

# Income Issues Discussion Questions

April 2008

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## Question 1

- ▶ Oligor testifies he has no income except unemployment of \$2000 per month
- ▶ He lost his job as accountant for SAS one year ago
- ▶ He has decided to go into private practice
- ▶ Custodial parent offers last two income tax returns showing gross income of \$180,000 each year

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## Do You:

1. Choice One
2. Choice Two
3. Choice Three
4. Choice Four
5. Choice Five

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### Question 1

- ▶ **Choice 1:** Because he has lost his job and does not presently earn \$180,000, only use this amount if you impute income. Is going into private practice a deliberate disregard of child support obligation?
- ▶ **Choice 2:** \$2000 is the actual present income
- ▶ **Choice 3:** Would be within your discretion
- ▶ **Choice 4:** Can do it - what would you want?
- ▶ **Choice 5:** ????? Other ideas?

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### Question 2

- ▶ Obligor earned \$60,000 during year immediately preceding hearing from a landscaping business
- ▶ Earned average of \$60,000 each of five previous years
- ▶ Expert says drought will hurt business - obligor "will be lucky" to pay expenses
- ▶ Expert's "best guess" is he'll earn \$30,000 this year

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### Do you.....

1. Choice One
2. Choice Two
3. Choice Three
4. Choice Four

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## Question 2

- ▶ **Choice 1:** Correct present income if you are not completely convinced by expert
  - See *Hartsell* (NC App March 4, 2008)
- ▶ **Choice 2:** Correct present income if you are convinced by expert
  - See *Glass*, 131 NC App 784 (1998)
- ▶ **Choice 3:** Probably not correct, unless there is testimony or evidence to support it
- ▶ **Choice 4:** Other ideas ?????

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## Question 3

- ▶ Obligor earned \$45,000 last year
- ▶ In addition, he received \$10,000 bonus
- ▶ He received similar bonus 5 years ago (same job)
- ▶ He testifies he has spent the bonus and doesn't have any reason to believe he'll receive another any time soon

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## Do you...

1. Choice One
2. Choice Two
3. Choice Three
4. Choice Four
5. Choice Five

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### Question 3

- ▶ **Choice 1:** Probably not given the evidence that he does not regularly receive the bonus. Amount does not “fairly reflect” his current earnings. See *Conrad*, 252 NC 412 (1960)
- ▶ **Choice 2:** Ignore the bonus – maybe best answer if you find evidence of future receipt too speculative
- ▶ **Choice 3:** Maybe – but fact that he spent it all may cause problem on appeal.
- ▶ **Choice 4:** Probably the safest choice because of evidence that he spent the bonus and it is not “present” income
- ▶ **Choice 5:** Other ideas?????

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### Question 4

- ▶ Children receive social security payments in amount of \$1500 due to obligor’s disability

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### Do you...

1. Choice One
2. Choice Two
3. Choice Three
4. Choice Four

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### Question 4

- ▶ Choice 2 is correct
- ▶ Guidelines now specifically provide these payments are included in income of person "on whose earnings record the benefits are paid," but amount is then deducted from that parent's support obligation

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### Question 5

- ▶ Children receive social security payments in amount of \$1500 each month due to death of step-father

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### Do you...

1. Choice One
2. Choice Two
3. Choice Three
4. Choice Four
5. Choice Five

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### Question 5

- ▶ Choice 4 is correct, according to *Hartley v. Hartley*, 645 SE2d 408 (NC App, June 2006)
- ▶ *Cf. Easter v. Easter*, 344 NC 166 (1996)
  - Maintenance by third parties can be considered in deviation regardless of ability of obligor to pay support

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### Question 6

- ▶ Custodial parent received \$25,000 equitable distribution award one month before child support hearing

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### Do you...

1. Choice One
2. Choice Two
3. Choice Three
4. Choice Four
5. Choice Five

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### Question 6

- ▶ Best guess is Choice #4 – do not consider distribution except in context of deviation where it is appropriate to consider all financial circumstances of the parties
- ▶ Similar to a house??? See *McKyer*, 179 NC App 132 (2006)(don't include as income unless gain is established)

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### Question 7

- ▶ 30 year-old obligor testifies to sporadic work history; presently unemployed
- ▶ Obligor is "able-bodied" but has low skill
- ▶ Tax return shows income from last year of \$15,000
- ▶ Obligor testifies she is looking for work but has no car

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### Do you...

