RECOMMENDATIONS: VOLUNTARY IMPOVERISHMENT

Maryland recognizes that where a party has "voluntarily impoverished" himself or herself, the voluntarily impoverished party's potential income or capacity to earn money will be attributed to such party for purposes of determining the voluntarily impoverished party's obligation to pay, or entitlement to receive, alimony or child support. Wills v. Jones, 340 Md. 480, 667 A.2d 331 (1995); John O. v. Jane O., 90 Md. App. 406, 601 A.2d 149 (1992); Goldberger v. Goldberger, 96 Md. App. 313, 624 A.2d 1328 (1993); Guarino v. Guarino, 112 Md. App. 1, 684 A.2d 23 (1996).

Under the Maryland Child Support Guidelines, "income" includes "potential income of a parent, if the parent is voluntarily impoverished," F.L. §12-201(b)(2). However, a determination of potential income may not be made for a parent who "is unable to work because of a physical or mental disability" or "is caring for a child under the age of 2 years for whom the parents are jointly and severally responsible." F.L. §12-204(b).

In Goldberger v. Goldberger, 96 Md. App. 313, 624 A.2d 1328 (1993), a child support case, the Court of Special Appeals held that "for purposes of the child support guidelines, a parent shall be considered 'voluntarily impoverished' whenever the parent has made the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources." Goldberger, 96 Md. App. at 327, 624 A.2d at 1335 (1993). The Court, in Goldberger, declared that "[t]o determine whether a parent has freely been made poor or deprived of resources the trial court should look to the factors enunciated in John O. v. Jane O." Moreover, in Wills v. Jones, the Court of Appeals discussed the meaning of "voluntariness" of an action and the meaning of "voluntary" in the context of termination of employment. A party who, "by his or her own choice, intentionally, of his or her own free will, terminated the employment" may be said to have acted voluntarily, and the resulting unemployment may constitute voluntary impoverishment.

The Court in John O., 90 Md. App. at 421, stated that "[s]ome of the factors to be considered in determining whether a party is voluntarily impoverished include:

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(2) his or her respective level of education;
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	relative to the divorce proceedings;
	the relationship between the parties prior to the initiation of proceedings;
(5)	his or her efforts to find and retain employment;
(6)	his or her efforts to secure retraining if that is needed;
(7)	whether he or she has ever withheld support;

(8) his or l	her past work history;
(9) the ar	rea in which the parties live and the status of the job market there; and
(10)any o	other considerations presented by either party."
ınder F.L. §12-20	the Court must make a specific finding of voluntary impoverishment 01(b)(2) if a parent's potential income ¹ is to be considered for purposes d support. {Note: Make finding in alimony case also}
	G: After Considering the Foregoing Factors I Find that the / <u>DEFENDANT</u>) <i>IS/IS NOT</i> Voluntary Impoverished
	

¹ MD. FAM. LAW CODE ANN. §12-201(f) defines "potential income" as "income attributed to a parent determined by the parent's employment potential and probable earnings level based on, but not limited to, recent work history, occupational qualifications, prevailing job opportunities, and earnings levels in the community."

determine 1	potential income the trial court must consider:
1)	age;
2)	mental & physical condition (Physical condition already discussed above?)
3)	assets;
4)	educational background, special training or skills;(Partially discussed above?)
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5)	prior earnings;
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Additionally, once a "voluntarily impoverished" determination has been made, to

6)	efforts to find & retain employment; (Already discussed above?)
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7)	status of job market in area where parent lives (Already discussed above?)
8)	actual income from any source;
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9)	any other factor bearing on parent's ability to obtain funds for child support
	G: After Considering the Foregoing Factors I Find that the ITIFF'S/DEFENDANT'S) Potential Income is