

Georgia Commission on Child Support
September 27, 2013
Meeting Minutes

Present were:

Commissioners:

Judge Louisa Abbot, Chair (via teleconference)
Judge Michael Key
Judge Lisa Branch, Georgia Court of Appeals
Judge Tom Campbell
Senator Chuck Hufstetler
Senator Emanuel Jones (via teleconference)
Judge Lisa Rambo
Rick Smith (via teleconference)
Wendy Williamson (via teleconference)
Chuck Clay

Pat Buonodono, Staff Attorney
Elaine Johnson, Staff

Guests:

Tanguler Gray Johnson, IV-D Director of Division of Child Support Services
Reed Kimbrough, Deputy Director of Division of Child Support Services
Patricia Smith, Director of State Operations for DCSS
Ryan Bradley, Policy Unit, DCSS
Jill Travis, Legislative Counsel
Megan Miller, Atlanta Legal Aid
Phillip Ladin, member of Calculator/Technology Committee
Erica Thornton, Manager of Policy and Paternity Unit for DCSS
Garry Gentile, Office Manager with DCSS
Brian Bilbrey, Problem Solving Court Coordinator, Mountain Judicial Circuit
Kristi Stone, Director of Field Operations, DCSS
Stephen Harris, Associate General Counsel, DCSS

The meeting began at 10:00 a.m.

I. Welcome and Introductions

Judge Key welcomed everyone, thanked them for coming, and explained that he was Chairing the meeting in the absence of Judge Abbot, who will be joining by telephone.

II. Review/Approval of Minutes of Last Meeting

Judge Key inquired whether everyone has had an opportunity to review the minutes of the last meeting. Motion for approval by Judge Campbell, seconded by Rick Smith. No one wished to discuss; motion passed unanimously.

III. Old Business

A. Committee Reports

1. Statute Review Committee

Judge Key thanked Senator Hufstetler for authorizing Jill Travis to work with the staff of the Commission. She was invaluable in the last round of legislation and has been very helpful again. Judge Key and Pat Buonodono are very grateful for her assistance.

Pat Buonodono went through the proposed revisions in numerical order, referencing the number that appears on the top right of each revision.

LC29 5721 – This is a proposal to add youth who are in an Individualized Education Program (IEP), or enrolled in the federal Job Corps program, which is a program for low income youths to learn job skills, to the existing provision that allows child support to continue for children up to age 20 if they are still in secondary school.

Judge Key stated, per Robert's Rules of Order, that since these proposals come from a standing committee, they come as a motion and no second is required. Judge Abbot confirmed this.

Judge Key asked for discussion on LC29 5721; there was none. The motion that this revision be submitted to the legislature carried unanimously.

LC29 5725 – This was sent by email to the Commissioners, but in error. Not up for discussion; substantive in nature and the Committee needs to discuss it further.

Judge Key pointed out that we will be having another Statute Review Committee meeting on October 18, 2013, starting at 10:00 a.m. We will be considering LC29 5725 and some other legislation that is more substantive in nature. Most of what was covered in this meeting were technical, clean up bills.

Jill Travis advised that the Legislature does not consider these to be just technical corrections, they would all be substantive bills, but we made that distinction for our own discussion purposes.

LC29 5726 – This addresses an error in the definitions section of 19-11-1 pertaining to the Bank Match Registry for DCSS.

Jill Travis stated that there is a problem in 19-11 in that the words “account” and “financial institution” are used in 19-11-30.1 through 30.11; those terms are also used in 19-11-32, 35, 37, 38 and 39, and they aren’t defined. There’s a wrong way of defining things and that is found on page 2 at line 50, where it says “as used in this code section,” and these other sections because the reader is never going to go back. So this bill corrects that, moves the definitions to where they should be which is in the beginning of the code section. Another correction that Pat speaks of regarding account is in LC29 5732.

Judge Key stated that this came before the Commission as a motion from the Committee that does not require a second, and asked for discussion. None was offered, and the motion carried unanimously.

LC29 5728 – Cleans up some of the language in the code section that authorizes the work of the Commission. One of the things the code section currently does is authorize the Commission to set tax rates, which it is not allowed to do under federal law. Jill removed that language, and stated what the Commission really needed to make it do was say it is authorized to make the correct calculations for the federal tax rates at any given time, so that was corrected. It also changes the period of review from two to four years.