1. Choice One
2. Choice Two
3. Choice Three
4. Choice Four
5. Choice Five

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### Question 7

- ▶ Choice 1: Only if you impute – can you support finding deliberate disregard?
- ▶ Choice 2: Same as Choice 1 – can you impute? If so, is last full-time job more reflective of ability than income tax return? Need findings
- ▶ Choice 3: Maybe.
- ▶ Choice 4: Probably not. No clear burden of proof

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### Question 8

- ▶ 21 year-old father was full time college student when child was conceived
- ▶ He is still full time college student; no employment
- ▶ 20 year-old mom was full time college student until child was born
- ▶ Child is now 6 months old
- ▶ Mom is part-time student; no employment

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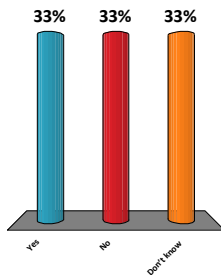
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### Do you impute income to dad?

1. Yes
2. No
3. Don't know



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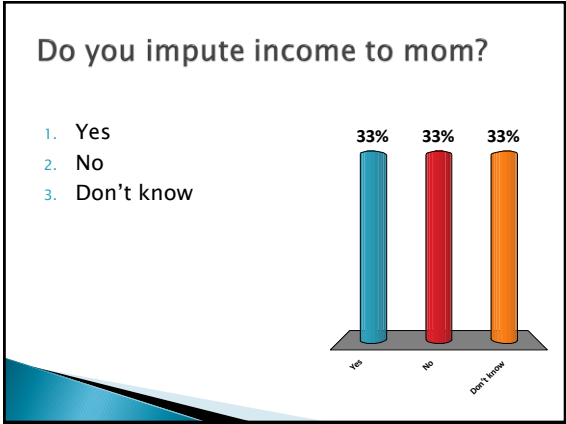
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### Question 8

- ▶ Dad – Maybe
  - Can impute if make findings of deliberate indifference
- ▶ Mom – Probably no
  - Guidelines say do not impute to parent who is caring for a child under age of three years old
  - What if mom and child live with her parents – and parents share care of child?

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### Question 9

- ▶ Obligor is doctor in private practice
- ▶ He earned \$150,000 in 2005
- ▶ He earned \$155,000 in 2006
- ▶ He earned \$50,000 in 2007 (separation and legal proceedings)
- ▶ He testifies stress of divorce caused reduction in income; clients did not like his “bedside manner”
- ▶ Custodial parent says he knew his bad conduct would hurt his business

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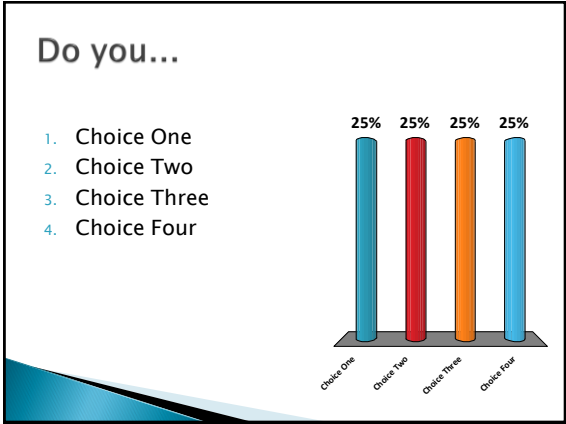
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### Question 9

- ▶ Choice 1: Correct if you think the reduction was not deliberate and reduced amount is reflective of present earnings
- ▶ Choice 2: Average is alright if you explain reason for believing average best reflects current earnings - meaning you think the reduction is a temporary thing
- ▶ Choice 3: Correct if you impute income. See *Wolf*, 151NC App 523 (2002)
- ▶ Choice 4: Other ideas????

