Missouri Bar Continuing Legal Education

Family Law Essentials

Child Support & Maintenance
10:45 – 11:45 a.m.

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Kansas City (Independence)

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Child Support

I. The origins of child support amount presumptions
   a. Federal mandates
   b. 1984: Child Support Enforcement Amendments
      Featured a long list of enforcement devices. Also required distribution of guidelines to judges.
   c. Family Support Act of 1988
      The guidelines from 1984 became mandatory. Federal law required states to enact legislation that any deviation from the presumed support amount must be accompanied by a finding that the guideline amount would be “unjust and inappropriate.”
      States required to review their guidelines every four years.
   d. The “feminization of poverty”

II. Section 452.340 RSMo
   b. Statute directs Missouri Supreme Court to promulgate rule establishing guidelines
   c. Rule 88.01 and Form 14
The methodology of Form 14 is based on the “income shares” model of child support guidelines. This methodology is used in 35 states. Another model is the “percentage of income,” used in 11 states.

i. Income Shares: Both parents should share in the expenses of the family proportionate to their incomes. The tables used vary among the states, based on economic estimates of child-rearing expenditures.

ii. Percentage of Income: This is based on the percentage of income of the obligor and the number of children to support.
   1. Flat percentage: portion of income devoted to child does not vary, regardless of the income of the obligor
   2. Varying percentage: increasing percentage at low and middle income levels; capped at constant percentage at given level

iii. Melson Formula: Not widely used. It’s a hybrid of income shares and percentage of income. Each parents’ basic needs are met before child support is set, usually around poverty level. But thereafter, parents don’t keep anything until child’s basic poverty-level needs are met. Then the child benefits from parents’ increased standard of living.

III. Judicial attitudes regarding mandatory guidelines since 1988

IV. Appellate Cases on child support calculation guidelines

**Wooldridge v. Wooldridge**, 915 S.W.2d 372 (Mo.App.W.D. 1996) has been cited by numerous courts, including the Missouri Supreme Court in **Neal v. Neal**, 941 S.W.2d 501 (Mo. banc 1997). It sets forth the proper methodology used in setting child support using Form 14 pursuant to Rule 88.01 and Section 452.340.

**Wooldridge** set out the now-familiar two-step process when a trial court establishes child support.

1. The court must determine the presumed correct child support amount using Form 14.
2. The court must then determine all the relevant factors of Section 452.340.1 to determine whether the presumed amount should be rebutted as unjust and inappropriate.

- **“Rejection”** of Form 14 figures vs. **“Rebuttal”** of Form 14 amounts.
- Other basic calculation cases:

**In re Marriage of Bottorff**, 221 S.W.3d 482 (Mo.App.S.D. 2007)

The court rejected the obligor’s contention that his “ability to pay” child support was determined by his net income after paying all of his other expenses. Quoting from other cases, the court reminds that “It was not the trial court's business, and it is not ours, to show how [father's] income can be made to cover his debts and current expenses. … Rather, it is father's place to
‘adjust income or obligations, or both, in such a way as to provide the payment of the child support he is ordered to pay.’”

Note: “Father's child support payments constitute 30% of his income. This award is not inconsistent with other awards that have been affirmed. See Welker, 902 S.W.2d at 869 (affirming award of 33% of obligated parent's income); Wilson-Trice, 191 S.W.3d at 73 (affirming award constituting 31% of obligated parent's income); In re Marriage of York, 185 S.W.3d 794, 799 (Mo.App.2006) (affirming child support and maintenance award amounting to 38% of obligated parent's income).”

Marquez v. Marquez, 136 S.W.3d 574 (Mo.App.S.D. 2004)

V. Rebutting the presumed amount of child support
   a. Realistic considerations
   b. The problem of expediency
   c. So when should you seriously consider it?
      i. Notably low income cases
      ii. Notably high income cases
      iii. Multiple parent & child cases
      iv. Truly extraordinary situations and special needs
   d. Rebuttals of convenience (e.g. *de minimis* adjustments)
   e. Rebuttals of settlement
      There are advantages to both the obligee and the obligor to rebut presumed support amounts, including both downward and upward rebuttals.
   f. Recent Rebuttal Cases
      **Obligee can get tax exemption only if PCSA rebutted**
      Under federal tax law, the “custodial parent” is entitled to claim the child as a dependent. I.R.C. § 152(e)(1). An exception is made if the custodial parent signs a declaration not to claim the child as a dependent. (Form 8332, which is attached to the noncustodial parent’s income tax return.)