Judge Key stated that this comes before the Commission as a motion from the Committee that does not require a second, and asked for discussion. None was offered, and the motion carried unanimously.

LC29 5729 – Originally what the revision was intended to do was simply insert the word “monthly” into 19-6-15 to make it clearer that child support has to be a monthly amount. Unfortunately, once Jill looked at the Code she realized that it was much more in depth, and a lot of clean up was necessary. Rather than change the definition, Jill inserted the word “monthly” into section (b) which directs how child support is calculated.

Jill Travis stated that is part of the correction. The definition on page 1 has been changed: “basic child support obligation means a monthly amount.” So monthly was inserted into the definition. “Basic child support obligation” was used about 60 times in this Code section, and in subsection (b), “monthly” is added a couple of places but because the words “basic child support obligation,” are used for example on line 49, where it says “locate basic child support obligation,” when you read that it really means locate the monthly amount of support displayed on...” and go back to the definition. This whole draft is intended to make sure that everybody understands when they are using the calculator it’s talking about a monthly amount. It’s just way more involved than originally thought, and some of it was cleaning up some of the definitions that are used in the existing law.

Judge Key stated that this bill also comes before the Commission as a motion from the standing Committee that does not require a second, and asked for discussion. None was offered, and the motion carried unanimously.

LC29 5730 – Changes the language on the low income deviation. Section 1 cleans up the language on rehearing, but the substantive part of this revision, and this revision does make a substantive change to the statute, is that it allows either party to request, or the judge to consider, a low income deviation for the noncustodial parent. People don't know to ask for it, especially if they are self-represented.

Judge Key asked for discussion – question from Senator Jones – if a motion is granted for a low income deviation, is there a provision anywhere in the statute for revocation of that motion?

Judge Key clarified the question, and responded that the situation in which the noncustodial parent's income improves and the low income deviation would no longer be applicable, the custodial parent would likely file a motion to modify child support.

Senator Jones stated he didn't see any language in this draft that mentions that once that person is no longer low income, it would change.

Judge Key responded that the modification provision is in a separate subsection of the Code, and he believes this would be treated as any other substantial change in condition. Judge Abbot agrees that the separate statute would always allow parties to come back and say "income has changed," and they can seek a modification at that time. That is existing law. Senator Jones then clarified that this law would apply to low income deviations.

Judge Abbot said we could always add language that says this is subject to existing law and add the code section. Jill Travis advised against this, because then you would almost have to specify this with every other part of the child support law. Stating that on something this specific and leaving it off the rest of the statutes would be confusing. The intent is for the readers and the people using the code to understand the modification section is across the board.

Judge Key gave another example: if someone tries a case before Judge Campbell, and Judge Campbell in his discretion gives a deviation for travel costs related to visitation, and then the parties end up living back in the same county again, then that could be modified as well. If the circumstances that justify the deviation in the first instance change, then either party depending on how it works in that particular case, can move the court for modification.

This addressed Senator Jones' concern with the proposed revision.

No further discussion; the motion carried unanimously.

LC29 5732 – Corrects two words, and this is the section that refers to the computerized central case registry for support orders.

Jill Travis added that this was interesting – in discussion of this section with Stephen Harris and Pat, it was found that the word on line 17 that says “accounts” should actually say “amounts.” The other correction on line 15 is the word “paragraph” – “Item” is the wrong word to use there.

Judge Key stated that this came before the Commission as a motion from the Committee that does not require a second, and asked for discussion. None was offered, and the motion carried unanimously.

LC29 5733 – Adds veterans’ disability payments to income that should be considered when calculating child support. Alice Limehouse, Pat’s predecessor, did a lot of research on this, and there is federal case law that says veterans’ disability payments, although they can’t be attached for child support, the amounts paid can and should be used in calculating child support. So it was added at 14, and the rest of the paragraph numbers were changed accordingly.

Senator Jones stated that this would be very unpopular legislation. No one wants to mess with veterans’ benefits. There will be a lot of push back on this one. If they can’t take it to pay child support, why would it count in calculating child support?

