



An Elected Office of
RAMSEY COUNTY

2017 MCAA Presentation The New Parenting Expense Adjustment

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New Parenting Expense Calculation

- Effective August 1, 2018
- How did we get here?
- Two main issues with the current guideline parenting expense adjustment
 - Cliff effect at 45% (and 10%)
 - Broad range for 12% parenting time deduction
- The hope is there will be less fighting about parenting time if the cliffs are smoothed out and more credit is given

§518A.36 Parenting Expense Adjustment

Subdivision 1. General.

(a) The parenting expense adjustment under this section reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, clothing, transportation, recreation, and household expenses. Every child support order shall specify the percentage of parenting time granted to or presumed for each parent. For purposes of this section, the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order averaged over a two-year period. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time. The percentage of parenting time may be determined by calculating the number of overnights or overnight equivalents that a parent spends with a child pursuant to a court order. For purposes of this section, overnight equivalents are calculated by using a method other than overnights if the parent has significant time periods on separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

(b) If there is not a court order awarding parenting time, the court shall determine the child support award without consideration of the parenting expense adjustment. If a parenting time order is subsequently issued or is issued in the same proceeding, then the child support order shall include application of the parenting expense adjustment.

§518A.36 Subd. 2

Subd. 2. Calculation of parenting expense adjustment.

(a) For the purposes of this section, the following terms have the meanings given:

(1) "parent A" means the parent with whom the child or children will spend the least number of overnights under the court order; and

(2) "parent B" means the parent with whom the child or children will spend the greatest number of overnights under the court order.

(b) The court shall apply the following formula to determine which parent is the obligor and calculate the basic support obligation:

(1) raise to the power of three the approximate number of annual overnights the child or children will likely spend with parent A;

(2) raise to the power of three the approximate number of annual overnights the child or children will likely spend with parent B;

(3) multiply the result of clause (1) times parent B's share of the combined basic support obligation as determined in section 518A.34, paragraph (b), clause (5);

(4) multiply the result of clause (2) times parent A's share of the combined basic support obligation as determined in section 518A.34, paragraph (b), clause (5);

(5) subtract the result of clause (4) from the result of clause (3); and

(6) divide the result of clause (5) by the sum of clauses (1) and (2).

(c) If the result is a negative number, parent A is the obligor, the negative number becomes its positive equivalent, and the result is the basic support obligation. If the result is a positive number, parent B is the obligor and the result is the basic support obligation.

§518A.36 Subd. 3

Subd. 3. Calculation of basic support when parenting time is equal.

If the parenting time is equal and the parental incomes for determining child support of the parents also are equal, no basic support shall be paid unless the court determines that the expenses for the child are not equally shared

- **NOTE:** The amendment to this section by Laws 2016, chapter 189, article 15, section 20, is effective August 1, 2018. Laws 2016, chapter 189, article 15, section 20, the effective date.

Minn. Stat. §518A.36 Summary of Changes

Subd. 1

- Court ordered overnights averaged over two years
- Can be based on overnight equivalents

Subd. 2

- The new statute eliminates the prior parenting expense calculations.
- Eliminates references to obligor and refers to Parent A and Parent B
- Defines Parent A as the parent with the least overnights and Parent B with the most
- Adds an algebraic calculation.

Subd. 3

- Replaces presumed equal parenting time with is equal parenting time.

Part (a) of Subd 2.

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(3) multiply the result of clause (1) times parent B's share of the combined basic support obligation as determined in section 518A.34, paragraph (b), clause (5);

(4) multiply the result of clause (2) times parent A's share of the combined basic support obligation as determined in section 518A.34, paragraph (b), clause (5);

(5) subtract the result of clause (4) from the result of clause (3); and

(6) divide the result of clause (5) by the sum of clauses (1) and (2).

Probably Looks Like This to Most People

(β) Τη χουρτ σφαλλ αππλψ της πολλοωινγ φορμουλα το δετερμινε ωηιχη παρεντ ις της οβλιγορ ανδ χαλχυλατε της βασιχ συμπορτ οβλιγατιον:

(1) ραισε το της ποωερ οφ τηρες της αππροξιματε νυμπερ οφ αννυαλ οωερνιγητς της χηιλδ ορ χηιλδρεν ωιλλ λικελψ σπενδ ωιτη παρεντ Α;

(2) ραισε το της ποωερ οφ τηρες της αππροξιματε νυμπερ οφ αννυαλ οωερνιγητς της χηιλδ ορ χηιλδρεν ωιλλ λικελψ σπενδ ωιτη παρεντ Β;

(3) μιλτιπλψ της ρεσυλτ οφ χλαυσε (1) τιμες παρεντ Βαε σθαρε οφ της γουμινεδ βασιχ συμπορτ οβλιγατιον αε δετερμινεδ ιν σεχτιον 518A.34, παραγραπη (β), χλαυσε (5);

(4) μιλτιπλψ της ρεσυλτ οφ χλαυσε (2) τιμες παρεντ Ααε σθαρε οφ της γουμινεδ βασιχ συμπορτ οβλιγατιον αε δετερμινεδ ιν σεχτιον 518A.34, παραγραπη (β), χλαυσε (5);

(5) συβτραχτ της ρεσυλτ οφ χλαυσε (4) φρομ της ρεσυλτ οφ χλαυσε (3); ανδ

(6) διωιδε της ρεσυλτ οφ χλαυσε (5) βψ της συμ οφ χλαυσεε (1) ανδ (2).

