

BURKE McCLASKY STEVENS

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

ANNE E. BURKE, P.A.

November 1, 2016

VIA ELECTRONIC MAIL ONLY

Ellen Goldman
esgoldman@egoldmanlaw.com

RE: Judge Foster's CLE Presentation – Inn of Court – 10.18.2016

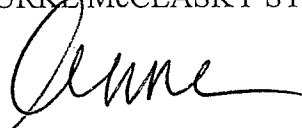
Dear Ellen;

Enclosed please find the Program Submission Form for the American Inns of Court.
Please let me know if you have any questions.

Best regards.

Very truly yours,

BURKE McCLASKY STEVENS



Anne E. Burke, P.A.

AEB/rmw
Enclosures

A Fellow of the American Academy
of Matrimonial Lawyers



Title of Program Snow White & Her Significant Others (Adjustments)
 Date of Program 10-18-16
 Presenting Inn Johnson County Kansas Family Law Inn Number _____
 Inn City Overland Park Inn State Kansas
 Contact Person _____ Phone _____
 Email Address _____

Program Summary:

Indicate the legal focus and be concise and detailed in summarizing the content and setup of your program. Attach additional sheets if necessary.

Child Support - Adjustments which are discretionary with the court:

1. Long distance parenting time
2. Parenting Time Adjustment
3. Income Tax Considerations (with Affordable Care Act Implications)
4. Special needs Adjustment
5. Agreement Past Minority
6. Overall Financial Condition

Program Materials:

The following materials checklist is intended to insure that all the materials that are required to restage the program are included in the materials submitted to the Foundation office.

- Did the program use a written script? Yes No
- Did the program material include any newspaper, magazine, or web articles? Yes No
- Did the program material include any copies of citations of law or legal documents? Yes No
- Did the program material include a fact pattern for the program? Yes No
- Did the program material include a list of questions for the program? Yes No
- Did you hand out any materials before or during the program? Yes No
- Did this program use PowerPoint, CD, DVD or other media during the course of the presentation? Yes No

Please include a copy of any of the above existing materials with your program submission.

Specific Information Regarding the Program

Number of participants required for the program _____ Has this program been approved for CLE? Yes No
 Which state's CLE Kansas How many hours? 1.0

Program Submission Form

Roles:

List the exact roles used in the demonstration and indicate their membership category; i.e., Pupil, Associate, Barrister or Master of the Bench.

Role	Membership Category
Snow White - Erin Dedrichson	Associate
Shea Stevens - Sleepy	Associate
Marcia Montgomery - Sneezy	Barrister
Jake McClasky - Grumpy	Barrister
Alex English - Doc	Associate
Amanda Kivett - Dopey	Associate
Kyle Barszewski - Bashful	Associate
The Evil One - Judge Foster	Judge
Anne Burke - The mirror	Master

Agenda of Program:

List the segments and scenes of the demonstration and the approximate time each step took; i.e., "Introduction by judge (10 minutes)."

Item	Time
Opening - The mirror & Evil One	5 minutes
Sleepy - Long Distance Parenting	10 minutes
Sneezy - Parenting Time	10 minutes
Grumpy - Income Tax	10 minutes
Doc - Special Needs	10 minutes
Dopey - Agreement Past Majority	10 minutes
Bashful - Overall Financial	10 minutes
Close - Mirror & Evil One	5 minutes

Recommended Physical Setup and Special Equipment:

i.e., VCR and TV, black board with chalk, easel for diagrams, etc. When submitting video, please indicate the length of all videos. i.e., 30 or 60 min.

Laptop, Power point, Screen, microphones
 Snow White costume,
 Dwarf - hats & T-shirts

Comments:

Clarify the procedure, suggest additional ways of performing the same demonstration, or comment on the response from the Inn members regarding the demonstration.

Questions:

Please contact Andrew Young at (703) 684-3590 ext 106 or by e-mail at ayoung@innsofcourt.org.

Judge Foster's Group
Child Support Worksheets: Discretionary
Modifications on Page 2

Presentation Date: Tuesday, October 18, 2016

Assigned Topics:

Judge Foster- The Evil One

Anne Burke - The Mirror/Narrator

Erin Dedrickson- Snow White

Shea Stevens - Long Distance Parenting Time Adjustment (Sleepy)

Marcia Montgomery - Parenting Time Adjustment (Sneezy)

Jace McClasky - Income Tax Considerations (w/ ACA implications) (Grumpy)

Alex English - Special Needs Adjustment (with Erin Dedrickson) (Doc)

Amanda Kivett - Agreement Past Majority (Dopey)

Kyle Barscewski - Overall Financial Condition Adjustment (Bashful)

SCRIPT:

Scene opens with music from Snow White and picture of castle. (Anne sent out previously)

Anne: Long ago, in a faraway kingdom, there lived a lovely young Princess named Snow White.

Her Stepmother, the Evil Queen, was cruel and vain. She hated anyone whose beauty rivaled her own- and she watcherd her step daughter with angry, jealous eyes.

The Queen had magic powers and owned a wondrous mirror that spoke. Every day she stood before it and asked:

Enter Judge Foster.

Judge Foster: Magic mirror on the wall, who is the fairest one of all?

Anne: And every day the mirror answered: you are the fairest one of all, Oh Queen. The fairest our eyes have ever seen.

Anne: As time passed, Snow White grew more and more beautiful- and the Queen grew more and more envious. She forced the Princess to dress in rags and work in the kitchen from dawn to dusk.

One day when the Queen spoke to her mirror she received the words she had been dreading:

Anne: Fair is thy beauty, Majesty, But hold- a lovely maid I see, One who is more fair than thee. Lips red as a rose, hair black as ebony, skin white as snow.

Judge Foster: (shrieking) Snow White??? She must be destroyed!!!!

ENTER SNOW WHITE

Anne: Snow White learned of the Queen's plans and she went running into the woods going deeper and deeper. She happened upon a little cottage and weary from her escape, she wanders into the little house.

JUDGE TO DO INITIAL HEIGH HO: Enter the Dwarfs singing "Heigh Ho , Heigh Ho, It's home from work we go..."

Anne: The dwarves arrive home to see Snow White in their little cottage.

Snow White: Oh MY!! All of my significant others and baby daddies in one room! You live here together?

Sleepy: we all live together because the child support we are paying you is out of this world!

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SLEEPY PART: Long Distance Parenting Time Adjustment.

Shea Stevens

Snow White: Since I have to pay for the travel expenses of little Ambien, Heigh Ho, Heigh ho, it's off to Court we go

JUDGE: HEIGH HOOOOO,

CHORUS: HEIGH HO, HEIGH HO, IT'S OFF TO COURT WE GO

Judge: Today we are here on Case #11CV0001, a de novo review from Hearing Officer Coffee's decision issued on February 2, 2016. Snow White, it is your Motion, are you ready to proceed?

Snow White: Yes, your Honor. Well, as you can tell, I am quite beautiful and I have an unlimited supply of suitors. I have found my true love, my prince charming. The only problem is that to allow my relationship to flourish, I had to move out of the Deep Woods to my prince's castle, four hours away from Sleepy.

Sleepy: Puhleeze, had to move? You'll move on in twelve months max, just in time to get knocked up again and make another person miserable for at least 18 years of his life.

Judge: Let's stick to the facts. Snow White, continue.

Snow White: Well, your honor, like I was saying, the prince and I now live in a castle that is approximately four hours in the car, or a quick puddle jumper flight. Sleepy refused to reduce her parenting time like any normal parent would do, so I am paying for a flight every other weekend.

Sleepy: Are you kidding me? Give up my parenting time? I am the only positive influence on little Ambien, showing him how normal people live. You know, living in the trunk of a tree, whistling while I work, talking to birds and rabbits, all the normal day to day activities in Deep Woods.

Snow White: Anyway, I am just too busy keeping Prince Charming happy to spend four hours in the car, so I am paying for flights, twice a month. On my way to Court, I was on the phone with Beauty, who told me that Judge Schoenig granted her a long distance parenting time adjustment in her case with Beast, so I think it is only fair for me to receive a parenting time adjustment.

Sleepy: Now I have heard it all!! First you move little Ambien away from me, now you want more money!???? You live off the income of your first husband's proceeds from his life insurance policy, your \$10,000 a month maintenance from Doc, not to mention child support and you are a billionaire after your appearance on Shark Tank. This is the first I have heard of this ridiculous request!!

Snow White: Well, I do usually use Prince's private plane or our frequent flyer miles, but this is an expense and we do only get so many hours each month for the plane. I estimate I spend at least \$350/mo on the travel expenses.

Judge: Ma'am, I am reviewing your pleadings here and don't see this request on the CSW that you filed with the Court with your initial Motion, nor do I see it on your proposed worksheets you submitted today.

Snow White: Yes, that is correct. Like I said, Beauty just gave me an idea for how to really stick it to Sleepy. I hear that Judges are very woman friendly. I mean, Sleepy is a woman, but it is my understanding the attractive women get the favorable rulings.

Judge: Sleepy do you have a response?

Sleepy: Is this a Miss America contest?

Judge: Sorry for not clarifying, a Response to the request for a long distance parenting time adjustment.

Sleepy: Well this is just ridiculous!!! Again, this is the first I have heard of this request, and what expenses is she really incurring???? Too bad she can't go on as many vacations if she uses points. Judge, I do know one word, and it is discretion. For the love of God, please use it and do not give her this adjustment!!

Judge: I'm using my discretion, to be fair and equitable, draw a straw, long one wins. Mirror, mirror on the wall, who is the fairest of them all?

Magic Mirror: Anne to pick on a table to discuss whether they agree with the outcome.

THEN SHEA EXPLAINS CASE:

In re Marriage of Sinks, No. 114,609 Kansas Court of Appeals, 2016

Court stated:

Preliminarily, Carrie argues that Larry never requested any child support adjustments for his potential visits to Texas. And a review of the record supports this contention. At the hearing, Larry candidly admitted that visits would present financial difficulties, but he never formally requested an adjustment.

What is long distance? It is not defined, but the guidelines suggest that the costs must be "real and substantial" which implies that the parents are not geographically separated by a considerable distance. What is considerable - well, that is left to the discretion of the court.

Not every situation justifies a deduction or addition for long distance visitation. The court should consider such factors as:

- a. Who moved away occasioning the expense
- b. The reasonableness of the expenditure to his child support obligation.

As such, the district court essentially granted him the adjustment sua sponte, which appears to run afoul of the Guidelines. See Guidelines, § IV.E. (2015 Kan. Ct. R. Annot. 126).

But even if this court considers that single reference as a request for a travel expense adjustment, the district court's decision presents two other problems. First, Larry never "proved

the basis for the adjustment" as required by the Guidelines. Guidelines, § IV.E. (2015 Kan. Ct. R. Anno. 126). He presented no testimony about the potential costs of visiting his daughter other than vaguely implying that he would not be able to stay with her and Carrie. Without detailed information about these potential travel costs, the district court's order essentially allows Larry to claim prospective, unspecified credits to his child support obligation. Given that the Guidelines envisions travel expenses being included as part of the parties' child support calculation, this rather hazy method of permitting travel expenses is at odds with our Kansas law. Guidelines, § IV.E.1. (2015 Kan. Ct. R. Anno. 126).

To further complicate things Larry had no parenting time with the minor child!
Second, and more importantly, the long-distance costs covered by the adjustment are those "directly associated with parenting time." Guidelines, § IV.E.1. (2015 Kan. Ct. R. Annot. 126). But as the parties agree and as noted by the district court, Larry had no court-ordered parenting time at the time of the move. Although the record is clear that Larry and his daughter saw one another occasionally and were working to improve their relationship, Larry had no actual parenting time to exercise. And as Larry had no parenting time, no costs can be "directly associated with" his exercise of parenting time. Guidelines, § IV.E.1. (2015 Kan. Ct. R. Anno. 126).

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SNEEZY & SNOW WHITE: Parenting Time Adjustment.

Marcia Montgomery

Sneezy: I filed a motion to modify child support because for months now I have had Sneezy Jr nearly half the time. You are constantly calling me demanding that I take him for a couple days at a time because you are so busy with your 4 younger kids, and anyway it is best for Sneezy Jr. to be with me. I don't have other kids. I take care of him better than you.

Snow White: No you don't, and anyway I pay for all of his dwarf pants and all of his other direct expenses. Besides, I need all of the 10 gold coins you pay each month, just like the Evil One ordered when Sneezy Jr was a baby and the paternity test showed that you are in fact his father. That was never in doubt by the way because he sneezes so much. And besides, the dads of my younger kids don't pay.

Sneezy: My son, Sneezy Jr, is now 7 years old. Think about your first born child, my son. You should stop having kids with every dwarf that thinks you are cute. I will not support your other kids, and why should I pay you so much when I have him almost half of the time?

Snow White: You don't have him half of the time. I have him more than you do in the summertime when the other dwarfs and you go off to work.