Judge Key responded that there are other incomes included for purposes of calculating support that are not subject to garnishment or levy, such as Social Security Disability. He stated it was a like kind thing compared to other types of income in the statute and that since it does involve veterans, it would best to table the issue until the next Statute Review Committee meeting as it does have a public hearing segment at the end of the meeting and perhaps it could be held for public comment at that meeting.

Judge Key asked if anyone opposed tabling this, and there was no response. He asserts the Committee will make sure it gets addressed at the public hearing in October. Judge Abbot thought that because there are so many issues with military families, an in depth look into the issue was needed. Veterans’ benefits come in many different forms, and it’s very difficult to figure out what amount of money someone is actually receiving. She favors tabling this revision.

Judge Key stated that just because the Commission moved through all these statutes in about 20 minutes does not in any way reflect the hard work that was put in by Commission staff and legislative staff; they worked very hard on this legislation.

Judge Branch asked if we could go back to LC29 5721 – wondering along the same lines what we were talking about as far as the reason for adding the IEP and federal Job Corps programs to support to age 20. She understands we already have the secondary school issue in there, but what is the basis for adding this in?

Pat responded that this was suggested on one of the surveys performed of attorneys at a training. It was discussed if someone is trying to earn their GED, including them in this, but that is usually affiliated with a college program and that takes it beyond the scope of secondary, and it's not usually full time. But the IEP and Job Corps are both full time programs – an example given by Pat is that she has a friend whose son is over the age of 18 and who is severely autistic. He goes to a program with an IEP where he is in school but it's not through the high school. He is in school every day, full time, so he is still getting a structured learning environment and he is eligible for this program to age 21. The Job Corps program is a federally funded program for low income youth who need job skills so they can go out and earn a living.

Judge Branch stated that in light of the fact that we are tabling the veterans' disability issue as a substantive issue, this is also substantive and she wondered if we could revisit this one and do the same thing, i.e., take public comment on this. These are two new programs being included.

As the Commission already voted to approve this, Judge Branch moved to reconsider the approval. Motion by Judge Branch, seconded by Chuck Clay. Judge Key asked for discussion and Judge Abbot stated that these youth still need support, especially in light of our state's high school dropout rate. She is not opposed to tabling it. She just wanted to emphasize that it is important for these children to continue to receive support so they can be successful at these programs.

Judge Key stated that between now and the time we have public comment on it, we might consider construction issues, whether this could be easily construed by the courts, what does it really mean and how broad or narrow are these words.

Judge Branch believed her point to be underscored by what Judge Abbot has said. This is a significant issue – a lot of these things being done are for ease of understanding, but this is a significant addition and she believed we should receive public comment on it.

Stephen Harris, Associate General Counsel with DCSS, stated that this is an issue that DCSS has to struggle with constantly. DCSS enforces those orders up until the date specified in the order – either age 18 or until the child graduates from secondary school – but they are confronted with children who have IEPs or are involved in Job Corps, and quite often the parents will begin to dispute whether that child support obligation has ended and it puts the Department in a place where they have to decide the issue themselves, and in at least one very recent example Stephen Harris thought of, it resulted in the parents having to go to court to get a judge's decision as to whether a transition program that the child was in under their IEP counted as secondary education. It has led to problems for the Department which has been forced to devote a lot of resources into determining whether a program like Job Corps or an IEP program fits into that. Ultimately it should be the judge's decision and not the Division's.

Senator Jones believed it should be added in because there are some kids who take a little longer to find out what they're going to do with their life. If the IEP program or Job

Corps program will benefit them, why shouldn't those noncustodial parents continue to pay child support?

Judge Key thanked everyone for their comments. The issue now is not necessarily the merits of this bill, but whether we want to reconsider the approval and recommendation of the bill, and address it during and after the public hearing. Hearing no further discussion, a vote was taken on the motion to reconsider. Motion carried with one vote against.

Judge Key asked Pat to discuss some of the legislation that is still in the mill, that the Committee has individual members working on, and what will be discussed on October 18, 2013.