      “Certainly, the trial court is entitled to consider which parent would benefit the most from receiving the dependency deduction.” But, because
the Form 14 presumed correct support amount [PCSA] is based in part on the assumption that the exemption will go to the obligee, before the “noncustodial” parent can be awarded the right to claim the child, the court must first rebut the PCSA as unjust and inappropriate.

In a footnote, the court reminded that if a trial court desires to allocate the dependency exemption to the obligor, it must order the obligee to sign IRS Form 8332. “The court’s order should make execution of the declaration contingent upon the custodial parent’s receipt of the court ordered child support payments and a deadline for signing the declaration should be established.”

**Note:** The tax code and appellate decisions routinely use the terms “custodial” and “noncustodial” parent even when addressing child support issues. Because an order for periodic child support is appropriate even in most true joint custody situations, counsel may wish to use the terms “obligee” and “obligor” instead of “custodial” and “noncustodial” as an increasing number of parents will hopefully share joint legal and physical custody.


**Daycare credit applies even if exemption awarded to obligor**


The trial court reduced the obligee’s daycare expense by the related tax credit. The trial court also awarded the dependency exemption to the obligor. On appeal, the obligee argued that because the obligor was awarded the dependency exemption, she could not qualify for the daycare credit, and that it was thus error for the trial court to include it. The court rejected this argument, concluding that even though the obligor was awarded the dependency exemption, the obligee should still be able to claim the daycare credit.

VI. True co-parenting time and the evolution of Line 11

a. Equal and nearly-equal joint custody time

b. Failure of the Form 14 presumptions and income shares model

   i. Form 14 Assumption 12:

   1. *Variable expenditures:* vary directly with the amount of time a child spends with a parent, such as food. Assumption = 38% of basic child support amount

   2. *Duplicated fixed expenditures:* do not vary with the amount of time a child spends with each parent, but incurred by
both parents, such as housing. Assumption = 30% of basic child support amount

3. **Non-duplicated fixed expenditures**: do not vary with child time and usually only incurred by parent in whose home the child spends the greater amount of time, such as clothing. Assumption = 32% of basic child support amount


   iii. What is really going on here?

c. Limiting Line 11 to 34%

   Assumption 12: As it is assumed that the payment of non-duplicated fixed expenditures (32%) does not vary even when an award of custody results in a child or children spending substantially equal time with both parents (up to 50% per year), the maximum Line 11 adjustment is limited to 34%. Duplicated fixed expenditures (30%) plus variable expenditures equals 68%, and the maximum adjustment divided equally equals 34%.

d. Section 452.340.11:

   The court may award child support in an amount that provides up to a fifty percent adjustment below the basic child support amount authorized by the child support guidelines described under subsection 8 of this section for custody awards of joint physical custody where the child or children spend equal or substantially equal time with both parents. L.2011, H.B. No. 111, § A.

e. If a parent has more than 109 nights per year, the ten percent credit is the required minimum for calculating a correct Form 14 and the presumed support amount. *Harris v. Harris*, 413 S.W.3d 34 (Mo.App.E.D. 2013); *Barker v. Barker*, 412 S.W.3d 457 (Mo.App.S.D. 2013). The trial court has significant discretion with this credit, from 10 percent up to 50 percent. *Heckman v. Heckman*, 422 S.W.3d 336 (Mo.App.W.D. 2013).

   Note: Of course, the Line 11 credit may be unavailable if the low-income caveat applies. *In re Marriage of Adams*, 414 S.W.3d 29 (Mo.App.S.D. 2013).

   Note: Does this mean the overnight credit is automatic?

