who often have experienced a substantial decrease in their own standard of living.¹⁵⁹ Merely stating that these "special needs" costs have not been factored in, as the Comments to Form 14 do,¹⁶⁰ and allowing judges discretion to supplement awards by including these expenses undermines the goals of greater consistency and efficiency in support awards.¹⁶¹

There are several ways the Missouri guidelines could be modified to provide for extraordinary expenses. One method would be to factor extraordinary expenses into the chart amounts, thereby treating extraordinary expenses as ordinary expenses.¹⁶² While this would result in a guideline that is easy to work with, this approach is unrealistic. Extraordinary expenses vary so widely that there is no way to calculate a meaningful average.¹⁶³ Another alternative is to deduct the extraordinary expenses from the income of the parent who paid them before calculation of the support award.¹⁶⁴ The disadvantage of this method is that it operates indirectly, like a tax deduction, resulting in the custodial parent getting back only a fraction of what he or she actually paid.¹⁶⁵ A third approach is to give a financial "bonus" not directly tied to the expense to the parent paying these expenses.¹⁶⁶ For the custodial parent who paid, the bonus would increase the support award; for the noncustodial parent who paid, the bonus would reduce the award.¹⁶⁷ The

157. See *supra* notes 80, 108-13 and accompanying text.

158. Sally F. Goldfarb, *Child Support Guidelines: A Model for Fair Allocation of Child Care, Medical, and Educational Expenses*, 21 FAM. L.Q. 325, 336 (1987).

159. See *supra* notes 2-3 and accompanying text.

160. See *supra* note 80 and accompanying text.

161. Goldfarb, *supra* note 158, at 336.

162. *Id.* at 334.

163. *Id.* at 335.

164. *Id.* at 336.

165. *Id.* at 337.

166. *Id.* For example, guidelines could provide for an automatic percentage reduction in the percentage of income owed as child support if a parent pays for a child's medical insurance or ordinary uninsured medical expenses. *Id.*

167. *Id.*

drawback of this plan is that the bonus is arbitrary.¹⁶⁸ The discount to one parent and increased burden to the other are not related to the actual costs of raising the child.¹⁶⁹

The best way to account for extraordinary expenses within the Missouri guidelines may be to treat these expenses like child care expenses by adding them to the basic support obligation and prorating the expenses according to the parents' relative incomes.¹⁷⁰ While this solution does pose potential problems because these expenses vary yearly, this approach does address the *actual* extraordinary expenses without threatening the underlying basic award.¹⁷¹

C. Split and Joint Physical Custody

The guidelines provide no instruction for how to determine child support in split and joint physical custody situations.¹⁷² These special custody arrangements are becoming more prevalent¹⁷³ and are often accompanied by unique problems.¹⁷⁴ If Missouri's guidelines are going to avoid the traditional inadequacies of child support awards, they must take split and joint physical custody situations into account.

Missouri's guidelines can be tailored to address split custody arrangements; however, the *Sinclair* court's suggestions are not appropriate.¹⁷⁵ Missouri should follow Nebraska's approach¹⁷⁶ that provides for separate calculations of the child support obligations for the children living with each parent.¹⁷⁷ For example, if two children lived with the mother and one child with the father, two separate calculations would be made. First, the worksheet would be used to find the presumed child support obligation for two children to be paid to the mother as the custodial parent. Next, the presumed child support amount for one child due the father as custodial parent would be figured. These two amounts would be offset, with the parent owed the lesser amount paying the difference as child support.¹⁷⁸

168. *Id.*

169. *Id.*

170. *Id.* at 332-33.

171. *Id.* at 333.

172. *See supra* notes 114-18, 139-42; *see also* MO. R. CIV P. Form 14.

173. *See* Doris Jonas Freed & Timothy B. Walker, *Family Law in the Fifty States: An Overview*, 21 FAM. L.Q. 417, 523 (1987).

174. *See* Karen A. Getman, *Changing Formulas for Changing Families*, 10 FAM. ADVOC. 47 (Spring 1988). Inadequate child support determinations are especially prevalent with these kinds of custody arrangements. *Id.* *See infra* notes 179-83 and accompanying text.

175. *See supra* text accompanying notes 117-18 for an explanation of the *Sinclair* court's method.

