

IN Brief

SPRING 2003

THE CONNECTICUT CHILD SUPPORT GUIDELINES

by Robert B. Katz

The Connecticut Child Support Guidelines were created and refined in the late 1980s and early 1990s. Prior to the introduction of the Guidelines, there was no system-wide uniformity among the judges regarding the entering of child support orders. Judges were allowed to consider individual circumstances of each case and apply the law as they saw fit. The result was a degree of variance from jurisdiction to jurisdiction regarding child support orders. With the implementation of the Child Support Guidelines, Connecticut began to create uniformity in the area of child support based upon mandates from the federal government. A goal of the Connecticut Child Support Guidelines was to promote settlements. The theory was that if the amount of child support about to be ordered was easily predictable more cases would settle because it would be more clear "what the judge will do." The issue in most instances is one where the lawyers can both immediately acknowledge "what the judge will probably do."

Our Child Support Guidelines are based upon economic studies of the cost of living with children and are also adjusted to the higher cost of living in Connecticut. The underlying theory of the Connecticut Child Support Guidelines is that both parents have an obligation to support their children. Because one parent is usually the "custodial" parent of the children, the custodial parent receives payment from the "non-custodial" parent.

The Connecticut Child Support Guidelines make an attempt to be flexible given certain

circumstances reflect the realities of our society and the specific facts of a case. The Guidelines take into account scenarios which, when brought to the attention of the court, may become factors in the court's determination. The court can take into account split custody arrangements, shared physical custody arrangements or parental obligations for children other than the children of the marriage. There is some recognition regarding the contribution of other individuals to the household and "deviation criteria" which include facts or circumstances which may justify a support order different from the presumptive amounts mandated by the Guidelines.

The Guidelines include a worksheet which produces the mathematical computation. There is also a chart, or grid, for the court to reference the factors of the number of children and the combined net income of both of the parents. The presumption is that the Guidelines must be followed. The court has to specifically state, on the record, if in fact the Guidelines are not followed and why not.

The first element of determining the appropriate child support order is a determination of the respective gross incomes of the parties. There may be a dispute as to the correct income as one of the parties may be self-employed and the accusation is that all income is not being properly reported. Further arguments may be one of the parties is under employed or not working to their potential for

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Child Support Guidelines (cont'd)

no justifiable reason. The court has the discretion to attribute to one of the parties an income other than their stated income. There are certain allowable exemptions, deductions and credits from the gross income which, when subtracted from the gross income, will provide the court with the net incomes of the parties. The court is obligated to look at the gross income minus allowable deductions to determine net income.

The net income of both of the parties is combined to produce a total amount of net weekly income available for child support purposes. From this total amount, the chart or grid is used to determine the appropriate level of support that a child or children deserve given that level of income of their parents. Once the total amount of child support is determined, the respective incomes of the parties are compared and a percentage of comparison between the two incomes is applied to the child support amount. For example, if the combined net weekly income of the parents is \$2,500.00 and there are two children, the Guidelines Chart indicates that those two children should receive \$566.00 of support from both of their parents per week. If one parent is earning 75% of the original \$2,500.00 net weekly income, that parent will be responsible for 75% of the necessary \$566.00 or \$425.00 per week child support. Some adjustment is made for the parent who is providing the health insurance for the children.

The Child Support Guidelines create further obligations for the parents in the areas of child care and unreimbursed health expenses for the children. Once it is determined that one parent has a child support payment obligation to the other, the court then calculates the new ratio of funds available in each household (custodial and non-custodial), determines the respective obligations for the parents related to the child care expenses for the children. Child care expenses considered by the court are limited to those expenses which allow the custodial parent to work. In addition, the "new" ratio between the net incomes of the parties, (after the payment of child support), determines the percentage that each parent will be responsible for of the unreimbursed medical expenses of the children.

