



CHILD SUPPORT TRAINING

Roanoke – June 17, 2006

Virginia

Dispute Resolution Services
Office of the Executive Secretary
Supreme Court of Virginia



Development of Family Mediation in Virginia



- 1987 Chief Justice Carrico appointed a Commission to study the future of Virginia's Judicial System
- Vision 3 of the 1989 Futures Commission Report states that the Judicial System needs to provide an array of dispute resolution options
- DRS has focused on mediation over the last 15 years

Family Mediation



- The largest volume of mediation is in family cases
- An average of 10,000 custody/visitation/support cases are mediated annually
- J&DR District Courts recognize the value of communication and relationships where children are involved
- Accurate child support is the courts' primary concern



Training Objectives



- Overview of pre-mediation considerations in family cases
- Overview of child support calculations
- Overview of spousal support calculations
- Overview of statutory revisions effective July 1, 2006 related to C/V/S
- Provide child support and spousal support practice sessions in small groups

Family Mediation Resource Manual



- Manual intended to provide a general overview of the applicable statutes, case law, and forms used in custody, visitation and child support cases.
- It should be updated annually at a minimum.



Pre-Mediation Checklist



- Protective Order or No Contact Order – Don't mediate unless exception provided by court
- Look at Order of Referral – Don't mediate issues not listed
- Do not mediate cases with public assistance (TANF) as the State is a party in interest
- Clarify age and identity of parties. If a minor, there should be a GAL or parent

Pre-Mediation



- If mentoring, ensure mentee has necessary training, you have all the appropriate paperwork, and that you meet prior to case.
- Provide client evaluations to parties at the conclusion of mediation – ensure they are in file.
- Clarify fee arrangements.
 - Orientation Session is **free** of cost
 - Mediations referred pursuant to Section 20-124.4 are reimbursed at \$100/case

Orientation Session



- This is a no-cost informational meeting to educate parties about ADR processes and to screen for appropriateness
- Mediators must screen for family violence, substance abuse, and balance of power issues. In person, separate meetings are best
- It can be conducted over the phone
- It must begin with a reading of the Confidentiality Agreement – note exception for information shared with mediator
- Mediators must continually assess the appropriateness of a case for mediation during the mediation itself

Child Abuse



- Mediators are mandated reporters of child abuse and neglect
- Mediators need not prove that abuse or neglect has taken place
- Inform the parties that allegations of abuse or neglect are not confidential
- If abuse or neglect is identified in any case, terminate the mediation safely and report to Child Protective Services

Reconciliation



- In court-referred mediations, if the parties reconcile and are living together, or they never actually separated, the court will not enter orders for CVS
- If the mediator learns of this, the mediation should not take place or take place with court approval
- If parties develop a mediated agreement and later try to reconcile, the agreement is negated. The parties may choose to include a provision in the agreement stating that it survives a reconciliation and requires a written revocation, signed by both parties

Agreement to Mediate



- Must be reviewed at the beginning of the process
- Must include the 4 Legals (*Va. Code* Section 8.01-576.12)
- Must include the exceptions to confidentiality
- Must require full and open disclosure of all relevant financial information, particularly where support is at issue

Participants in Mediation



- Mother and father are necessary parties in a custody and/or visitation mediation and mediation should not proceed in their absence unless:
 - 1) deceased
 - » If deceased, request copy of death certificate
 - 2) parental rights terminated
 - 3) permission of court to proceed
- If parent fails to appear, terminate or reschedule
- If parent's whereabouts are unknown, need verification that required notices were posted in the newspaper
- Check with court to determine procedure

Other Participants



- Attorney – provide advice/assistance
- GAL - an attorney appointed by court to represent the interests of the child or incapacitated adult. Provide independent report to the court. Need Waiver of Confidentiality
- Experts
- Interpreter – Available for deaf and hard of hearing persons or for non-English speakers
- Court will pay for interpreter services in court-referred mediation.