Sneezy: Yeah, for 3 weeks every summer off to work we go, but I still have him mostly half of the time. And Sneezy Jr. tells me that you make him help you with the rest of your brood; you even have a 7-year old changing diapers!! It'd be better for him if he would go off to work with me and the other dwarfs.

Snow White: That would be against the Evil One's child labor laws. Besides my other lovers, I mean dwarfs, tell me that you don't do your fair share of the work because you are always sneezing.

Sneezy: My sneezing does NOT interfere with my taking care of Sneezy Jr. In fact, he laughs when I sneeze and then he copies me. He's getting real good at sneezing himself.

Stop trying to change the subject. I need an adjustment on my child support. And the Evil One's child support guidelines allow me to have a big parenting time adjustment; in fact, I should have the shared residency support amount with you paying for Sneezy Jr's dwarf clothes and other direct expenses because I have JR with me nearly half the time if not actually half the time..

Snow White: Welllllll, I admit that you DO have him almost half of the time, SO, how about a 10% decrease so you only pay me 9 gold coins each month.

Sneezy: NO that is not fair and that is not what the Evil One's law says. Besides I pay for all of Jr.'s food, and stuff when he is with me about half of the time. Either you agree to take only 5 gold coins each month **OR we'll have the Evil One decide and I bet he'll agree with me..**

Snow White: NO, I will not agree to that. I don't want to take any less than 10 gold coins each month, and in no case will I take less than 9. Sneezy, Jr. deserves all the money that **I can get from you.**

Sneezy: Well, then to the Evil One we go.

Snow White: Hey, let's ask the Mirror for the correct answer BEFORE we go to the Evil One.

Anne: MIRROR GETS AUDIENCE SUGGESTIONS/ANSWERS:

Sneezy & Snow White: Well that didn't work....SO, let's DO ask the Evil One.

JUDGE: HEIGH HOOOOO,

CHORUS: HEIGH HO, HEIGH HO, IT'S OFF TO COURT WE GO

In front of the Evil One, the Judge:

Judge: We are here on Sneezy's Motion to Modify child support.

Sneezy: Well, your Honor, I now have Jr about half of the time and Snow White even admits that, so I want the child support modified so that I only pay the equal parenting time amount, with Snow White paying Jr's direct expenses. I request that you grant my motion and reduce by half the amount I pay.

Snow White: Your Honor, I agree that he should have SOME adjustment, but NOT half; NOT the adjustment to use the equal parenting time amount. Yes, I DO admit that he has Jr about half of the time but I still pay for Jr's direct expenses. SO.....I ask that you give Sneezy a 10% adjustment....or at most a 15% adjustment because he does have JR between 45 and 49% of the time.

Judge: Do you agree that you have nearly equal parenting time with JR AND that this parenting plan IS in his best interest?

Snow White and Sneezy together: Yes, we do. The issue is money.

Snow White: I pay his direct expenses but we don't always agree on WHAT IS a direct expense for JR.

Judge: Well, let me see, Child Support Guidelines, section IV E 2. Is the law. I could give Sneezy a 15% adjustment, but Sneezy says that makes him pay too much. AND I can IF I WANT TO....because it's discretionary with me, the judge....use the equal parenting time support formula, but Snow White, that cute thing, says that will not give her enough money for JR. What to do?

OK.....I've got it. I'll roll the dice. If I roll a 7, Sneezy wins and if I roll a 1 Snow White wins. (rolls dice). Well, well, I rolled 4....SO, here's what I am going to do. Sneezy gets a 20% adjustment. That's fair to both because he gets a bigger adjustment than 15% since Sneezy has the kid almost half of the time, but Snow White pays ALL of the kid's expenses and she has JR more of the time in the summer when Sneezy goes off to work. That's my ruling, AND my reasons for the discretionary adjustment deviating from the guidelines.

ANN/MIRROR: ASK JUDGE GYLLENBORG IF SHE AGREES WITH DECISION

THEN MARCIA EXPLAINS CASE LAW:

***Sloczek v. Sloczek*, 51 Kan. App.2d 606 (2015) Every attorney, who ever has a child support issue of any kind, needs to obtain and study this case.** It is well written and gives a treasure trove of citations to important cases, that speak to the child support guidelines and deviation from them in general, as well as to the specific issue of parenting time adjustment. In *Sloczek*, the Appellate Court affirmed the lower court and held that IF the evidence supports the District Court Judge's deviation from the child support guidelines, it is not mandatory either

to use the equal parenting time child support amount or to use only the formula adjustment table in the guidelines giving a 5%, 10% or 15% adjustment to the nonresidential parent who has 35 - 39%, 40 - 44% or 45 - 49% respectively time with the children. In *Sloczek*, the parents had agreed to 50-50 parenting time and Father wanted to use the equal parenting time support amount with Mother paying the children's direct expenses, but Mother wanted to the court to give Father only a 15% adjustment because his work prevented him from having the children 50% of the time during the summers, and Father earned substantially more than Mother. Judge Gyllenborg ordered a 20% adjustment of the child support, reasoning that because of the income disparity and the extra time that Mother has the children in the summers, to use her judicial discretion in granting a 20% parenting time adjustment was more equitable and in the children's best interest. The Court of Appeals held, among other things, that there is no mandate to use the equal parenting time formula even if the parents each have 50% of the time with the children. In every case, the court has the option not to make any adjustments. Each case is different; each parent's circumstances are unique; all children's needs differ; the judge using her discretion must decide and rule, rather than relying on a computer program.

It is mandatory to use the Kansas Child Support Guidelines. The district court can deviate from the amount of child support listed in the Guidelines but must justify any such deviation through specific written findings in the journal entry detailing how the deviation is in a child's best interests. Failure to make such written findings, however, is reversible error. *In re Marriage of Thurmond*, 265 Kan. 715, 716 (1998); *In re Marriage of VnderVoort*, 39 Kan. App. 2nd 724 (2008)

The district court is in the best position to make finding on the best interests of the minor children. *In re Marriage of Rayman*, 273 Kan. 996 (2002). An appellate court reviews the district court's findings of fact to determine if those findings are supported by substantial competent evidence and are sufficient to support the district court's conclusions of law. *In re Marriage of Atchison*, 38 Kan. App. 2nd 1081 (2008). "Substantial evidence" is such legal and relevant evidence as a reasonable person might accept as being sufficient to support a conclusion. *Venters v. Sellers*, 293 Kan. 87 (2001)

Practice tip: Even if you have a fully executed agreed upon Settlement Agreement and/or Parenting Plan, those documents as well as the Journal Entry must have details explaining any and all deviation from the Child Support Guidelines and the reason that such deviation is in the best interest of the children in your case. Absent that, the district court will probably not approve and sign the Journal Entry.

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GRUMPY AND SNOW WHITE: - The Income Tax Consideration Adjustment

Jace McClasky

GRUMPY: I thought I'd found happiness when I met, you, Snow White. You swept me off my feet and made me feel like I was the only vertically challenged man in your life. Sure, I saw how you looked at the other dwarfs, but you made me a special dinner, cleaned my house and baked me a delicious apple pie. You told me you wanted to live with me forever. Apparently you tell that to all the dwarfs, as I've been talking to Happy, Dopey, Sleepy, Bashful, Doc...the whole crew...and heard that you've had children with all of us! You didn't really love us, you just wanted to feel "big" and better about yourself until your real prince came along.

SNOW WHITE: That's not true! I loved you and each and every one of you...for different reasons! You may have been little, Grumpy, but you loved me and made me feel beautiful....and my, what a big....and warm...bed you had!

GRUMPY: Yes, well, that bed at least gave us our son, Pinocchio. He seems like a good kid, but a little bit jumpy...like someone's always jerking him around...which, by the way is how I feel. You've been claiming him on your taxes each year and I talked to Dopey, who is also an accountant, and Dopey says I should be looking into whether or not getting to claim Pinocchio every other year and get some of the same advantages as you...especially since I pay you so much damn support!

SNOW WHITE: I think you are Dopey, as a change in the child support calculations now shows that if we alternate the tax exemptions, there is no change to our child support calculations. As a matter of fact, Bradley Software states that if you select "alternating" the tax exemption for a child, it is as if that child is ignored in the Income Tax Considerations adjustment section of the child support worksheet.

GRUMPY: I don't know that I believe you. It sounds like you have been spending a lot of time with Brad Short or Randy Spivey. Are there any other children I don't know about??? I'll have to take this matter before the Evil One and get her opinion. Just because you provide insurance for little "Nocchi", you feel that you should get to claim him every year on your taxes...and that isn't right...I want a level playing field!

SNOW WHITE: Have you not followed anything, my height-resistant co-parent with a bad attitude? The Affordable Care Act requires everyone in the United States to have health insurance and states that we can be penalized for not providing insurance for "Nocchi". I am trying to protect you, since I provide his insurance, that if I fall into another deep, long sleep and forget to pay his insurance, you won't get penalized by having claimed him when he didn't have continual coverage. I know it is confusing, and quite honestly the Affordable Care Act makes everyone a little bit "Grumpy". I am actually trying to look out for you by claiming "Nocchi", since the alternating tax credit won't matter and if his coverage accidentally lapses, you won't get penalized.

GRUMPY: I don't know about all of this. I have tried to read through the changes to the Child Support Guidelines and thought that I saw language that the Court can look at the actual economic impact of the dependency exemption on the parties, and can even consider other tax

impacts for both of us, when determining if an adjustment to child support should be made. I'll have to take this before the Evil One and make sure you're not talking over my head.

JUDGE: HEIGH HOOOOO,

CHORUS: HEIGH HO, HEIGH HO, IT'S OFF TO COURT WE GO

In front of the Evil One, the Judge:

Judge: We are here on Grumpy's Motion to Modify child support.

GRUMPY: Well, Evil One....our issue is pretty simple....Snow White and I both pay for little "Nocchi's" expenses here and there, I pay child support and yet Snowy wants to claim him on her taxes every year. She has tried to claim that if we alternate him as an exemption every year, that it won't make a financial difference and that I should somehow thank her, since she is paying for his insurance and I could get penalized if I claimed him and he didn't have insurance.

SNOW WHITE: Your Honor, I have talked to the diminutive one on this many times, and he remains as dour as ever. He just doesn't get it...I am saving his bacon by claiming little Nocchi on my taxes. Grumpy and I both know I have the job with better insurance and that I have a propensity for long slumber...and I may forget to pay his premium or let it lapse...and if I do...and Grumps is claiming him, the IRS could light him up like a GNOME at Christmas!

GRUMPY: Well, thanks Rip Van Winkle, but I think the Evil One should look at all of our tax issues, to see if you have a lot of other tax advantages through your apple orchard business, your "find prince charming" wedding planning business or other tax advantages you might have. I go to work every day, as a "4 foot 2", I mean "W-2" employee and I think this tax exemption could really help me.

Judge: Did you each bring a copy of your most recent tax returns so I can review the relevant tax impacts? If not, I have no choice but to review this matter in light of the facts as presented and the updates made to the Child Support Guidelines.

GRUMPY: Well, Evil One...I got so fired up over this issue and coming here today, I forgot to bring my tax returns....

SNOW WHITE: Well played, Tiny Dancer...you've always come up a little short!

JUDGE: No more name calling! I'm using my discretion, and to be fair and equitable, each of you draw one card from this pack. The highest card wins! Mirror, mirror on the wall, who is the fairest of them all?

MAGIC MIRROR: Anne to pick on a table to discuss whether they agree with the outcome.

JACE EXPLAINS THIS FURTHER:

As most are aware, attempting to alternate the tax exemption for the minor children now results in "the child being ignored" in the "Income Tax Considerations" Adjustment section on the child support worksheet. This is particularly the case if the custodial parent itemizes taxes and doesn't claim the "head of household" filing status. But even with the "head of household" status, the monthly credit for the non-custodial parent is generally nominal.

The change in the Kansas Child Support Guidelines to address the Affordable Care Act offers tips for practitioners to persuade the party who provides insurance for the minor children to be the one claiming them as exemptions on their insurance, to insure that any lapse in coverage doesn't result in a penalty by the IRS to a parent not knowing insurance had lapsed.

There is language in the Guidelines that allows a Court discretion to view not only the economic impact of one party claiming the dependency exemption(s), but to also consider other income tax impacts of the parties when determining what adjustment, if any, should be made. The party seeking the adjustment has the burden of proof.

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Doc – Special Needs Adjustment

Alex English

Mirror/Narrator: Doc and Snow White have a teenage son, A. Difficult Dan (OR ADD). He lives with Snow White. He has some issues. He has been diagnosed with oppositional defiance disorder and ADD. He has recently been kicked out of public school, and will be admitted to Crittenton for no less than two months. After that, the parents will have to pay for A. Difficult Dan to go to a private school, Fairy Tale's School for Poisoned Apples, for behaviorally challenged children. A. Difficult Dan has also always required therapy and medication, which comes at a high cost to the family.

Snow White: Doc, we need to get the money part of this figured out! This is going to cost so much money!

Doc: Snow, it's simple, how about I just pay an additional \$500 per month in child support, using the Special Needs Adjustment in line E.4. of the child support worksheet.

