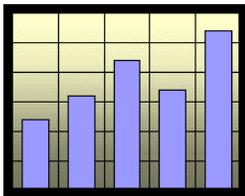


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# Georgia Child Support Guidelines: Deviation Strategies<sup>©</sup>

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# ***Georgia Child Support Guidelines: Deviation Strategies***

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## **Georgia Child Support Guidelines: Deviation Strategies**

This manual covers a wide variety of topic on Georgia's child support guidelines. While the main focus is on deviation strategies, the manual starts with basics on the child support guidelines, putting code in the context of legal principles and economic foundations. Chapters are extensively documented with appellate opinion and explanatory exhibits. Practical tips for daily practice are a hallmark of the manual. Guideline foundation material—generally not known by many—are cited for many chapters. Overall, the manual brings together a wide variety of angles not found in such a single document.

### **Chapter Summaries**

#### **CHAPTER 1**

##### **Introduction**

*This manual covers key topics in applying child support cases in Georgia. It blends application of statutes, appellate opinions, using economic data, designing economic exhibits, and practical tips on making the daily routine on procedure and case management easier. The focus is on applications in Georgia but this work draws on national studies and helpful appellate opinion from other states. Chapters include a variety of topics—basics on the framework of Georgia's "Income Shares" child support guidelines, deviation procedure and strategies (broad based concepts and individual deviation factors), special topics—legal/economic issues and daily routines for case work.*

#### **CHAPTER 2**

##### **Basics on the Income Shares Guidelines and Deviating**

*This chapter covers basic features and statutory application requirements of Income Shares procedure for determining a child support award. Importantly, the differences between a presumptive award and deviation award are explained with discussion on the mandatory inclusions for presumptive awards. Setting the stage for frequent analysis throughout the book, the presumptive calculation is explained as a variation of the traditional "needs and ability to pay" methodology which is applied throughout the book and conforms to a vast list of Georgia appellate opinion as noted. The needs and ability to pay approach provides the framework for developing arguments for deviation awards.*

#### **CHAPTER 3**

##### **OCGA on the Basis for Deviating**

*In this chapter, the statutory code for the basis for deviating from a presumptive award are cited. This includes a list of specific deviation factors plus nonspecific factors. This chapter provides a ready reference for common deviation factors that may apply to a case and the statutory basis.*

#### **CHAPTER 4**

##### **Mandatory Steps for a Deviation Award—A Minimum Checklist for Deviating**

*Appellate opinion is quite clear that proper procedure must be followed for a deviation award to be correctly entered by the court. Code is specific on required findings. Appellate opinion clarifies some of the generalities in code. A concise but specific checklist for proper deviation is given.*

## **CHAPTER 5**

### **Concepts and Standards for Rebuttal and Deviation**

*For a given case, it is easy to get caught up in procedure. However, legal principles of rebuttal can be as important. The starting point is the legal concept of rebuttability with explanatory appellate opinion—including those on due process. General standards for rebuttal of a presumptive award include: needs and ability to pay; "unjust or inappropriate;" "best interests of the child;" and presumed facts not existing in case facts. Each is discussed in detail with underlying statutes and appellate opinion.*

## **CHAPTER 6**

### **Rebuttable and Irrebuttable Presumptions Plus the Issue of the Best Interests of the Child Standard**

*Child support code in Georgia occasionally has provisions that clearly are irrebuttable presumptions. Examples are given. Discussion focuses on how certain code sections conflict with standard concepts of rebuttal discussed in the prior chapter. Emphasis is given to issues related to the best interests of the child.*

## **CHAPTER 7**

### **Travel Expenses as a Deviation Factor**

*The deviation of travel expenses for exercising parenting time is used as an introduction to "simple" deviation factor calculations and exhibits. It is shown to be a relatively simple pro-rated add-on.*

## **CHAPTER 8**

### **Putting It All Together—an Example of Deviation Steps and Full Argument**

*A potent argument for a deviation award requires concise argument and economic exhibits. This section uses the travel expenses deviation factor as an example of putting together code, economic exhibits, and proposed required written findings.*

## **CHAPTER 9**

### **Parenting Time as a Deviation Factor**

*Parenting time generally is the biggest factor to affect child costs incurred by each parent. This section reviews code on underlying assumptions, underlying economic studies on parenting time, related appellate opinion from Georgia and other states, and designing economic exhibits to support parenting time deviations. Underlying assumptions on parenting time often are misunderstood as portions of code and underlying economic studies indicate that the noncustodial parent presumptively is assumed to have no parenting time—in contrast to the assumption by some that "standard" parenting time costs are built into the presumptive award.*

## **CHAPTER 10**

### **Child Care Tax Credits as a Deviation Factor**

*Child care (day care) costs are part of the presumptive calculation but they are in before-tax-credit dollars. That is, both parents share the child care costs but unless there is a deviation, the custodial parent gets 100 percent of the cost offset from federal child care tax credits. This section goes through code section for this deviation, simplifies federal tax credit calculations to determine the amount of the cost offset and shows an economic exhibit on estimating the appropriate deviation amount that results in the noncustodial parent sharing the cost offset as well as the nominal costs.*

