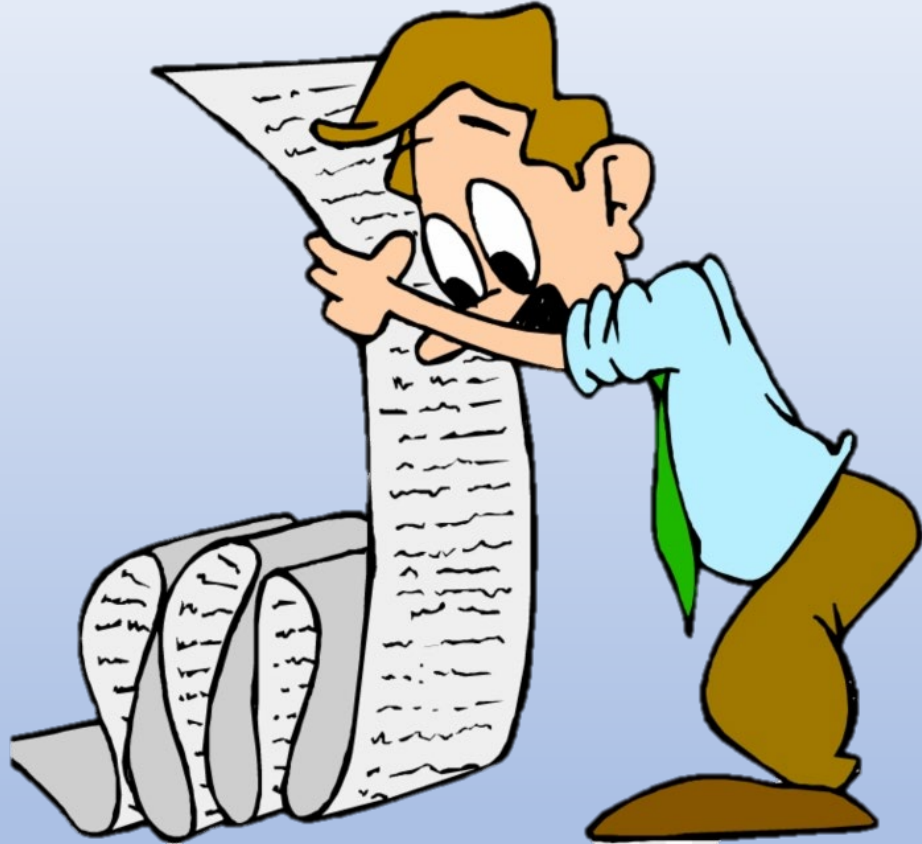


Breakout Session: A

Income Determination & Modification

With Laura Walker and Elizabeth Lee





What income do you plug into the Child Support Guidelines?

Easy! The legislature gave us a laundry list of sources of income to use to calculate income.

Maryland Family Law § 12-201(b) actual income means income from any source

- (3) “Actual income” includes:
- (i) salaries;
- (ii) wages;
- (iii) commissions;
- (iv) bonuses;
- (v) dividend income;
- (vi) pension income;
- (vii) interest income;
- (viii) trust income;
- (ix) annuity income;
- (x) Social Security benefits;
- (xi) workers' compensation benefits;
- (xii) unemployment insurance benefits;
- (xiii) disability insurance benefits;
- (xiv) for the obligor, any third-party payment paid to or for a minor child as a result of the obligor's disability, retirement, or other compensable claim;
- (xv) alimony or maintenance received; and
- (xvi) expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business to the extent the reimbursements or payments reduce the parent's personal living expenses.