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### Question 10

- ▶ Custodial parent and children live with obligor's parents
- ▶ Custodial parent pays no rent or other household expenses but does purchase groceries frequently for everyone in household
- ▶ Neither party requests deviation
- ▶ Obligor argues he should receive "credit" for support his parents are providing to his children

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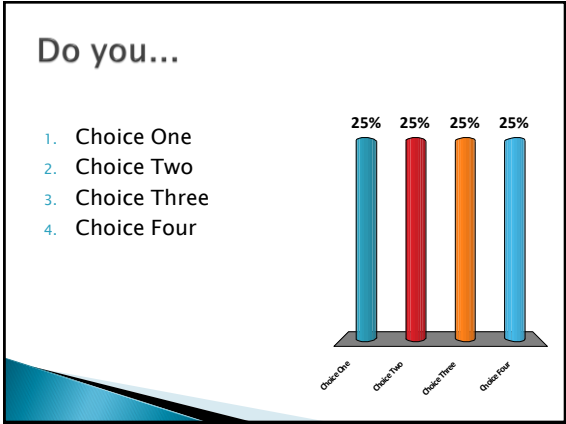
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### Question 10

- ▶ Choice 1: Maybe alright to ignore contributions if no evidence presented as to value
- ▶ Choice 2: Okay to ask questions if you want. If questions give evidence of value, adding amount to income of custodial parent is correct under *Williams*
- ▶ Choice 3: Okay to deviate on own motion. May be best choice if you do not have evidence of value of grandparent contribution. *See Easter.*
- ▶ Choice 4: Other ideas?????

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### Question 11

- ▶ Husband is car salesman
- ▶ Car dealership allows him to drive cars from inventory at no charge to him
- ▶ Wife asks to include value of car based on sales price of the car he is driving at time of hearing
- ▶ Husband argues dealership doesn't pay anything near that amount for the car

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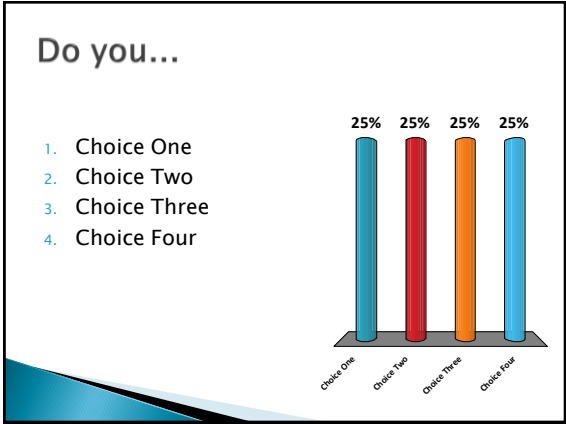
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### Question 11

- ▶ Choice 1: Cases indicate should use amount that reflects the savings in personal living expenses; using sales price would be okay
- ▶ Choice 2: No - looking for total benefit to him rather than cost to dealership
- ▶ Choice 3: Using rental value is correct and easiest to apply
- ▶ Choice 4: Other ideas???

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### Question 12

- ▶ Obligor is tobacco farmer
- ▶ Tax returns for last 5 years show net losses
- ▶ Obligor testifies he has nothing but debt
- ▶ Custodial parent shows expenses of parties while living together (separated 6 months)
- ▶ Expenses show very comfortable lifestyle and new farm equipment each year

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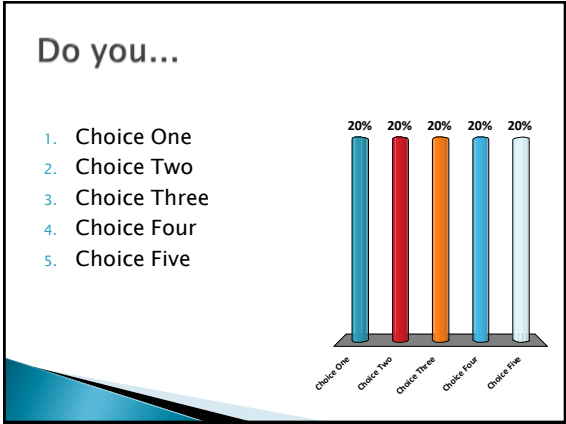
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### Question 12

- ▶ Choice 1: probably not – no clear burden
- ▶ Choice 2: maybe – *see Ahern*, 63 NC App 728 (1983)(alimony case)
- ▶ Choice 3: Okay if have enough information to determine gross income and all reasonable expenses
- ▶ Choice 4: probably best choice
- ▶ Choice 5: Other ideas???

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