Non-Parent Custodians



- Grandparents who have custody of the grandchildren may seek child support from one or both parents
- Parties should be advised to seek advice of counsel when a parent is considering relinquishing custody to a grandparent or any party who is not a parent of the child. Such an action may affect future parental rights and the law is very complex

Minor as Participant



- A minor may be the subject of a CVS case, but can also be a parent in a CVS case
- In all cases, clarify whether a GAL has been appointed and determine if they want to attend
- Some courts order the minor child to participate
- Mediators should set parameters for the involvement of the minor in mediation
- The ability of the child to participate will depend upon the age and mental capacity of the child

Minor Participation



- The mediator should meet with the minor in caucus so he/she is not made to choose between parents or express preferences in front of parents, unless he/she chooses to do so.

Paternity



- Mediators should ask both parties if they are the biological parents of the child
- This question should be part of the orientation session
- Do not mediate cases where paternity is in doubt
- Mediators should refer parties back to court if paternity is at issue
- Mediators should not acknowledge paternity

New Mediated Child Support Form



- The 24th Judicial District, Virginia Beach J&DR District Court, and Spotsylvania J&DR District Court are requesting family mediators to complete a new Mediated Child Support Agreement Form
- This form is similar to the Child Support Order and is not a mandatory form
- Where it is used, the local courts have already or will shortly provide training on completing this form. Check with local Mediation Coordinator
- This training will not review this form

Child Support Basics



- WHO, WHAT, WHY, WHEN, WHERE?
- Child Support is the RIGHT of every child
- Child Support is the DUTY owed to each and every child by the parents
- Child Support is the OBLIGATION of both parents

What?



- Child Support is an amount of money which the Court or the Division of Child Support Enforcement may order one or more parties to pay

Who?



- One or **BOTH PARENTS** may be ordered to pay Child Support
- The payee or recipient of Child Support Payments is usually the person with whom a minor child resides. This may be a parent, grandparent, or other person to whom the Court has granted Physical Custody

Why?



- The parents brought the child(ren) into the world, so they should support them
- Kids are expensive
- *Virginia Code* Section 16.1-278.15 describes Child Support law generally

When?



- A prerequisite for a Child Support Order is the filing of a Petition for Child Support
- This is usually filed by the person who wishes to receive money from one or more persons who are responsible for supporting the minor child

Where?



- There are several answers:
 - Juvenile and Domestic Relations District Court
 - Circuit Court
 - The Division of Child Support Enforcement

The Mechanics of Child Support



- How does one file for child support?
- How is child support calculated?
- How can child support be paid?
- How long does child support last?

How to File for Child Support?



- File in Juvenile and Domestic Relations District Court
- File in Circuit Court
- File with the Division of Child Support Enforcement
 - A person may apply to DCSE for child support. DCSE can enter an administrative Order which would require the other party to pay child support through a wage withholding by his/her employer, which is then sent to DCSE for dispersal to the receiving parent

How is Child Support Calculated?



- Information the mediator needs to know:
 - Gross monthly income of each parent
 - Reasonable business expenses, if applicable
 - Spousal support, if any
 - Self-employment tax, if any
 - Number of other biological or adopted children of the parties and other child support orders
 - Number of children in this case
 - Work related daycare expenses
 - Cost of health insurance for the children only
 - Which parent has physical custody of the child(ren)
 - How many days the child(ren) spend with each parent

Gross Income



- Gross - before deductions
- Inclusive, from all sources
- Averaged if varies from month to month
- Weekly: multiply by 4.33
- Bi-weekly: multiply by 2.167
- Annually: divide by 12
- Semi-monthly: multiply by 2

Gross Income



- Gross includes, but is not limited to: salaries, wages, commissions, royalties, bonuses, dividends, pensions, severance pay, interest, trust income, annuities, capital gains, some SS benefits, workers comp. benefits, unemployment insurance benefits, disability insurance benefits, spousal support, rental income, gifts, veterans benefits, prizes or awards (See *Va. Code* Section 20-108.2 C)

Exclusions from Gross Income



- Benefits from public assistance and social service programs
 - Examples:
 - TANF
 - General Relief
- SSI benefits
- Child support received
- Income from secondary employment used to lower child support arrearages

FAQs On Gross Income



- Overtime
- Bonuses
- Tips
- Part-time
- Nine-month salaries
- Seasonal work
- Allowances (housing and car)
- Imputation (to be discussed later)
- Self Employment
- Unreported income, legal or illegal

