

Georgia Commission on Child Support
Statute Review Committee Meeting
Friday, September 21, 2018

Meeting Minutes

Statute Review Committee Members:

Judge Shawn LaGrua, Chair
Ms. Katie Connell, Co-Chair
Judge Amanda Baxter
Rep. Beth Beskin
Mr. Byron Cuthbert
Judge Lisa Jones
Judge Todd Markle

Staff:

Pat Buonodono
Elaine Johnson
Bruce Shaw

Invitees:

Jill Travis, Legislative Council

Guests:

Judge Michael Key, Chair, Commission
Jessica Farah, JC/AOC
Jung Wook Lee
Tanguler Gray, DHS/DCSS
Byron Cuthbert, DHS/DCSS
Ryan Bradley, DHS/DCSS
Erica Thornton, DHS/DCSS
Ashley Seals, DHS/DCSS
Tamia Anthony, DHS/DCSS
Stephen Harris, DHS
Jason Naunas, OAG
Mark Rogers (Telephone)
Wayne Slear
David D. James

The meeting was called to order at 9:30 a.m. by Judge Shawn LaGrua, Chair. Members and attendees were asked to sign in or identify themselves, if attending by telephone. Guests were asked to indicate if they wanted to speak before the Commission at the end of the meeting.

The Minutes from the May 24, 2018 meeting were reviewed and, with no changes identified or requested, were approved by the committee.

Old Business:

- A. Pat Buonodono asked Byron Cuthbert, of the Division of Child Support Services (DCSS), to report information on Adoption Assistance. Mr. Cuthbert stated that the Department of Human Services (DHS) has a rule concerning Adoption Assistance. Also, there are three states that have case law on this subject: Alabama, Florida and Arizona. In all three states, the rulings determined that Adoption Assistance payments should not be included as income for calculating child support based on the rationale that the money follows and is paid as a benefit for the child. Judge LaGrua asked for further discussion. Jill Travis stated that if the committee wants to include a provision on Adoption Assistance it would be identified as an exclusion from gross income in the statute. This is found at Line 394 in LC 29 8143. Mr. Cuthbert added that the funding comes from Titles IV-E and IV-B, under the federal Social Security Act, and state funds. Judge Amanda Baxter recommended that the

language recognize where the check goes – it follows the child. Discussion continued on the language that should be added to the statute. Pat stated the committee should include language that says the funding also comes from state funds designated for Adoption Assistance. The idea is to recommend excluding all of these funds as income. Judge LaGrua asked that proposed language be prepared for the committee to consider. The discussion concluded that a recommendation be made today to the Full Commission that the committee wants to draft language to exclude Adoption Assistance benefits as gross income. A vote was taken and approved for language to be recommended at the November Statute Review meeting.

- B. Pat continued to the next item on the agenda, educational grants and scholarships of the parents, even when provided by an employer, as an exclusion to gross income. Pat reported that this subject has come up from public contacts with Commission staff. Katie Connell also reported having encountered this issue and referenced the Nobles case that provided a fairly definitive ruling. Pat stated that the case addressed the question as a benefit from the employer but did not address it as a scholarship or grant. Jill Travis suggested the committee look at line 339, Fringe benefits, and also at exclusions to gross income, line 395. She pointed out this would be a policy question on where to put the language. Katie continued discussion on the Nobles case. She asked if the committee needed to address this in the statute or rely upon case law. She suggested the case addressed the matter appropriately using the framework of the statute. Judge LaGrua pointed out that a jury or pro se litigants will have to address this issue and may not know about the case law. She requested a decision by the committee. It was suggested that they keep this item on the radar, but not to present language to amend the statute at this time. A motion was made by Judge Baxter with a second by Katie Connell. A vote was taken and the committee agreed not to present language to amend the statute on this subject. The motion was not opposed.
- C. Pat continued to the topic of alimony and asked Katie Connell to report to the committee. Katie explained that she presented the topic of alimony and changes in the federal tax code to the Family Law Section of the State Bar. She said there was no real interest in discussing the subject since the use of alimony is very limited. She does not believe the tax code change on alimony will adversely impact the setting of child support. Pat asked if this is a non-issue, and Katie agreed. Judge LaGrua asked for other comments and there were none. This concluded the discussion with no further action taken by the committee.
- D. Pat continued with a report on the judge email survey on judicial use of the Child Support Addendum. She reported that the form is not required by law or in a Uniform Superior Court Rule, except in domestic violence cases. She concluded that judges who use the form are content with the form and don't want it taken away. This concluded the discussion with no further action taken by the committee.