Depending
on the case,
the Court
may consider
the following
as income

- severance pay
- capital gains
- gifts
- prizes

Petrini v. Petrini, 336 Md. 453 (1994), court could consider noncash gift, but boyfriend's payment of half the bills is not considered income, Allred v. Allred, 130 Md.App 13

**This is NOT
income for
child support
purposes**

“Actual income” does not include benefits received from means-tested public assistance programs:

- Temporary cash assistance
 - Supplemental Security Income
 - Food stamps, and
 - Transitional emergency, medical, and housing assistance
-
- Family Law § 12-201(b)(5)

“I GET SOCIAL SECURITY”

- But, what kind of Social Security?
- Is it Social Security Disability? (where you have worked and paid in social security taxes over the years and are now disabled? This payment is based on your past earnings)
- Are you over 62 and getting Social Security Retirement?
- Are you getting Supplemental Security Income? (found to be disabled and unable to work, but never paid social security taxes, and have no assets)
The maximum SSI payments are currently \$914 a month)
- Are you getting dependent benefits as An Adult Disabled Child? (This is rare but does occur)

HOW TO CALCULATE INCOME FROM SOCIAL SECURITY TO PLUG INTO THE GUIDELINES

- From our laundry list, FL § 12-201(b)(3)(x) “Actual income” includes:
Social Security benefits

BUT we also must look to FL § 12-201(b)(3)(xiv) “for the obligor, any third-party payment paid to or for a minor child as a result of the obligor's disability, retirement, or other compensable claim”

(the social security payment for the dependent child gets added into the obligor's income)

For example, Obligor Parent gets \$2000 a month from the Social Security Administration, the dependent child gets \$500 a month from Social Security for being the dependent child of the obligor parent. You must add these two sums together to get the obligor's income total, which is \$2500 a month.

Structure for today's presentation

Analyze income of 4 different types of wage earners

- W-2 employees
- Self-employed who keep records of their earnings
- Self-employed who keep no records of their earnings
- Parents who say they are not working. (Is it voluntary impoverishment?)





W-2 Wage Earners

Frequently occurring issues:

Do you include

- over time pay
- BAH and BAS for military parents
- Hazard pay (such as covid pay, combat pay)
- Working 2 jobs



IS OVERTIME
PAY
CONSIDERED
INCOME FOR
CHILD
SUPPORT
PURPOSES?

- It depends...
- Brown v. Brown, 119 Md. App. 289, 705 A.2d 7 (1998) “It all depends on whether it is a regular part of the parent’s employment”

How to Decide

Analysis:

- How long has the parent worked at the job?
- What do the year-to-date wages on the most recent pay stub indicate?
- What were the gross wages the year before? The year before that?
- Does the parent have a history of volunteering to work overtime?
- Does the job have a built in 'over time season'?
 - (tax accountant at tax time, Christmas time rush)
- Does the nature of the job include an overtime expectation?
(police, emergency personnel)

LOOK OUT FOR OUTLIERS (But does an outlier occur every year?)

CHILD SUPPORT AGENCY TOOLS

- Beacon (formally known as MABS). Computer system run by the Maryland Department of Labor, Division of Unemployment Benefits, contains quarterly wages as reported by Employers
- Federal Case Registry (FCR). Federal data base of quarterly wages shared with Child Support Agencies across the United States.
- MD Code, Labor and Employment, § 8-626.1 reporting of new hires



EXAMPLE OF BEACON REPORT

First Name	Last Name	Employer ID	Employer Name	Wage Amount	Year-Quarter
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$6,324.00	2016-3
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$17,937.00	2016-4
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$12,911.00	2017-1
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$14,009.00	2017-2
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$12,861.00	2017-3
HARRY	POTTER	10101010101	NPL CONSTRUCTION CO	\$391.00	2017-4
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$14,553.00	2017-4
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$16,467.00	2018-1
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$14,369.00	2018-2
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$12,762.00	2018-3
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$14,880.00	2018-4
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$13,538.00	2019-1
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$13,941.00	2019-2
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$12,681.00	2019-3
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$17,340.00	2019-4
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$14,015.00	2020-1
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$15,686.00	2020-2
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$164.36	2020-3
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$142.70	2020-4
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$17,891.69	2021-1
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$15,004.18	2021-2
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$17,315.44	2021-3
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$14,494.04	2021-4
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$17,242.47	2022-1
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$12,938.72	2022-2
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$15,152.54	2022-3
HARRY	POTTER	10101010101	WASHINGTON SUBRN SAI	\$17,340.00	2022-4

WHY IS MILITARY LEAVE AND EARNING STATEMENT HARD TO UNDERSTAND?