Imputation



- Voluntarily unemployed
- Underemployed
- Not reporting income
- The mediator cannot impute income
- However, parties may agree to the amount of income that either or both receive

Reasonable Business Expenses



- For self-employed only
 - History of income tax filings may be helpful as a starting point
 - Parties' personal knowledge of actual finances
 - Parties may determine what is considered reasonable
 - Reasonable does not mean ALL business expenses

Spousal Support



- Deductible from payor's gross income
- Included in recipient's gross income
- Actual support paid or to be paid between these two parties

Other Children



- Actual payments being made on Orders for support of other children
- Must be biological or adopted
- Step Children are not included
- Boyfriend/Girlfriend's kids not included
- Unborn children are not included
- Additional children are not reason alone for a modification of child support

Self Employment Tax



- Self employed shall deduct from gross income one half of annual self employment tax
- Must be divided into monthly amounts
- Usually found on the first page of the 1040 tax return

Number of Children In This Case



- The number of children for whom support is sought

Work Related Child Care Costs



- Only applicable to **work-related** child care
- Does not apply when parent is in school
- **Reasonable** child care expenses
- Attributable to the parent who remits payment
- Average costs for school and non-school child care, if different

Health Insurance



- Amount attributable directly to the child
- Must be paid by one of the parents
- Payments by others are not given credit in worksheet calculation
- If a parent adds a child to preexisting medical plan and incurs no additional cost, then no credit is given for health insurance for this child in this calculation
- Subtract direct payment of health insurance from the payor's child support obligation

Health Insurance



- Extraordinary medical and dental expenses are no longer a separate line item in the calculation
- Any reasonable and necessary unreimbursed medical and dental expenses in excess of \$250 for each child, for any calendar year proportional to income shares
- The statute is silent, but the first \$250 is presumed to be paid by the custodial parent
- The agreement must contain specific terms of which parent is responsible and how it will be paid

Definition of a Day



- A day is a continuous 24-hour period
- Overnight, but less than 24 hours, constitutes a half-day
- Do not double count
- Calculate the number of days that the parent with the fewer number of days has physical custody. The remaining days are presumed to be with the other party

How Is Child Support Calculated?



- Determine physical custody
- Count days
- Determine which worksheet to use
 - Sole: with one parent only
 - Split: at least one child with each parent
 - Shared: each parent shares more than 90 days with the child. *Exceptions may apply*
- Compute worksheet
- Extrapolation needed?

Extrapolating a Child Support Amount



- Example: The parties' combined gross income is \$2967.00 a month. They have one child. What is the child support amount for that child?
- These figures are from the child support tables:

Gross Income	Support amount for 1 child
2950	440
2967	???
3000	445

Extrapolating . . . continued



1. Find the difference between the combined gross income for the parties and the **lower** combined gross income figure from the chart:

$$2967 - 2950 = 17$$

2. Divide the answer from step #1 by 50

$$17/50 = .34$$

3. Find the difference between the two child support amounts (at the higher and lower income figures) on the chart

$$445 - 440 = 5$$

Extrapolating . . . continued



4. Multiply the answer in step #2 by the answer in step #3

$$.34 \times 5 = 1.7$$

5. Add the result of the calculation in step 4 to the lower child support figure in the chart to get the amount of support for your desired gross income

$$1.7 + 440 = 441.7 \text{ or round to } 442$$

Sole Worksheet



- Primary physical custody with one parent
- 90 or fewer days for the non-custodial parent
- See sample worksheet in Appendix 23