   Note: In *Pecher v. Pecher*, 398 S.W.3d 580 (Mo.App.W.D. 2013), the court of appeals affirmed a trial court judgment declining to award the minimal overnight credit based on the circumstances of the obligor and the children.
f. Problems with higher-level overnight adjustments
   i. Motivation based on parenting time or support liability?
   ii. Incorrect assumptions, such as direct support
   iii. The true cost of raising a child: At the end of the day, it’s still a case-by-case analysis

VII. “Child Support Income”

a. Comment H “Imputed Income” to Line 1 of the Directions for Form 14

H. COMMENT: Imputed Income: When determining whether to include imputed income and, if so, the amount to include in a parent's "gross income," a court or administrative agency shall consider all relevant factors, including:

(1) The parent's probable earnings based on the parent's work history during the three years, or such time period as may be appropriate, immediately before the beginning of the proceeding and during any other relevant time periods;

(2) The parent's occupational qualifications;

(3) The parent's employment potential;

(4) The available job opportunities in the community; and

(5) Whether the parent is custodian of a child whose condition or circumstances make it appropriate that the parent not be required to seek employment outside the home.

CAVEAT: If income and, where appropriate, reasonable work-related childcare costs are imputed in calculating the presumed child support amount payable to an unemployed parent entitled to receive support, then the support ordered paid by the parent obligated to pay support shall not exceed the presumed child support amount payable if these items are not imputed.

b. Appellate case theme = Would it be the natural and probable course of events for the parties to have the incomes that counsel seeks to impute to them?

Scobee ex rel. Roberts v. Scobee, 360 S.W.3d 336 (Mo.App.W.D. 2012) [how to use Form 14 in an imputation case] This is a well-written analytical decision presenting a recent summary of imputation of income issues.

Buckholz v. Buckholz, 166 S.W.3d 146 (Mo.App.S.D. en banc 2005) [evidence for imputation must be current]


Payne v. Payne, 206 S.W.3d 379 (Mo.App.E.D. 2006) [cannot force relocation of obligor]
Pearcy v. Pearcy, 193 S.W.3d 844 (Mo.App.S.D. 2006) [cannot be based on income aberration]

Wood v. Wood, 193 S.W.3d 307 (Mo.App.E.D. 2006) [approving of trial court using four-year average of father’s income for child support purposes]

Peniston v. Peniston, 161 S.W.3d 428 (Mo.App.W.D. 2005) [best efforts to obtain other income]

Perkins v. Perkins, 21 S.W.3d 184 (Mo.App.S.D. 2000) [justifiable reasons for leaving employment]

Lavalle v. Lavalle, 11 S.W.3d 640, 650 (Mo.App.E.D. 1999)

“Factors to consider in deciding whether or not to impute income to a custodial parent are: (1) the age, maturity, health, and number of children in the home; (2) the custodial parent's employment history, including recency of employment and earnings, as well as the availability of suitable employment; (3) the age and health of the custodial parent; (4) the availability of appropriate child-care givers; (5) the relationship between the expense of child-care givers and the net income the custodial parent would receive; (6) the cost, if any, for transportation, suitable clothing, and other items required for the custodial parent to have the imputed employment; (7) the custodial parent's motivation or reasons for being at home; and (8) the adequacy of available resources if the custodial parent remains at home.

Keller v. Keller, 224 S.W.3d 73 (Mo.App.S.D. 2007) [actual money available for support]

In re Fuldner, 41 S.W.3d 581, 598 n.6 (Mo.App.S.D. 2001) [manipulating closely-held companies]

Heckman v. Heckman, 422 S.W.3d 336 (Mo.App.W.D. 2013) [effect of stock options]


Rallo v. Rallo, 477 S.W.3d 29 (Mo.App.E.D. 2015) [lack of medical evidence militates against disability claim; “In fact, it may have been an abuse of discretion not to have imputed at least minimum wage under these circumstances…”]

c. Discovering true income for child support purposes
   i. Tax returns
   ii. Loan documents (motivation to state higher income)
   iii. Credit card statements
iv. Bank statements (deposits)

VIII. Medical Expenses & Insurance

a. Court must consider medical insurance: Section 454.603 RSMo
   
   
   **In re Marriage of Hoskins**, 164 S.W.3d 188 (Mo.App.S.D. 2005)
   
   **In re Marriage of Turner**, 5 S.W.3d 607 (Mo.App.S.D. 1999)

b. What factors to consider for medical insurance?
   
   i. Cost?
   
   ii. Convenience?
   
   iii. Assurance and history of problems?

c. QMCSO

d. Extraordinary medical costs
   
   i. Include on Line 6e as “extraordinary expense”
   
   ii. Or rebut Form 14 presumption as unjust or inappropriate


f. “Unjust or inappropriate” finding not required to order a parent to pay a percentage of uninsured medical expenses

g. When to vary from 50/50 split of uninsured medical expenses

IX. Other Extraordinary Expenses: private schools

a. Is there a history or prior agreement?

b. Does the school meet the particular educational needs of the child?

c. Do the economic circumstances of the obligor make it appropriate?