Pat listed some issues that the Statute Review Committee is still discussing:

1. Develop a means for withholding to stop when a child emancipates, without need of a modification order. When child support is supposed to stop and income deduction is supposed to stop, employers are telling people to get a court order before they will stop withholding child support. The Committee is looking for ways to do that; Judge Abbot has suggested possibly a Uniform Superior Court Rule might be the answer to that. So we are looking at possible ways to correct this.
2. Defining preexisting orders: this has turned into a substantive issue. It was originally thought it would be a technical or corrective issue but it is not, so the Committee needs to have more discussion.
3. A law that allows the court to order child support beyond the age of majority for children who are physically or mentally disabled and unable to care for themselves. The staff attorney is looking at what other states are doing and will make a report at the next Statute Review Committee meeting.
4. The Committee had discussed the elimination of the "first child" benefit so that when a noncustodial parent has two children with two different partners, they are not required to pay the "first child" amount for both children. Pat thinks the presentation later in the meeting will address that to some extent.
5. A way to factor the duration of the payment of work-related child care expenses into child support; very often if parties get divorced or a child support order is obtained, a situation occurs where there are two years of full time daycare left, then that expense continues on in the child support calculation until someone files for a modification. The Committee is looking at whether there is a way to consider the amount of time the child will require full time child care in the calculations.
6. A possible limitation on how much is paid for child care and private education expenses.

Katie Connell and Stephen Harris are working on items 5 and 6 above, and are speaking with members of the Family Law Section of the State Bar about those issues.

Judge Key stated that there is acknowledgement by the Committee that some of these are so difficult and complex that they may not be addressed in the upcoming legislative session.

a. Administrative Legitimation Subcommittee

Judge Key stated that this subcommittee had a brief meeting on the same day as the Statute Review Committee met; there was a lively discussion about administrative legitimation, and it was agreed and acknowledged that nothing could be ready by the upcoming legislative session, so the work of that subcommittee will be tabled until shortly after the 2014 legislative session and then the subcommittee will gear up on that.

Pat asked if there were any other statutory issues that anyone wanted to suggest to the Statute Review Committee – either now or by email.

Tangler Johnson, Director of the Division of Child Support Services: I know there are statutes in place concerning access and visitation. My request is not necessarily a recommendation, but it is just to ask whether or not there's been any discussion around changing the laws around access and visitation, and the impact access and visitation has on child support. Many of our noncustodial parents, as I'm sure you are aware, those who are paying do suffer when it comes down to access and visitation rules and regulations. Currently we have contracts in place and we do make referrals, but as you know access and visitation is not a part of our orders and I would like to know whether the Commission has had any discussion in that area.

Pat responded that the Committee had some discussion within the Administrative Legitimation Subcommittee; they are trying to make the law work better and make it easier for people to access the legitimation and along with that, it gives the parent the right to request visitation and/or custody. The Committee is looking at the issue but it is tabled until it gets this first draft of statutes to the legislature.

The Commission was asked if any member was interested in separating the visitation issue separately from administrative legitimation but no interest was shown. The two issues will be considered together.

That concludes the report from the Statute Review Committee. The meeting moved to the Technology and Calculator Committee, Wendy Williamson is the Chair.

2. Technology/Calculator Committee

Wendy Williamson reported that the Technology/Calculator Committee has met twice and has grown to ten in number, including Phil Ladin, now a family law attorney but he was involved in the original calculator in the IT area with DCSS, and Judge Warren

Davis who is a Superior Court Judge in Gwinnett. The mission is to explore the potential for designing a new web-based calculator to meet the needs of a diverse public, the court, and attorneys. The goal is to make the worksheet more portable and accessible in an era of wifi, iPad, Apple and PCs; a web based calculator would meet all of those needs. Also, getting to it would be simpler than if you are restricted to using Excel on a PC. Usability is a big concern; that means there is a wide spectrum of people with diverse ability, a versatile calculator is desired that pro se folks, lawyers and judges can use, and use easily. The judges have made it clear they want it to be capable of easy modification from the bench or at any time when they are working on it, and lawyers want to be able to track different versions so that if something goes up on appeal, they can see what rules were in place when a particular calculation was made. It is important to have the ability to print off a PDF to have a record of different drafts. The cost of maintenance has been both expensive and complicated when MS Excel made their changes which required a genesis of the worksheet. According to Wendy Williamson anyone who has worked in this area knows once they become comfortable with a version, they don't really want to go to the new version, resulting in people operating with different versions of the current calculator, which means that the calculations were inconsistent. If the calculator is web based there would be more control over the modifications and less expense in maintaining it. It will therefore also be more consistent. Anyone accessing the calculator would be using the current version. It would also be helpful that no matter what device you are on, you would have access to the same calculator. She hoped the Committee would be authorized to go ahead with the development of an RFP (request for proposals) and look for the person or company that would actually develop this website.