Snow White: What?! This is going to cost so much more than that! Let's just use the proportionate percentages of our total income from line D.2. to determine how much each party should pay for these unreimbursed medical expenses.

JUDGE: HEIGH HOOOOO,

CHORUS: HEIGH HO, HEIGH HO, IT'S OFF TO COURT WE GO

Judge: Hello, we are here for case number 08CV12345, Snow White versus Doc. At issue today is Doc's Motion to Modify Child Support for the parties' minor child, A. Difficult Dan. Parties, please state your appearances.

Snow White: Oh, hello, I am Snow White, your honor.

Doc: Doc here, I'm representing myself.

Judge: Okay, are you ready to proceed Doc? This is your motion.

Doc: Yes, of course. Judge, our son, A. Difficult Dan, has been a problem child. Maybe it's because of all of those other illegitimate kids Snow has living over there in that house with him. But I understand a boy needs his mother, and so I have never argued about where A. Difficult Dan should live, and I don't intend to do that today. But you see, Judge, A. Difficult Dan has some mental health diagnoses, and he's currently attending in-patient treatment at Crittenton. When he is released, Snow and I have researched, and we've agreed he should attend Fairy Tale's School for Poisoned Apples, because he was kicked out of his regular public school for incidents related to his mental health problems. The problem is that Snow and I don't agree about how these additional costs should be paid for.

Judge: Doc, what is your proposal?

Doc: Judge, I have filed a proposed child support worksheet in which we will use the special needs adjustment to require me to pay an additional \$500 per month in child support. Because this is a long term problem, it appears to me to be fair to include this adjustment in the child support itself. It's less back and forth between Snow and me, and less room for bills getting missed. This way Snow just pays them all. I figure \$500 should be enough to cover about half of all of A. Difficult Dan's extra monthly expenses. And, it shouldn't be too much of a burden to Snow. I mean, she's a princess who lives in a castle for goodness sake!

Judge: Okay, Ms. Snow, what do you think about that?

Snow White: Oh your honor, thank you. I do NOT agree that using the special needs adjustment is the best course of action. All of these years we've been dividing all of A Difficult Dan's numerous additional expenses proportionately, according to line D.2. of the child support worksheet. Doc is a physician, so he always has lots of money. In fact, his income is 80% of our proportional total income. He always faithfully pays his proportionate share of A. Difficult Dan's prescriptions and therapy costs. I have no reason to believe that he wouldn't continue to do this. Plus, if he only pays an extra \$500 per month, then he's not paying enough based on his proportionate share. This would not be fair, and I would be put at an extreme disadvantage, when I already have all of my other kids to pay for and worry about.

Judge: Exactly how much will the stay at Crittenton cost? And how much will Fairy Tale's School for Poisoned Apples cost?

Snow White: Well, we don't know about Crittenton. That will just likely be a huge medical bill that comes once his stay is over. It will be way more than \$500 or \$1000 per month. And Fairy Tale's School for Poisoned Apples has tuition of \$1000 per month.

Judge: I'm using my discretion, to be fair and equitable, it's time for a game of Rock-Paper-Scissors! We'll play one game, and the winner of the game wins this case! Mirror, mirror on the wall, who is the fairest of them all?

Magic Mirror: Anne to pick on a table to discuss whether they agree with the outcome.

Judge: Thank you, Mirror. I will take that into consideration. ARBITRARY DECISION...AND, this ruling is completely discretionary, so good luck appealing that!

THEN ALEX EXPLAINS CASE:

Alex:

What is considered *special needs*? Special needs are items above and beyond the ordinary expenses of raising children, AND are only those expenses not considered anywhere else in the support order or on the computation worksheet. Special needs items for children are not prevalent in the general population.

Examples? Page 22 of the CS guidelines list ongoing treatment for health problems, orthodontist care, special education, and therapy costs.

The only other thing the CS guidelines mentions is that the amount of the special needs expenses, which should be reduced to a monthly average, should be listed on line E.4.

Linda Elrod's book, Kansas Family Law, mentions that the parties need to determine if they want to have a proportional division of an expense or if they want to shift the expense from one parent to the other.

I spent a long time looking for case law about a special needs adjustment to discuss with you, but most of the case law I found were related to extraordinary expenses, such as extracurricular sports and activities. This case law is no longer relevant because these are NO LONGER considered a special needs expense. The guidelines changed last year to exclude these items, as they have been accounted for as part of regular child support. The child support committee determined that these are not items above and beyond the ordinary expenses of raising children, and that they were a typical expense for most families.

So, this is what the judge ended up ruling: Because the costs of Crittenton aren't known at this time, he ordered that the parties handle in patient treatment according to line D.2. of the child support worksheet, as they would any regular unreimbursed medical expense. The same goes for all future therapy costs and prescriptions. This is what the parties had been doing all of these years, and it appears to have been working. Judge understood that the private school is a big change, and of course, a new expense for the parties. It was a necessary expense that was required for A. Difficult Dan, and it was unique to his situation. Most children do not require this expense. So, judge allowed the parties to use the special needs adjustment. That being said, he determined that, father's income is proportionally higher than mother's. Father should pay his 80% of the \$1,000 per month tuition, beginning the same month A. Difficult Dan begins attending Fairy Tale's School for Poisoned Apples.

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Dopey - Agreement Past Majority

Amanda Kivett

Snow White: I have the most beautiful, intelligent, studious daughter in all of the land, Angelica. She was so smart, we couldn't send our sweet little angel to public school in the Blue Valley Forest, she had to attend Bar Hill in the Castle. Now, the genius princess wants to be more than a Jayhawk or Purple Cat, perhaps a Pilgrim or Handsome Dan in the far away kingdoms of Harvard or Yale. I need my Dopey ex to pay child support beyond the princess' 18 birthday.

Dopey: What? She already put me on the child support! Now she wants me to pay for four more years?!? I aint' saying she's a gold digger, but is this witch for reals? Do I have to keep paying her?

JUDGE: HEIGH HOOOOO,

CHORUS: HEIGH HO, HEIGH HO, IT'S OFF TO COURT WE GO

Judge: Do you have a written agreement regarding child support for the princess after her 18th birthday?

Snow White: Well, we sent our little angel to the best schools in all of Kansas Land! We bought her a hummer when she wrecked her Lexus. We paid for Kaplan! How can we not pay for college?

Dopey: This witch is triflin', we ain't got no written agreement!

Judge: Which, witch?

Dopey: That one that lives in fairytale land!

Judge: I'm using my discretion, to be fair and equitable, it's time for a game of Odds or Evens! We'll play one game, and the winner of the game wins this case! Dopey, you're "Odds", and Snow White is "Evens." Ready? 1-2-3 Shoot! [Dopey and Snow White Both Hold Up Number of Fingers, total sum determines "odd" or "even."] Mirror, mirror on the wall, who is the fairest of them all?

Mirror, Mirror (Anne): Audience interaction.

THEN AMANDA EXPLAINS CASE:

Dopey: Maybe I'm not so Dopey after all!

In *Rumbaugh v. Park*, No. 113,660 Kansas Court of Appeals, 2016, the court stated that "Generally, termination of child support occurs automatically when the child reaches age 18, the child dies, or the payor parent dies. But the Kansas Supreme Court has recognized that child support may be continued beyond the child's 18th birthday by prior written agreement of the parties." This exception has been adopted by the legislature and made a part of the guidelines. However, if there is no prior written agreement, the court cannot order child support beyond the child's graduation from high school.

The trial court also does not have the authority to require a parent to pay support during the child's minority to be used after the child reaches majority. In *the Matter of the Marriage of Wilson*, No. 100,780 Kansas Court of Appeals, 2010, the trial court ordered father to pay \$6,000 per month in child support for the benefit of the parties' only child, and then ordered mother to place \$3,500 of that amount into a trust for special needs or future education. Even though the money could have been used before the child reached age 18, the Court of Appeals found that because there was an intention by the court that some of the money could be used after the child turned 18, it was an error of law as the trial court does not have the authority to require support past majority by court order.

Additionally, if the parties do enter into an agreement for support beyond minority, the parties are bound by the terms of their agreement and the court does not have the jurisdiction or ability to increase or decrease the periodic support payments after the child has attained age 18. The exact terms of the parties' agreement controls. See *Morrison v. Morrison*, No. 62803 Kansas Court of Appeals, 1989.

Sorry Snow White, no prior written agreement, no child support for your little princess after 18!

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Bashful – The Overall Financial Conditions Adjustment

Kyle Barscewski

Snow White: Now that my little SkyGuy is getting older, all of these sports leagues are killing my pocketbook. I think I need to take Bashful back to Court for a child support modification.

JUDGE: HEIGH HOOOOO,

CHORUS: HEIGH HO, HEIGH HO, IT'S OFF TO COURT WE GO

Judge: We are here today on Ms. White's Motion to Modify. Ms. White, what is the status today?

Snow White: Judge, we have already exchanged updated income information, and we agree on everything except how to treat the child's sports enrollment.

Judge: What is the issue?

Snow White: Our ShyGuy is 15 now, and he's on three sports traveling teams: baseball, football, and soccer. The child support amount doesn't even cover the monthly costs for those teams, let alone provide anything for food and housing! I would like to put a \$500.00 per month adjustment in the overall financial condition box so I can afford to pay for these sports.

Bashful: Judge, she's just trying to shake me down for more money. She's the typical money-hungry, scorned woman! I am already paying everything I can, but it's never enough!

Judge: What kind of expenses are you incurring on a monthly basis, Ms. White?

Snow White: I have to pay for the uniforms, special equipment and shoes for each sport, and the team travels out of town each month for games. All of that costs a lot of money!

Bashful: I am fine with my little ShyGuy playing some of the sports, but there is no reason why Ms. White and I can't at least talk about some cost-effective ways to manage these expenses. She never asks my permission before enrolling him in the sports—she just signs him up and

expects me to pay out the wazoo! There has to be some middle ground on this. This is very embarrassing for me.

Snow White: Judge, our kid has to play in all of those leagues. All of his friends play, too, and it would kill him if he couldn't play with them. In fact, nearly every kid in the district plays in these premier leagues. They have to if they expect to get a college scholarship.

Judge: OK, I have heard enough. This is a tough decision. On the one hand, the Child Support Guidelines are already designed to account for extracurricular activities pertaining to most children. As Ms. White has suggested, nearly every child is participating in some sort of significant activity, and those activities are already factored into the calculation. On the other hand, If I permit an overall financial conditional adjustment in this case, it would have the indirect effect of asking Bashful Father to pay his share twice.

Judge (con't): I'm using my discretion, to be fair and equitable, it's time for me to flip a coin. Bashful, you're "heads." Snow White, you're "tails." [Flips Coin] Mirror, mirror on the wall, who's the fairest of them all?

Mirror, Mirror (Anne): Audience interaction.

THEN KYLE EXPLAINS CASE:

[need help on relevant and meaningful case law, if it exists]

Removed from the most recent child support guidelines is the Extraordinary Expense Provision (Formerly Special Needs or Extraordinary Expenses): Extraordinary expenses of the child are items exceeding the usual and ordinary expenses normally incurred, including but not limited to, the cost of private school, premier sports, advanced instruction, or performance related expenses in the arts, which are not considered elsewhere in the support order or in computations of the worksheet. The court shall have discretion to award extraordinary expenses so long as they are reasonable.

The rationale for removing the extraordinary expenses is that most recent data showed that these expenses were already taken into consideration when creating the Child Support Guidelines. Additionally, if many families are already engaging in such activities, they become more "ordinary" and less "extraordinary."

The overall financial condition adjustment still remains: Lawyers always have the ability to negotiate and argue that overall finances of the parties and the needs of the children justify an overall financial condition adjustment.

The example provided by guidelines is a situation in which a parent, after dissolution of the relationship, secures secondary employment. In such situations, the Court may consider including an adjustment under the circumstances requiring the secondary employment if it is in the best interest of the child.

The reality is there is a temptation to treat the Overall Financial Condition as a “catch-all.” Many lawyers treat it as a place to negotiate child support between the parents—this is an improper use. However, if there are legitimate financial considerations unique to the parties, attorneys should not be afraid to properly use this adjustment.

Although line D.9 is the rebuttable presumption of child support, the child support guidelines specifically provide that “The completion of Section E of the worksheet shall constitute the written findings for deviating from the rebuttable presumption.”

Best Practice Tip: When using any adjustment in child support agreements, particularly the “Overall Financial Condition Adjustment,” provide the Court with a substantial written justification for the adjustment. This allows the Court to understand the reasons for the adjustment, and to verify that the use of the adjustment is more than a mere negotiation of the final child support amount.

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CLOSING

Mirror (Anne): By now the Evil Queen knows that Snow White is still alive.

Evil Queen (hissing): this time, I will finish her!

Mirror: Evil Queen filled a basket full of apples and put a poisoned one on top.

Evil Queen (cackling) : one bite and Snow White will sleep forever and and I shall be the fairest in the land.

