

# AUGUSTA JUDICIAL CIRCUIT

## Domestic Relations Division

**To:** Members of the Domestic Bar

**From:** J. David Roper, Daniel J. Craig, J. Wade Padgett

**Re:** Final Divorce Decrees and Other Matters

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At the last Domestic Bar Meeting, the contents of this memo were discussed.

### **1. Attached Memo.**

See the attached memo for suggested language for the items discussed below. It has been revised since the bar meeting to provide for driving time in Para 5 below.

### **2. CSA & PP.**

We strongly urge that you **ONLY** use the CS Addendum to address CS issues and the Parenting Plan to address custody and visitation issues. We know that you have favorite language you like to use in your settlement agreements and final decrees, but such language is creating conflicts between the various documents. If you have special language that is not in the CSA or the PP, please put same in the Additional Provisions of such documents. The Additional Provisions override the other provisions of these documents. **SEE ATTACHED MEMO** for suggested incorporation language to use in your settlement agreements and final decrees.

### **3. Filing CSA, CS worksheet & PP.**

To avoid double filing, please do not file your CSA, CSWS or PP, unless needed. Just attach them to your final decree. In any event, **PLEASE** make sure that copies of your settlement agreement, CSA, final CSWS and PP are attached to the final decree.

### **4. Child Support to age 20.**

All CS provisions should run to age 20 if in school. This is the standard language in the CSA.

### **5. Use of PP A & PP B.**

If you are going to use PP A and PP B, you must tell us when PP B kicks in. **SEE ATTACHED MEMO** for suggested language. Driving time is probably the best measure. **BEWARE** of appellate decisions that disapprove of certain self-executing changes in custody or visitation.

## **6. Error in CSA.**

There is an error in our circuit's CS Addendum under Parenting Time. The parenting time for PP A is not 128 days, but approximately 95 days. We have also revised the parenting time for PP B to make it more accurate. SEE ATTACHED MEMO and correct your CSA accordingly. We will post a revised CSA on the website.

## **7. Revisions to the CSA.**

Based on legislation passed this year, we will have to revise our CSA, effective September 1. If you have any suggested changes, please advise Judge Roper.

## **8. Shared Parenting/Joint Physical Custody.**

We've seen some pretty scary PPs. We will be looking closely at shared parenting arrangements which are done to placate one parent or to avoid child support. In other words, actual custody/parenting time must match the PP. NOTE that p. 2 of the PP requires an attachment explaining any shared or joint physical custody arrangement.

Thanks for your cooperation.

**(Attachment)**

**Memo to Bar 6-1-09**

**Suggested Language for Final Judgment**

**Custody/Visitation/Child Support**

The parties have \_\_\_ minor child/children, to-wit: JOHN BLANK, born July 4, 2003, and JANE BLANK, born December 25, 2005. Plaintiff and Defendant shall have joint legal custody of the children. Plaintiff shall have primary physical custody of the children. Defendant shall have visitation with the children. Defendant shall pay child support to Plaintiff in the amount of \$\_\_\_\_\_, per month. Custody, visitation and child support shall be governed the Parenting Plan and Child Support Addendum attached hereto and hereby made a part of this judgment.

**Incorporation of Settlement Agreement**

The parties have entered into a settlement agreement dated \_\_\_\_\_ settling various matters relating to the dissolution of their marital relationship. A copy of said agreement is attached hereto. Said agreement is hereby approved by the Court and made a part of this judgment.

**When PP A & PP B Are Attached**

Option 1 – Mandatory Switch to Plan B Unless Parties Agree Otherwise -- based on highway miles or average driving time

Parenting Plan A shall apply unless the distance between the parties' homes is more than \_\_\_\_\_ highway miles [hours average driving time], in which case, Parenting Plan B shall apply; provided, however, that the parties may agree to continue to utilize Parenting Plan A.

Option 2 – A Parent May Elect PP B -- based on highway miles or average driving time

Parenting Plan A shall apply unless the distance [average driving time] between the parties' homes is more than \_\_\_\_\_ highway miles [hours], in which case, Parenting Plan B shall apply, if \_\_\_\_\_ [custodial/noncustodial parent] so elects.

**Suggested Language for Settlement Agreement**

**Custody/Visitation/Child Support**

The parties have \_\_\_ minor child/children, to-wit: JOHN BLANK, born July 4, 2003, and JANE BLANK, born December 25, 2005. Plaintiff and Defendant shall have joint legal custody of the children. Plaintiff shall have primary physical custody of the children. Defendant shall have visitation with the children. Defendant shall pay child support to Plaintiff in the amount of \$\_\_\_\_\_, per month. Custody, visitation and child support shall be governed the Parenting Plan and Child Support Addendum executed contemporaneously herewith.