The Connecticut Child Support Guidelines are mandatory but only within certain income parameters. The chart, which is used to determine the support obligation for the parties based on their combined net incomes, only considers combined net incomes up to \$2,500.00 per week. In those households where the combined net weekly income of the parents exceeds \$2,500.00 per week, the court is given discretion with how to deal with the sum in excess of the \$2,500.00. For example, for two children whose parents have a combined net weekly income of \$2,500.00, their parents together have an obligation to support them in the amount of \$566.00 per week. For those families that have a combined net weekly income in excess of \$2,500.00, the court usually is obligated to award, at a minimum, the \$566.00 per week and then deal with the excess on a case by case basis. The factors in those cases include such issues as private schools, camps, activities for the children, etc., which are not otherwise specifically dealt with in the Connecticut Child Support Guidelines.

Connecticut has a new statute which went into effect on October 1, 2002 to deal with the issue of college expenses for the children. Simply stated, the new law gives the court jurisdiction to enter orders to obligate divorcing parents to pay for their children's college education. Prior to October 1, 2002, no such law existed. The new law allows the court to impose an order whether or not the parents agree. **L&D**

For more information on this subject, please contact Robert B. Katz at (860) 676-3182 or by email at rkatz@ldlaw.com.

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CONTRACTS: SAY WHAT YOU MEAN

by William C. Stokesbury

Two recent Connecticut court cases remind us of the importance of careful drafting of contracts and attention to detail in executing them. While the decisions are not groundbreaking or otherwise surprising, each one holds an important lesson.

Who Are You?

It may sound simple, but you'd better get it right or it could cost you! Individuals have it easy. They can sign their legal name and bind themselves to a contract. Entities, such as partnerships, limited liability companies and corporations, need to be much more careful.

In particular, officers of corporations, and managers and members of limited liability companies and partnerships, can avoid personal liability for most entity obligations by following certain well-defined procedures. Perhaps the most critical of these is that the individual clearly act on behalf of the entity in the individual's authorized capacity, such as "XYZ Corporation by John Jones, its President, duly authorized." Failure to follow the formalities associated with the execution of a contract on behalf of an entity can have disastrous results.

In *Haynes Construction vs. Dorce* (CT Sup. Ct), the defendant subcontractor, Dominique Dorce, operated a masonry company known as "Sunshine Masonry Construction LLC" but he executed his masonry subcontract as "Sunshine Masonry" by "Dominique Dorce." Mr. Dorce failed to identify both the proper company name and his position with the company. The contract went bad and the court allowed a pre-judgment attachment on Mr. Dorce's personal assets to the tune of \$245,000. While the final outcome of the case is not yet known, the lesson to be learned is that the appropriate formalities must be followed when executing a contract on behalf of an entity in order to avoid unintended personal liability.

Default and Damages

No one likes to think about a possible default when signing a contract. Still, parties need to understand that defaults are indeed possible and decide what remedies are most appropriate under the circumstances. Many form real estate contracts contain liquidated, or specified, damages provisions.

A liquidated damage clause normally establishes an exclusive remedy for the non-defaulting party. The benefit of such a clause is that the parties have established a precise remedy in the event of a default. However, liquidated damages clauses can be used by a party with a strong negotiation position to minimize the party's exposure to damages in the event of its default under the contract. A court will enforce such a clause unless it is considered a penalty.

In *Detar vs. Coast Venture XXVX, Inc.*, (CT App.Ct) the buyer sued the seller-builder under a contract for the purchase and sale of a condominium unit after the seller had unilaterally terminated the contract. The buyer sued for damages and was awarded some \$40,000 in damages by the trial court. The Appellate Court, however, reversed the trial court's decision. As the court said, "The liquidated damages clause plainly states that it applies if the defendant *for any reason whatsoever, including construction delays, shall fail, or be unable to convey title or perform its obligations* under the contract" (emphasis added by the court). Therefore, the court invoked the liquidated damages clause and limited the defendant's liability to \$1,000, as specified in the contract, and the return of the plaintiff's deposit.