   See:


   As with college costs, private or parochial school costs may either be included in Form 14 or ordered separately. For example, a periodic support amount may be
ordered, as well as a general but specifically sufficient order to pay the costs for a certain school. In this case, the court rebutted the presumed amount of $924 and ordered $4041.18, and entered a separate order directing the obligor to pay for parochial school. (The opinion didn’t review what the extra $3K per month was for. Certainly it wasn't for education expenses, because there's a separate order for that.

X. College Support

a. Section 452.340.5 RSMo and repeated amendments
b. Missouri’s statutory requirement for college support is constitutional.
d. Two ways to account for college expenses: (1) Line 6d “extraordinary expense” or (2) rebuttal or presumption. *Shiflett v. Shiflett*, 954 S.W.2d 493 (Mo.App.W.D. 1997).
e. *Echele v. Echele*, 782 S.W.2d 430 (Mo.App.E.D. 1989) is a leading case for providing a working example of both language that is too flexible and language that is specific enough to be enforced for direct college support. In *Echele*, this clause was held too vague to be enforceable: “one-half of the cost of ‘vocational/technical school or one-half the cost of post-secondary education at a state supported college or university with respect to each of the parties' minor children. Said cost shall include the cost of tuition, books, and room and board[;]’ [and] [i]n the event either or both parties' minor children choose to attend a private college or university, then [Obligor] shall be responsible for one-third the cost of tuition, books and dormitory fees (room and board) of said college or university.” But, the court fashioned a clause that would be enforceable:

Husband shall pay one-half of the cost each year for each child attending a post-secondary college, university, or vocational/technical school, state or private, subject to the following limitations:

1) 'Cost' shall include tuition, fees, books, dormitory costs for room and board. It does not include room and board while residing with either parent.

2) The 'one-half' husband is to pay shall be the actual cost to the child, i.e. if child receives a scholarship or other aid which reduces cost, the 'cost' does not include the amount of such scholarship or aid. For this purpose, loans to the student shall not be considered a 'scholarship or other aid.'

3) The child must carry at least a minimum number of credit hours each semester which, according to the institution the child attends, constitutes a full load.

4) The maximum cost which husband shall be responsible for in any given school year will be one-half of the then cost for tuition, fees, books, and dormitory costs for room and board at the University of Missouri at Columbia, regardless of what institution the child attends.

5) The husband shall not be responsible for paying for more than eight semesters at a college or university.
f. Whatever methodology is used, the court must consider the following factors: [1] the financial ability of the obligor; [2] the ability and capacity of the child for college work; [3] the nearness of the child to his [or her] majority; [4] whether the child is self-supporting or not, and [5] the obligor's willingness to provide for such education, as shown by some agreement or other indication on his part. Shiflett, Id. Note: Factor [5] is no longer applicable, given the history of appellate cases construing the statutory directive.

See also:

Forde v. Forde, 190 S.W.3d 521 (Mo.App.E.D. 2006) [college support factors]

Foraker v. Foraker, 133 S.W.3d 84 (Mo.App.W.D. 2004) [college support “outside” Form 14]

DeArriba v. DeArriba, 100 S.W.3d 134 (Mo.App.E.D. 2003) [no double-dipping for expenses]

Word v. Peterson, 57 S.W.3d 894 (Mo.App.W.D. 2001) [Should a student be required to obtain a student loan?]