- IRS does not tax military housing or food allowance, so it is recorded separately from the basic pay
 - (BAH= Basic Allowance for Housing)
 - (BAS= Basic Allowance for Subsistence)
- Leave and Earnings Statements are issued only once a month, but pay is issued twice a month (usually the 1st and 15th of the month)
- Occasionally you will see hazard duty incentive pay (HDIP) if parent is doing qualifying hazardous duty, so it depends if it would be included as income, or Selective Retention Bonus (SRB), which likely would not be included as income.

WHAT TO INCLUDE FROM MILITARY PAY?

DEFENSE FINANCE AND ACCOUNTING SERVICE MILITARY LEAVE AND EARNINGS STATEMENT															
ID	NAME (Last, First, MI)			SOC. SEC. NO.	GRADE	PAY DATE	YRS SVC	ETS	BRANCH	ADSN/DSSN	PERIOD COVERED				
	██████████			██████	E5	040211	04	100210	AF	██████	1-31 JUL 08				
ENTITLEMENTS				DEDUCTIONS				ALLOTMENTS				SUMMARY			
Type	Amount			Type	Amount			Type	Amount			+Amt Fwd			
A	BASE PAY	2247.30		FEDERAL TAXES	88.46			DISCRETIONARY ALT	1621.00			+Tot Ent		4266.73	
B	BAS	294.43		FICA-SOC SECURITY	139.33			TRICARE DENTAL	11.58			-Tot Ded		1570.22	
C	BAH	1725.00		FICA-MEDICARE	32.59							-Tot Allt		1532.58	
D				SGLI	27.00							=Net Amt		1163.93	
E				AFRH	.50							-Cr Fwd		.00	
F				FAMILY SGLI	5.60							=EOM Pay		1163.93	
G				TSP	112.37										
H				MID-MONTH-PAY	1164.47										
I															
J															
K															
L															
M															
N															
O															
	TOTAL	4266.73			1570.22				1532.58						
LEAVE	BF Bal	Emd	Used	Cr Bal	ETS Bal	Lv Lost	Lv Paid	Use/Lose	FED TAXES	Wage Period	Wage YTD	M/S	Ex	Add'l Tax	Tax YTD
	25.5	25.0	11	39.5	85.5	.0	.0	.0		2134.93	13682.36	M	02	.00	493.01
FICA TAXES	Wage Period	Soc Wage YTD		Soc Tax YTD	Med Wage YTD	Med Tax YTD	STATE TAXES	St	Wage Period	Wage YTD	M/S	Ex	Tax YTD		
	2247.30	14402.50		892.94	14402.50	208.83	AK		.00	.00	N	00	.00		
PAY DATA	BAQ Type	BAQ Deprn	VHA Zip	Rent Amt	Share	Stat	JFTR	Depns	2D JFTR	BAS Type	Charity YTD	TPC	PACIDN		
	W/DEP	SPOUSE	08641	.00	1	R		0			.00				
THRIFT SAVINGS PLAN (TSP)	Base Pay Rate	Base Pay Current	Spec Pay Rate	Spec Pay Current	Inc Pay Current	Inc Pay Current	Bonus Pay Rate	Bonus Pay Current							
	5	.00	0	.00	0	.00	0	.00							
	TSP YTD Deductions				Deferred		Exempt								
	720.14				720.14		.00								
REMARKS:	YTD ENTITLE 27768.11				YTD DEDUCT 2557.92										
IF TSP ELECTION AMT EXCEEDS NET AMT DUE, TSP WILL NOT BE DEDUCTED.							BASE AIRMAN & FAMILY READINESS CTR FOR DETAILS.								
-LEAVE CARRYOVER INCREASED TO 75 DAYS FOR FY08. NO ACTION REQUIRED BY MEMBERS. DFAS WILL BEGIN RESTORING AFTER 1 OCT 08.							-IF YOU GAMBLE WITH SAFETY...YOU BET YOUR LIFE.								
-MYPAY HAS ALLOWED MBRs TO ELECT A HARD-COPY LES VIA US MAIL. AF POLICY IS TO PROVIDE AN ELECTRONIC LES. EFF 1 OCT (SEP LES). AF WILL NO LONGER PRINT LES STATEMENTS							-ELECTIONS ARE COMING! UPDATE YOUR ADDRESS TO GET AN ABSENTEE BALLOT. REQUEST YOUR BALLOT FOR THE PRESIDENTIAL AND STATE ELECTIONS. SEE YOUR VOTING ASST. OFFICER OR WWW.FVAP.GOV.								