## Correction to CS Addendum -- Parenting Time

**16. Parenting Time.** The amount of the Noncustodial Parent's parenting time provided by the Child Support Order is approximately: *[Check (a), (b) and/or (c), as applicable.]*

\_\_\_\_\_ (a) Parenting Plan A -- approximately 95 days and 38 afternoons per year.

\_\_\_\_\_ (b) Parenting Plan B -- approximately 65-90 days per year, depending upon the amount of summer visitation granted.

\_\_\_\_\_ (c) \_\_\_\_\_ *[Number of days, afternoons, etc.]*

SUPERIOR COURT OF \_\_\_\_\_ COUNTY, GEORGIA

Civil Action File No. \_\_\_\_\_

_____	)
	)
<b>Plaintiff,</b>	)
v.	)
	)
_____	)
<b>Defendant.</b>	)

**CHILD SUPPORT ADDENDUM**

*Instructions. The form of this addendum has been approved for use in the Augusta Judicial Circuit. Each paragraph with options and/or blanks must be completed. Do not delete paragraphs which do not apply. If there are substantive changes to the basic form, use a distinctive font to distinguish the changes and check here. \_\_\_\_\_*

*This addendum must be incorporated into the final judgment. The amount of child support and the frequency of payment must be included in the final judgment.*

**This child support addendum may become a part of a judgment in the above-styled action (the "Child Support Order"). The Child Support Order includes any agreement of the parties and other documents incorporated therein. The requirements of OCGA § 19-6-15 have been applied in determining the amount of child support. The *Child Support Worksheet* and schedules thereto (collectively, the "Worksheet") attached hereto or filed contemporaneously herewith are a part of this addendum. Unless otherwise provided in the Child Support Order, the facts, data and calculations shown on the Worksheet shall become findings of the Court.**

1. **Number of Children.** The number of children for whom support is being provided is shown on the Worksheet. *[If child support is being determined for only one child, "children" and associated grammar shall be read as if written in the singular, where appropriate.]*
2. **Custodial/Noncustodial Parent:** The Noncustodial Parent for child support purposes is shown on the Worksheet. The other parent is the Custodial Parent.
3. **Gross Income.** The monthly Gross Income of both parents is shown on the Worksheet. *[If income was imputed based on minimum wage or earning potential, give particulars in Paragraph 20.]*
4. **Child Support Amount.** \_\_\_\_\_ shall pay child support to \_\_\_\_\_ in the amount of \$\_\_\_\_\_ per month beginning \_\_\_\_\_, 20\_\_\_\_. Unless otherwise provided in the Child Support Order, child support is payable in two equal installments on the 1<sup>st</sup> day and the 15<sup>th</sup> day of each month, or in installments which correspond with the Noncustodial Parent's pay schedule, but at least monthly.

**5. Duration of Child Support.** Unless otherwise provided in the Child Support Order, with respect to each child, the obligations hereunder to pay child support, maintain health insurance, and pay uninsured health care expenses shall continue until the child reaches eighteen years of age, dies, marries or otherwise becomes emancipated; provided that, if a child reaches eighteen years of age before completing secondary school, the obligations to pay child support, maintain health insurance, and pay uninsured health care expenses for the child shall continue as long as the child is enrolled in and attending secondary school on a fulltime basis, but shall terminate when the child reaches twenty years of age.

**6. Child Care Expense.** If there are allowed Work Related Child Care Costs, the amount thereof is shown on the Worksheet. Each parent's pro rata share and the amount actually paid by each parent are shown on the Worksheet. The proportionate amount for each parent has been added to such parent's share of the Basic Child Support Obligation. The amount actually paid by each parent has been deducted from such parent's share of the Basic Child Support Obligation. The amount resulting from the foregoing process is the parent's share of the Presumptive Amount of Child Support, unless there is an adjustment for Health Insurance.

**7. Health Insurance Availability.** *[Check (a), (b) or (c) and complete.]*

\_\_\_\_\_ (a) Health insurance for the children is available at a reasonable cost to \_\_\_\_\_ through \_\_\_\_\_. As long as health insurance remains available to such parent at a reasonable cost, such parent shall maintain such insurance on all the children.

\_\_\_\_\_ (b) Health insurance for the children is available at no cost to \_\_\_\_\_ through \_\_\_\_\_. As long as such health insurance remains available to such parent, such parent shall maintain such insurance on all the children. If health insurance ceases to be available at no cost, but becomes available to either parent at a reasonable cost, such parent shall maintain health insurance on all the children. The premiums for such insurance shall be paid by the parties in the same percentages and in the same manner as uninsured health care expenses are required to be paid hereunder.