Mirror: the next morning the Evil Queen left the poisoned apple on Snow White’s kitchen window. Snow White saw the apple and then, with a sigh, fell to the floor. Just then a handsome Prince [Jace] came riding through the forest. As soon as he saw her, he fell in love with her and wanted her to have his baby. He kissed her cheek. Snow White woke up, blinked her eyes, and smiled. The Prince carried Snow White off to his castle where they lived happily ever after.

What happens to the Evil Queen. HELP here. Needed.

Maybe the Dwarfs complain to Judicial Qual for using dice, cards ,a games of chance to make arbitrary decisions. Judicial Qual & Supreme Court banish Evil Queen for Child Support Guideline Committee. and the Judicial Kingdom..

CHORUS: SOMEDAY MY PRINCE WILL COME - JACE CARRY SNOW WHITE OFF

Judge Foster's Group
Child Support Worksheets: Discretionary
Modifications on Page 2

Presentation Date: Tuesday, October 18, 2016

Assigned Topics:

Judge Foster- The Evil One

Anne Burke - The Mirror/Narrator

Erin Dedrickson- Snow White

Shea Stevens - Long Distance Parenting Time Adjustment (Sleepy)

Marcia Montgomery - Parenting Time Adjustment (Sneezy)

Jace McClasky - Income Tax Considerations (w/ ACA implications) (Grumpy)

Alex English - Special Needs Adjustment (with Erin Dedrickson) (Doc)

Amanda Kivett - Agreement Past Majority (Dopey)

Kyle Barscewski - Overall Financial Condition Adjustment (Bashful)

SCRIPT:

Scene opens with music from Snow White and picture of castle. (Anne sent out previously)

Anne: Long ago, in a faraway kingdom, there lived a lovely young Princess named Snow White.

Her Stepmother, the Evil Queen, was cruel and vain. She hated anyone whose beauty rivaled her own- and she watcherd her step daughter with angry, jealous eyes.

The Queen had magic powers and owned a wondrous mirror that spoke. Every day she stood before it and asked:

Enter Judge Foster.

Judge Foster: Magic mirror on the wall, who is the fairest one of all?

Anne: And every day the mirror answered: you are the fairest one of all, Oh Queen. The fairest our eyes have ever seen.

Anne: As time passed, Snow White grew more and more beautiful- and the Queen grew more and more envious. She forced the Princess to dress in rags and work in the kitchen from dawn to dusk.

One day when the Queen spoke to her mirror she received the words she had been dreading:

Anne: Fair is thy beauty, Majesty, But hold- a lovely maid I see, One who is more fair than thee. Lips red as a rose, hair black as ebony, skin white as snow.

Judge Foster: (shrieking) Snow White??? She must be destroyed!!!!

ENTER SNOW WHITE

Anne: Snow White learned of the Queen's plans and she went running into the woods going deeper and deeper. She happened upon a little cottage and weary from her escape, she wanders into the little house.

JUDGE TO DO INITIAL HEIGH HO: Enter the Dwarfs singing "Heigh Ho , Heigh Ho, It's home from work we go...."

Anne: The dwarves arrive home to see Snow White in their little cottage.

Snow White: Oh MY!! All of my significant others and baby daddies in one room! You live here together?

Sleepy: we all live together because the child support we are paying you is out of this world!

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SLEEPY PART: Long Distance Parenting Time Adjustment.

Shea Stevens

Snow White: Since I have to pay for the travel expenses of little Ambien, Heigh Ho, Heigh ho, it's off to Court we go

JUDGE: HEIGH HOOOOO,

CHORUS: HEIGH HO, HEIGH HO, IT'S OFF TO COURT WE GO

Judge: Today we are here on Case #11CV0001, a de novo review from Hearing Officer Coffee's decision issued on February 2, 2016. Snow White, it is your Motion, are you ready to proceed?

Snow White: Yes, your Honor. Well, as you can tell, I am quite beautiful and I have an unlimited supply of suitors. I have found my true love, my prince charming. The only problem is that to allow my relationship to flourish, I had to move out of the Deep Woods to my prince's castle, four hours away from Sleepy.

Sleepy: Puhleeze, had to move? You'll move on in twelve months max, just in time to get knocked up again and make another person miserable for at least 18 years of his life.

Judge: Let's stick to the facts. Snow White, continue.

Snow White: Well, your honor, like I was saying, the prince and I now live in a castle that is approximately four hours in the car, or a quick puddle jumper flight. Sleepy refused to reduce her parenting time like any normal parent would do, so I am paying for a flight every other weekend.

Sleepy: Are you kidding me? Give up my parenting time? I am the only positive influence on little Ambien, showing him how normal people live. You know, living in the trunk of a tree, whistling while I work, talking to birds and rabbits, all the normal day to day activities in Deep Woods.

Snow White: Anyway, I am just too busy keeping Prince Charming happy to spend four hours in the car, so I am paying for flights, twice a month. On my way to Court, I was on the phone with Beauty, who told me that Judge Schoenig granted her a long distance parenting time adjustment in her case with Beast, so I think it is only fair for me to receive a parenting time adjustment.

Sleepy: Now I have heard it all!! First you move little Ambien away from me, now you want more money!???? You live off the income of your first husband's proceeds from his life insurance policy, your \$10,000 a month maintenance from Doc, not to mention child support and you are a billionaire after your appearance on Shark Tank. This is the first I have heard of this ridiculous request!!

Snow White: Well, I do usually use Prince's private plane or our frequent flyer miles, but this is an expense and we do only get so many hours each month for the plane. I estimate I spend at least \$350/mo on the travel expenses.

Judge: Ma'am, I am reviewing your pleadings here and don't see this request on the CSW that you filed with the Court with your initial Motion, nor do I see it on your proposed worksheets you submitted today.

Snow White: Yes, that is correct. Like I said, Beauty just gave me an idea for how to really stick it to Sleepy. I hear that Judges are very woman friendly. I mean, Sleepy is a woman, but it is my understanding the attractive women get the favorable rulings.

Judge: Sleepy do you have a response?

Sleepy: Is this a Miss America contest?

Judge: Sorry for not clarifying, a Response to the request for a long distance parenting time adjustment.

Sleepy: Well this is just ridiculous!!! Again, this is the first I have heard of this request, and what expenses is she really incurring???? Too bad she can't go on as many vacations if she uses points. Judge, I do know one word, and it is discretion. For the love of God, please use it and do not give her this adjustment!!

Judge: I'm using my discretion, to be fair and equitable, draw a straw, long one wins. Mirror, mirror on the wall, who is the fairest of them all?

Magic Mirror: Anne to pick on a table to discuss whether they agree with the outcome.

THEN SHEA EXPLAINS CASE:

In re Marriage of Sinks, No. 114,609 Kansas Court of Appeals, 2016

Court stated:

Preliminarily, Carrie argues that Larry never requested any child support adjustments for his potential visits to Texas. And a review of the record supports this contention. At the hearing, Larry candidly admitted that visits would present financial difficulties, but he never formally requested an adjustment.

What is long distance? It is not defined, but the guidelines suggest that the costs must be "real and substantial" which implies that the parents are not geographically separated by a considerable distance. What is considerable - well, that is left to the discretion of the court.

Not every situation justifies a deduction or addition for long distance visitation. The court should consider such factors as:

- a. Who moved away occasioning the expense
- b. The reasonableness of the expenditure to his child support obligation.

As such, the district court essentially granted him the adjustment sua sponte, which appears to run afoul of the Guidelines. See Guidelines, § IV.E. (2015 Kan. Ct. R. Annot. 126).

But even if this court considers that single reference as a request for a travel expense adjustment, the district court's decision presents two other problems. First, Larry never "proved

the basis for the adjustment" as required by the Guidelines. Guidelines, § IV.E. (2015 Kan. Ct. R. Anno. 126). He presented no testimony about the potential costs of visiting his daughter other than vaguely implying that he would not be able to stay with her and Carrie. Without detailed information about these potential travel costs, the district court's order essentially allows Larry to claim prospective, unspecified credits to his child support obligation. Given that the Guidelines envisions travel expenses being included as part of the parties' child support calculation, this rather hazy method of permitting travel expenses is at odds with our Kansas law. Guidelines, § IV.E.1. (2015 Kan. Ct. R. Anno. 126).

To further complicate things Larry had no parenting time with the minor child!
Second, and more importantly, the long-distance costs covered by the adjustment are those "directly associated with parenting time." Guidelines, § IV.E.1. (2015 Kan. Ct. R. Annot. 126). But as the parties agree and as noted by the district court, Larry had no court-ordered parenting time at the time of the move. Although the record is clear that Larry and his daughter saw one another occasionally and were working to improve their relationship, Larry had no actual parenting time to exercise. And as Larry had no parenting time, no costs can be "directly associated with" his exercise of parenting time. Guidelines, § IV.E.1. (2015 Kan. Ct. R. Anno. 126).

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SNEEZY & SNOW WHITE: Parenting Time Adjustment.

Marcia Montgomery

Sneezy: I filed a motion to modify child support because for months now I have had Sneezy Jr nearly half the time. You are constantly calling me demanding that I take him for a couple days at a time because you are so busy with your 4 younger kids, and anyway it is best for Sneezy Jr. to be with me. I don't have other kids. I take care of him better than you.

Snow White: No you don't, and anyway I pay for all of his dwarf pants and all of his other direct expenses. Besides, I need all of the 10 gold coins you pay each month, just like the Evil One ordered when Sneezy Jr was a baby and the paternity test showed that you are in fact his father. That was never in doubt by the way because he sneezes so much. And besides, the dads of my younger kids don't pay.

Sneezy: My son, Sneezy Jr, is now 7 years old. Think about your first born child, my son. You should stop having kids with every dwarf that thinks you are cute. I will not support your other kids, and why should I pay you so much when I have him almost half of the time?

Snow White: You don't have him half of the time. I have him more than you do in the summertime when the other dwarfs and you go off to work.

Sneezy: Yeah, for 3 weeks every summer off to work we go, but I still have him mostly half of the time. And Sneezy Jr. tells me that you make him help you with the rest of your brood; you even have a 7-year old changing diapers!! It'd be better for him if he would go off to work with me and the other dwarfs.

Snow White: That would be against the Evil One's child labor laws. Besides my other lovers, I mean dwarfs, tell me that you don't do your fair share of the work because you are always sneezing.

Sneezy: My sneezing does NOT interfere with my taking care of Sneezy Jr. In fact, he laughs when I sneeze and then he copies me. He's getting real good at sneezing himself.

Stop trying to change the subject. I need an adjustment on my child support. And the Evil One's child support guidelines allow me to have a big parenting time adjustment; in fact, I should have the shared residency support amount with you paying for Sneezy Jr's dwarf clothes and other direct expenses because I have JR with me nearly half the time if not actually half the time..

Snow White: Welllllll, I admit that you DO have him almost half of the time, SO, how about a 10% decrease so you only pay me 9 gold coins each month.

Sneezy: NO that is not fair and that is not what the Evil One's law says. Besides I pay for all of Jr.'s food, and stuff when he is with me about half of the time. Either you agree to take only 5 gold coins each month **OR we'll have the Evil One decide and I bet he'll agree with me..**

Snow White: NO, I will not agree to that. I don't want to take any less than 10 gold coins each month, and in no case will I take less than 9. Sneezy, Jr. deserves all the money that **I can get from you.**

Sneezy: Well, then to the Evil One we go.

Snow White: Hey, let's ask the Mirror for the correct answer BEFORE we go to the Evil One.

Anne: MIRROR GETS AUDIENCE SUGGESTIONS/ANSWERS:

Sneezy & Snow White: Well that didn't work....SO, let's DO ask the Evil One.

JUDGE: HEIGH HOOOOO,

CHORUS: HEIGH HO, HEIGH HO, IT'S OFF TO COURT WE GO

In front of the Evil One, the Judge:

Judge: We are here on Sneezy's Motion to Modify child support.

Sneezy: Well, your Honor, I now have Jr about half of the time and Snow White even admits that, so I want the child support modified so that I only pay the equal parenting time amount, with Snow White paying Jr's direct expenses. I request that you grant my motion and reduce by half the amount I pay.

Snow White: Your Honor, I agree that he should have SOME adjustment, but NOT half; NOT the adjustment to use the equal parenting time amount. Yes, I DO admit that he has Jr about half of the time but I still pay for Jr's direct expenses. SO.....I ask that you give Sneezy a 10% adjustment....or at most a 15% adjustment because he does have JR between 45 and 49% of the time.

Judge: Do you agree that you have nearly equal parenting time with JR AND that this parenting plan IS in his best interest?

Snow White and Sneezy together: Yes, we do. The issue is money.

Snow White: I pay his direct expenses but we don't always agree on WHAT IS a direct expense for JR.

Judge: Well, let me see, Child Support Guidelines, section IV E 2. Is the law. I could give Sneezy a 15% adjustment, but Sneezy says that makes him pay too much. AND I can IF I WANT TO....because it's discretionary with me, the judge....use the equal parenting time support formula, but Snow White, that cute thing, says that will not give her enough money for JR. What to do?