The Algebraic Calculation

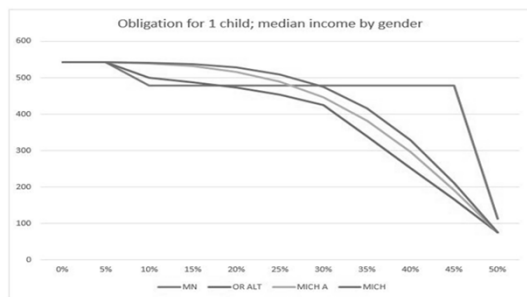
$$\frac{(Ao)^3 (Bs) - (Bo)^3 (As)}{(Ao)^3 + (Bo)^3}$$

This Calculation is Based upon Michigan Model

Where:

- Ao – Approximate annual number of overnight
- equivalent the children will spend with parent A
- Bo – Approximate annual number of overnight
- equivalent the children will spend with parent B
- As –Parent A's base support obligation
- Bs –Parent B's base support obligation

Graph of Results of Various Options for Parenting Expense Calculations



Important Elements

- The algebraic calculation will be built into the calculator.
 - Plug in the overnights.
- Overnights based upon court order.
- If the order does not grant any parenting time, the parenting expense is not considered.
- If a later order addresses it, the parenting expense calculation shall be applied.

Part (c) of Subd 2.

(c) If the result is a negative number, parent A is the obligor, the negative number becomes its positive equivalent, and the result is the basic support obligation. If the result is a positive number, parent B is the obligor and the result is the basic support obligation.

Statutory Calculation of the Parenting Time Adjustment

	PARENT A		PARENT B		TOTAL	PARENT A %
	LEAST # of days		MOST # of days			
	150		215		365	0.411
					Sum of clause 1 and 2	
Clause 1	3,375,000	Clause 2	9,938,375		13,313,375	
Child support amount						
Basic sup Per PICS	677		226			
Clause 3	762,750,000	Clause 4	6,728,279,875			
Clause 5	(5,985,529,875)					
Clause 6	-449					
Clause 1						
Parent A's nights cubed						
Clause 2						
Parent B's nights cubed						
Clause 3						
A's cubed # times B's support per PICS						
Clause 4						
B's cubed # times A's support per PICS						
Clause 5						
Clause 3- Clause 4						
First step for clause 6						
Sum Clause 1 and 2						

$$\frac{\text{Clause 1} \quad \text{Clause 3} \quad \text{Clause 2} \quad \text{Clause 4}}{(\text{Ao})^3 (\text{Bs}) - (\text{Bo})^3 (\text{As}) \quad \text{Clause 5}}$$

$$(\text{Ao})^3 + (\text{Bo})^3 \quad \text{Clause 6 Part 1}$$

- Clause 6 Part 2 – Clause 5 divided by Clause 6 part 1

Modifications of Prior Orders

Minn. Stat. §518A.39 subd. 2(d)

If the old order did not address overnights but contained a parenting expense adjustment it will continue in the same manner after modification unless the motion is also about a change in parenting time and it describes how to do that

§518A.39 (d) (2)

(2) if the parenting time was presumed equal but the parents' parental incomes for determining child support were not equal:

- (i) multiply the combined basic support obligation under section 518A.34, paragraph (b), clause (5), by 0.075;
- (ii) prorate the amount under item (i) between the parents based on each parent's proportionate share of the combined PICS; and
- (iii) subtract the lower amount from the higher amount.

Prior Orders

- (k) On the first modification following implementation of amended child support guidelines, the modification may be limited if the amount of the full variance would create a hardship for either the obligor or obligee

Important Limitation on Parent B Support

Minn. Stat. §518A.26 Definitions. Subd. 14.

Includes a rebuttable presumption that support would be \$0 for the parent that has more than 55% of the court ordered parenting time

Other Changes

- Minn. Stat. § 518A.34 (c)
- New Rules on Split Custody

Calculating Parenting Time – Old Statute

- Under the old law this was not as crucial in most situations because of the wide range of a parenting expense deduction for parenting between 10-45%.
- It became very significant when parenting time was in the 40-50% range.