Wendy went on to add that Pat would show a current version of the worksheet to the Committee at the meeting and Phil Ladin would show an example of a web based calculator. She stressed that it was Kentucky's calculator and they have a different law and that this committee was not proposing that this be their calculator but it could serve as an example of what a web based calculator could like.

Judge Key clarified with Wendy that she was asking the Commission to approve moving forward with an RFP, and asked Judge Abbot if the full commission was required for approval. Wendy asked for clarification from Judge Abbot as to what the Committee has already been authorized to do. Judge Abbot stated the Commission does need to authorize an RFP; we have done RFPs before. The Commission has had to issue RFPs to make sure they are following all of the state guidelines. DCSS did the original web-based calculator. It was extremely expensive for the Department. Judge Abbot stated that it's in the best interest of the Commission to ensure the best price to create the best web-based calculator achievable. One of the reasons Judge Abbot placed Judge Warren Davis on the Committee is that he raised a lot of issues about the last web-based calculator. Common issues with it were it was complicated, it was not pro se friendly, it was hard for the judges to use.

Judge Abbot doesn't believe there is a lack of statutory authority to do it because the Commission is in charge of creating the calculator; as far as she is concerned she thinks they can proceed. A motion was made by Wendy Williamson and seconded by Judge

Campbell to authorize the Technology/Calculator Committee to move forward with an RFP. Judge Key asked for discussion; there being none, a vote was taken and the motion carried unanimously.

At this point, Pat did a brief presentation on how the child support calculator currently in use in Georgia works.

Judge Abbot stated you also have to have a worksheet for when one child emancipates based on Georgia case law. So you could end up with a large amount of paper.

Phillip Ladin spoke and pointed out the basic child support obligation table on the existing calculator. He shows that we can see the Excel spreadsheet doing the calculations based on the number of children and the income, and figures out how much the actual child support is going to be but you can't allow anyone to make any changes to these tables with which the calculations are done, which makes the spreadsheet a very complicated tool and also a lot of work to send out in order to make modifications. Excel uses macros which only work on specific hardware. So if anyone is working from an iPad or an iPhone or other smart phone, they can't access the current calculator. Phil took a look all around the country and tried to find the states that were using some sort of a web-based application. He found two, one is Kentucky and one is Oklahoma. Kentucky uses a web-based tool. Oklahoma does the same, but when printed, Oklahoma does a much better job of a clean document to be given to a judge or a pro se person that they can understand.

The first state's website looked at was Kentucky. Their calculator is simple use and easy to navigate for a pro se person but it didn't print out very well and lacked information that is necessary.

Also looked at was Oklahoma's calculator. More information was entered on their page but it was also confusing. Phil gave the example of when entering that the children are with the father for 65 days it didn't automatically calculate that the children are with the mother 300 days of the year. There was much more to manually enter in general for this calculator but it printed out much more dynamic forms with more information than Kentucky and it only printed the necessary pages. Also found on the Oklahoma calculator is the ability to create additional components such as court prints and hearing prints that could be used at trial for judge, attorney and pro se person. Phil stated our intent is not to mimic these states but to get an idea of how we utilize our laws with the types of things we can do on the web.

The meeting was opened for questions. Judge Abbot inquired how the documents were sent to the court and how does the court retrieve and modify them. Phil replied that data was stored at the state and court personnel could login to see the forms that have been created. Judge Abbot reminded the committee of the big issues of the former calculator was the difficulty users had finding forms leaving them unable to modify them and this was one of Judge Davis' biggest concerns. Phil stated that the old calculator was absolutely inefficient and stated when the RFP is created for the new calculator these

issues will be addressed but the technology has not yet determined the exact way they would like it to be done in RFP and that additional meetings and conferences will be held to gather that information.