g. The conditional nature of college support

i. In re Marriage of Kohring v. Snodgrass, 999 S.W.2d 228 (Mo. banc 1999) [support abates for failure to comply with statutory reporting requirements]

ii. Morton v. Myers, 21 S.W.3d 99 (Mo.App.W.D. 2000) reminds that the statute must be followed: “In other words, after the first semester, for the child to continue receiving child support, the statute requires the child to provide each parent with a transcript provided by the institution that showed: (1) the courses enrolled in; (2) the courses completed for each semester; (3) the grades and credits received for each completed course; and a transcript from the institution listing for the upcoming semester: (1) the courses enrolled in and (2) the number of credits for each course.” (The court noted that § 452.340.5 was amended in 1998 to allow a transcript or “other official document.”)

iii. See also:

Schubert v. Schubert, 366 S.W.3d 55 (Mo.App.E.D. 2012) [large trial court discretion to excuse delay and non-reporting]

Waddington v. Cox, 247 S.W.3d 567 (Mo.App.E.D. 2008) [“official” transcript not required]

Wilkerson v. Leonard, 258 S.W.3d 90 (Mo.App.W.D. 2008) [temporary incomplete grades do not terminate support]
**Lombardo v. Lombardo**, 35 S.W.3d 386 (Mo.App.W.D. 2000) [support terminated for flunked courses]


**Rogers v. Rogers**, 87 S.W.3d 368 (Mo.App.W.D. 2002) [reporting failure doesn’t emancipate; only relieves of support for that semester]

iv. **BUT:** Upon request for notification of the child’s grades by the noncustodial parent, the child shall produce the required documents to the noncustodial parent within thirty days of receipt of grades from the education institution. If the child fails to produce the required documents, payment of child support may terminate without the accrual of any child support arrearage and shall not be eligible for reinstatement.

L.2007, S.B. No. 25, §A

h. An odd enforcement wrinkle

- Student fails to disclose while obligor’s wages are withheld pursuant to administrative withholding order. Obligor files motion for repayment of withheld wages. What result?

- Student fails to disclose while obligor pays child support directly. Obligor later files motion for repayment of withheld wages. What result?

- Obligor executed a voluntary wage assignment. Student fails to disclose while wages are withheld pursuant to that assignment. Obligor later files motion for repayment of withheld wages. What result?

i. “Manifest circumstances”


**Perry v. Perry**, 114 S.W.3d 865 (Mo.App.W.D. 2003) [“The key issue in order to find such a manifest circumstance is whether the situation is beyond the control of the child. … In other words, did alternatives still exist which the child could have pursued to start or complete their education. ‘Manifest circumstances are those situations beyond a child’s control.’”]

Missouri courts have liberally construed § 452.240.5 RSMo “to be consistent with the public policy interest of encouraging children to
pursue higher education. *Braun v. Lied*, 851 S.W.2d 93, 96 (Mo.App.1993). Nonetheless, if attendance is not continuous, a court will find the child emancipated unless all of the following three elements are present: (1) the interruption from the enrollment is temporary; (2) there is an evident intent to re-enroll; and (3) there are manifest circumstances which prevented the continuous enrollment. *Daily v. Daily*, 912 S.W.2d 110, 112 (Mo.App.1995).

*In re Marriage of Maggi and Wood*, 244 S.W.3d 274 (Mo.App.S.D. 2008) [“manifest circumstances” cannot undermine statute]

*Kasten v. Frenz*, 109 S.W.3d 210 (Mo.App.E.D. 2003) [proper grounds for waiving enrollment deadline]

*Harris v. Williams*, 72 S.W.3d 621 (Mo.App.E.D. 2002) [no emancipation for short absence from college due to finances]

*Atkinson v. Atkinson*, 423 S.W.3d 322 (Mo.App.E.D. 2014) [diagnosed health problems can be an excuse]

j. Allowing payment directly to student discretionary with court


k. Contracting for college support

Separation agreements occasionally contain language that appears to require more college support than mandated by Missouri statute. Some of this language is the unfortunate by-product of paralegal cut & paste. But some is specifically bargained for by the parties. Counsel confronted with this situation should review *Shands v. Shands*, 237 S.W.3d 597 (Mo.App.S.D. 2007) a veritable treasure trove of black-letter college support law. *Shands* at first glance appears to stand for the proposition that the parties can bargain for more than is required by the college support statute. But the wealth of authority cited therein suggests otherwise. The cases cited by the court in support of the concept that the parties can contract to exceed the statutory college support requirement pre-date the line of cases, also cited in *Shands*, that the statute controls. See e.g. *Schottel-Lehde v. Schottel*, 75 S.W.3d 359 (Mo.App.W.D. 2002).