Calculating Parenting Time – New Statute

- Now, every added day of parenting time may make an incremental difference in the support obligation.
- Statute itself does not tell us how to calculate the number of overnights.

Example Calculation - Dad

- Dad's days 6 of 14 156
- Dad's vacation, 2 weeks 14
- Dad's holiday's 5

- Dad's total days **175**

- If we divide by 365, Dad is at 47.9% for parenting time.

Example Calculation Continued - Mom

- Mom's days 8 of 14 208
- Mom's vacation, 2 weeks 14
- Mom's holidays 5

- Mom's total days **227**

- However the total days under this method are
175+227 = 402. The days are over-counted.

Example Calculation - Revised

- Dad's 156-6 150
- Vacation 8
- Total **158**

- Mom's days 209-8 201
- Vacation 6
- Total **207**

- This parenting amount is 43.3%
- Holidays are disregarded and duplicate days are eliminated

Another Common Parenting Plan

- Parent A - Every other weekend, and one night per week.
- Split Holidays
- 1 month in summer
- Dad's 104
- Vacation 22
- Total 126

- Mom's days 261
- Vacation 22
- Total 239

Conclusion

The new parenting expense calculation is daunting, and presents challenges to us as County Attorney's because it is difficult and not transparent. It does represent a more equitable solution to allocate the expense each party has when they have the children in their home.

Split Custody and the IV-D Lawyers Role in Child Support

Holly Mikeworth, Assistant Isanti County Attorney

Split Custody

- Cases where parties have multiple children and each parent is the primary custodian of at least one of the children.
- Minnesota Statutes chapter 518A did not previously address split custody cases or the method in which to calculate child support.
- Counties treated these types of cases differently depending on the facts presented.

518A.34

Sefkow v. Sefkow, 427 N.W.2d 203, 215 (Minn. 1988)

The Court used the offset method. It calculated each parent's obligation separately and reduced the lower obligation from the higher obligation to determine the net support.

- Court determined Mom's obligation for child in Dad's home = \$459.00
- Court determined Dad's obligation for child in Mom's home = \$1,000.00
- Offset \$1,000.00 - \$459.00 = \$541.00

Split custody addressed in Minn. Stat. § 518A.34 (c) (1-3) (2018)

- Calculation of child support in split custody cases addressed in statute, effective August 1, 2018.
- It defines split custody as "two or more children and each parent has at least one joint child more than 50% of the time." § 518A.34(c)(1).

HM3 The Court applied an offset, wherein it calculated each parents' respective child support obligation for the child out-of-their home. Once each parents' obligation was calculated, the Court subtracted the higher obligation from the lower and ordered Dad to pay the remaining amount to Mom for support.

Holly Mikeworth, 6/9/2017

HM4 This case was before the income shares model, but the same approach was followed after income shares took effect.

Holly Mikeworth, 6/9/2017

Minn. Stat. 518A.34 (c) cont'd.

- The statute requires use of the “offset” method.
- Specifically lays out each form of support in paren (1) – (3)
 - (1) Basic Support
 - (2) Child Care support
 - (3) Medical / Dental insurance expenses

Minn. Stat. § 518A.34 (c) cont'd.

- States that in each type of support that “the court shall offset the higher [basic support, child care support, medical / dental support] with the lower support obligation to determine the amount to be paid by the parent with the higher obligation to the parent with the lower obligation.” *Id.* at (c)(1-3).
- Specifically states that unreimbursed medical expenses “are not included in the presumptive amount of support owed by a parent and are calculated and collected as provided in section 518A.41.”

Minn. Stat. § 518A.34 (c) cont'd.

- Counties no longer have the discretion to calculate split custody cases with methods other than the offset method.
- What to do in cases where the offset method results in guideline support that strikes agency as particularly high? (example – one parent receives MFIP, when offset method is applied, it results in one parent paying support for the child in the home of the MFIP recipient, and the MFIP recipient paying nothing for the child that resides with the other parent).
 - Set for hearing from the outset.
 - Ask for a deviation in the motion and supporting affidavit.
 - Ask for discretionary review hearing when MFIP recipient is no longer on PA to recalculate.

County Attorney's Role in Custody Issues

- The County's role in custody issues primarily arise in paternity cases.
- The County must have a basis to proceed with a paternity case.
 - If the custodial parent is receiving public assistance, there is a basis by which to proceed with paternity. If the custodial parent is not cooperating, sanctioning may be appropriate to obtain compliance with naming and identifying the alleged father.
 - If it is a non-public assistance case and the applicant / custodial parent fails to cooperate, the county can close the case.