176. McDonald, *supra* note 7, at 853, 857. The Nebraska guidelines are also based on the income shares model. *Id.* at 851.

177. *Id.*

178. *See id.* at 867 for an example of how the split custody calculation can be incorporated into an income shares worksheet.

The separate calculations are vital to this approach. If one calculation applied to all children and the obligation is then divided by the number of children with each parent, as *Sinclair* suggests, the support amounts would be artificially low. The amounts would reflect economies of scale (reduced increases in expenses with each additional child) that do not exist because all the children are not in one household.

The joint physical custody arrangement is not easily addressed. While shared custody does tend to increase the expenses of the noncustodial parent, the custodial parent's costs do not decrease in proportion.¹⁷⁹ Rather there will probably be an increase in the total expenditures for the child.¹⁸⁰ Any decrease in the award to the custodial parent then would threaten that parent's ability to meet his or her financial share of the custody arrangement.¹⁸¹

Because the overall expenses of both parents for child-rearing are much greater with shared custody than in the sole custody situation, the income shares chart amounts are likely to be even more inadequate in shared custody cases.¹⁸² Missouri needs a separate schedule providing higher award amounts for joint physical custody. The creator of the income shares model recommended that basic award levels be increased by as much as fifty percent for shared custody.¹⁸³

D. Multiple Families

Missouri's guidelines do not incorporate the expenses or resources of second families.¹⁸⁴ Whatever the policy behind this, divorced parents often remarry and have other children.¹⁸⁵ Moreover, studies show that multiple families are no longer the exception, but the rule,¹⁸⁶ and a "first family first" philosophy is no longer a responsible approach.¹⁸⁷ One author has even suggested that such an approach violates the Equal Protection Clause of the United States Constitution.¹⁸⁸ The prevalence of multiple families requires accommodating rules.¹⁸⁹ If guidelines are to create not only adequate,

179. Getman, *supra* note 174, at 47.

180. *Id.* at 48.

181. *Id.* at 47.

182. *See supra* notes 147-48 and accompanying text.

183. Getman, *supra* note 174, at 47.

184. *See supra* notes 143-44 and accompanying text.

185. For example, one study showed that 88% of remarried men had or expected either new biological children or stepchildren, or both. Takas, *supra* note 14, at 3 (citing the NATIONAL CENTER FOR HEALTH STATISTICS, Washington (1984)); NATIONAL SURVEY OF FAMILY GROWTH, CYCLE III (1982).

186. Takas, *supra* note 14, at 2.

187. *See id.*

188. Rebecca Burton Garland, *Second Children Second Best? Equal Protection for Successive Families Under State Child Support Guidelines*, 18 HASTINGS CONST. L.Q. 881, 881 (1991).

189. Takas, *supra* note 14, at 34.

consistent, and efficient orders, but also equitable ones, they must be responsive to the needs of subsequent families.¹⁹⁰

Missouri could address this need by including the income of subsequent spouses in the guideline calculation of parental income. Rather than imposing "stepparent liability,"¹⁹¹ this inclusion reflects the increased ability of the parents to pay.¹⁹² The Missouri guidelines could also include the support of subsequent children as a factor, recognizing that they are entitled to support, and thus bringing the guideline into conformity with the needs of parents in changing circumstances.¹⁹³

V. CONCLUSION

Guidelines have improved child support awards by increasing the adequacy, consistency, and efficiency of awards. Despite the fact that the awards set by the guidelines may sometimes only maintain children at or above the poverty level, the occurrences of children in poverty have been reduced by the statutory guidelines.¹⁹⁴

In the future, guidelines must grow more responsive to particular family circumstances. Guidelines certainly cannot provide for every situation, and a total elimination of judicial discretion would be unwise. Guidelines can, however, respond to many factors that were once viewed as exceptional but today are considered common.¹⁹⁵ In Missouri, guidelines can be tailored to account for changing societal trends by addressing parental incomes above the chart maximum, extraordinary expenses, non-traditional custody arrangements, and multiple families.

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190. *Id.*

191. *Id.* at 32.

192. *Id.*

193. *Id.*

194. McDonald, *supra* note 7, at 860.

195. Takas, *supra* note 14, at 2.