CHILD SUPPORT GUIDELINES WORKSHEET

Commonwealth of Virginia Va. Code § 20-108.2

Case No.: _____



V. _____

	MOTHER	FATHER
1. Monthly Gross Income (see instructions on reverse)	\$ _____	\$ _____
2. Adjustments for spousal support payments (see instructions on reverse)	\$ _____	\$ _____
3. Adjustments for support of child(ren) (see instructions on reverse)	\$ _____	\$ _____
4. Deductions from Monthly Gross Income allowable by law (see instructions on reverse)	-\$ _____	-\$ _____
5. a. Available monthly income	\$ _____	\$ _____
b. Combined monthly available income (combine both available monthly income figures from line 5.a.)	\$ <input style="width: 100px;" type="text"/>	
<hr/>		
6. Number of children in the present case for whom support is sought:	<input style="width: 100px;" type="text"/>	
7. a. Monthly basic child support obligation (from schedule — see instructions on reverse)	a. \$ _____	
b. Monthly amount allowable for health care coverage (see instructions on reverse)	b. \$ _____	
c. Monthly amount allowable for employment-related child care expenses (see instructions on reverse)	c. \$ _____	
8. Total monthly child support obligation (add lines 7.a., 7.b., and 7.c.)	\$ <input style="width: 100px;" type="text"/>	
<hr/>		
	MOTHER	FATHER
9. Percent obligation of each party (divide "available monthly income" on line 5.a. by line 5.b.)	_____ %	_____ %
10. Monthly child support obligation of each party (multiply line 8 by line 9)	\$ <input style="width: 100px;" type="text"/>	\$ <input style="width: 100px;" type="text"/>
11. Deduction by non-custodial parent for health care coverage when paid directly by non-custodial parent (from line 7.b.)	\$ _____	\$ _____
<hr/>		
	MOTHER	FATHER
12. Adjustments (if any) to Child Support Guidelines Calculation (see instructions on reverse)		
a. Credit for benefits received by or for the child derived from the parent's entitlement to disability insurance benefits to the extent that such derivative benefits are included in a parent's gross income	-\$ _____	-\$ _____
b. _____	\$ _____	\$ _____
c. _____	\$ _____	\$ _____
13. Each party's adjusted share	\$ <input style="width: 100px;" type="text"/>	\$ <input style="width: 100px;" type="text"/>

Shared Worksheet



- Child spends 91 days or more with the non-custodial parent
- See sample in Appendix 23
- Difference between shared and sole
 - Multiply base amount by 1.4
 - Take into account income shares and custody shares
 - Subtract parents' calculations from each other

**CHILD SUPPORT GUIDELINES
WORKSHEET — SHARED CUSTODY**
Commonwealth of Virginia Va. Code § 20-108.2

Case No.:



..... V. DATE

I. GUIDELINE CALCULATION

A. INCOME

	<u>Mother</u>	<u>Father</u>	<u>Combined</u>
Monthly Gross Income (see instructions on Page 2)	(1) \$	(2) \$	
Adjustments for spousal support payments (see instructions on Page 2)	(3) \$	(4) \$	
Adjustments for support of child(ren) (see instructions on Page 2)	(5) \$	(6) \$	
Deductions from Monthly Gross Income allowable by law (see instructions on Page 2)	(7) -\$	(8) -\$	
Available Gross Income	(9) \$	(10) \$	= (11) \$
Percentage of Combined Gross Income	(12) \$%	(13) \$%	= 100%

B. CHILD SUPPORT NEEDS

Number of children for whom support is sought			(14)
Child support from guideline table — apply lines (11) and (14) to table			(15) \$
Total shared support — line (15) x 1.40			(16) \$
	<u>Mother</u>	<u>Father</u>	
Total days in year each parent has custody	(17)	(18)	= 365
Each parent's custody share	(19)%	(20)%	= 100%

C. EACH PARENT'S SUPPORT OBLIGATION TO OTHER PARENT

1. Father's obligation to Mother		<u>Mother</u>	<u>Father</u>
Basic support to Mother — lines (19) x (16)			(21) \$
Health care coverage PAID by Mother (if any)			(22) \$
Work-related child care of Mother (if any)			(23) \$
Total — lines (21) + (22) + (23)			(24) \$
Father's obligation — lines (24) x (13) =			(25) \$
2. Mother's obligation to Father			
Basic support to Father — lines (20) x (16)	(26) \$		
Health care coverage PAID by Father (if any)	(27) \$		
Work-related child care of Father (if any)	(28) \$		
Total — lines (26) + (27) + (28)	(29) \$		
Mother's obligation — lines (29) x (12) =	(30) \$		