\_\_\_\_\_ (c) Health insurance for the children (other than Medicaid or PeachCare for Kids) is not available to either party at a reasonable cost at this time. If health insurance for the children later becomes available to either parent at a reasonable cost, such parent shall maintain health insurance on all the children. The premiums for such insurance shall be paid by the parties in the same percentages and in the same manner as uninsured health care expenses are required to be paid hereunder.

**8. Health Insurance Premiums.** If there are allowed Health Insurance premiums, the amount thereof is shown on the Worksheet. Each parent's pro rata share and the amount actually paid by each parent are shown on the Worksheet. The proportionate amount for each parent has been added to such parent's share of the Basic Child Support Obligation. The amount actually paid by each parent has been deducted from such parent's share of the Basic Child Support Obligation. The amount resulting from the foregoing process is the parent's share of the

Presumptive Amount of Child Support, unless there is an adjustment for Work Related Child Care Costs.

**9. Health Insurance Benefits.** The party who maintains health, dental or vision insurance on the children shall provide the other party with an insurance identification card or other acceptable proof of insurance coverage and shall cooperate with the other party in submitting claims under the applicable policy. All money received by either party for claims shall be paid within five days after receipt to the other party (if the other party paid the applicable health care service provider) or to the applicable health care provider (if the provider has not been paid by one of the parties).

**10. Uninsured Health Care Expenses.** Plaintiff shall pay \_\_\_\_\_% and Defendant shall pay \_\_\_\_\_% of all uninsured health care expenses incurred for the children. "Uninsured health care expenses" means uninsured medical expenses including, but not limited to, health insurance copayments, deductibles, and such other costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any acute or chronic medical or health problem or mental health illness, including counseling and other medical or mental health expenses, that are not covered by insurance. The party who incurs an uninsured health care expense for a child shall provide verification of the amount to the other party. The other party shall reimburse the incurring party (or pay the health care provider directly) for the appropriate percentage of the expense within 15 days after receiving verification of the expense.

**11. Deviations** *[Check (a) or (b).]*

\_\_\_\_\_ (a) None of the Deviations permitted by OCGA § 19-6-15 applies in this case.

\_\_\_\_\_ (b) One or more of the Deviations permitted by OCGA § 19-6-15 apply in this case.

**12. Deviations other than Low Income:** *[If there are Deviations other than low income, check (a) or (b). If (b) is selected, each part must be completed.]*

\_\_\_\_\_ (a) The Worksheet sets forth the reasons for the Deviation(s), how the application of the guidelines would be unjust or inappropriate considering the relative ability of each parent to provide support, how the best interest of the children is served by the Deviation(s), and that the Deviation(s) will not seriously impair the ability of Custodial Parent to maintain minimally adequate housing, food and clothing for the children and to provide other basic necessities. *[Use this paragraph if Schedule E, Sections B, C & D are completed. Do not use this paragraph if the only Deviation is the Low Income Deviation.]*

\_\_\_\_\_ (b) Deviation(s) should be allowed for \_\_\_\_\_

The application of the Presumptive Amount of Child Support would be unjust and inappropriate without the above Deviation(s) because \_\_\_\_\_

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The Deviation(s) will serve the best interest of the children because \_\_\_\_\_

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The Deviation(s) will not seriously impair the ability of the Custodial Parent to maintain minimally adequate housing, food, and clothing for the children and to provide other basic necessities. *[Use this paragraph if Schedule E, Sections B, C & D are not completed. **Do not** use this paragraph if the only Deviation is the Low Income Deviation.]*

Each Deviation shown on the Worksheet or set forth above is justified. Consideration has been given to all available income of each parent, all reasonable expenses of each parent, and the financial impact of each Deviation upon each parent. The Presumptive Amount of Child Support that would have been required by OCGA § 19-6-15 if no Deviations had been applied is shown on the Worksheet.

**13. Low Income Deviation.** *If a Low Income Deviation is shown on the Worksheet, the Noncustodial Parent (NCP) is entitled to such Deviation. The NCP is a low income person as defined by OCGA § 19-6-15 with Gross Income in the amount shown on the Worksheet, and needs the self support reserve for NCP's own support. The Presumptive Amount of Child Support would be unjust and inappropriate to the NCP. The NCP is financially unable to pay the Presumptive Amount of Child Support and maintain a minimum standard of living. Consideration has been given to all nonexcluded income available to each parent, all reasonable expenses of each parent, and the financial impact of this Deviation upon the Custodial Parent's household. This Deviation will not seriously impair the ability of the Custodial Parent to maintain minimally adequate housing, food, and clothing for the children and to provide other basic necessities. This Deviation is in the best interest of the children because it will facilitate the NCP's ability to maintain a standard of living which will promote the parent-child relationship. Based upon the foregoing, a low-income Deviation is clearly justified for the NCP. The Presumptive Amount of Child Support that would have been required by OCGA § 19-6-15 if no Deviations had been applied is shown on the Worksheet.*