ADD THE ENTITLEMENTS ALL TOGETHER

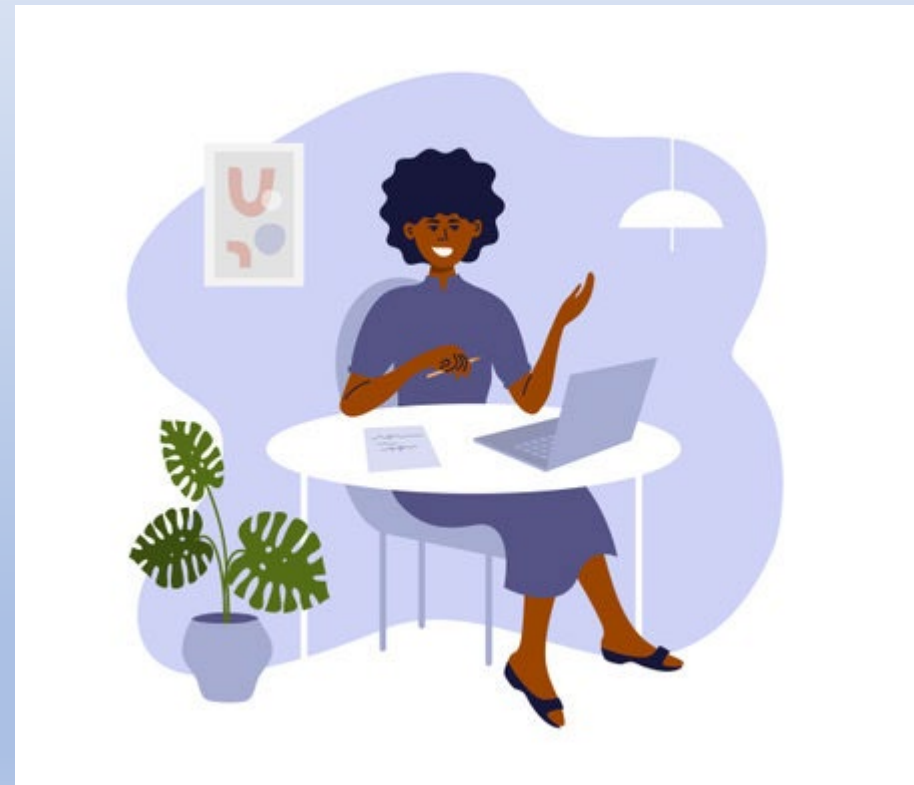
- Entitlements are in the left-hand column, add together the basic pay, BAH, and BAS. This is the monthly parent's income
- Deductions are in the middle column, notice the midmonth pay listed as a deduction. It is already included in the Entitlement column.
- Housing and subsistence pay are considered income because of our laundry list, FL §12-201(b)(3)(xvi), that these payments reduce the parent's personal living expenses.



**WHAT ABOUT PARENTS
WORKING MULTIPLE JOBS?**

Analysis II: Self-Employed Who Keep Their Records

- Sole proprietor
- Independent contractor
- Part time business or gig worker
- Partnership
- S corporation
- Limited Liability Corporation



IT IS ALL ABOUT THE SCHEDULE C

- Schedule C, used to report income or loss

IRS publication 535 explains business expenses

- <https://www.irs.gov/businesses/small-businesses-self-employed/self-employed-individuals-tax-center>



**SCHEDULE C
(Form 1040)**

Profit or Loss From Business

(Sole Proprietorship)

Department of the Treasury
Internal Revenue Service

Go to www.irs.gov/ScheduleC for instructions and the latest information.

