

**Family Law Commission**  
Meeting Minutes  
April 26, 2012  
Senate Hearing Room

**Members Present:**

Senator Bruce Ennis, Vice Chair  
Representative Michael Ramone, Secretary  
Senator Sorenson  
Representative Stephanie Bolden  
Diana Metzger  
James Morning  
Judge Walls  
Harriet Ainbinder  
Peg Smith  
WendyJean Matlack  
Curtis Bounds

**Liaisons Present:**

Drew Slater, Asst FLC

**Speakers:**

Commissioner Southmayd  
DAG Brenda Sammons

The Family Law Commission met on Thursday, April 26, 2012 to discuss second incomes relating to child support payments.

**Call to Order:**

The meeting was called to order at 9:43am.  
Vice-Chair Ennis led the meeting

**1. Approval of Minutes**

Motion by Representative Ramone, Second by Mr. Morning to approve the March minutes. The minutes were approved unanimously with no abstentions.

**2. Speakers**

Senator Ennis asked Commissioner Southmayd to speak to the secondary income in the child support formula. There were copies handed out of the code and regulations that Commissioner Southmayd would be referring to.

Commissioner Southmayd said that there were a list of factors on a case-by-case basis that was reviewed in the Melson Formula in 1998. The formula is reviewed every four years but the second income issue has not had a full and thorough review since 1998. There was case law and that is now in the formula. In addition, there were several questions that had to be answered:

1. Was the second income while the parties were married or is this a new income?
2. Is the second income for a dedicated purpose, such as paying off bills or a luxury idea, such as a boat
3. Is this a large amount of your total earnings in a year?

Commissioner Southmayd said that it is difficult to spend more time with your children when you have a second income. In addition, federal law states that at a minimum you must consider all of the income of the obligee parent. If the state does not adhere to the federal statute, they put themselves at risk to lose \$25 million in funding for support enforcement with \$4-5

million of that money for the Family Court. The state has had close calls on federal funding before.

The formula also has to consider someone who drives a school bus, owns a chicken house and works at the beach over the summer and it is very difficult to determine their primary income. It is not as easy as always looking at the W-2 forms.

There are some jobs where you can work 60 hours a week and be paid no overtime so how would that work into the formula? A statute excluding second income would be an exclusionary rule which would allow unscrupulous parents to shelter income, specifically those who are self-employed. They could pay themselves less but own a business or corporation.

Additional income is in the standard of living adjustment. 16 percent is for one child where 84 percent of the extra income is left to the parent. Having said that, the calculations are much more complicated than that but most of the income stays with the parent.

Mr. Morning then asked about the self-support allowance and it was noted that this allowance is \$1,120. Mr. Morning inquired as to how that compared to minimum wage where, according to the IRS, \$1,350 is the maximum monthly allowance for a family of 1 in Kent County and \$534 is the standard expenses for one person for food, clothing and other items in Kent County. Commissioner Southmayd said that he did not know that information off the top of his head. It was later discovered that the monthly after tax income of a person earning minimum wage, working 40 hours a week, is \$1,088. It was mentioned that if you are employed lower than that then this could be reviewed along with reviewing the tables with the Department of Labor.

A person making minimum wage would pay a minimum order of \$130 per month, which would leave them \$958, just above the Federal poverty threshold for one person of \$931. This is not applicable for person who are fully or temporarily disabled but is reviewed on a case-by-case basis. It should also be mentioned that Social Security Disability has a dependent benefit where Social Security Income does not as this is need based income.

Mr. Morning asked about the military and their child support as they make \$17,000 plus another \$1,000. Commissioner Southmayd said that all this income is included but it is limited to what someone could make at Dover Air Force Base. There is an exclusion for clothing allowance and paying a health care premium, which is deducted from the military persons pay.

Mr. Morning asked about the support payments for a child with special needs. What is the parent has to work two jobs in order to support their special needs child? Commissioner Southmayd said this would be a case-by-case basis.

Ms. Matlack mentioned that housing and rent for a two bedroom apartment could cost \$1,400 a month. The self-support allowance would not cover a two bedroom apartment in New Castle County and a two bedroom apartment is mandatory for a parent and child.

Mr. Morning asked about military parents and specifically military pensions. It was mentioned that a military pension is considered income and if the military person works a second job, after retiring from the military, that second job would be considered income as well. As would any substantial investment income each year. Commissioner Southmayd said that it is hard to predict future earnings and actual income is the starting point but they also take the economy and other jobs that the obligee is qualified for but not currently available into account as well.

Dr. Ainsbinder asked that the second income issue be reviewed before the next Melson Formula review in 2014 since it has not been looked at thoroughly since 1998. Commissioner Southmayd said that this will be considered in 2014 if he is still on the review committee.

Representative Ramone said that there were two big issues that were brought up:

1. Review process
  - a. The economy is not back yet. There should be an opportunity to review the formula sooner because of extenuating circumstances such as the change in the way banks are lending and home values decreasing.
2. Under-employment
  - a. During this economy, there are many non-custodial parents who are under-employed and there may be no environment to increase their potential to earn.

There was also a question of what if the other parent does not want to work? They could be cheating the system.

Mr. Bounds said that one difficulty is that there is only an hour and a half, or less, to hear a case. There is a need for more Judges and Commissioners. It was by mentioned by a commission member that the people go to Family Court while half the tax base is Superior and Chancery Court. However, the people are the ones that go to Family Court. DAG Sammons concurred with Mr. Bounds comments.

Commissioner Southmayd said that the formula is updated every two years to adjust for allowances. Additionally, if there is a problem with income, specifically second income, anyone can file a petition to reduce their child support and be heard in 30-60 days to ask for an adjustment. It was also noted that there should be one year or more that shows evidence of diminished capacity.

Commissioner Southmayd also mentioned that New Castle County has a Commissioner dedicated to hear cases that cannot be resolved through mediation the same day, called "same day resolution." Commissioner Southmayd also mentioned to review page 2 of the handout relating to the federal regulation (42 U.S.C.A. 666). He also mentioned that Maryland has a bill that could take all your second income to pay back support down. Mr. Morning said that there is a bill in another state to allow those in jail to not pay child support while in jail. There is no Delaware legislation to this effect.

The next item on the agenda was the review of the January comments. After which the committee moved to pending legislation. Having only two bills in pending legislation, it was decided that we would review these and any other bills at the next meeting on May 10<sup>th</sup> in the interest of time.

There was no new business before the commission.

### **Adjournment**

With a motion from Representative Bolden to adjourn the meeting, seconded by Senator Sorenson the meeting adjourned at 11:11am.

Submitted by Drew Slater  
Assistant to the Family Law Commission