

# CHILD SUPPORT

Presentation by:  
Stacey Cohen &  
Stephanie Matalon

# PRINCIPLES TO REMEMBER

- Florida Statute § 61.29:
- The following principles establish the public policy of the State of Florida in the creation of the child support guidelines:
  - (1) Each parent has a fundamental obligation to support his or her minor or legally dependent children.
  - (2) The guidelines schedule is based on the parent's combined net income estimated to have been allocated to the child as if the parents and children were living in an intact household.
  - (3) The guidelines encourage fair and efficient settlement of support issues between the parties and minimizes the need for litigation.

# WAYS TO ESTABLISH CHILD SUPPORT

- A dissolution of marriage action pursuant to Florida Statute § 61.052.
- A paternity action pursuant to Florida Statute § 742.031.
- A petition for injunction against domestic violence pursuant to Florida Statute § 741.30(6)(a)4.
- A petition for support unconnected with dissolution of marriage pursuant to Florida Statutes § 61.09 and 61.10.
- A Title IV-D Administrative Child Support Proceeding pursuant to Florida Statute § 409.2563(2)(f).
- A Title IV-D Judicial Proceeding pursuant to Florida Statute § 409.2564.

# SENATE BILL 226

## Support for Dependent Adult Children

- Senate Bill 226 created Florida Statute 61.1255:
  - The statute codified existing case law.
  - Provided a definition of dependent adult child.
  - Gives courts guidance on determining the amount of support.

# DEPENDENT ADULT CHILD

- Unmarried adult
- Incapable of self support due to a mental or physical injury
- Mental or physical injury must have started prior to the child's 18<sup>th</sup> birthday.

# FILING THE CASE

- A civil suit to establish support for a dependent adult child may only be filed in circuit court in the county in which the dependent adult child resides.
- The case may be filed in circuit court or in family court.

# WHO MAY FILE THE PETITION?

- Dependent adult child; or
- The dependent adult child's:
  - Agent under a power of attorney;
  - Parent or other adult on their behalf; or
  - Guardian Advocate (appointed under Chapter 399 or 744).
- The Department of Revenue cannot file the Petition.

# WHEN SHOULD THE PETITION BE FILED?

- The Petition may be filed anytime after the child reaches 17 years and six months of age, unless such order is already from the child's minority.
- If the Court already has jurisdiction over the parties for child support, the parents may submit the agreement to the Court in the existing case before the child turns 18.



# RECEIPIENT OF THE SUPPORT

- If the child is over the age of 18 the following can receive the support payments:
  - The Adult Dependent Child;
  - The Guardian Advocate;
  - Guardian;
  - Agent with Durable Power of Attorney;
  - Special trust or pooled trust.

# CHILD SUPPORT CALCULATION

- The child support guidelines under Florida Statute 61.30 do not apply.
- Child Support is calculated to Florida Statute 61.13.
- The dependent adult child support is based on the following factors:
  - The child's needs
  - Ability of parents to pay
  - Flexibility to preserve government benefits.

# CHILD SUPPORT CALCULATION

- The Court shall determine all of the following:
  - The dependent adult child's income and assets;
  - The dependent adult child's existing and future needs;
  - Whether a parent or other individual pays or will pay for or provides for their care or supervision;
  - Financial resources available to each parent for the support; care and supervision of the dependent adult child;
  - Any other financial resources available for support, care or supervision of the dependent adult child;

# CHILD SUPPORT CALCULATION

- State and federal programs or benefits the dependent adult child is receiving or may receive at eighteen and the effect receiving child support would have on those benefits.
- The Court cannot order support that would cause the child to be ineligible for such programs.

# HOUSE BILL 1087-CHILD SUPPORT

- House Bill 1087 makes changes to the Child Support Program administered by the Department of Revenue.
- In addition:
  - Incarceration cannot be treated as voluntary unemployment
  - DOR may start paternity and child support proceedings with an affidavit of a non-parent caregiver.
  - Changes the requirements to depository payments.

# RECENT CASE LAW

- Funderburk v. Ricenbaw 357 So.3d 188 (Fla. 2d DCA 2023): the trial court has the authority to modify child support despite language in the parties' MSA setting an "absolute floor" on the amount.
- McGill v. McGill 355 So.3d 563 (Fla. 2d DCA 2023): the trial court is required to make findings as to the parties' incomes when ordering retroactive child support. The trial court is also required to explain how the amounts were calculated and to attached child support guidelines.

# RECENT CASE LAW

- Mannella v. Mannella 363 So.3d 236 (Fla. 6th DCA 2023): the standard for a modification of child support is a substantial change in circumstances regardless of whether the underlying child support obligation was imposed by settlement or order.
- Shaw v. Shaw 337 So.3d 61 (Fla. 4th DCA 2022): A court cannot order undifferentiated alimony and child support. The amounts must be calculated separately.

# RECENT CASE LAW

- Olguin v. Olguin 339 So.3d 1061 (Fla. 2d DCA 2022): Alimony awards must be considered in determining the parties' incomes for calculation of child support.
- McDaniel v. McDaniel 340 So.3d 561 (Fla. 2d DCA 2022): It is error to consider reimbursed expenses to the extent that they do not reduce living expenses in calculating child support.



# RECENT CASE LAW

- Nadeau v. Reeves 328 So.3d 1001 (Fla. 4th DCA 2021): Trial court erred by inflating the mother's income based on the support she receives from her new spouse.
- Hilbrands v Hilbrands 320 So.3d 938 (Fla. 2d DCA 2021): It is error to impute additional income to a party based on in-kind contributions from a new spouse.
- Sunderwirth v. Sunderwirth 332 So.3d 1087 (Fla. 2d DCA 2022): a fiancé's in kind payments cannot be treated as income for purposes of calculating child support.