Counsel desiring to perfect an enforceable agreement for child support in excess of the statutory requirement are cautioned to review *Schottel-Lehde, Id.*, and *Davis v. Helton*, 796 S.W.2d 409 (Mo.App.W.D. 1990). Is it possible to do this? Put another way, how could there not be a conflict if the issue arises in an enforcement proceeding?

XI. Modification

a. Section 452.370 RSMo

b. “changed circumstances so substantial and continuing as to make the terms unreasonable”
c. Twenty percent change when Form 14 applied = prima facie showing of change of circumstances so substantial and continuing as to make current terms unreasonable

d. “...if the existing amount was based upon the presumed amount pursuant to the child support guidelines.”

In Brown v. Brown, 19 S.W.3d 717 (Mo.App.W.D. 2000), the parents were originally granted joint physical and legal custody. Each had custody of the children for six months. Father originally agreed to child support of $800 per month during Mother’s custodial period – a sum greater than the presumed amount at that time. In a modification action, the trial court awarded Father sole legal custody, detailing Mother’s conduct in unflattering terms. The trial court also reduced Father’s support obligation to $630 a month, but this was reversed by the court of appeals because the original support order was not “based upon the presumed amount pursuant to the child support guidelines.” Recall that this last clause of the last sentence of § 452.370.1 was added in 1997. Therefore, although a 20% change was present, the obligor would be required to show a “substantial and continuing” change of circumstances mandating a decrease, and not just a 20% change.

See also:


e. Private agreement cannot restrict future modification. See e.g. Lasker v. Johnson, 123 S.W.3d 283 (Mo.App.W.D. 2003); Schleisman v. Schleisman, 989 S.W.2d 664 (Mo.App.W.D. 1999)

f. When the new Form 14 goes into effect, can this alone constitute grounds for a modification?

Section 452.340.9 RSMo (original support orders)

There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines … is the correct amount of child support to be awarded.

Section 452.370.1-.2 RSMo (modification of existing orders)

1. …If the application of the child support guidelines and criteria set forth in section 452.340 and applicable supreme court rules to the financial circumstances of the parties would result in a change of child support from the existing amount by twenty percent or more, a prima facie showing has been made of a change of circumstances so substantial and continuing as to make the present terms unreasonable, if the existing amount was based upon the presumed amount pursuant to the child support guidelines.
2. When the party seeking modification has met the burden of proof set forth in subsection 1 of this section, the child support shall be determined in conformity with criteria set forth in section 452.340 and applicable supreme court rules.

XII. Trial Issues


b. Counsel in contested cases will sometimes submit various versions of Form 14s, depending upon facts to be found by the court. For instance, a party may submit one Form 14 based on a finding that the obligor has “X” amount of income; and other Form 14 based on a finding that the obligor has “Y” amount of income. In a truly flawed decision, *Voinescu v. Kinkade*, 270 S.W.3d 482 (Mo.App.W.D. 2008) the Western District ruled that when one of the obligee’s multiple Form 14 versions reflected a reduced income, she “acquiesced in the court’s consideration of the lower income amount and has waived any allegation of error on appeal.” The court cited *Blevins v. Blevins*, 249 S.W.3d 871 (Mo.App.W.D. 2008) in support of the ruling. But a careful reading of that case reveals that the obligee there only submitted one Form 14, and was bound by it. Furthermore (and more importantly), the obligee in *Blevins* testified that “he was asking the circuit court ‘to be fair’ and was ‘not imputing any additional income that [the obligor] might be making.’” Bootstrapping this *Blevins* ruling properly based on that testimony to a situation where a party submits various Form 14s dependent upon income findings by the court is illogical.