OK.....I've got it. I'll roll the dice. If I roll a 7, Sneezy wins and if I roll a 1 Snow White wins. (rolls dice). Well, well, I rolled 4....SO, here's what I am going to do. Sneezy gets a 20% adjustment. That's fair to both because he gets a bigger adjustment than 15% since Sneezy has the kid almost half of the time, but Snow White pays ALL of the kid's expenses and she has JR more of the time in the summer when Sneezy goes off to work. That's my ruling, AND my reasons for the discretionary adjustment deviating from the guidelines.

ANN/MIRROR: ASK JUDGE GYLLENBORG IF SHE AGREES WITH DECISION

THEN MARCIA EXPLAINS CASE LAW:

***Sloczek v. Sloczek*, 51 Kan. App.2d 606 (2015)** Every attorney, who ever has a child support issue of any kind, needs to obtain and study this case. It is well written and gives a treasure trove of citations to important cases, that speak to the child support guidelines and deviation from them in general, as well as to the specific issue of parenting time adjustment. In *Sloczek*, the Appellate Court affirmed the lower court and held that IF the evidence supports the District Court Judge's deviation from the child support guidelines, it is not mandatory either

to use the equal parenting time child support amount or to use only the formula adjustment table in the guidelines giving a 5%, 10% or 15% adjustment to the nonresidential parent who has 35 - 39%, 40 - 44% or 45 - 49% respectively time with the children. In *Sloczek*, the parents had agreed to 50-50 parenting time and Father wanted to use the equal parenting time support amount with Mother paying the children's direct expenses, but Mother wanted to the court to give Father only a 15% adjustment because his work prevented him from having the children 50% of the time during the summers, and Father earned substantially more than Mother. Judge Gyllenborg ordered a 20% adjustment of the child support, reasoning that because of the income disparity and the extra time that Mother has the children in the summers, to use her judicial discretion in granting a 20% parenting time adjustment was more equitable and in the children's best interest. The Court of Appeals held, among other things, that there is no mandate to use the equal parenting time formula even if the parents each have 50% of the time with the children. In every case, the court has the option not to make any adjustments. Each case is different; each parent's circumstances are unique; all children's needs differ; the judge using her discretion must decide and rule, rather than relying on a computer program.

It is mandatory to use the Kansas Child Support Guidelines. The district court can deviate from the amount of child support listed in the Guidelines but must justify any such deviation through specific written findings in the journal entry detailing how the deviation is in a child's best interests. Failure to make such written findings, however, is reversible error. *In re Marriage of Thurmond*, 265 Kan. 715, 716 (1998); *In re Marriage of VnderVoort*, 39 Kan. App. 2nd 724 (2008)

The district court is in the best position to make finding on the best interests of the minor children. *In re Marriage of Rayman*, 273 Kan. 996 (2002). An appellate court reviews the district court's findings of fact to determine if those findings are supported by substantial competent evidence and are sufficient to support the district court's conclusions of law. *In re Marriage of Atchison*, 38 Kan. App. 2nd 1081 (2008). "Substantial evidence" is such legal and relevant evidence as a reasonable person might accept as being sufficient to support a conclusion. *Venters v. Sellers*, 293 Kan. 87 (2001)

Practice tip: Even if you have a fully executed agreed upon Settlement Agreement and/or Parenting Plan, those documents as well as the Journal Entry must have details explaining any and all deviation from the Child Support Guidelines and the reason that such deviation is in the best interest of the children in your case. Absent that, the district court will probably not approve and sign the Journal Entry.

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GRUMPY AND SNOW WHITE: - The Income Tax Consideration Adjustment

Jace McClasky

GRUMPY: I thought I'd found happiness when I met, you, Snow White. You swept me off my feet and made me feel like I was the only vertically challenged man in your life. Sure, I saw how you looked at the other dwarfs, but you made me a special dinner, cleaned my house and baked me a delicious apple pie. You told me you wanted to live with me forever. Apparently you tell that to all the dwarfs, as I've been talking to Happy, Dopey, Sleepy, Bashful, Doc...the whole crew...and heard that you've had children with all of us! You didn't really love us, you just wanted to feel "big" and better about yourself until your real prince came along.

SNOW WHITE: That's not true! I loved you and each and every one of you...for different reasons! You may have been little, Grumpy, but you loved me and made me feel beautiful....and my, what a big....and warm...bed you had!

GRUMPY: Yes, well, that bed at least gave us our son, Pinocchio. He seems like a good kid, but a little bit jumpy...like someone's always jerking him around...which, by the way is how I feel. You've been claiming him on your taxes each year and I talked to Dopey, who is also an accountant, and Dopey says I should be looking into whether or not getting to claim Pinocchio every other year and get some of the same advantages as you...especially since I pay you so much damn support!

SNOW WHITE: I think you are Dopey, as a change in the child support calculations now shows that if we alternate the tax exemptions, there is no change to our child support calculations. As a matter of fact, Bradley Software states that if you select "alternating" the tax exemption for a child, it is as if that child is ignored in the Income Tax Considerations adjustment section of the child support worksheet.

GRUMPY: I don't know that I believe you. It sounds like you have been spending a lot of time with Brad Short or Randy Spivey. Are there any other children I don't know about??? I'll have to take this matter before the Evil One and get her opinion. Just because you provide insurance for little "Nocchi", you feel that you should get to claim him every year on your taxes...and that isn't right...I want a level playing field!

SNOW WHITE: Have you not followed anything, my height-resistant co-parent with a bad attitude? The Affordable Care Act requires everyone in the United States to have health insurance and states that we can be penalized for not providing insurance for "Nocchi". I am trying to protect you, since I provide his insurance, that if I fall into another deep, long sleep and forget to pay his insurance, you won't get penalized by having claimed him when he didn't have continual coverage. I know it is confusing, and quite honestly the Affordable Care Act makes everyone a little bit "Grumpy". I am actually trying to look out for you by claiming "Nocchi", since the alternating tax credit won't matter and if his coverage accidentally lapses, you won't get penalized.

GRUMPY: I don't know about all of this. I have tried to read through the changes to the Child Support Guidelines and thought that I saw language that the Court can look at the actual economic impact of the dependency exemption on the parties, and can even consider other tax

impacts for both of us, when determining if an adjustment to child support should be made. I'll have to take this before the Evil One and make sure you're not talking over my head.

JUDGE: HEIGH HOOOOO,

CHORUS: HEIGH HO, HEIGH HO, IT'S OFF TO COURT WE GO

In front of the Evil One, the Judge:

Judge: We are here on Grumpy's Motion to Modify child support.

GRUMPY: Well, Evil One....our issue is pretty simple....Snow White and I both pay for little "Nocchi's" expenses here and there, I pay child support and yet Snowy wants to claim him on her taxes every year. She has tried to claim that if we alternate him as an exemption every year, that it won't make a financial difference and that I should somehow thank her, since she is paying for his insurance and I could get penalized if I claimed him and he didn't have insurance.

SNOW WHITE: Your Honor, I have talked to the diminutive one on this many times, and he remains as dour as ever. He just doesn't get it...I am saving his bacon by claiming little Nocchi on my taxes. Grumpy and I both know I have the job with better insurance and that I have a propensity for long slumber...and I may forget to pay his premium or let it lapse...and if I do...and Grumps is claiming him, the IRS could light him up like a GNOME at Christmas!

GRUMPY: Well, thanks Rip Van Winkle, but I think the Evil One should look at all of our tax issues, to see if you have a lot of other tax advantages through your apple orchard business, your "find prince charming" wedding planning business or other tax advantages you might have. I go to work every day, as a "4 foot 2", I mean "W-2" employee and I think this tax exemption could really help me.

Judge: Did you each bring a copy of your most recent tax returns so I can review the relevant tax impacts? If not, I have no choice but to review this matter in light of the facts as presented and the updates made to the Child Support Guidelines.

GRUMPY: Well, Evil One...I got so fired up over this issue and coming here today, I forgot to bring my tax returns....

SNOW WHITE: Well played, Tiny Dancer...you've always come up a little short!

JUDGE: No more name calling! I'm using my discretion, and to be fair and equitable, each of you draw one card from this pack. The highest card wins! Mirror, mirror on the wall, who is the fairest of them all?

MAGIC MIRROR: Anne to pick on a table to discuss whether they agree with the outcome.

JACE EXPLAINS THIS FURTHER:

As most are aware, attempting to alternate the tax exemption for the minor children now results in "the child being ignored" in the "Income Tax Considerations" Adjustment section on the child support worksheet. This is particularly the case if the custodial parent itemizes taxes and doesn't claim the "head of household" filing status. But even with the "head of household" status, the monthly credit for the non-custodial parent is generally nominal.

The change in the Kansas Child Support Guidelines to address the Affordable Care Act offers tips for practitioners to persuade the party who provides insurance for the minor children to be the one claiming them as exemptions on their insurance, to insure that any lapse in coverage doesn't result in a penalty by the IRS to a parent not knowing insurance had lapsed.

There is language in the Guidelines that allows a Court discretion to view not only the economic impact of one party claiming the dependency exemption(s), but to also consider other income tax impacts of the parties when determining what adjustment, if any, should be made. The party seeking the adjustment has the burden of proof.

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Doc – Special Needs Adjustment

Alex English

Mirror/Narrator: Doc and Snow White have a teenage son, A. Difficult Dan (OR ADD). He lives with Snow White. He has some issues. He has been diagnosed with oppositional defiance disorder and ADD. He has recently been kicked out of public school, and will be admitted to Crittenton for no less than two months. After that, the parents will have to pay for A. Difficult Dan to go to a private school, Fairy Tale's School for Poisoned Apples, for behaviorally challenged children. A. Difficult Dan has also always required therapy and medication, which comes at a high cost to the family.

Snow White: Doc, we need to get the money part of this figured out! This is going to cost so much money!

Doc: Snow, it's simple, how about I just pay an additional \$500 per month in child support, using the Special Needs Adjustment in line E.4. of the child support worksheet.

Snow White: What?! This is going to cost so much more than that! Let's just use the proportionate percentages of our total income from line D.2. to determine how much each party should pay for these unreimbursed medical expenses.

JUDGE: HEIGH HOOOOO,

CHORUS: HEIGH HO, HEIGH HO, IT'S OFF TO COURT WE GO

Judge: Hello, we are here for case number 08CV12345, Snow White versus Doc. At issue today is Doc's Motion to Modify Child Support for the parties' minor child, A. Difficult Dan. Parties, please state your appearances.

Snow White: Oh, hello, I am Snow White, your honor.

Doc: Doc here, I'm representing myself.

Judge: Okay, are you ready to proceed Doc? This is your motion.

Doc: Yes, of course. Judge, our son, A. Difficult Dan, has been a problem child. Maybe it's because of all of those other illegitimate kids Snow has living over there in that house with him. But I understand a boy needs his mother, and so I have never argued about where A. Difficult Dan should live, and I don't intend to do that today. But you see, Judge, A. Difficult Dan has some mental health diagnoses, and he's currently attending in-patient treatment at Crittenton. When he is released, Snow and I have researched, and we've agreed he should attend Fairy Tale's School for Poisoned Apples, because he was kicked out of his regular public school for incidents related to his mental health problems. The problem is that Snow and I don't agree about how these additional costs should be paid for.

Judge: Doc, what is your proposal?

Doc: Judge, I have filed a proposed child support worksheet in which we will use the special needs adjustment to require me to pay an additional \$500 per month in child support. Because this is a long term problem, it appears to me to be fair to include this adjustment in the child support itself. It's less back and forth between Snow and me, and less room for bills getting missed. This way Snow just pays them all. I figure \$500 should be enough to cover about half of all of A. Difficult Dan's extra monthly expenses. And, it shouldn't be too much of a burden to Snow. I mean, she's a princess who lives in a castle for goodness sake!

Judge: Okay, Ms. Snow, what do you think about that?

Snow White: Oh your honor, thank you. I do NOT agree that using the special needs adjustment is the best course of action. All of these years we've been dividing all of A Difficult Dan's numerous additional expenses proportionately, according to line D.2. of the child support worksheet. Doc is a physician, so he always has lots of money. In fact, his income is 80% of our proportional total income. He always faithfully pays his proportionate share of A. Difficult Dan's prescriptions and therapy costs. I have no reason to believe that he wouldn't continue to do this. Plus, if he only pays an extra \$500 per month, then he's not paying enough based on his proportionate share. This would not be fair, and I would be put at an extreme disadvantage, when I already have all of my other kids to pay for and worry about.

Judge: Exactly how much will the stay at Crittenton cost? And how much will Fairy Tale's School for Poisoned Apples cost?

Snow White: Well, we don't know about Crittenton. That will just likely be a huge medical bill that comes once his stay is over. It will be way more than \$500 or \$1000 per month. And Fairy Tale's School for Poisoned Apples has tuition of \$1000 per month.

Judge: I'm using my discretion, to be fair and equitable, it's time for a game of Rock-Paper-Scissors! We'll play one game, and the winner of the game wins this case! Mirror, mirror on the wall, who is the fairest of them all?