D. NET MONTHLY CHILD SUPPORT PAYABLE FROM ONE PARENT TO THE OTHER PARENT

Shared custody child support guideline amount — difference between lines (25) and (30) = (31)	(31) \$
(32) Payable to <input type="checkbox"/> Mother <input type="checkbox"/> Father (see instructions on Page 2)	

II. ADJUSTMENTS (IF ANY) TO SHARED CUSTODY CHILD SUPPORT GUIDELINE AMOUNT

A. ADJUSTMENT ITEMS

	<u>Mother</u>	<u>Father</u>
1. Credit for benefits received by or for the child derived from the parent's entitlement to disability insurance benefits to the extent that such derivative benefits are included in a parent's gross income	(33) \$	(34) \$
2.	\$	\$
3.	\$	\$
Total adjustments	(35) \$	(36) \$
Net adjustment (difference between lines (35) and (36))	(37) \$	
(38) Owed to <input type="checkbox"/> Mother <input type="checkbox"/> Father (see instructions on Page 2)		

B. TOTAL ADJUSTED SUPPORT (see instructions on Page 2)

(39) \$	
(40) Payable to <input type="checkbox"/> Mother <input type="checkbox"/> Father	

Exceptions to Shared



- If parent fails to exercise visitation, the custodial parent may be able to rebut the presumptive amount of child support
- Guidelines shall not impair parent's ability to provide minimally adequate housing and basic necessities for the child
- Impact of 150% Federal Poverty Guidelines

Split Worksheet



- Must have at least two children
- Each parent has physical custody of a child(ren) of the parties (biological or adopted)
- Calculate support for each separate family unit
- Support is the difference between the amounts owed by parents
- See sample worksheet in Appendix 23

**CHILD SUPPORT GUIDELINES
WORKSHEET — SPLIT CUSTODY**
Commonwealth of Virginia Va. Code § 20-108.2

Case No.:



..... V.

	MOTHER	FATHER
1. Monthly Gross Income (see instructions on Page 2)	\$	\$
2. Adjustments for spousal support payments (see instructions on Page 2)	\$	\$
3. Adjustments for support of child(ren) (see instructions on Page 2)	\$	\$
4. Deductions from Monthly Gross Income allowable by law (see instructions on Page 2)	-\$	\$
<hr/>		
5. a. Available monthly income	\$	\$
b. Combined monthly available income (combine both available monthly income figures from line 5.a.)	<input style="width: 100px; height: 20px;" type="text"/>	
6. Percent obligation of each party (divide "available monthly income" on line Line 5.a. by line 5.b.)	%	%
7. Number of children for which that person is the <u>noncustodial</u> parent.	<input style="width: 60px; height: 25px;" type="text"/>	<input style="width: 60px; height: 25px;" type="text"/>
<hr/>		
	MOTHER	FATHER
8. a. Monthly basic child support obligation for number of children listed above (from schedule — see instructions on Page 2)	\$	\$
b. Monthly amount allowable for health care coverage paid by <u>other</u> parent (see instructions on Page 2)	\$	\$
c. Monthly amount allowable for employment-related child care expense paid by <u>other</u> parent (see instructions on Page 2)	\$	\$
9. Total monthly child support obligation of each parent (add lines 8.a., 8.b., and 8.c. for each parent)	\$ <input style="width: 60px; height: 25px;" type="text"/>	\$ <input style="width: 60px; height: 25px;" type="text"/>
10. Total monthly child support obligation of each party (multiply line 6 by line 9)	\$ <input style="width: 60px; height: 25px;" type="text"/>	\$ <input style="width: 60px; height: 25px;" type="text"/>
<hr/>		
	MOTHER	FATHER
11. Adjustments (if any) to Child Support Guidelines Calculation (see instructions on Page 2)		
a. Credit for benefits received by or for the child derived from the parent's entitlement to disability insurance benefits to the extent that such derivative benefits are included in a parent's gross income	-\$	-\$
b.	\$	\$
c.	\$	\$
12. Each party's adjusted obligation to other party	\$ <input style="width: 60px; height: 25px;" type="text"/>	\$ <input style="width: 60px; height: 25px;" type="text"/>
13. Net payment	\$ <input style="width: 60px; height: 25px;" type="text"/>	\$ <input style="width: 60px; height: 25px;" type="text"/>

Deviations



- After determining the presumptive guideline amount according to *Va. Code* Section 20-108.2, the parties may agree to deviate from the guideline amount.
- See *Va. Code* Section 20 – 108.1B, et. seq. for deviations
- Deviations must be specified and explained to the court in writing
- The court may or may not approve of proposed deviations

How Can Support Be Paid?



