

Imputing Potential Income to Determine a Parent's Child Support Obligation

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District Court Judges Special Topic Seminar
April 9, 2008

What Is Potential Income?

Potential income is

- † The amount of income that a parent
- † Could reasonably be expected to receive
- † If he or she took reasonable steps
- † To fully exercise his or her capacity
- † To earn income through employment
- † Or obtain income from other sources

Actual vs. Potential Income

Actual income

- † Income actually received at time of hearing

Potential income

- † Not actually received by parent
- † Imputed based on parent's capacity to earn
- † Based on work history, etc.
- † Treated as if actually received by parent

Actual vs. Potential Income

Actual, current income

- ✦ *May be based on prior or anticipated income*
 - ✦ *Scotland Co. DSS v. Powell (NC Ct. App. 2002)*
 - ✦ *Holland v. Holland (NC Ct. App. 2005)*
 - ✦ *Diehl v. Diehl (NC Ct. App. 2006)*
- ✦ *Different from "imputing" potential income*
 - ✦ *Burnett v. Wheeler (NC Ct. App. 1997)*
 - ✦ *Diehl v. Diehl (NC Ct. App. 2006)*

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In-Kind vs. Potential Income

In-kind income

- ✦ *Noncash income actually received by parent*
 - ✦ *Free room & board from parents (Spicer v. Spicer)*
 - ✦ *Free use of car from employer (Leary v. Leary)*
- ✦ *Different from "imputing" potential income*
 - ✦ *But see Leary v. Leary (NC Ct. App. 2002)*

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Determining Potential Income: I

Potential income generally must be based on

- ✦ *Parent's "earning capacity"*
 - ✦ *Parent's employment potential & probable earnings*
 - ✦ *Parent's recent work history*
 - ✦ *Parent's occupational qualifications*
 - ✦ *Prevailing job opportunities in the community*
 - ✦ *Prevailing earning levels in the community*

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Determining Potential Income: II

Potential income generally shouldn't be less than

- ✦ Full-time minimum wage (approx. \$1,100 per month)
- ✦ If parent is capable of working full-time
- ✦ Has no recent work history or vocational training
- ✦ And full-time minimum wage employment available

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Determining Potential Income: III

Court must make *specific* findings of fact

- ✦ Regarding *amount* of potential income
 - ✦ *McKyer v. McKyer* (NC Ct. App. 2006)
- Findings supported by evidence in record
- ✦ Can't *assume* parent's potential earnings
 - ✦ Based solely on parent's prior earnings

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Legal Contexts: I

Establishing a new child support order

- ✦ Temporary or permanent
- ✦ Child support guidelines
 - ✦ Deviating from the guidelines
 - ✦ Combined incomes exceed guidelines
- ✦ Obligor's potential income
- ✦ Obligee's potential income

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Legal Contexts: II

Entering a modified child support order

✦ *After finding changed circumstances*

Legal Contexts: III

Determining changed circumstances

✦ Significant change in parent's income

- ✓ "Fifteen percent" change under guidelines
- ✗ Increase in actual or potential income
- ? "Voluntary" vs. "involuntary" decrease in income
- ? "Bad faith" vs. "good faith" decrease in income

Actual vs. Potential Income



Parent's duty

- ✦ To provide
- ✦ Reasonable
- ✦ Support
- ✦ For child

Parent's right

- ✦ To make decisions
- ✦ Employment
- ✦ Retirement
- ✦ School, family, etc.

The "Bad Faith" Rule: I

Court may *not* impute potential income *unless*

- † Parent is *voluntarily* unemployed
 - † Or *voluntarily* underemployed
- and*
- † Parent is acting in "bad faith"
 - † Failure to exercise earning capacity due to
 - † "Deliberate disregard" of duty to support child

The "Bad Faith" Rule: II

"Bad faith" turns on parent's *motive*

- † Desire or intent to avoid legal obligation
- † *Wolf v. Wolf* (NC Ct. App. 2002)
- † Naïve indifference to legal obligation
- † *Roberts v. McAllister* (NC Ct. App. 2005)
- † May be inferred from actions
- † *Wachacha v. Wachacha* (NC Ct. App. 1978)

The "Bad Faith" Rule: III

Wolf v. Wolf (NC Ct. App. 2002)

- † Failing to exercise earning capacity
- † Refusing to seek or accept employment
- † Intentionally reducing income
- † Deliberate neglect of work or business
- † Quitting job to start a new business

The "Bad Faith" Rule: IV

Court must make *specific* finding of "bad faith"

- ✦ Failure to make finding is reversible error
- ✦ *Ford v. Wright* (NC Ct. App. 2005)

Evidence must support "bad faith" finding

- ✦ Voluntary reduction in income insufficient
- ✦ *Pataky v. Pataky* (NC Supreme Ct. 2004)

Burden of proof regarding "bad faith"

- ✦ Unclear !!!

Limits on Using Potential Income

Court generally may *not* impute potential income

- ✦ Custodial parent caring for child
 - ✦ Who is under age of 3 yrs. and
 - ✦ To whom noncustodial parent owes duty of support
- ✦ Physically or mentally incapacitated parent

Factual Contexts

Voluntarily unemployed

- ✦ Quit former job
- ✦ Laid off or fired
- ✦ Not looking for work
- ✦ Refused job
- ✦ Retired
- ✦ Attending school
- ✦ Caring for child
- ✦ Incarcerated

Voluntarily underemployed

- ✦ Changed jobs
- ✦ Part-time employment
- ✦ Seasonal employment
- ✦ Quit second job
- ✦ Refusing overtime

Subchapter S & partnership

- ✦ Undistributed income

Case Law: I

- ✓ *McKyer* (2006)
Part-time employment
- ✓ *Roberts* (2005)
Stay-at-home mom
- ✓ *Mason* (2003)*
Relatively young retiree
- ✓ *King* (2002)*
Voluntarily quit job
- ✓ *Wolf* (2002)*
Fired for good cause
- ✗ *Ford* (2005)
Self-employed parent
- ✗ *Godwin* (2004)
College student
- ✗ *Pataky* (2004)
Quit job for grad school
- ✗ *Cook* (2003)
Changed career
- ✗ *Bowers* (2001)
Unemployed

Case Law: II

- ✓ *Osborne* (1998)
Early retirement
- ✓ *Cauble* (1998)*
Subchapter S corporation
- ✓ *Askew* (1995)*
Quit job to start business
- ✗ *Chused* (1998)
Laid off & new job
- ✗ *Kowalick*(1998)
Sold business & new job
- ✗ *Ellis* (1997)
Seasonal employment
- ✗ *Sharpe* (1997)*
Voluntary job change
- ✗ *Lawrence* (1992)
Unproductive investment
- ✗ *Greer* (1991)*
Laid off & looking for job

Case Law: III

- ✓ *Stanley* (1981)
Unemployed
- ✓ *Register* (1980)
Stay-at-home mom
- ✓ *Swink* (1969)
Unemployed
- ✗ *Cameron* (1989)
Part-time employment
- ✗ *Atwell* (1985)
Part-time employment
- ✗ *Goodhouse* (1982)*
Sold business; student
- ✗ *Wachacha* (1978)*
Changed employment
- ✗ *Sguros* (1960)
Relocated & changed career

Everything You Wanted to Know ...

Family Law Bulletin #23 (April 2008)

✦ "Imputing Potential Income to Parents"

✦ General School of Government publications link:

✦ www.sog.unc.edu (click "publications" & search catalogue)

✦ Direct web link & free download:

✦ www.sog.unc.edu/pubs/electronicversions/pdfs/flb22.pdf

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