



Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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Ron's Corner

Attorney Lawrence Markey and I recently discussed a case involving a husband who had recently divorced for a second time. The husband had two children, one from each marriage, and had been ordered by the respective trial courts to provide stipulated amounts of child support. The issue argued among the parties concerned the amount of child support each former spouse should receive given financial hardship of the husband.

My relationship with Lawrence spawned the idea to collaborate on an article concerning hardship deductions.

Without hesitation, we enthusiastically wrote and completed the project, which we are pleased to present here. We think this will benefit you as a family law attorney.

For those of you who are not familiar with Lawrence, he was admitted to the State Bar in 2002 and practices family law in Torrance. He received his undergraduate degree from USC and law degree from the University of Michigan School of Law. Lawrence is also a non-practicing Certified Public Accountant and teaches at the American Institute of Law.

Understanding Hardship Deductions

By Lawrence Markey, Esq. and Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA

Child support litigation in California has caused the spilling of an ocean of ink and toner, yet to many attorneys, the magic box we call the “guideline” remains as mysterious as ever. One component that adds to the opacity of the statewide guideline is the “hardship deduction” embodied in Family Code §4071(b).

This article will provide a brief summary of the guideline calculation, and then explain when the hardship deduction is available, and how and when it should be applied. Finally, we will show how a support obligor can ultimately achieve the effect of the hardship deduction even when the Court declines to apply it.

The California statewide child support guideline calculation is expressly enacted to bring the State of California within the mandates of the federal child support regulatory scheme (Family Code §4050). The support obligation established by the formula is the presumed correct amount of child support, unless the Court concludes that application of the formula would be unjust, and supports its guideline deviation with one of the few enumerated exceptions (Family Code §4057).

The formula itself, found at Family Code §4055, appears only somewhat intimidating, but the devil lies in the details. Among those pesky details are the deductions allowed from gross income to arrive at net income.

Gross income is defined at Family Code §4058 and includes “income from whatever source derived,” other than child support or any needs-based public assistance program, and including but not limited to:

Commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers’ compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to the proceeding [and] income from the proprietorship of a business ... reduced by expenditures required for the operation of the business.

A parent’s support obligation, however, must be based on the parent’s net disposable income, and therefore Family Code §4059 provides a list of enumerated mandatory deductions from gross income that a court must apply. Those deductions include:

- State and Federal income taxes
- FICA deductions
- Employer-mandated union dues and retirement withholdings
- Health and disability insurance premiums for the parent and any child for whom the parent has an obligation to support
- Job-related expenses
- Spousal support paid to a former spouse
- Child support paid for a child of another relationship

Further, the Court has discretion to reduce an obligor’s gross income by what is referred to as the “hardship deduction.” (Family Code §§4070-4073). Hardship deductions are within the discretion of the court, and are approved for extraordinary health expenses, uninsured catastrophic losses, and the basic living expenses of any children the parent has an obligation to support and who

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reside with the payor parent. (Family Code §4071; see also Marriage of Paulin (1996) 46 Cal.App.4th 1378 [noting that applying the hardship deduction after the birth of a second and third child is “not automatic” but nonetheless affirming a trial court order doing so].)

The subset of cases involving an obligor parent who has children with a new spouse or co-parent, while still paying child support for a child of a previous relationship, can be quite vexing. These cases are also frequently filled with raw emotions and hurt feelings. Thus, no-holds barred litigation is common and a practitioner must be sure they understand the workings of the hardship deduction accurately.

In these “new child” cases, the payor parent may request a hardship reduction from his income in an amount specified by Family Code §4071(b):

The maximum hardship deduction under paragraph (2) of subdivision (a) for each child who resides with the parent may be equal to, but shall not exceed, the support allocated each child subject to the order. For purposes of calculating this deduction, the amount of support per child established by the statewide uniform guideline shall be the total amount ordered divided by the number of children and not the amount established under paragraph (8) of subdivision (b) of Section 4055.

The Judicial Council has developed tables in accordance with Family Code §4055 to reflect the maximum hardship deduction, taking into consideration the paying parent’s net disposable income prior to the hardship deduction, the number of children for whom the hardship deduction is being granted and the total number of children for whom the child support award is being calculated. The DissoMaster™ (or other support calculation software) will calculate the exact amount of the hardship deductions and percentage of hardship (1 – 100 percent) that the Court finds is reasonable to apply.

The extraordinary costs of living in California, coupled with the raw emotions associated with the real or imagined “favoritism” for newborn children, make for dramatic and expensive fights over the hardship deduction.

But it doesn’t have to be that way. In fact, in many situations, the same result will occur whether or not the hardship deduction is applied. Take, for example, a Father has two children with two different mothers. As is typical, Mother #1 has a child support order in place, but upon Father’s breakup with Mother #2, a second support order is sought by Mother #2.

For the sake of simplicity, in this example, we will say both Mothers make the same income (\$4,000 per month) and the timeshare/parenting plans are identical (3% custody to Father).

Mother #1’s guideline child support amount comes out to \$1,545. The DissoMaster™ (or other support calculation software) calculation does not reflect the child support Father will soon be paying to Mother #2. After all, Judge #1 had no crystal ball to tell whether or when Father would be paying a second child support order. Father seeks a hardship deduction due to the birth of his second child, but it is denied.

After Father and Mother #2 end their relationship, Mother #2 seeks a child support award and Father again seeks a

hardship deduction to reduce his gross income. Judge #2 uses his discretion to deny the hardship request. At the conclusion of the hearing the Court awards Mother #2 only \$1,323 in monthly support. Her amount is lower – not because her child is any less deserving – but because Father’s side of the DissoMaster™ (or other support calculation software) now includes \$1,545 on the “CS Paid previous relationship” line, which is mandatory.

Father then has an incentive to seek a reduction of the child support for Mother #1, because he now pays child support to Mother #2, so that amount should be on the DissoMaster™ (or other support calculation software) calculation for him and Mother #1. The result ends up being \$1,355 per month paid to Mother #1.

If Mother #2 is carefully watching the writing on the wall, she will also go to Court for a modification, due to the new (lower) child support Father is now paying to Mother #1, and the result will be an increase of child support to \$1,351 for Mother #2.

The result? Both Mothers get similar support orders, and both orders end up matching what the outcome would have been if both Judicial Officers had simply applied the hardship deduction in the first place. In order to prevent the repeated trips back to court, the simpler option appears to be awarding the hardship exemption as a matter of course, despite its discretionary nature. To do otherwise seems to be the equivalent of pouring gas on an already explosive situation and increasing unnecessary litigation.

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