Attach to Form 1040, 1040-SR, 1040-NR, or 1041; partnerships must generally file Form 1065.

OMB No. 1545-0074

2022

Attachment
Sequence No. 09

Name of proprietor _____ Social security number (SSN) _____

A Principal business or profession, including product or service (see instructions) _____ **B** Enter code from instructions _____

C Business name. If no separate business name, leave blank. _____ **D** Employer ID number (EIN) (see instr.) _____

E Business address (including suite or room no.),
City, town or post office, state, and ZIP code _____

F Accounting method: (1) Cash (2) Accrual (3) Other (specify) _____

G Did you "materially participate" in the operation of this business during 2022? If "No," see instructions for limit on losses Yes No

H If you started or acquired this business during 2022, check here Yes No

I Did you make any payments in 2022 that would require you to file Form(s) 1099? See instructions Yes No

J If "Yes," did you or will you file required Form(s) 1099? Yes No

Part I Income

1	Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked <input type="checkbox"/>	1	
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	
4	Cost of goods sold (from line 42)	4	
5	Gross profit. Subtract line 4 from line 3	5	
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6	
7	Gross income. Add lines 5 and 6	7	

Part II Expenses. Enter expenses for business use of your home only on line 30.

8	Advertising	8		18	Office expense (see instructions)	18	
9	Car and truck expenses (see instructions)	9		19	Pension and profit-sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see instructions):		
11	Contract labor (see instructions)	11		a	Vehicles, machinery, and equipment	20a	
12	Depreciation	12		b	Other business property	20b	
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13		21	Repairs and maintenance	21	
14	Employee benefit programs (other than on line 19)	14		22	Supplies (not included in Part III)	22	
15	Insurance (other than health)	15		23	Taxes and licenses	23	
16	Interest (see instructions):			24	Travel and meals:		
a	Mortgage (paid to banks, etc.)	16a		a	Travel	24a	
b	Other	16b		b	Deductible meals (see instructions)	24b	
17	Legal and professional services	17		25	Utilities	25	
28	Total expenses before expenses for business use of home. Add lines 8 through 27a	28		26	Wages (less employment credits)	26	
29	Tentative profit or (loss). Subtract line 28 from line 7	29		27a	Other expenses (from line 48)	27a	
30	Expenses for business use of your home. Do not report these expenses elsewhere. Attach Form 8829 unless using the simplified method. See instructions. Simplified method filers only: Enter the total square footage of (a) your home: _____ and (b) the part of your home used for business: _____. Use the Simplified Method Worksheet in the instructions to figure the amount to enter on line 30	30		b	Reserved for future use	27b	
31	Net profit or (loss). Subtract line 30 from line 29. • If a profit, enter on both Schedule 1 (Form 1040), line 3, and on Schedule SE, line 2. (If you checked the box on line 1, see instructions.) Estates and trusts, enter on Form 1041, line 3. • If a loss, you must go to line 32. If you have a loss, check the box that describes your investment in this activity. See instructions. • If you checked 32a, enter the loss on both Schedule 1 (Form 1040), line 3, and on Schedule SE, line 2. (If you checked the box on line 1, see the line 31 instructions.) Estates and trusts, enter on Form 1041, line 3. • If you checked 32b, you must attach Form 6198. Your loss may be limited.	31		32a	All investment is at risk.		
				32b	Some investment is not at risk.		

For Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 11334P

Schedule C (Form 1040) 2022

Schedule C (Form 1040) 2022

Page 2

Part III Cost of Goods Sold (see instructions)

33	Method(s) used to value closing inventory: a <input type="checkbox"/> Cost b <input type="checkbox"/> Lower of cost or market c <input type="checkbox"/> Other (attach explanation)	
34	Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation <input type="checkbox"/> Yes <input type="checkbox"/> No	
35	Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35
36	Purchases less cost of items withdrawn for personal use	36
37	Cost of labor. Do not include any amounts paid to yourself	37
38	Materials and supplies	38
39	Other costs	39
40	Add lines 35 through 39	40
41	Inventory at end of year	41
42	Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on line 4	42

Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month/day/year) ____/____/____

44 Of the total number of miles you drove your vehicle during 2022, enter the number of miles you used your vehicle for:
a Business _____ b Commuting (see instructions) _____ c Other _____

45 Was your vehicle available for personal use during off-duty hours? Yes No

46 Do you (or your spouse) have another vehicle available for personal use? Yes No

47a Do you have evidence to support your deduction? Yes No
b If "Yes," is the evidence written? Yes No

Part V Other Expenses. List below business expenses not included on lines 8-26 or line 30.

48	Total other expenses. Enter here and on line 27a	48	
----	--	----	--

Schedule C (Form 1040) 2022

STATUTE REGARDING SELF EMPLOYMENT INCOME

1. Family Law 12-201 (b)(2) gross receipts minus ordinary and necessary expenses required to produce income
(may be fine for the IRS but not child support purposes)

2. Family Law 12-201(b)(3)(xvi)

What expense reimbursements or in-kind payments are reducing the parent's personal living expenses?

3. Family Law 12-201(I)

Can't deduct depreciation expenses, 'or any other expenses determined by the court to be inappropriate for determining actual income for purposes of calculating child support'

TAX DEDUCTIONS AND INCOME CALCULATIONS

- Home office deduction
- Business use of the car
- Utility bills when you don't have a separate building for business
- Salary to the current wife

Analysis III: Self-Employed Without Records or Filed Taxes

- MD FL §12-203(b) requires income statements of the parents to be verified with documentation.
- What to do when you have a parent who works in a cash (or cash app) only industry and has no 1099, never files taxes, and has no desire to create a paper trail of their earnings?

(Tanis v. Crocker, 110 Md App 559, 678 A.2d 88 (1996), clarifies that the statute does not require that a parent's income tax returns be considered in order to resolve a dispute concerning that parent's income. The court has discretion with the documentation of income)

PUT ALL YOUR CARDS ON THE TABLE



- Ask the custodial parent:
 - How long have you known the other parent?
 - Did you ever live together?
 - What does the other parent do for a living?
 - What type of work has the other parent done while you have known them?
 - What did (s)he make when you lived together?
 - When you lived together what household bills did (s)he pay?
 - Do you have any documentation of the other parent's past or current earnings?
 - Do you have any pictures or social media posts about him working for a living?

SELF EMPLOYED PEOPLE OFTEN ADVERTISE ON SOCIAL MEDIA

- RULE 5-901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION
- See Griffin v. State, 419 Md. 343, 19 A.3d 415 (2011)
- See Sublet v. State, 442 Md. 632 (2015)
 - “[t]estimony of a witness with knowledge that the offered evidence is what it is claimed to be