- Direct payment by payor to payee
- DCSE pass through or wage withholding
- Electronic funds transfer from bank or work
- Direct payment to DCSE
- Payor must be able to prove payments
- Payor can be held in contempt of court for non payment

How Long Must Child Support Be Paid?



- Until the child reaches 18
 - Except if the child is still in high school when he or she reaches 18. Then, child support will continue until either the child turns 19 or graduates from high school, whichever occurs first
- Support may be continued for a child over 18
 - When the child is severely and permanently mentally or physically disabled
 - Unable to live independently and support himself
 - Resides in the home of the parent seeking support

Modification of Child Support Orders



- Child support remains modifiable while under the jurisdiction of the court
- The *Va. Code* requires that the parties must demonstrate a material change in circumstances in order for the court to change the amount
- The birth of a new child in and of itself is not a change in circumstances
- When a payor gets a second job to pay child support arrears, it is not deemed a change in circumstances
- This is a complex area of law and mediators should determine what their local court expects

Statutory Changes



Every July 1st statutory changes go into effect.

Notable changes in 2006

- All child support orders must reflect payments to be due the first day of the month
- Several changes to deviation factors including,
 - cost of visitation travel
 - good faith and reasonableness of change in employment decisions when a parent's income has decreased

Spousal Support



- The amount of money for support which one spouse must pay to the other upon separation or divorce

Spousal Support



- Controlled by statute
 - No tables
 - No charts
- At discretion of the court based upon factors listed in § 20-107.1 of the *Code of Virginia*
- Guidelines may be used in some local courts

Pendente Lite



- “During the pendency of” the suit
- Temporary support
 - usually until a final decree is granted and spousal support is granted or denied
 - Purpose: to stabilize the family
 - This is the primary use of the guidelines

Section 20-103 E

Code of Virginia



- *Pendente Lite* support is not a precedent for the final award
- Temporary support looks to immediate needs
- The Final Order on spousal support looks to future needs

Sections 20-103 A and B

Code of Virginia



- Authorizes the court to make
 - “any order that may be proper”
 - "the discretion of such court" to do one or more of eight things
 - See appendix 26

Local Spousal Support Guidelines



Adopted by Circuit Courts in

- Richmond, including Richmond City, Henrico County, Chesterfield County
- Harrisonburg/Rockingham County
- Fairfax

Used primarily for *Pendente Lite*, not for permanent spousal support

Spousal Support Award Options



Award options may be:

- Ongoing monthly payments
- Lump sum (usually only as part of final decree)
- Rehabilitative: time limited monthly payments
- Reservation: opportunity to petition the court for support in the future

Mediated Agreements



Should include:

- Amount of periodic support
- Mode of payment
 - Start date and payment periods
- Order for any healthcare coverage
- Arrearages
- Termination or modification date, if any
- Length of reservation, if any



Role of Fault

- *Virginia Code* § 20-107.1
 - Adultery as a bar to spousal support
 - Impact of condonation

- Exception
 - Manifest injustice

Section 20-107.1

Code of Virginia - Factors



1. Obligations, needs and financial resources of the parties
2. Standard of living
3. Duration of the marriage
4. Age and health of the parties
5. Impact of child's age and health on employment outside the home
6. Monetary and non-monetary contributions

Factors Continued



7. Property interests
8. Equitable distribution (*Virginia Code* § 20-107.3)
9. Earning capacity
10. Enhancing skills for employment
11. Arrangements made by the parties during the marriage
12. Contributions to profession of other party
13. Other factors, including the tax consequences

Modification and Termination of Spousal Support



- Death of either party
- Recipient spouse remarries
- Recipient spouse cohabits with someone for a period greater than a year in a “state analogous to marriage”
- Jurisdiction of court to modify
- Written agreement must address