The court clearly did not want to reward the defendant for unilaterally terminating the contract but had to based upon the unambiguous and unequivocal contract provision. The buyer had simply signed a bad contract. Excluding seller's unilateral action terminating the contract from the scope of the liquidated damages clause could have saved the buyer from this disaster.

These two cases serve to remind us to review carefully and understand contracts before executing them. Any tendency to skip over the "boilerplate" must be resisted. So, read and understand all contracts and, of course, call us with any questions *before* signing. **L&D**

Individuals have it easy. They can sign their legal name and bind themselves to a contract. Entities, such as partnerships, limited liability companies and corporations, need to be much more careful.

For more information on this subject, please contact William C. Stokesbury at (860) 676-3136 or by email at wstokesb@ldlaw.com.

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If your organization would like an attorney to speak on a legal issue or topic, we would be pleased to offer the talents of an attorney of Levy & Droney. Topics are:

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- Automobile Liability
- Homeowner's Liability
- Condominium Issues
- First-Time Home Buyers

If interested, please contact Attorney Robert B. Levine at rlevine@ldlaw.com or (860) 676-3259.

ATTORNEY CARL A. PETERSON: 1935-2003

The attorneys and staff of Levy & Droney announce with great regret the death of Carl A. Peterson, counsel to the firm. Mr. Peterson passed away on March 31, 2003 at his home in Cheshire after succumbing to long-term health problems.

Prior to merging his practice with Levy & Droney, Mr. Peterson was a partner in the Waterbury firm Gager & Peterson. He joined that firm in 1963 and helped establish it as one of Connecticut's leading law firms. Mr. Peterson was a prominent member of Waterbury's business and legal communities for

the past four decades. He is a Past Chairman of the Waterbury Chamber of Commerce, and a member of the Waterbury Foundation and Waterbury Hospital. A graduate of Yale and New York University, he specialized in the areas of estate planning, commercial lending, corporate law, and real estate.

Two of Mr. Peterson's partners from the firm of Gager & Peterson, Curtis V. Titus and C. Robert Zelinger, are members of Levy & Droney, P.C., which is committed to continue Carl's legacy of service and legal counsel to his many valued clients. **L&D**

FIRM HAPPENINGS

BOB ZELINGER has been elected Chairman of the Greater Waterbury Chamber of Commerce, Inc. at its annual business meeting held on March 28, 2003. He previously served as Board Secretary and Vice Chairman of Government Affairs. The Waterbury Chamber has more than 1,000 members in the Naugatuck Valley Region.

BOB ZELINGER was reappointed to the Executive Committee and Finance committee of the St. Mary's Hospital Corporation Board of Directors.

JOEL MANDELL served as Moderator for the fall public forum of The Real Estate Exchange which included a panel consisting of the Presidents of Foxwoods Resort Casino, Fleet Bank and Hartford Hospital.

ROSS FINGOLD will be the featured speaker at a seminar entitled "Revised UCC Article 9 Secured Transactions" on June 2, 2003 sponsored by National Business Institute.

WILLIAM STOKESBURY has been re-elected as President of the Avon Historical Society.

JOMARIE ANDREWS will be the featured speaker at a seminar entitled "Current Issues in Commercial Real Estate Leases in Connecticut" on June 13, 2003.

JOE SAPPINGTON AND JOMARIE ANDREWS presented a seminar on Real Estate Transactions and Environmental Issues at the Connecticut Real Estate Exchange's Rising Star Meeting on April 10, 2003.

ROBERT B. COHEN AND JOE SAPPINGTON will be the featured speakers at a seminar and lecture on June 26, 2003 entitled "Handling Mold Disputes in Connecticut: A Guide To Recent Developments and Effective Litigation Strategies," presented by Lorman Education Services. Clients interested in attending should contact Attorney Sappington for further information.

COLEMAN B. LEVY was appointed to the Long Range Planning Committee of the New Britain Museum of American Art. Attorney Levy was also elected member of the Board of Directors of the Greater Hartford Jewish Federation. **L&D**