Magic Mirror: Anne to pick on a table to discuss whether they agree with the outcome.

Judge: Thank you, Mirror. I will take that into consideration. ARBITRARY DECISION...AND, this ruling is completely discretionary, so good luck appealing that!

THEN ALEX EXPLAINS CASE:

Alex:

What is considered *special needs*? Special needs are items above and beyond the ordinary expenses of raising children, AND are only those expenses not considered anywhere else in the support order or on the computation worksheet. Special needs items for children are not prevalent in the general population.

Examples? Page 22 of the CS guidelines list ongoing treatment for health problems, orthodontist care, special education, and therapy costs.

The only other thing the CS guidelines mentions is that the amount of the special needs expenses, which should be reduced to a monthly average, should be listed on line E.4.

Linda Elrod's book, *Kansas Family Law*, mentions that the parties need to determine if they want to have a proportional division of an expense or if they want to shift the expense from one parent to the other.

I spent a long time looking for case law about a special needs adjustment to discuss with you, but most of the case law I found were related to extraordinary expenses, such as extracurricular sports and activities. This case law is no longer relevant because these are NO LONGER considered a special needs expense. The guidelines changed last year to exclude these items, as they have been accounted for as part of regular child support. The child support committee determined that these are not items above and beyond the ordinary expenses of raising children, and that they were a typical expense for most families.

So, this is what the judge ended up ruling: Because the costs of Crittenton aren't known at this time, he ordered that the parties handle in patient treatment according to line D.2. of the child support worksheet, as they would any regular unreimbursed medical expense. The same goes for all future therapy costs and prescriptions. This is what the parties had been doing all of these years, and it appears to have been working. Judge understood that the private school is a big change, and of course, a new expense for the parties. It was a necessary expense that was required for A. Difficult Dan, and it was unique to his situation. Most children do not require this expense. So, judge allowed the parties to use the special needs adjustment. That being said, he determined that, father's income is proportionally higher than mother's. Father should pay his 80% of the \$1,000 per month tuition, beginning the same month A. Difficult Dan begins attending Fairy Tale's School for Poisoned Apples.

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Dopey - Agreement Past Majority

Amanda Kivett

Snow White: I have the most beautiful, intelligent, studious daughter in all of the land, Angelica. She was so smart, we couldn't send our sweet little angel to public school in the Blue Valley Forest, she had to attend Bar Hill in the Castle. Now, the genius princess wants to be more than a Jayhawk or Purple Cat, perhaps a Pilgrim or Handsome Dan in the far away kingdoms of Harvard or Yale. I need my Dopey ex to pay child support beyond the princess' 18 birthday.

Dopey: What? She already put me on the child support! Now she wants me to pay for four more years?!? I aint' saying she's a gold digger, but is this witch for reals? Do I have to keep paying her?

JUDGE: HEIGH HOOOOO,

CHORUS: HEIGH HO, HEIGH HO, IT'S OFF TO COURT WE GO

Judge: Do you have a written agreement regarding child support for the princess after her 18th birthday?

Snow White: Well, we sent our little angel to the best schools in all of Kansas Land! We bought her a hummer when she wrecked her Lexus. We paid for Kaplan! How can we not pay for college?

Dopey: This witch is triflin', we ain't got no written agreement!

Judge: Which, witch?

Dopey: That one that lives in fairytale land!

Judge: I'm using my discretion, to be fair and equitable, it's time for a game of Odds or Evens! We'll play one game, and the winner of the game wins this case! Dopey, you're "Odds", and Snow White is "Evens." Ready? 1-2-3 Shoot! [Dopey and Snow White Both Hold Up Number of Fingers, total sum determines "odd" or "even."] Mirror, mirror on the wall, who is the fairest of them all?

Mirror, Mirror (Anne): Audience interaction.

THEN AMANDA EXPLAINS CASE:

Dopey: Maybe I'm not so Dopey after all!

In *Rumbaugh v. Park*, No. 113,660 Kansas Court of Appeals, 2016, the court stated that "Generally, termination of child support occurs automatically when the child reaches age 18, the child dies, or the payor parent dies. But the Kansas Supreme Court has recognized that child support may be continued beyond the child's 18th birthday by prior written agreement of the parties." This exception has been adopted by the legislature and made a part of the guidelines. However, if there is no prior written agreement, the court cannot order child support beyond the child's graduation from high school.

The trial court also does not have the authority to require a parent to pay support during the child's minority to be used after the child reaches majority. In *the Matter of the Marriage of Wilson*, No. 100,780 Kansas Court of Appeals, 2010, the trial court ordered father to pay \$6,000 per month in child support for the benefit of the parties' only child, and then ordered mother to place \$3,500 of that amount into a trust for special needs or future education. Even though the money could have been used before the child reached age 18, the Court of Appeals found that because there was an intention by the court that some of the money could be used after the child turned 18, it was an error of law as the trial court does not have the authority to require support past majority by court order.

Additionally, if the parties do enter into an agreement for support beyond minority, the parties are bound by the terms of their agreement and the court does not have the jurisdiction or ability to increase or decrease the periodic support payments after the child has attained age 18. The exact terms of the parties' agreement controls. See *Morrison v. Morrison*, No. 62803 Kansas Court of Appeals, 1989.

Sorry Snow White, no prior written agreement, no child support for your little princess after 18!

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Bashful – The Overall Financial Conditions Adjustment

Kyle Barscewski

Snow White: Now that my little SkyGuy is getting older, all of these sports leagues are killing my pocketbook. I think I need to take Bashful back to Court for a child support modification.

JUDGE: HEIGH HOOOOO,

CHORUS: HEIGH HO, HEIGH HO, IT'S OFF TO COURT WE GO

Judge: We are here today on Ms. White's Motion to Modify. Ms. White, what is the status today?

Snow White: Judge, we have already exchanged updated income information, and we agree on everything except how to treat the child's sports enrollment.

Judge: What is the issue?

Snow White: Our ShyGuy is 15 now, and he's on three sports traveling teams: baseball, football, and soccer. The child support amount doesn't even cover the monthly costs for those teams, let alone provide anything for food and housing! I would like to put a \$500.00 per month adjustment in the overall financial condition box so I can afford to pay for these sports.

Bashful: Judge, she's just trying to shake me down for more money. She's the typical money-hungry, scorned woman! I am already paying everything I can, but it's never enough!

Judge: What kind of expenses are you incurring on a monthly basis, Ms. White?

Snow White: I have to pay for the uniforms, special equipment and shoes for each sport, and the team travels out of town each month for games. All of that costs a lot of money!

Bashful: I am fine with my little ShyGuy playing some of the sports, but there is no reason why Ms. White and I can't at least talk about some cost-effective ways to manage these expenses. She never asks my permission before enrolling him in the sports—she just signs him up and

expects me to pay out the wazoo! There has to be some middle ground on this. This is very embarrassing for me.

Snow White: Judge, our kid has to play in all of those leagues. All of his friends play, too, and it would kill him if he couldn't play with them. In fact, nearly every kid in the district plays in these premier leagues. They have to if they expect to get a college scholarship.

Judge: OK, I have heard enough. This is a tough decision. On the one hand, the Child Support Guidelines are already designed to account for extracurricular activities pertaining to most children. As Ms. White has suggested, nearly every child is participating in some sort of significant activity, and those activities are already factored into the calculation. On the other hand, if I permit an overall financial conditional adjustment in this case, it would have the indirect effect of asking Bashful Father to pay his share twice.

Judge (con't): I'm using my discretion, to be fair and equitable, it's time for me to flip a coin. Bashful, you're "heads." Snow White, you're "tails." [Flips Coin] Mirror, mirror on the wall, who's the fairest of them all?

Mirror, Mirror (Anne): Audience interaction.

THEN KYLE EXPLAINS CASE:

[need help on relevant and meaningful case law, if it exists]

Removed from the most recent child support guidelines is the Extraordinary Expense Provision (Formerly Special Needs or Extraordinary Expenses): Extraordinary expenses of the child are items exceeding the usual and ordinary expenses normally incurred, including but not limited to, the cost of private school, premier sports, advanced instruction, or performance related expenses in the arts, which are not considered elsewhere in the support order or in computations of the worksheet. The court shall have discretion to award extraordinary expenses so long as they are reasonable.

The rationale for removing the extraordinary expenses is that most recent data showed that these expenses were already taken into consideration when creating the Child Support Guidelines. Additionally, if many families are already engaging in such activities, they become more "ordinary" and less "extraordinary."

The overall financial condition adjustment still remains: Lawyers always have the ability to negotiate and argue that overall finances of the parties and the needs of the children justify an overall financial condition adjustment.

The example provided by guidelines is a situation in which a parent, after dissolution of the relationship, secures secondary employment. In such situations, the Court may consider including an adjustment under the circumstances requiring the secondary employment if it is in the best interest of the child.

The reality is there is a temptation to treat the Overall Financial Condition as a “catch-all.” Many lawyers treat it as a place to negotiate child support between the parents—this is an improper use. However, if there are legitimate financial considerations unique to the parties, attorneys should not be afraid to properly use this adjustment.

Although line D.9 is the rebuttable presumption of child support, the child support guidelines specifically provide that “The completion of Section E of the worksheet shall constitute the written findings for deviating from the rebuttable presumption.”

Best Practice Tip: When using any adjustment in child support agreements, particularly the “Overall Financial Condition Adjustment,” provide the Court with a substantial written justification for the adjustment. This allows the Court to understand the reasons for the adjustment, and to verify that the use of the adjustment is more than a mere negotiation of the final child support amount.

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CLOSING

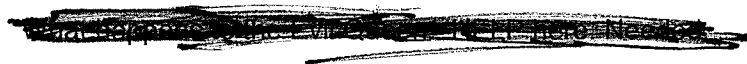
Mirror (Anne): By now the Evil Queen knows that Snow White is still alive.

Evil Queen (hissing): this time, I will finish her!

Mirror: Evil Queen filled a basket full of apples and put a poisoned one on top.

Evil Queen (cackling) : one bite and Snow White will sleep forever and and I shall be the fairest in the land.

Mirror: the next morning the Evil Queen left the poisoned apple on Snow White's kitchen window. Snow White saw the apple and then, with a sigh, fell to the floor. Just then a handsome Prince [Jace] came riding through the forest. As soon as he saw her, he fell in love with her and wanted her to have his baby. He kissed her cheek. Snow White woke up, blinked her eyes, and smiled. The Prince carried Snow White off to his castle where they lived happily ever after.



Maybe the Dwarfs complain to Judicial Qual for using dice, cards ,a games of chance to make arbitrary decisions. Judicial Qual & Supreme Court banish Evil Queen for Child Support Guideline Committee. and the Judicial Kingdom..

CHORUS: SOMEDAY MY PRINCE WILL COME - JACE CARRY SNOW WHITE OFF

Judge Foster's Group **Child Support Worksheets: Discretionary Modifications on Page 2**

LONG DISTANCE PARENTING TIME ADJUSTMENT:

In re Marriage of Sinks, No. 114,609 Kansas Court of Appeals, 2016

Court stated:

Preliminarily, Carrie argues that Larry never requested any child support adjustments for his potential visits to Texas. And a review of the record supports this contention. At the hearing, Larry candidly admitted that visits would present financial difficulties, but he never formally requested an adjustment.

What is long distance? It is not defined, but the guidelines suggest that the costs must be "real and substantial" which implies that the parents are not geographically separated by a considerable distance. What is considerable - well, that is left to the discretion of the court.

Not every situation justifies a deduction or addition for long distance visitation. The court should consider such factors as:

1. Who moved away occasioning the expense
2. The reasonableness of the expenditure to his child support obligation.

As such, the district court essentially granted him the adjustment sua sponte, which appears to run afoul of the Guidelines. See Guidelines, § IV.E. (2015 Kan. Ct. R. Annot. 126).

But even if this court considers that single reference as a request for a travel expense adjustment, the district court's decision presents two other problems. First, Larry never "proved the basis for the adjustment" as required by the Guidelines. Guidelines, § IV.E. (2015 Kan. Ct. R. Anno. 126). He presented no testimony about the potential costs of visiting his daughter other than vaguely implying that he would not be able to stay with her and Carrie. Without detailed information about these potential travel costs, the district court's order essentially allows Larry to claim prospective, unspecified credits to his child support obligation. Given that the Guidelines envisions travel expenses being included as part of the parties' child support calculation, this rather hazy method of permitting travel expenses is at odds with our Kansas law. Guidelines, § IV.E.1. (2015 Kan. Ct. R. Anno. 126).

To further complicate things Larry had no parenting time with the minor child!

Second, and more importantly, the long-distance costs covered by the adjustment are those "directly associated with parenting time." Guidelines, § IV.E.1. (2015 Kan. Ct. R. Annot. 126). But as the parties agree and as noted by the district court, Larry had no court-ordered parenting

time at the time of the move. Although the record is clear that Larry and his daughter saw one another occasionally and were working to improve their relationship, Larry had no actual parenting time to exercise. And as Larry had no parenting time, no costs can be "directly associated with" his exercise of parenting time. Guidelines, § IV.E.1. (2015 Kan. Ct. R. Anno. 126).

