

Section H

Post-Secondary Education Subsidy: Lessons Learned and Practical Pointers

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Post-Secondary Education Subsidy
 LESSONS LEARNED AND PRACTICAL POINTERS

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In re Marriage of Larsen
 912 N.W. 2d 444 (Iowa 2018)

- High Conflict Divorce-2nd Appeal
- Significant 529 Accounts at time of Divorce (2015)
 - Over \$63,000 for child in question
 - Over \$155,000 for all 3 children
- Child was estranged from Dad at time of Divorce
- Incomes of parents (\$77,000 and \$110,000)
- Each Academic Year Separately
- Child Eligible for Scholarships and Unsubsidized Loans
- Partial Stipulation on Day of Trial

Larsen Decree Language

In the event any child pursues a course of study or training beyond high school under the circumstances contemplated by Iowa Code Section 598.21F, each of the parties shall contribute toward the costs of that study or training as provided by 598.21F. The parties' custodial 529 accounts for each child shall first be used to discharge their share of their contributions under this provision but neither party shall be able to avoid contribution based upon any claims of alienation or estrangement. These accounts shall be equally divided with each party having an account for each child.

The parties shall be free to continue to add funds to these accounts but are not required to do so, however, the balances on each of these accounts should not be reduced below half of the amounts above unless due to market conditions. The parties acknowledge that these accounts are for the children and will not be used for any other purposes or withheld from any of the children. The parties shall exchange statements annually on April 1st.

Process for Determining Subsidy 598.21F

- Only in Divorce
 - *Johnson v. Louis*, 654 N.W.2d 886 (Iowa 2002).
- Good Cause
- Determine Cost of Attendance
- Child's Expected Contribution
- Allocate Remaining Costs Between Parents

Good Cause

- Child Between Ages 18-22
 - 598.1(8) or *In re Marriage of Neff*, 675 N.W. 2d 573 (Iowa 2004)
- Vocational-Technical Training
- Full-time Student in College, University, or Community College
- Admitted Student before Next Regular Term
- Age, Ability of the Child, Child's Financial Resources, Child is Self-Sustaining, Financial Situation of Parents
 - *In re Marriage of Goodman*, 690 N.W.2d 279 (Iowa 2004).

Cost of Attendance

- Estimated Costs of Attendance Published by the School-Presumed Reasonable and Necessary
 - Tuition and Fees
 - Room and Board
 - Books and Supplies
 - Personal Expenses incl. Transportation
- Based upon In-State Public Institution
 - PP: Check all 3 institutions as costs vary slightly and changes yearly
- Court may Vary upon Showing of Special Need or Other Circumstances
 - PP: Check tuition for student's college (e.g. business)

Child's Contribution

- **May** be Reasonably Expected to Contribute:
 - Scholarships or Grants
 - Student Loans
 - Reasonable Under all the Facts and Circumstances of the Case
 - Not mandatory to take all loans offered
 - Earned Income
 - Ability to Earn Not Actual Work Income
 - Can be based on Reasonable Expectations for Earnings
 - *Larsen*: 5 Hours per week at Minimum Wage=\$1,000 for School Year
 - Savings
 - Not reasonable to use 100% or drain account
 - *Larsen*: \$2119 in savings, Court allocated \$500
- PP: Don't allow earnings to be double counted as savings
- Child's Contribution Exceed Cost of Public College (Might be out of luck)
 - *In re Marriage of Sullins*, 715 N.W.2d 242 (Iowa 2006).

Parent's Contribution

- Completely Discretionary-May not Shall
- Amount Remaining is Divided Between Parents
- Maximum Amount of Contribution is One-Third of Total Costs of Attendance
- Does not have to be Equal Allocation
- No Undue Financial Hardship on Parents
 - *In re Marriage of Vaughan*, 812 N.W.2d 688 (Iowa 2012)
- No Reimbursement to Parent for Amounts Already Paid
 - *In re Marriage of Longman*, 619 N.W.2d 369 (2000)
 - PP: Request Hearing as Soon as Financial Award Letter Received

Payment

- Paid To Child or Educational Institution NOT Custodial Parent
 - Best to have payment terms in Order, i.e. due dates each semester
 - Most schools allow monthly payments but there is a fee
 - No payment terms can make it difficult to enforce
- "It is Ordered that each party shall contribute the sum of \$3,050 toward the cost of L.S.'s college education each year. Respondent shall reimburse Petitioner that amount for L.S.'s first year of college and the parties are directed to work out how each shall pay their share for L.S.'s ensuing years of college."

Additional Issues

- Repudiation by Child
 - Publicly Disowned
 - Refusing to Acknowledge
 - Bad relationship Not Enough
- Obligations of Child
 - Report Grades within 10 days of receipt *Each Semester*
 - Terminated if Cumulative GPA not in *median range* for 1st Year
- Can a Child file to enforce????

529 College Savings Accounts

- Need to Address in Divorce Decree
 - Owned by Parent NOT Child
 - Can be transferred to other family members
 - Withdrawn with 10% Penalty for Non-Educational Purposes
 - Terms to Include if Child does NOT Pursue Education
 - Can Transfer Ownership or Divide Accounts (Forms Online)
- PP: Divide the Accounts Equally at Time of Divorce

QUESTIONS?

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