New Business:

- A. Pat explained that we did need to discuss alimony as it appears in the statute because of the jury charge issue. It needs to distinguish between alimony between parties, and alimony paid or received from a previous marriage. Pat stated that alimony is included as income when the money is coming from a previous marriage, but that the statute does not state that alimony pertains to a previous marriage as a deviation. Jill Travis directed the committee to the LC at lines 316 and 317. Pat stated that in (i)(2)(g) it does not specify from where the alimony is received when included as a deviation. Katie stated that it is her interpretation that alimony as a deviation is paid between parties involved in the litigation, and treated as income when received from someone other than a party in the litigation. Katie further stated that if the noncustodial parent in a case is paying alimony in addition to child support that the court can possibly make a deviation because there is additional money being exchanged between the parents. An additional problem is that alimony is usually an amount that is going to end before the child support. Pat suggested we clarify that in the statute for the purpose of writing jury instructions. Judge LaGrua said we need to make sure the Pattern Jury Committee, Judge Leonard, knows how this will be addressed, and that she could make that contact. Jill Travis reminded the committee that language in the LC is to strike (i)(2)(g) from the statute and that is an option for the committee to consider. Pat stated that with the tax benefit of alimony gone from the tax code that we will likely see less alimony included. Katie made a motion to strike (i)(2)(g) from O.C.G.A. 19-6-15 and Judge Rambo made a second. Judge LaGrua asked for a vote of the committee and the motion carried with no opposition.
- B. Pat explained that the Commission staff receive questions on ordinary and reasonable expenses of self-employment or business operations necessary to produce income and what is not included as income. Pat provided examples in the statute at O.C.G.A. 19-6-15(f)(1)(B)(i). The issue is that the word “excessive” is not defined and we do not know if it applies to everything in the list. Jill Travis explained that excessive is the modifier for the entire list and does apply to all expenses in the list in the section. Judge Markle said that excessive would also be at the discretion of the court. After discussion, Judge LaGrua asked if the committee needed to do anything with this section, and the committee agreed that the item is a non-issue. This concluded the discussion with no further action taken by the committee.
- C. Pat reviewed section O.C.G.A. 19-6-15(f)(4)(A) dealing with imputed income and explained that when the change to imputed income was made in the 2018 bill, we failed to make the change in O.C.G.A. 19-6-15(f)(4)(D)(vi)(IV). Jill Travis directed the committee to lines 506 and 507 in the LC, stating that striking this language would make the two sections consistent. Judge LaGrua asked if there was a motion to make the language consistent. Katie asked if this was something we were supposed to do to bring us into compliance with the federal final rule, and the answer was yes. There was a motion and a second, and the motion passed without opposition.

- D. Judge LaGrua asked Jill Travis to explain the changes made in the LC regarding the addition of “or jury” and “or the jury” in several locations in the bill, as well as a few grammatical corrections. Jill directed the committee to Line 425, and explained that you can see how it is the court or the jury, but that in other locations we are missing the language. Jill stated that she searched the entire statute to determine if and where “or jury” and “or the jury” needed to be added. She pointed out various locations in the LC to the committee. Judge LaGrua asked if there was a motion to add the jury language in the statute as recommended. There was a motion, a second, and no opposition.
- E. Pat stated that there was one person signed up to speak to the committee, and that Mr. Mark Rogers was on the phone and had submitted a memo to the Commission. Pat explained that she had referred the memo to the Statute Review Committee. Mr. Rogers was given two minutes for comments. Mr. Rogers said he provided significant detail in his memo. He said some items related to consistency and parenting time issues. He urged the committee to review his memo and see what stands out as a priority.

Judge LaGrua asked if Mr. David James wanted to speak to the committee. Mr. James introduced himself as legislative liaison from the National Parents’ Organization. He said he wanted to tell the committee about legislative issues being worked on by his organization including parenting time. He discussed circumstances of his own case. He stated that there is not equal application of the law for parents going into divorce court and that there is no incentive for parents to have equal time with the children. He asked that the committee, and especially legislators, pay attention to legislation concerning parenting time. Judge LaGrua asked if there was anyone else scheduled to speak, and Pat responded no.

Jill Travis asked if she could bring to the attention of the committee prior discussions on Income Deduction Orders and asked if this was to be discussed today or for the full Commission to discuss. She pointed out language in section 2, page 27 of the LC. Pat explained that she had proposed language regarding employers and the need for them to at least stop deductions of current support in income deduction orders when children have emancipated. She stated that when she went back over the minutes from the May 24, 2018 meeting it was not an issue the committee wanted to continue to discuss and she took the item off this agenda. Judge Key stated that from a Commission standpoint, he suggested the issue go to the Commission and if they want to act on they can send it back to the Statute Review Committee. Judge Markle asked about the duration of support language up to age 18 or until completion of secondary school, up to age 20. He wanted to know if the language should say the parties have agreed. Jill Travis pointed out that line 354 in the LC addresses his concern. There was additional discussion on how to make the employer comfortable with stopping the current support. Elaine reported on work she is doing with the Division of Child Support Services on educating employer payroll departments on stopping the income deduction order.

The committee completed discussions and business. The meeting was adjourned at 10:10 a.m.