How can counsel deal with this?

c. As more domestic cases involve the requirement of specific trial court findings, remember Rule 78.01(c):

*(c)* In all cases, allegations of error relating to the form or language of the judgment, including the failure to make statutorily required findings, must be raised in a motion to amend the judgment in order to be preserved for appellate review. (emphasis added)

XIII. Abatement

a. 30-day custody change: Section 452.340.2

b. Custody interference: Section 452.340.7 (“…may abate, in whole or in part, any past or future obligation of support…”)
c. Routine misuse of “abatement” in settlement agreements

XIV. Emancipation

a. Section 452.340.3
   i. Death
   ii. Marriage
   iii. Military duty
   iv. Self-support with relinquishment of parental control by express or implied consent
   v. 18 years old unless extended school or college applies

b. Section 452.340.4: physical or mental incapacitation

c. “Substantial” evidence usually required to prove physical or mental incapacitation. See *Hicks v. Quednow*, 197 S.W.3d 217 (Mo.App.W.D. 2006)


e. Automatic emancipation in Section 452.340.12 (affidavit filing)

XV. Government interference: The Family Support Division

Government assistance: The Family Support Division

a. IV-D Law

b. TANF/Non-TANF cases; “hybrids”

c. Medicaid, MC+ n/k/a “MO HealthNet for Kids”, Health insurance

d. Co-extensive jurisdiction to establish support?

e. Administrative modification

f. FSPC (affectionately referred to by insiders as “Fast Pack”)
   i. Advantages
   ii. Disadvantages; written agreement or court order based on required findings (Section 452.350.2 RSMo)

**Maintenance**

I. Section 452.335

a. Prerequisite: “…Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs …”
b. Prerequisite: “… [AND] [i]s unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.”

c. Factors:
   i. financial resources of obligee
   ii. time necessary to find “appropriate” employment
   iii. comparative earning capacity
   iv. standard of living during the marriage
   v. obligations and assets, including marital and separate property
   vi. duration of marriage
   vii. age, physical & emotional condition of spouse seeking maintenance
   viii. ability of obligor to meet his needs
   ix. conduct of parties during marriage
   x. “Any other relevant factors”

d. Always very fact-specific

II. Standards or guidelines
   a. There are charts out there, but do not rely on them. cf. *Stock v. Stock*, 158 S.W.3d 284 (Mo.App.S.D. 2005) [permissible to consider Form 14 procedures in assessing the reasonableness of maintenance awards]
   b. Johnson County, Kansas, has a formula. Don’t rely on it in Missouri. There is national software. Don’t rely on it in Missouri. Maintenance is fact-specific and comes from a different historical background than child support.
   c. *Cates v. Cates*, 819 S.S.2d 731 (Mo. banc 1991) [guide for maintenance issues]

III. Modifiable or Non-modifiable?
   a. Order must designate
   c. Same terminology standard as original child support modification language: “substantial and continuing change of circumstances”
      i. Section 452.335.3 – revised maintenance provision
ii. Section 452.370.1 – still included in original child support modification provision

IV. Rehabilitative maintenance
   a. To permit obligee to get on his/her feet
   b. To balance some economic factors, especially in a marriage that has not been lengthy
   c. Limited duration not appropriate without evidence of when obligor will no longer require maintenance. *Hileman v. Hileman*, 909 S.W.2d 675 (Mo.App.E.D. 1995)
      i. Again, very fact-specific
      ii. Is there evidence of “impending financial change?”
      iii. Cannot be used by trial court to “compromise”

V. Nominal maintenance
   a. Preserve jurisdiction to increase award when serious problems loom (esp. health issues)
   b. Again, very fact-specific
   c. Do not bargain into or out of carelessly in negotiation.

VI. Termination
   a. Death: always cf *Richardson v. Richardson*, 218 S.W.3d 426 (Mo. Banc 2007) [Permanent maintenance not terminated when obligee attempted a murder-for hire. Although Missouri policy favors divesting wrongdoer of benefits obtained from bad conduct, here the obligor’s death would end the wrongdoer’s maintenance, so the policy does not apply.]
   b. Remarriage: almost always (agreement would need to specifically continue after obligee’s remarriage, and original order would need to be non-modifiable)

**Temporary Orders**

I. Child Support: use Form 14
   a. Obligor: begin making voluntary payments
b. Retroactive support liability (see below)

II. Maintenance: preserve status quo, a “snapshot” of financial conditions prior to the separation

**Retroactive Liability**

The term “retroactive support” can be confusing and is often used to describe different support obligations. There are three periods of support liability, three different types of creditors, and different methodologies to determine the corresponding liability for each period.

