Georgia Commission on Child Support
Statute Review Committee
Minutes of Meeting: July 25, 2014

Present in person:

Judge Michael Key
Katie Connell, family law attorney
Stephen Harris, DCSS general counsel
Judge Lisa Rambo
Judge Amanda Baxter, OSAH
Ryan Bradley, DCSS policy specialist
Erica Thornton, DCSS, policy and paternity unit
Judge Kristen Miller
Megan Miller, Atlanta Legal Aid
Michelle Jordan, Atlanta Legal Aid
Representative Regina M. Quick
Leigh Cummings, family law attorney
Patricia Buonodono, staff attorney
Elaine Johnson, staff
Bruce Shaw, staff

Present via teleconference:

Judge Louisa Abbot
Representative Timothy Barr

The meeting began at 2:03 p.m.

I. Welcome and Introductions

II. Review of Minutes – 6/17/2014

Judge Rambo moved to approve the minutes from the June 17, 2014 meeting. Katie Connell seconded the motion; the motion carried unanimously.

III. Old Business

A. Report from Administrative Legitimation Subcommittee

The Administrative Legitimation Subcommittee met prior to this meeting and is currently in the process of revising draft legislation making changes to the administrative legitimation statutes.

B. Items for discussion from the last meeting:

1. First Child Benefit

Pat Buonodono stated that a problem with the first child benefit is that NCPs are not allowed to receive credit for paid child support on an order unless it's preexisting. To address the issue, credit would have to be given on the worksheets for any other child support order being paid. Pat stated it would be best to have public meeting around the state to before taking any action regarding this issue. Judge Abbot stated that she would prefer not to address the issue because of the sizable opposition that was made towards this issue previously; she also does not want to ask the legislature to again change a section that was just changed in the last session.

Judge Key opened the floor for discussion on the topic. Katie Connell stated that there was a lot of case law in Georgia that effectively says a parent who has subsequent children does so at their own financial peril and not the existing child's. She also stated there would be a worry about opening the court system to a flood of modifications for newly allowed adjustments based on other support orders.

Judge Abbot stated that when the initial income shares child support bill was passed, the thought process behind preexisting orders was, from a policy standpoint, to not encourage people to think they could have subsequent children and decrease their obligation to existing children. Judge Baxter pointed out that often in her courtroom a younger child has the first child support order and the older child would be effectively penalized by a policy intended to penalize and discourage a parent from having more children. Judge Abbot stated that in case by case basis, the law is generous enough to allow judges to get to an amount that is just and to pursue the issue again would not be advisable. Judge Key opened the floor to hear from anyone who felt strongly enough to pursue the issue further. After no response, Judge Key resolved that the Committee would not move further on this issue.

2. Defining reasonable cost of health insurance

Pat Buonodono started by referencing the Code of Federal Regulations CFR § 303.31(a)(3) which reads:

> *(3) Cash medical support or the cost of private health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law, regulations or court rule having the force of law or State child support guidelines adopted in accordance with § 302.56(c) of this chapter. In applying the five percent or alternative State standard for the cost of private health insurance, the cost is the cost of adding the child(ren) to the existing coverage or the difference between self-only and family coverage.*

Currently Georgia does not have a numeric standard defined in its statute. Pat Buonodono is bringing this issue forward to propose Georgia define this standard to comply with federal law. The draft legislation being reviewed by the Committee under O.C.G.A. § 19-6-15(c)(2)(D) reads:

> *(D) Determine whether health insurance for the child involved is available at a reasonable cost to either parent. If the health insurance is available at a reasonable cost to the parent, <u>which is less than five percent of the parent's gross income</u>, then the court shall order that the child be covered under such health insurance….*

Judge Key inquired whether, if the cost was 5.2% of gross income, the courts would not have the authority to order it. His concern is that given the totality of the circumstances the courts would be better equipped to decide what is reasonable rather than a statutory line drawn in the sand. Judge Key then

suggested making the reasonable cost of health insurance a rebuttable presumption. The Committee agreed to this suggestion. Stephen Harris pointed out that this regulation didn't necessarily require states to do this but actually required child support enforcement programs to do this. With this revelation the Committee agreed to not pursue this matter given the limitations it could impose on the courts.

3. Including termination date in child support order (to keep employers from requiring NCPs to get a court order to stop withholding)

The draft of statutory changes reads:

> *GA. Code 19-6-32 Entering order for income deduction; delinquency notice requirement; modification of order (Georgia Code (2013 Edition))*
>
> *(d) The income deduction order shall set forth a date of termination of the order of support, and shall be effective ~~so long~~ until said date of termination or ~~as the order of support upon which it is based is effective or~~ until further order of the court.*

Judge Key stated the most common child support scenario the end date for support can be anticipated. This provision would require that date to be included in the order and in the event the obligation did not end a modification would then need to be filed. The meeting was opened for discussion.

Pat Buonodono stated that she felt more specific language was needed in the event of support obligation not ending and modification becoming necessary.

Katie Connell posed the question of how a graduation date would be decided for a child who will turn 18 before graduating and graduation date is still many years off. Pat Buonodono indicated that DCSS included a date on their orders to which Stephen Harris explained that DCSS has an automated process in place that begins when the estimated date approaches. This process would be unavailable to private individuals. Judge Key replied that the parties could agree upon a date in the IDO and if not a judge could then determine the date through a process that would better be prescribed by Uniform Superior Court Rules.

Megan Miller expressed her concern for individuals who are without legal resources to go back to court to have an order extended. She stated that in lower income cases an IDO continues past the time when ordered to stop often serves to recoup arrears owed, thereby becoming beneficial. She would prefer to see a separate mechanism created to allow noncustodial parents a better process for stopping IDO's instead.