Statutory Requirements in Paternity Adjudication

Minn. Stat. § 257.66, subd. 3 requires that a paternity order address the following:

- Legal and physical custody
- Parenting time
- The child's name
- Ongoing child support (basic, medical, child care)
- Past support
- Pregnancy and confinement expenses
- Mother's and Father's names, social security numbers (conf. info. sheet), dates of birth, and places of birth (if known).

How to plead out custody and parenting time issues in a paternity case

- Case needs to be pled out with enough evidence to be able to proceed by default. Specifically, must ask the Court award the parents some form of legal and physical custody (sole, joint, some combination).
- Asking for adjudication of paternity and then reserving issues of legal and physical custody is not enough.

Reserving legal and physical custody is not enough

- Problems with reserving:
 - If case proceeds by default, the child is left without a legal or physical custodian.
 - Minn. Stat. § 257.541, subd. 1 provides that the mother retains sole legal and physical custody of the child until paternity has been established or until custody is determined in a separate action.
 - After adjudication, there is no presumption of custody to mom, like there is with a ROP under Minn. Stat. §257.75, subd. 3(a) which provides, "Until a temporary or permanent order is entered granting custody to another, the mother has sole custody."

"Reasonable Parenting Time"

- "Every child support order shall specify the percentage of parenting time granted to or presumed for each parent." Minn. Stat. § 518A.36, subd. 1(a).
- "If there is not a court order awarding parenting time, the court shall determine the child support award without consideration of the parenting expense adjustment." *Id.* at subd. 1(b).
- *Lonneman v. Lonneman*, not reported in N.W.2d, 2013 WL 141674.
 - The parties' J&D gave Dad "reasonable parenting time." Because it did not specify a percentage of parenting time for Dad, or even contain a parenting time schedule from which a percentage could be determined, no adjustment should have been given to Dad.

Lingering questions and discussion

Can custody and parenting time be addressed without the County Attorney's office taking a position?

- Different suggested approaches based on level of contact / cooperation with parties.
 - (1) No agreement between the parties / Limited contact with parties:
 - Rely on paternity affidavit completed by custodial parent.
 - Sample language for complaint: "Petitioner (Mom) requests that the Court grant sole legal and sole physical custody of the joint child to Petitioner (Mom) and requests that Respondent (Dad's) parenting time be reserved."
 - If County proceeds by default, consistent with the language in the complaint request the Court award Petitioner (Mom) sole legal and sole physical custody with Respondent (Dad's) PT reserved.

Lingering questions and discussion

- (2) Parties in agreement as to custody and parenting time at time of agency interviews:
 - Plead out in complaint and eventual motion and supporting affidavit terms of custody and parenting time agreement.
- (3) Parties not in agreement at time of filing but reach agreement at hearing stage:
 - Place parties' custody and parenting time agreement on the record at the time of hearing.
- (4) Parties involved in a child protection action at time of paternity filing:
 - Ask in the paternity pleadings that custody and parenting time be decided consistent with the decision in the juvenile file.

Rule 11.01 of MN R. Civ. P.

- Rule 11.01 of the Minnesota Rules of Civil Procedure states:

Every pleadings, written motion, and other similar document shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. . . .

Rule 11.02 of MN R. Civ. P.

- Rule 11.02 of the Minnesota Rules of Civil Procedure states that as an attorney presenting pleadings to the court, you certify you
 - (1) performed a reasonable inquiry under the circumstances;
 - (2) that the factual allegations made in the pleadings have evidentiary support; and
 - (3) the claims have a basis in law.

Rule 11.02 of MN. R. Civ. P.

11.02 Representations to Court

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other document, an attorney or self-represented litigant is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;
- (d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief; and
- (e) the pleading, motion, or other document does not include any restricted identifiers and that all restricted identifiers have been submitted in a confidential manner as required by Rule 11 of the General Rules of Practice for the District Courts. Notwithstanding Rule 11.03(a)(1) of these rules, a party shall not be required to wait 21 days before filing or presenting a motion seeking relief from the court in regard to the proper submission of documents containing restricted identifiers.

(Amended effective January 1, 1992; amended effective July 1, 2000; amended effective August 1, 2000; amended effective July 1, 2015.)

Rule 11.03 of MN. R. Civ. P. - Sanctions

Failure to follow Rule 11.02 can result in sanctions against the attorney. Rule 11.03 states in part:

11.03 Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that Rule 11.02 of these rules has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated Rule 11.02 or are responsible for the violation. This rule does not limit the imposition of sanctions authorized by other rules, statutes, or the inherent power of the court.

Role of County Attorney in Ex-Pro Rules

Rule 369 of the Rules of General Practice (Rules of the Expedited Child Support Process – Family Court Rules, Part B) provides:

Rule 369.01 Role of County Attorney

Subdivision 1. Approval as to Form and Content. The county attorney shall review and approve as to form and content all legal documents prepared by employees of the county agency for use in the expedited process or in district court.

Questions / Comments

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