1. **“Pre-Petition”** = period prior to filing. The support liability calculated during this time will result in a claim for “reimbursement of necessaries” by a parent. That is proved by evidence of reasonable and necessary expenditures for a child for a period of up to five years preceding the filing of the petition.

2. **“Retroactive”** = from date of personal service to entry of a current support order.

3. **“Current” or “Periodic”** = from the entry of the current support order forward. This includes both temporary support orders (PDL - *pendente lite*, during the pendency of the litigation), as well as the final support order.

*See* I Mo. Family Law §§ 11.40-11.42 (MoBar 7th ed. 2012)

**Arrearage:** Which of these periods of liability gives rise to an “arrearage?”

*See e.g.*, *Ruhl ex rel. Axe v. Ruhl*, 401 S.W.3d 553 (Mo.App.W.D. 2013)

**Debt Allocation** (briefly)

I. Section 452.330.1 RSMo requires court to apportion marital debt

II. **Effect on total “support” situation: Beware!**

III. Many clients still do not understand effect on third-party creditors

IV. Counseling regarding incurring further debt

V. Be wary of bankruptcy issues

   a. State-court language is not binding in federal bankruptcy proceedings. Bankruptcy court will look to substance of agreement or order.

   b. Almost impossible to discharge or reduce marital debt obligation in a dissolution decree, compared to years past

   c. Regardless of bankruptcy proceedings, failure to pay will damage innocent party’s credit
VI. Indemnification and disclosure clauses in agreements

**Discovery** (briefly)

I. One form does not fit all: tailor your requests appropriately (what goes ‘round comes ‘round)

II. Most accurate information depends on nature of income source
   a. low-income: paychecks; payroll records
   b. high-income: bank statements; tax returns; credit card charges; loan applications; accounting records; business documents (large variety)
   c. self-employed: same as high-income

III. Sources of Information
   a. Tax returns
      i. 1040
      ii. W-2s
      iii. MO-40
      iv. Schedule C, SE (self-employed)
      v. Schedule E (supplemental income/loss)
      vi. Schedule F (farming)
      vii. Schedule D (capital gains)
      viii. Form 940, 941 (self-employed)
      ix. Form 1099
      x. Form 1120 (corporation)
      xi. Form 1065 (partnership)
      xii. Schedule K-1
   b. Bank Accounts
      i. personal checking account: analyze most recent deposits
         In *Andrews v. Andrews*, 289 S.W.3d 717 (Mo.App.E.D. 2009), the obligor’s federal income tax return reflected an income of $26,000. But at trial, counsel for the obligee introduced evidence of various bank deposits. The trial court used those deposits and payments for business-related expenses to reach a real gross income of $179,229.05, and calculate presumed child support of $2393. The court of appeals affirmed.
      ii. ATM transactions
iii. All accounts upon which the party has signatory authority
   1. may need to analyze related documents
   2. not all joint accounts are true source of income
   c. Paycheck statements; payroll records directly from employer
d. Family Support Division: access to employment security data
e. Credit card statements
f. Loan applications: incentive not to understate income
g. Deeds: recent acquisition or sale of real property
h. Closely-held corporation records
i. Corporate stock
j. Promissory notes
k. Vehicle titles
l. Leases
m. Financial statements
n. Partnership & LLC agreements
o. Appraisals, recent
p. Property Insurance
q. Life Insurance
r. Disability Insurance
s. Broker accounts & transactions
t. Money market accounts; CDs; IRAs
u. Trust Agreements
v. Contracts, current
w. Pending litigation or claims
x. Sales, transfers, gifts

Packaged Deals

I. What is the best result for your client? (Hint: It’s not always the most amount of money possible.)

II. Structuring child support & maintenance
   a. Maintenance is tax deductible by payor; taxable to payee
   b. Child support is not deductible or taxable
c. The dependency exemption: Overcoming the temptation from Assumption 7 of Form 14

d. Making benefits (e.g. right to claim exemption) dependent upon performance of all duties (e.g. current payment of child support)

III. Property Division: *Cates* does not *really* say you cannot do “lump sum maintenance.” You can, but you have to call it something else, and that money will need to be treated more like a property division.

IV. Linking custody – support – property division – debt allocation – all while not enraging opposing counsel and the judge and without losing your mind