

CHILD SUPPORT IS BASED ON INCOME

By K. Dean Kantaras

CHILD SUPPORT IN THE STATE of Florida is supposed to be paid based on a net income grid that was adopted by the Florida Legislature. Therefore, the definition of what is included in income is critical to those calculations.

When both parties in a case are employed in a typical employment situation, the calculation of income is generally fairly straightforward, as the courts can look at W-2 forms to determine the gross income for each parent. From those findings, the child support guidelines that determines how much child support for which each parent is to be responsible are used.

For example, if the mother is going to have majority time sharing (what was once called "primary residential care" and before that "custody"), and the father is going to have a typical time sharing schedule (what was once called "visitation"), and the mother has a net income of \$2,000.00 a month and the father has a net income of \$3,000.00 a month, and there are two minor children, the statutory child support grid would require the father to pay \$1,551.00 per month in child support. However, this example does not take into consideration such things as health insurance and daycare.

These calculations become more complicated when the income is not as straightforward, such as where one of the parties is employed by a small, family-owned or self-owned corporation, which has elected Subchapter S tax status. Subchapter S corporations were created as a means of allowing individuals to operate a business with the legal protections of a corporation, but with the income passing through the corporation directly to the individual. This can create a problem in determining net individual income



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for child support purposes, even though the income of the corporation that is passed through directly to the individual shareholders will be reported by the shareholders on their Federal Income Tax returns, making it easy to account for when calculating child support. Other items may not be as clear cut.

If the corporation provides an automobile and pays all of the expenses for it, such as gas, monthly payments, insurance and repairs and maintenance, and charges all of that to the expenses of the corporation and does not show them as additional income to the parent in question, then those expenses may be "charged back" to the employee as "in-kind income that reduces living expense" and may be included in the employee's income for child support calculation purposes. Likewise, there are other expenses frequently paid by the corporation, or other business entities,

and not charged to the employee that should be included in the employee's income. Some of those are health insurance and life insurance premiums.

Other complications may also arise when parents or other relatives routinely pay certain expenses, such as rent or mortgage payments, or provide a home and don't require rental payments. The possibilities are endless.

Since many divorce lawyers, such as myself, believe that the Financial Affidavit in a divorce is the single most important document that will be filed in a case, it is critical to explore in depth all of the potential income sources before filing an affidavit. Financial Affidavits can be amended as often as necessary, when financial circumstances change. But, amending an affidavit because it was improperly prepared may affect the credibility of both the client and the lawyer before the judge.

Therefore, if your lawyer asks you prolonged questions about your income, don't be offended, as he or she is only attempting to protect you and your position before the court. ■■■

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