



Child Support Bulletin – September 2019

Child Support Guidelines – Rebuttal Criterion for Certain Equal Residential Responsibility Cases – Sample Language

Effective January 1, 2019, there is a new rebuttal criterion in the child support guidelines that may be applied in certain cases where the parents have equal residential responsibility for their children.

Under N.D. Admin. Code § 75-02-04.1-09(2)(o), a court may deviate from the presumptively correct child support obligation based on:

The improved convenience to the parents, and negligible impact to the child, of a nominal increase in the child support obligation of the parent with the smaller obligation as determined under section 75-02-04.1-08.2, not to exceed seventy-five dollars per month, in order for the obligation of each parent to be equal prior to application of the payment offset provided in that section and eliminate any net amount being due except during months when the obligation is assigned to a government agency.

Child Support has received indications that some parents with equal residential responsibility and similar incomes prefer not to have a nominal net child support amount change hands. By applying the new rebuttal criterion in these situations, a court can accommodate the parent's wishes while still protecting the best interests of the children.

With any deviation from the presumptively correct child support obligation, the court must make a written finding or specific finding on the record that the presumption has been rebutted. The finding must:

- State the presumptively correct child support obligation;
- Identify the criteria that rebut the presumptively correct obligation; and
- State the obligation after application of the rebuttal criteria.

See N.D.C.C. § 14-09-09.7(4).

Example/Sample Language

Plaintiff/Mom and Defendant/Dad are stipulating to equal residential responsibility for their child. Mom's monthly net income is \$2,500, resulting in a presumptively correct obligation of \$511. Dad's monthly net income is \$2,900, resulting in a presumptively correct obligation of \$574. The difference in their obligations is \$63. They both prefer that Dad not pay this amount to Mom so they want to invoke the deviation.

The stipulation and concluding documents include the following language:

Based on net monthly income of \$2,500, Plaintiff's child support obligation for one child is \$511. Based on net monthly income of \$2,900, Defendant's child support obligation for one child is \$574. Plaintiff and Defendant have equal residential responsibility for their child so their child support obligations may be offset for payment purposes. This means the lesser obligation of \$511 owed by Plaintiff will be subtracted from the greater obligation of \$574 owed by Defendant for a difference of \$63. A preponderance of the evidence establishes that a deviation from the guidelines is in the best interest of the child based on N.D. Admin. Code § 75-02-04.1-09(2)(o). This deviation criterion authorizes a nominal increase in the obligation of the parent with the smaller obligation, not to exceed \$75, so that the obligations of the parents are equal, which eliminates any net amount being due. Accordingly, Plaintiff's obligation shall be increased by \$63 to \$574 to equal Defendant's obligation and thus eliminate any net amount due.

If child support rights become assigned because the child receives public assistance, the offset is no longer allowed. Each parent will be responsible for paying the full amount of the parent's obligations as long as the assignment is in effect.

Questions: Please contact Paulette Oberst, assistant director for policy and lead attorney, at 328-3582 or poberst@nd.gov.