Tax Consequences



Taxable to the receiving spouse (IRC §71) and deductible from the gross income of the payor (IRC § 215)

- May reverse the tax burden if it is expressly included in a written document
- Can not file joint tax return and claim spousal support deduction
- Other considerations: mortgage, children as exemptions

Spousal Support Payments



1. Must be made in cash and paid to the payee or a third party for payee's benefit pursuant to a divorce or separation instrument
2. Must not be designated as anything other than alimony or spousal support or separate maintenance
3. Must not be members of the same household at time of payment
4. Must terminate upon the death of the payee spouse

Spousal Support Payments Continued



5. Must not be construed as child support. Mediators should be careful not to have spousal support terminate upon events involving children, such as graduation from school
6. Payments of \$15,000 or more in one year, and lesser amounts in following years, are subject to special front loading rules (issues are very complex and parties should consult a tax professional)

When Party Is Seeking Spousal Support



- **Now**
 - **Temporary** (spousal support orders may be for temporary “bridge” support)
- **Now and Future**
 - **Permanent**
- **Future**
 - **Reservation?**
 - **Duration of reservation?**
 - **Any conditions for reservation?**

Key Spousal Support Concepts



How much and for how long???

- **Amount of Support**

- Level
- Varied (e.g. increasing, decreasing)
- Lump Sum
- Relevant conditions (e.g. graduating from college and gaining full time employment)

- **Duration of Support**

- Beginning and end
- Statutory and other agreed upon causes for termination

Questions for Discussion in Mediation



- Key Questions:
 - What is the purpose of the support?
 - What is the amount of the need?
 - What is the ability to pay?
 - How much for how long?
 - What circumstances or events effect the answers to these questions?

Processes for Discussion Continued



Know whether your jurisdiction requires that a certain formula be used to calculate *pendente lite* spousal support.

- Income and Expense Procedure
- Local Guidelines
 - Richmond
 - Harrisonburg/Rockingham
 - Fairfax

Income and Expense Procedure



Husband's

Income (net, after tax)

-Monthly Expenses

NET = _____

Wife's

Income (net, after tax)

-Monthly Expenses

NET = _____

Income and Expenses: The Brokeups



Bill's

Income \$4,920

Expenses -5,391

NET = \$ (471)

Barbara's

Income \$2,742

Expenses -3,988

NET = \$(1,246)

The Brokeups



The Problem:

- Is there a “demonstrated need”?
- Is there “ability to pay”?
- Do the parties understand their financials?
- Can either veto expenses of the other?
- Can one impute income to the other?

The Brokeups



The Answer:

- When faced with a financial deficit, there are several possible answers:
 - Increase Income
 - Decrease Expenses
 - Spend assets
- **In mediation the parties can make these choices**
- **In court, a judge decides the parties' finances!**

What Benefit Does Mediation Provide the Brokeups?



- *The standard benefits of mediation!*
- The parties control the practical aspects of their support and income needs
- The parties can reach realistic agreements customized for their needs
- The parties can use spousal support strategically to maximize tax and other income and expense benefits that preserve their valuable assets
- The parties can discuss termination and duration of support with greater flexibility than the court

The Brokeups in Richmond, Harrisonburg, or Fairfax



- If the Brokeups lived in Richmond, Harrisonburg/Rockingham, or Fairfax, the mediator would use the appropriate guidelines formula to identify the minimum amount of TEMPORARY support that the court would likely order, without referring to income and expense statements
- In mediation the parties remain free to apply their own standards to make these decisions

Important Take-Aways



- Spousal support is a very difficult area of law in Virginia
- Know what the relevant jurisdiction requires in terms of guidelines or income and expense approaches to computation
- Remember that you are using the mediation process: problem identification, problem understanding, options identification and evaluation, mutually agreed upon decisions!

THANK YOU



- Thank *YOU* for attending this training and **MANY THANKS TO OUR TRAINERS and FACILITATORS!**
- Please go to your respective breakout rooms for the afternoon workshops
- Let us know if you forgot to bring a calculator
- Let your facilitator know if you must leave early – it will reduce CMEs credited
- Please complete the course evaluation
- You will not return to the main conference room at the conclusion of the day