#### **CHAPTER 11** **Child-Related Tax Benefits as a Cost Offset and Deviation Factor**

*Child-related tax benefits are separate from the issue of child care tax credits. These include head of household status, dependency exemptions, and child tax credits. There are mixed opinions on whether the presumptive award takes these into account but underlying studies indicate that they are not. The cost offsets from these tax benefits are substantial for the custodial parent. This section reviews IRS views on allowing courts to order the custodial parent to share child tax benefits. Other states' treatment is discussed. This tax discussion can be used as the basis for a non-specific deviation in Georgia.*

#### **CHAPTER 12** **Agreement by the Parties as a Deviation Factor**

*Georgia code on child support allows the parties to agree on an award that differs from the presumptive award. However, certain conditions must be met. Agreement by the parties is a deviation factor and deviation procedure must be followed. Additionally, the deviation amount must be entered in Schedule E of the child support worksheet. This section shows alternative methods of calculating deviation values to enter in Schedule E. Key appellate opinion are covered.*

#### **CHAPTER 13** **Contingency Awards Upon the Oldest Child Reaching Majority**

*An often-overlooked facet of determining child support awards in Georgia is that appellate opinion has determined that the duration of duty of support requires contingency awards when a case has more than one child. That is, as the oldest child emancipates, the contingency award must follow standard procedure for the remaining number of children. The contingency award must follow presumptive procedure or deviation award procedures. Appellate opinion on this issue results in notable complications in award calculations for an initial award or modification award when there is more than one child.*

#### **CHAPTER 14** **Child Care on an Automatic Future Modification Basis or on a Reimbursement Basis as a Deviation Factor**

*Child care costs are part of the presumptive calculation. However, child care costs are volatile on an on-going basis in many cases. Also, the "two-year rule" on modification prohibition may*

*interfere with modifying an award for changes in child care costs. Full rebuttability and putting child care on a reimbursement basis may be the best answer for both parents.*

## **CHAPTER 15**

### **Life Insurance Expense as a Deviation Factor**

*Life insurance coverage often is ordered by the court. The question is how to allocate the cost of premiums between the parents for entry in Schedule E of the worksheet. This is an issue whether one or both parents are required to carry life insurance in behalf of the child.*

## **CHAPTER 16**

### **Other Health-Related Insurance as a Deviation Factor**

*The presumptive award calculation includes health insurance premiums but only for standard health insurance. Vision, dental, and specialty health insurance are not included presumptively but are part of a potential deviation for health-related insurance. Issues for this deviation are determining the child's portion of family coverage and allocating the premium costs between the parents.*

## **CHAPTER 17**

### **Existing But Not Preexisting Child Support Orders as a Deviation Factor**

*Preexisting child support orders are part of the presumptive calculations while existing but not preexisting child support orders (those entered initially after initial entry of the order before the court) are not. Yet, existing child support orders affect a parent's ability to pay and can be considered for a non-specific deviation. Issues are legal arguments on rebuttability and ability to pay. Appropriate economic exhibits compare awards with and without income used to pay the existing award.*

## **CHAPTER 18**

### **Extraordinary Expenses as a Deviation Factor**

*Extraordinary expenses are not included in the standard table of child costs used for calculating the presumptive award. These include special activities for the child, extraordinary educational expenses, and extraordinary medical expenses for either the child or parent. Special issues include the "7 percent rule" and recent appellate opinion that the court must first use the child support worksheet method for allocating expenses instead of a reimbursement method. Also, there are issues of how to cover extraordinary expenses incurred by the noncustodial parent and how to address a parent's medical needs against the best interests of the child.*

## **CHAPTER 19**

### **High Income as a Deviation Factor with Focus on Extrapolation**

*Georgia's child support cost table has a presumptive high income ceiling of \$30,000 combined income per month. However, a deviation above the presumptive cost is allowed under certain conditions. Based on appellate opinion, a high income deviation is not automatic due to the*

*existence of high income. Procedure must be followed. A needs and ability to pay standard suggests that a budget based approach may be helpful. Additionally, certain types of statistical extrapolation may provide guidance to the court.*

## **CHAPTER 20**

### **"Add-on" Expenses as an Adjustment to Available Income as a Deviation Factor**

*The presumptive award calculation includes day care expenses which can be large monthly expenditures. There may be deviation factors that are sizeable—such as travel and extraordinary medical expenses. The economics of budget constraints indicates that "standard" spending on other items is reduced to accommodate. This would suggest reducing standard expenditures (from the child cost table) in the presumptive calculation to reflect typical household responses to budget constraints. This chapter shows a rational method for deviating on this issue.*