Katie Connell agreed that it is a problem that she sees in her practice but she inquired if there was any estimate for the number of people affected. She stated if the possibility of a burden being shifted to custodial parents exists, she would like an adequate measure of the issue at hand.

Elaine Johnson stated that she recently attended an Eastern Regional Interstate Child Support Conference's employer symposium, and a common response from employers was that they did not know when support payments should end. When directed to the language in an IDO, many employers responded that they were uncomfortable stopping the withholding because there are arrears so often. Judge Baxter stated she deals with this problem as well and that it should be pursued because there is a current imbalance in the system where a custodial parent is provided an avenue to collect arrears but a noncustodial parent has no method of getting money back that has been taken after a support payments were supposed to end.

Judge Key stated that the draft currently in discussion can be sent to the Commission as a recommendation for consideration. Judge Key asked Jill Travis to adjust the language to "Where appropriate the income deduction order shall state a date of termination…" or something to similar effect. Pat Buonodono stated Jill Travis was currently authorized by Representative Barr to work with the Administrative Legitimation Subcommittee but not yet this Committee. Representative Barr then authorized Jill Travis to work with the Statute Review Committee.

Katie Connell asked as a point of discussion to address Judge Baxter's concern as to why there was no statutory obligation for a custodial parent to repay support payments to which they are not legally entitled when requested to do so. This might factor into more consent orders being entered to stop IDO payments, helping to alleviate the problem with terminating IDOs. Judge Tilley stated that filing an unjust enrichment suit could be considered an avenue to recoup funds for an NCP to which Katie Connell replied that only people of considerable means are able to pay for this type of litigation.

Jill Travis asked for clarification on whether this should be drafted for IDO only situations or any overpayment situation. Judge Key asked her to draft it both ways.

Stephen Harris added that if something were added about a cause of action in the draft he would like to make sure that it was towards the custodial parent who kept the money and not DCSS.

4. Anticipated changes affecting the amount of support (child care, youth aging out)

This issue is addressed in two parts of the draft. Changes in child care expenses are addressed in what would add a subsection (G) to O.C.G.A. § 19-6-15(h)(1) that reads:

> *(G) If a substantial change in the amount of work related child care costs is anticipated within two years of filing the child support worksheet, e.g. a child will move from full-time daycare to an after-school or other less expensive program, then a second worksheet may be prepared showing the calculations with the anticipated adjustment in work related child care cost. If agreed by the parties or accepted by the Court as being in the best interest of the child, the child support order shall specify that child support shall be automatically modified based upon the worksheet showing the change in work related child care costs, upon the occurrence of the anticipated change in work related child care costs.*

Judge Key stated that there was some discussion in previous meetings about an alternate solution of taking child care off the worksheet altogether. This brought up concerns about custodial parents being able to afford child care up front as well as being able to recoup the noncustodial parent's portion of the cost. Judge Key offered two a two way solution to solve the problem: when an event is expected to significantly change expenses in the future use two worksheets to identify the difference and the other to give the judge discretion to take the child care expense off the worksheet altogether.

The issue of children aging out is addressed in an addition to O.C.G.A. § 19-6-15(b) and reads:

> *(12) In cases in which child support is calculated for more than one child, a separate worksheet shall be prepared showing the amount of child support due as the support obligation for each child ends, until there remains only one child in the home, and there shall be a final child support order that will take effect as each child support obligation ends for the remaining children of the parties. Nothing contained in this paragraph shall preclude the parties from exercising their right to seek a modification of child support as set forth in subsection (k) of this Code section.*

Judge Key requested that Jill Travis put this in legislative form for the Committee to discuss and inquired if alimony should be included. Katie Connell responded that alimony impacts child support rarely due to it being factored in with the current guidelines and the issue is likely not worth pursuing.

IV. New Business

A. New statutory issues for discussion:

1. Extraordinary expense problem

Pat Buonodono gave an example of a noncustodial parent who paid $24,000 a year in private school tuition but was not allowed to claim an extraordinary expense deviation because the custodial parent had no income. This deviation is to be prorated to between parents per their income but in this type of situation, one parent bears the entire burden. Pat Buonodono asked if the Committee wanted to change the statute to allow for an upward or downward deviation rather than have it shared as a pro rata expense. The advice coming from the Committee was a consensus of this being a judicial education issue rather than a legislative issue.

2. Allow parenting time deviation to be + or –

Pat Buonodono stated parenting time is currently only a downward deviation but it has been suggested to her by Superior Court judges that it be an upward deviation as well to be used for noncustodial parents who elect to spend no time with their children. There is a 22% parenting time consideration built into the obligation table for the noncustodial parent. This item was referred to the Commission for discussion without a recommendation from the Committee.

3. If minimum wage imputed, should low income deviation still be used?

Pat Buonodono stated that imputed income and the low income deviation are often used together but the purposes behind these two issues are in conflict. After the discussion the Committee decided not to pursue the item because the judge has the discretion to balance the two and reach a right sized order.

B. Other New Business

Pat Buonodono raised an issue involving the destruction of hardcopy orders after they have been e-filed. Currently 103 counties are e-filing orders for DCSS, in some of the counties there is a dispute as to what happens with the hard copies once the case is e-filed. Some clerks are refusing to house the physical documents and the burden is falling onto the DCSS office. Pat Buonodono proposed adding a provision to allow for the destruction of original documents once the cases have been e-filed in O.C.G.A. § 19-11-1 which deals exclusively with cases that are promulgated by DCSS. Due to the imposed cost on the clerks for destruction of documents, the Committee opted not to pursue a solution legislatively.

V. Schedule Next Meeting

The next meeting is scheduled for 12:30 on August 19th, 2014.

The meeting adjourned at 3:50 p.m.