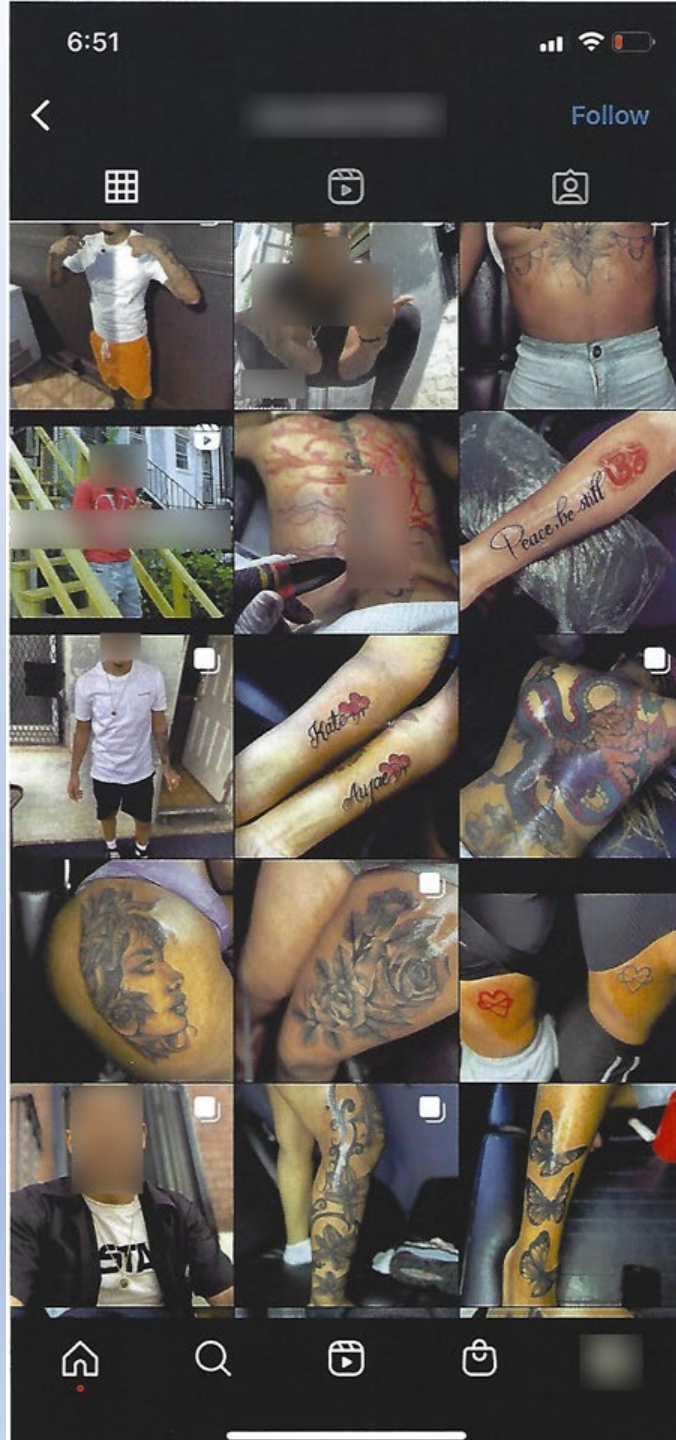


CASE STUDY OF A SELF-EMPLOYED TATTOO ARTIST

- NO reported wages on Beacon
- No tax returns
- Living off the economic grid
- The custodian brought pictures and documents from Instagram of the parent's advertisement and displays of his artwork.
- After the custodial parent's testimony, the father agreed that he was a tattoo artist, and started explaining his earning and how much he charged per tattoo.

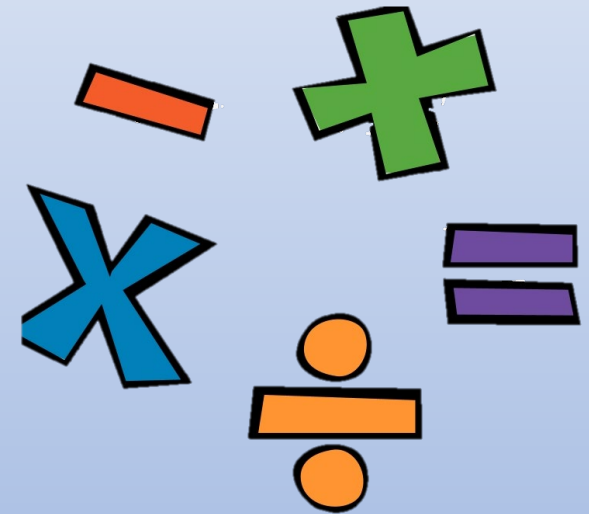
Instagram pics





BREAK IT DOWN

- Example, the self-employed Tattoo Artist, break down questions:
 - How many days a week do you tattoos?
 - How much do you charge per tattoo?
 - What days are the busiest of the week?
 - How many tattoos do you do on a busy day?
 - What is the least busy of the week?
 - How many tattoos do you do on a not so busy week



MONTHLY SPENDING

Example, what is your:

- rent/mortgage
- car payments
- cell phone
- utilities
- car insurance
- other child support obligations
- spend at the grocery store
- gas in car



Have them fill out a long form financial statement to get a better idea of the income



Is it voluntary
improvement?
Need to file for a
Modification?