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PARENTING TIME ADJUSTMENT:

***Sloczek v. Sloczek*, 51 Kan. App.2d 606 (2015)** Every attorney, who ever has a child support issue of any kind, needs to obtain and study this case. It is well written and gives a treasure trove of citations to important cases, that speak to the child support guidelines and deviation from them in general, as well as to the specific issue of parenting time adjustment. In *Sloczek*, the Appellate Court affirmed the lower court and held that IF the evidence supports the District Court Judge's deviation from the child support guidelines, it is not mandatory either to use the equal parenting time child support amount or to use only the formula adjustment table in the guidelines giving a 5%, 10% or 15% adjustment to the nonresidential parent who has 35 - 39%, 40 - 44% or 45 - 49% respectively time with the children. In *Sloczek*, the parents had agreed to 50-50 parenting time and Father wanted to use the equal parenting time support amount with Mother paying the children's direct expenses, but Mother wanted to the court to give Father only a 15% adjustment because his work prevented him from having the children 50% of the time during the summers, and Father earned substantially more than Mother. Judge Gyllenborg ordered a 20% adjustment of the child support, reasoning that because of the income disparity and the extra time that Mother has the children in the summers, to use her judicial discretion in granting a 20% parenting time adjustment was more equitable and in the children's best interest. The Court of Appeals held, among other things, that there is no mandate to use the equal parenting time formula even if the parents each have 50% of the time with the children. In every case, the court has the option not to make any adjustments. Each case is different; each parent's circumstances are unique; all children's needs differ; the judge using her discretion must decide and rule, rather than relying on a computer program.

It is mandatory to use the Kansas Child Support Guidelines. The district court can deviate from the amount of child support listed in the Guidelines but must justify any such deviation through specific written findings in the journal entry detailing how the deviation is in a child's best interests. Failure to make such written findings, however, is reversible error. *In re Marriage of Thurmond*, 265 Kan. 715, 716 (1998); *In re Marriage of VnderVoort*, 39 Kan. App. 2nd 724 (2008)

The district court is in the best position to make finding on the best interests of the minor children. *In re Marriage of Rayman*, 273 Kan. 996 (2002). An appellate court reviews the district court's findings of fact to determine if those findings are supported by substantial competent evidence and are sufficient to support the district court's conclusions of law. *In re Marriage of Atchison*, 38 Kan. App. 2nd 1081 (2008). "Substantial evidence" is

such legal and relevant evidence as a reasonable person might accept as being sufficient to support a conclusion. *Venters v. Sellers*, 293 Kan. 87 (2001)

Practice tip: Even if you have a fully executed agreed upon Settlement Agreement and/or Parenting Plan, those documents as well as the Journal Entry must have details explaining any and all deviation from the Child Support Guidelines and the reason that such deviation is in the best interest of the children in your case. Absent that, the district court will probably not approve and sign the Journal Entry.

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INCOME TAX ADJUSTMENTS:

As most are aware, attempting to alternate the tax exemption for the minor children now results in “the child being ignored” in the “Income Tax Considerations” Adjustment section on the child support worksheet. This is particularly the case if the custodial parent itemizes taxes and doesn’t claim the “head of household” filing status. But even with the “head of household” status, the monthly credit for the non-custodial parent is generally nominal.

The change in the Kansas Child Support Guidelines to address the Affordable Care Act offers tips for practitioners to persuade the party who provides insurance for the minor children to be the one claiming them as exemptions on their insurance, to insure that any lapse in coverage doesn’t result in a penalty by the IRS to a parent not knowing insurance had lapsed.

There is language in the Guidelines that allows a Court discretion to view not only the economic impact of one party claiming the dependency exemption(s), but to also consider other income tax impacts of the parties when determining what adjustment, if any, should be made. The party seeking the adjustment has the burden of proof.

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SPECIAL NEEDS ADJUSTMENT:

What is considered *special needs*? Special needs are items above and beyond the ordinary expenses of raising children, AND are only those expenses not considered anywhere else in the support order or on the computation worksheet. Special needs items for children are not prevalent in the general population.

Examples? Page 22 of the CS guidelines list ongoing treatment for health problems, orthodontist care, special education, and therapy costs.

The only other thing the CS guidelines mentions is that the amount of the special needs expenses, which should be reduced to a monthly average, should be listed on line E.4.

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SUPPORT PAST MAJORITY:

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EXTRAORDINARY EXPENSE:

Removed from the most recent child support guidelines is the Extraordinary Expense Provision (Formerly Special Needs or Extraordinary Expenses): Extraordinary expenses of the child are items exceeding the usual and ordinary expenses normally incurred, including but not limited to, the cost of private school, premier sports, advanced instruction, or performance related expenses in the arts, which are not considered elsewhere in the support order or in computations of the worksheet. The court shall have discretion to award extraordinary expenses so long as they are reasonable.

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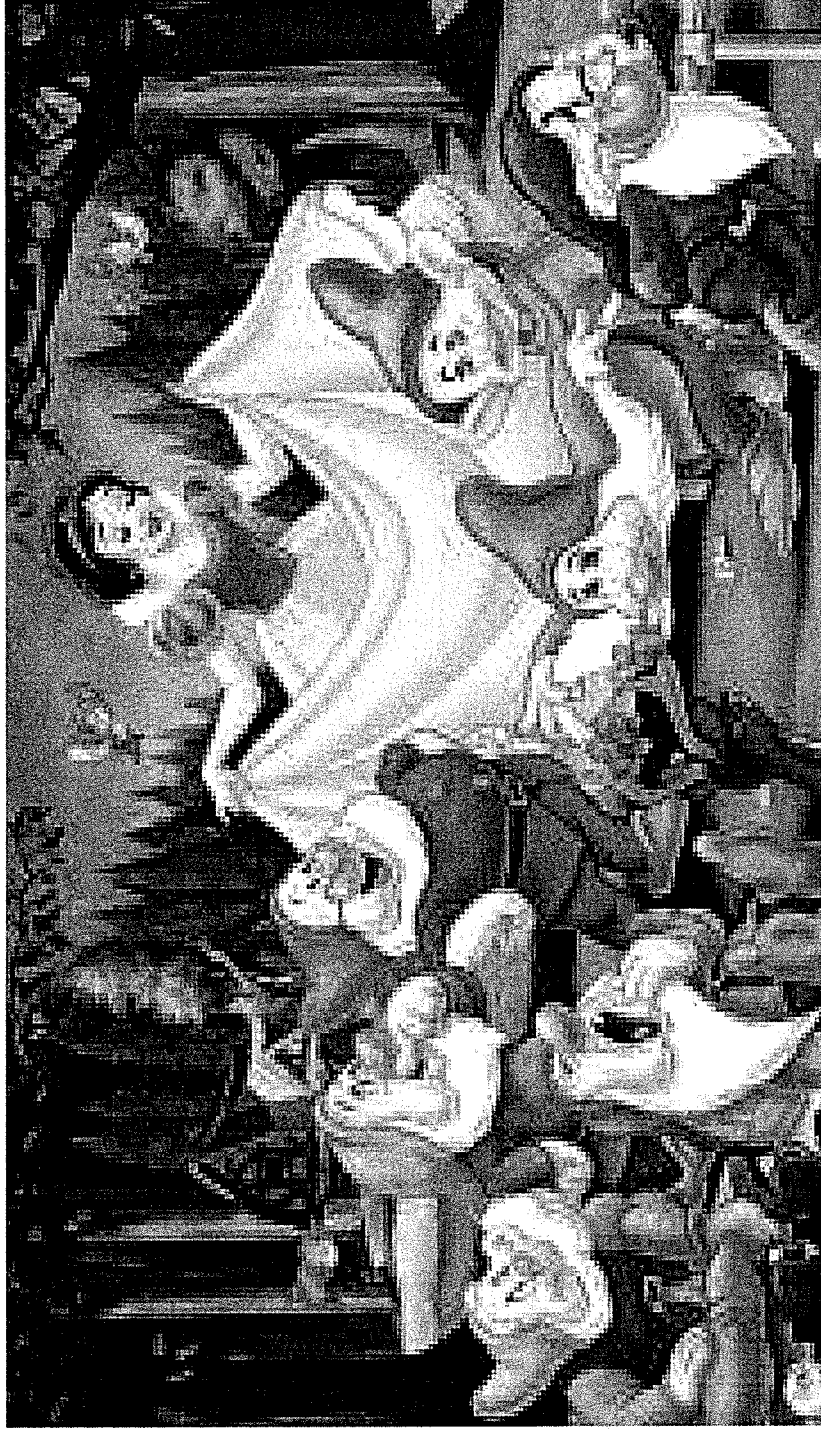
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Power Point

The Honorable Thomas Foster

— Presents —



“Snow White and her Seven Significant Others”

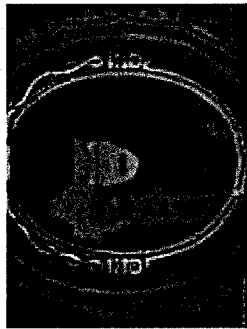
Featuring



Hon. Thomas Foster

— as —

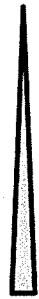
EVIL WITCH



Anne Burke

— as —

MAGIC MIRROR



Erin Dedrickson

— as —

SNOW WHITE

Significant Others



Doc Bashful Sneezzy Sleepy Grumpy Dope

(IN NO ORDER OF SIGNIFICANCE)

“Doc” - Alexandra English

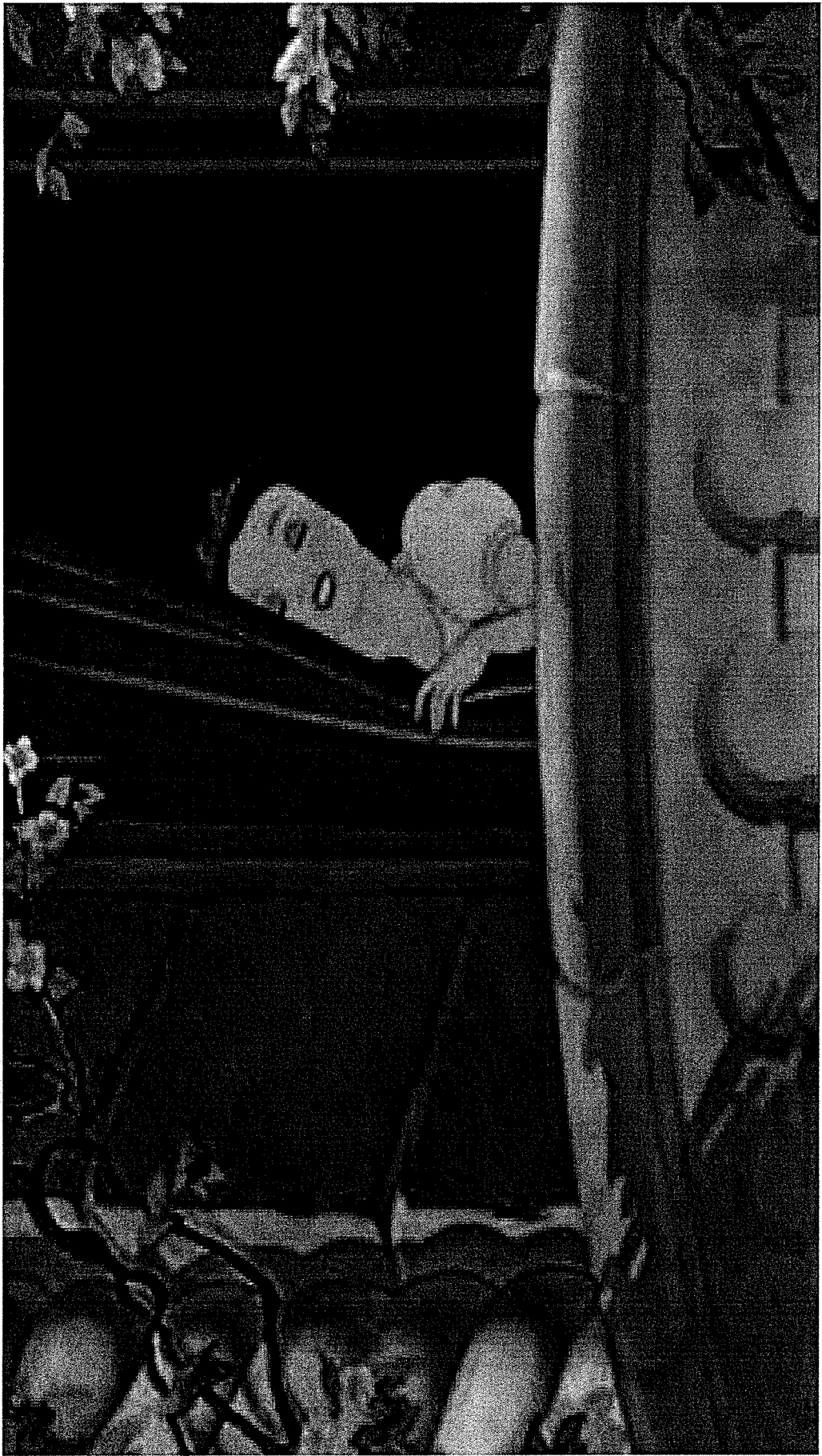
“Sleepy” - Shea Stevens

“Grumpy” - Jace McClasky

“Bashful” - Kyle Barscewski

“Sneezzy” - Marcia Montgomery

“Dopey” - Amanda Kivett



SCENE ONE

LONG DISTANCE PARENTING TIME ADJUSTMENT

In re Marriage of Sinks, No. 114,609 Kansas Court of Appeals, 2016

Court stated:

What is long distance? It is not defined, but the guidelines suggest that the costs must be “real and substantial” which implies that the parents are not geographically separated by a considerable distance. What is considerable - well, that is left to the discretion of the court.