**14. Qualified Child Adjustment.** *If a Qualified Child adjustment to Gross Income is shown on the Worksheet, the adjustment was permitted because the parent receiving it has one or more children living in the parent's home who satisfy the requirements therefor, and failure to allow the adjustment would cause substantial hardship to the parent. Such adjustment is in the best interest of the children for whom child support is being awarded because it provides more funds available to the parent to maintain an acceptable standard of living.*

**15. Social Security Benefits.** *If Title II Social Security benefits for the children from the account of the Noncustodial Parent are shown on the Worksheet, such benefits shall be counted as child support payments, and shall be applied to the child support to be paid by such parent. If the amount of benefits received is less than the amount of support ordered, the Noncustodial Parent shall pay the amount exceeding the Social Security benefit. If the amount of benefits received is equal to or more than the amount of support ordered, the Noncustodial Parent's*

responsibility is met and no further support shall be paid. Any Title II benefits received by the Custodial Parent for the children's benefit shall be retained by the Custodial Parent for the children's benefit, and shall not be used as a reason for decreasing the amount of child support or reducing arrearages.

**16. Parenting Time.** The amount of the Noncustodial Parent's parenting time provided by the Child Support Order is approximately: *[Check (a), (b) and/or (c), as applicable.]*

\_\_\_\_\_ (a) Parenting Plan A. -- approximately 95 days and 38 afternoons per year

\_\_\_\_\_ (b) Parenting Plan B -- approximately 65-90 days per year, depending upon the amount of summer visitation granted.

\_\_\_\_\_ (c) \_\_\_\_\_ *[Number of days, afternoons, etc.]*

**17. Continuing Garnishment for Child Support.** Whenever, in violation of the terms of the Child Support Order, there has been a failure to make child support payments, so that the amount unpaid is equal to or greater than the amount payable for one month, child support may be collected by the process of continuing garnishment for child support.

**18. Income Deduction Order.** *[Check (a), (b) or (c).]*

\_\_\_\_\_ (a) There is good cause, or the parties have agreed, not to require an Income Deduction Order at this time. Income deduction will not serve the children's best interest. The Noncustodial Parent shall pay child support directly to the Custodial Parent. The Custodial Parent may request an Income Deduction Order if there is a delinquency equal to one month's support.

\_\_\_\_\_ (b) An Income Deduction Order for payment of child support shall be entered by the Court pursuant to OCGA § 19-6-32. The Income Deduction Order shall take effect if there is a delinquency equal to one month's support. The Income Deduction Order may be enforced by serving a "Notice of Delinquency" as provided in OCGA § 19-6-32 (f).

\_\_\_\_\_ (c) An Income Deduction Order for payment of child support shall be entered by the Court pursuant to OCGA § 19-6-32. The Income Deduction Order shall take effect immediately upon entry by the Court.

**19. Emancipation.** Child support has been determined for \_\_\_\_\_ children in this case. When the number of children for whom child support is owed decreases, the amount of support shall decrease as follows:

When there are only *three* children for whom child support is owed, the Noncustodial Parent shall pay child support of \$\_\_\_\_\_ per month beginning on the due date of the next child support payment.

When there are only *two* children for whom child support is owed, the Noncustodial Parent shall pay child support of \$\_\_\_\_\_ per month beginning on the due date of the next child support payment.

When there is only *one* child for whom child support is owed, the Noncustodial Parent shall pay child support of \$\_\_\_\_\_ per month beginning on the due date of the next child support payment.

The foregoing is not intended to restrict either parent's right to seek a modification of child support under applicable law.

**20. Additional Provisions.** *[If these Additional Provisions conflict with other provisions of this addendum, the Additional Provisions shall control.]*

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**21. Incorporation into Judgment.** It is contemplated that this child support addendum will be incorporated into a judgment this case. If there is any conflict between such judgment and this addendum or any written agreement between the parties, the judgment shall control. If there is any conflict between this addendum and any written agreement between the parties, this addendum shall control. If the Worksheet conflicts with this addendum, this addendum shall control.

### Agreement of Parties

The parties hereby agree to the terms of this Child Support Addendum. If signed by a party, the party affirms that the information he/she has provided in connection with the preparation of this addendum is true and correct. If signed by an attorney, the attorney certifies that this addendum accurately represents information obtained from his/her client which is believed to be true and correct. *[This paragraph may be deleted if not signed by or on behalf of both parties.]*

This \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Plaintiff's or Plaintiff's Attorney

\_\_\_\_\_  
Defendant's or Defendant's Attorney