Pat added that one of the things that will be important was to have the possibility to save the data as some kind of file that can be emailed to a judge because it was made very clear by Judge Davis that it was a very important function. Phil replied that two of the things they are discussing are: 1. Information would be stored in a database so that during the pendency of the case it could be brought back up for the multiple versions that are being worked on by both sides (plaintiff, defendant, Judge and Judges clerk as well). 2. Once there is a final order, in case statutes change, an appeal etc., instead of storing the data, a PDF would be created and stored on the calculator as it was on the day of the Judge's ruling so that hard copy would remain.

Wendy thanked Pat and Elaine for two surveys sent out, one to 1,500 attorneys and one to all of the Judges that have worked with the worksheet. From this survey feedback has come in for a concern of privacy. Wendy stated it is important to balance the accessibility to a report and to not give access to one party another party's worksheet draft.

3. Guidelines Committee

Chuck Clay reported that Dr. Tutterow was presenting elsewhere at the time of the meeting and was unavailable. Dr. Tutterow will present on this matter at a later time. Judge Abbot assured the Commission that she had no doubt Dr. Tutterow will take care of the matter and that time remains to do so since the report is due in June 2014.

B. Other Old Business

Judge Key brought up an issue of uniform rules. It was his opinion the number used for converting weekly income into monthly income should be 4.33 rather than 4.35 and he hoped the Superior Court judges could look into the issue and correct the math. Judge Abbot replied that she will talk back with Judge Frank Mills about the issue but it will not be easy for her to carry.

Judge Key opened the floor for other old business issues but none were brought forth.

IV. New Business

A. DCSS Presentation: "Right Size Orders" – Garry Gentile & Brian Bilbrey

Pat introduced Garry Gentile and Brian Bilbrey and that the presentation is from the Division of Child Support Services.

The presentation highlighted the differences between middle class families and generational poverty families. Most cases dealt with by the Division of Child Support Services arise from generational poverty families creating the majority of child support arrears in Georgia. Garry defined “Right Size Orders” as the actual amount a noncustodial parent is able to pay in support. However, if the amount is imputed from minimum wage, it often creates an infeasible budget for persons in generational poverty families. Three states ranked above Georgia in current support collection performance were taken into consideration. North Carolina, Virginia and Wisconsin’s worksheets gave a lesser child support obligation for poor people every single time. If steps are taken to achieve similar results, Georgia can create more realistic and achievable budgets for noncustodial parents and increase federal funding through performance incentives.

Judge Abbot inquired about any solutions to noncustodial parents entering into consent orders that are infeasible to only end up in contempt a few months down the road. Tangler Gray Johnson for the Division of Child Support Services (DCSS) replied that DCSS is doing everything they could to prevent this but they were limited by the statutes which disallows them from any legal recommendations to the noncustodial parents who are obviously unable to pay the support obligation provided by the worksheet. Judge Abbot proposed the possibility of adding language to notify all parties of all their options and possibly allowing the Department of Child Support Services to intervene. Tangler replied that fear is the main factor that keeps noncustodial parents from going before the Judge to consider a low income deviation.

Judge Key stated the Statute Review Committee can take a look the issue of a statutory provision to give notice of the right that a low income deviation would be appropriate. According to Judge Key, the Statute Review Committee can also take a look at the 40 hour work week issue as well as the multiple families for noncustodial parents issue but it may be too big to tackle this session.

Judge Abbot reinforced the need to continue the training as well because the court is entitled to consider all sources of income for a custodial parent when doing income deviation but it seemed that proof of income is hardly ever brought.

The meeting was opened for questions by Judge Key but none were raised. He added that if the low income deviation legislation passes it will become a very important educational issue for Superior Court and State Court Judges or anyone setting child support. Pat stated that she would love to be invited to the Judges’ Conference to do so.

B. Other new business

No one raised any other new business.

V. Close of Meeting and Scheduling Next Meeting

Pat stated the next meetings have been scheduled. The Commission meeting has been scheduled for November 22, 2013 at 11:00 a.m. and the next Statute Review Committee has been scheduled for October 18, 2013 at 11:00 a.m.

The meeting adjourned at 1:10 p.m.