Not every situation justifies a deduction or addition for long distance visitation. The court should consider such factors as:

Who moved away occasioning the expense

The reasonableness of the expenditure to his child support obligation.

As such, the district court essentially granted him the adjustment sua sponte, which appears to run afoul of the Guidelines. See Guidelines, § IV.E. (2015 Kan. Ct. R. Annot. 126).

Without detailed information about these potential travel costs, the district court's order essentially allows Larry to claim prospective, unspecified credits to his child support obligation. Given that the Guidelines envisions travel expenses being included as part of the parties' child support calculation, this rather hazy method of permitting travel expenses is at odds with our Kansas law. Guidelines, § IV.E.1. (2015 Kan. Ct. R. Anno. 126).

SCENE TWO

PARENTING TIME ADJUSTMENT

Sloczek v. Sloczek, 51 Kan. App.2d 606 (2015) Every attorney, who ever has a child support issue of any kind, needs to obtain and study this case. It is well written and gives a treasure trove of citations to important cases, that speak to the child support guidelines and deviation from them in general, as well as to the specific issue of parenting time adjustment. In *Sloczek*, the Appellate Court affirmed the lower court and held that IF the evidence supports the District Court Judge's deviation from the child support guidelines, it is not mandatory either to use the equal parenting time child support amount or to use only the formula adjustment table in the guidelines giving a 5%, 10% or 15% adjustment to the nonresidential parent who has 35 - 39%, 40 - 44% or 45 - 49% respectively time with the children. In *Sloczek*, the parents had agreed to 50-50 parenting time and Father wanted to use the equal parenting time support amount with Mother paying the children's direct expenses, but Mother wanted to the court to give Father only a 15% adjustment because his work prevented him from having the children 50% of the time during the summers, and Father earned substantially more than Mother.

PARENTING TIME ADJUSTMENT

- **Judge Gyllenborg** ordered a 20% adjustment of the child support, reasoning that because of the income disparity and the extra time that Mother has the children in the summers, to use her judicial discretion in granting a 20% parenting time adjustment was more equitable and in the children's best interest. The Court of Appeals held, among other things, that there is no mandate to use the equal parenting time formula even if the parents each have 50% of the time with the children. In every case, the court has the option not to make any adjustments. Each case is different; each parent's circumstances are unique; all children's needs differ; the judge using her discretion must decide and rule, rather than relying on a computer program.
- It is mandatory to use the Kansas Child Support Guidelines. The district court can deviate from the amount of child support listed in the Guidelines but must justify any such deviation through specific written findings in the journal entry detailing how the deviation is in a child's best interests. Failure to make such written findings, however, is reversible error. *In re Marriage of Thurmond*, 265 Kan. 715, 716 (1998); *In re Marriage of VnderVoort*, 39 Kan. App. 2nd 724 (2008)
- The district court is in the best position to make finding on the best interests of the minor children. *In re Marriage of Rayman*, 273 Kan. 996 (2002). An appellate court reviews the district court's findings of fact to determine if those findings are supported by substantial competent evidence and are sufficient to support the district court's conclusions of law. *In re Marriage of Atchison*, 38 Kan. App. 2nd 1081 (2008). "Substantial evidence" is such legal and relevant evidence as a reasonable person might accept as being sufficient to support a conclusion. *Venters v. Sellers*, 293 Kan. 87 (2001)
- **Practice tip:** Even if you have a fully executed agreed upon Settlement Agreement and/or Parenting Plan, those documents as well as the Journal Entry must have details explaining any and all deviation from the Child Support Guidelines and the reason that such deviation is in the best interest of the children in your case. Absent that, the district court will probably not approve and sign the Journal Entry.

SCENE THREE

INCOME TAX CONSIDERATIONS

As most are aware, attempting to alternate the tax exemption for the minor children now results in "the child being ignored" in the "Income Tax Considerations" Adjustment section on the child support worksheet. This is particularly the case if the custodial parent itemizes taxes and doesn't claim the "head of household" filing status. But even with the "head of household" status, the monthly credit for the non-custodial parent is generally nominal.

The change in the Kansas Child Support Guidelines to address the Affordable Care Act offers tips for practitioners to persuade the party who provides insurance for the minor children to be the one claiming them as exemptions on their insurance, to insure that any lapse in coverage doesn't result in a penalty by the IRS to a parent not knowing insurance had lapsed.

There is language in the Guidelines that allows a Court discretion to view not only the economic impact of one party claiming the dependency exemption(s), but to also consider other income tax impacts of the parties when determining what adjustment, if any, should be made. The party seeking the adjustment has the burden of proof.

SCENE FOUR

SPECIAL NEEDS ADJUSTMENT

- What is considered *special needs*? Special needs are items above and beyond the ordinary expenses of raising children, AND are only those expenses not considered anywhere else in the support order or on the computation worksheet. Special needs items for children are not prevalent in the general population.
- Examples? Page 22 of the CS guidelines list ongoing treatment for health problems, orthodontist care, special education, and therapy costs.
- Special needs expenses should be reduced to a monthly average and should be listed on line E.4.
- Linda Elrod's book, Kansas Family Law, mentions that the parties need to determine if they want to have a proportional division of an expense or if they want to shift the expense from one parent to the other.
- Most of the case law about the special needs adjustment is related to extraordinary expenses, such as extracurricular sports and activities. This case law is no longer relevant because these are NO LONGER considered a special needs expense. The guidelines changed last year to exclude these items, as they have been accounted for as part of the child support formula. The child support committee determined that these are not items above and beyond the ordinary expenses of raising children, and that they are a typical expense for most families.

SCENE FIVE

AGREEMENT

PAST MINORITY

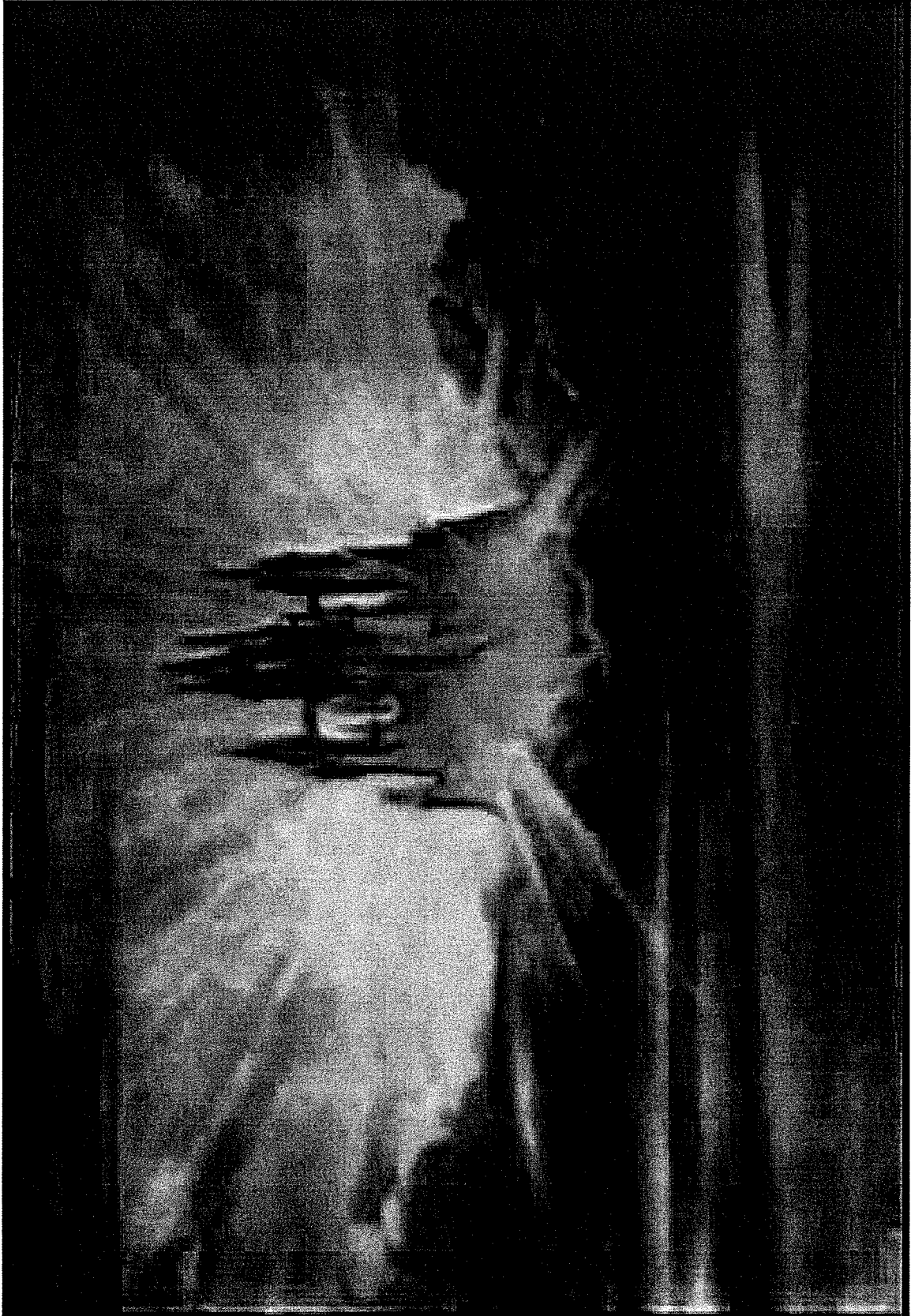
- *Rumbaugh v. Park*, No. 113,660 Kansas Court of Appeals, 2016, “Generally, termination of child support occurs automatically when the child reaches age 18, the child dies, or the payor parent dies. But the Kansas Supreme Court has recognized that child support may be continued beyond the child’s 18th birthday by prior written agreement of the parties. See *Brady* 225 Kan. 485. Although Brady was decided before the adoption of the guidelines, the legislature incorporated this exception in K.S.A. 2015 Supp. 23-3001(b)(1).”
- *In the Matter of the Marriage of Wilson*, No. 100,780 Kansas Court of Appeals, 2010, “While the written journal entry doesn’t specifically mention use of the trust fund for education past majority, it doesn’t say anything that conflicts with that intention either. The district court’s child-support award thus appears to have been based upon an intention that some of the money could be used for education after [the child] turns 18, which is not allowed by court order (except for finishing high school). Thus, the district court’s child-support award is based upon an error of law—that the district court could require that [father] send money to [mother] to be put into an account to be used for education past majority.”
- *Morrison v. Morrison*, No. 62803 Kansas Court of Appeals, 1989, “Accordingly, we hold that, where the child support obligations of a parent are extended past the age of majority by an agreement incorporated into the decree of divorce, the trial court has no jurisdiction to modify the periodic support payments after the child has attained the age of 18.”

SCENE SIX

OVERALL FINANCIAL CONDITION ADJUSTMENT

- Removed from the most recent child support guidelines is the Extraordinary Expense Provision (Formerly Special Needs or Extraordinary Expenses): Extraordinary expenses of the child are items exceeding the usual and ordinary expenses normally incurred, including but not limited to, the cost of private school, premier sports, advanced instruction, or performance related expenses in the arts, which are not considered elsewhere in the support order or in computations of the worksheet. The court shall have discretion to award extraordinary expenses so long as they are reasonable.
- The rationale for removing the extraordinary expenses is that most recent data showed that these expenses were already taken into consideration when creating the Child Support Guidelines. Additionally, if many families are already engaging in such activities, they become more “ordinary” and less “extraordinary.”
- The overall financial condition adjustment still remains: Lawyers always have the ability to negotiate and argue that overall finances of the parties and the needs of the children justify an overall financial condition adjustment.
- The example provided by guidelines is a situation in which a parent, after dissolution of the relationship, secures secondary employment. In such situations, the Court may consider including an adjustment under the circumstances requiring the secondary employment if it is in the best interest of the child.
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EPILOGUE

- After being banished from the District Court, the Evil One is placed on the Kansas Supreme Court by the King of All Things Fair, Just & Equitable, who commends the Evil One for his ingenious methods to find a fair result in all cases.