## **CHAPTER 21**

### **Modification Issues: Time Constraints and Exceptions, An Increase in Income for Obligor Does Not Preclude Downward Modification, and Possible Defenses for Contempt**

*There are a number of miscellaneous issues in child support procedure that often are not well understood. Among these, the two-year prohibition on modification has two key exceptions. Modification of an award is permitted to go in the opposite direction of a change in income. Finally, there is a difference between the existence of arrearage and wilful contempt with an unexpected defense being reliant upon an agreement that had not been approved by the court.*

## **CHAPTER 22**

### **Miscellaneous Topic: Allocating Uninsured Health Care Expenses According to the Underlying Study**

*Underlying facts of the guidelines can be important. A little known underlying fact is that the presumptive cost table assumes payment by the custodial parent toward uninsured health care expenses by \$250 per child per year. This fact affects what is an appropriate allocation of these uninsured expenses between the two parents. Simple prorating is not economically appropriate. Alternative language is suggested.*

## **CHAPTER 23**

### **Quick Start with the Excel Worksheet: Practical Tips and Warnings on Entering Deviation Amounts & "Top 20 Mistakes"**

*There are a number of daily issues related to case preparation that require some extra attention. For the child support worksheet, it is very important to understand which column (custodial or noncustodial) to enter deviation amounts. Additionally, care should be given to reviewing the opposing party's deviations—notably whether the deviation amount should be pro-rated or not. Finally, the Georgia Child Support Commission has developed a list of common mistakes made when completing a child support worksheet.*

## **CHAPTER 24**

### **Mortgage Payment as a Deviation Factor and Related Alimony and Income Tax Issues**

*A mortgage payment partially in lieu of cash child support is allowed as a deviation. However, for the payor to gain expected tax benefits, payment must meet requirements established by the Internal Revenue Service. Simply because a family court order assigns payment of a mortgage to one party does not necessarily mean that the IRS recognizes that payment for tax purposes. Care in setting up the method of the mortgage payment can help ensure that the intended party receives the tax benefits.*

## **CHAPTER 25**

### **Looking Ahead—Future Issue for Rebuttal, Taking Into Account Second Household Cost**

*This short narrative raises the issue of whether it is appropriate to base the child cost table on intact family data. That is, "adult overhead" (housing costs before children) is more than assumed presumptively. The child cost table overstates the parents' ability to pay. This suggests that the child cost table should be revised to take into account the doubling of adult overhead after divorce or at a minimum encourage a deviation. This is actually a due process question.*

## **CHAPTER 26**

### **Underlying Facts of Georgia's Child Support Guidelines—A Summary**

*Underlying facts of the child support guidelines—notably for the BCSO cost table—can affect what might be appropriate arguments for deviating from the presumptive award. When case facts differ from underlying facts, that can be the basis for rebutting a presumption under concepts of due process. This chapter summarizes key underlying facts. It is important to note that not all statements in OCGA are correct regarding underlying facts of the guidelines.*

## **APPENDIX A**

### **Documentation of What Is Included in the Schedule of Basic Child Support Obligations**

*The detailed categories of the expenses included in Georgia's child support guidelines' Basic Child Support Obligation Table have not been documented specifically for Georgia. However, Georgia's guidelines are based on the same general Income Shares methodology as that in use for New Jersey. New Jersey's guidelines do give detailed information on what expenses are included in the presumptive cost table.*

## **APPENDIX B**

### **Detailed Documentation That Child-Related Tax Benefits Are Not Taken Into Account in the Basic Child Support Obligation Table**

*This underlying fact must be documented from information economic studies related to Income Shares guidelines. Georgia's child support guidelines follow standard development procedures for Income Shares guidelines as is documented in Presentation to Georgia Child Support Commission, by Jane Venohr, Policy Studies, Inc., Denver, Colorado, September 9, 2005 and in Presentation to Georgia Child Support Commission, by Jane Venohr, Policy Studies, Inc., Denver, Colorado, November 30, 2005. Key points from this presentation on this issue are listed. Supporting documentation from IRS sources and from other states' child support code and appellate opinion are cited. Notably, key facets of what is included in child-related tax benefits are discussed and*

*shown to be a significant cost offset to spending on children that should be included in child support determination.*

## **APPENDIX C**

### **Presumptive Parenting Time Adjustments: Examples from North Carolina and Arizona**

*Georgia specifically lists noncustodial parenting time expenses as a deviation factor. However, statute does not give any guidance on how to calculate a parenting time deviation. Of course, the court is free to make such a calculation in a manner it believes to be appropriate. Earlier in this manual, economics based approaches were discussed, focusing on the Shockey study from Arizona. Additional insight on how to deviate for parenting time can be gained from seeing how other states with presumptive parenting time adjustments make their calculations. That is, what are they formulas and what do they imply for potential deviation amounts in Georgia? Two key approaches are now included in this seminar's Excel deviation calculator.*