

Georgia Commission on Child Support
Statute Review Subcommittee
September 13, 2013
Minutes

The meeting was called to order at 10:05 a.m.

Present in person:

Judge Michael Key, Chair
Katie Connell
Stephen Harris (DCSS, replacing Julia Fisher)
Pat Buonodono, Staff Attorney
Judge A. Quillian Baldwin, Jr.
Jill Travis, Legislative Counsel (Guest)
Anne Kirkhope, CJCJ (Guest)

Present via telephone:

Judge Elizabeth Branch
Senator Emanuel Jones
Elaine Johnson, Staff

- I. Welcome and Introductions
- II. Review of Minutes of 8/16/2013 Meeting

Pat requested that we table this until our next meeting, as the minutes were circulated only yesterday. The Committee agreed.

- III. Review of Proposed Statutory Revisions – Judge Key suggested we look at all of the proposed revisions and then vote on them at the end. Pat discussed each proposed revision in turn.

- A. Technical

- 1. To correct inconsistency between 45 C.F.R. 302.56(e) and O.C.G.A. 19-6-53(a)(4); proposed revision makes Georgia law consistent with Federal law regarding frequency of review of the child support guidelines.

No discussion.

- 2. To revise certain subsections in OCGA 19-6-15 (a) and (b) to clarify that child support is a monthly obligation.

Jill Travis believes this might take some work and wants to do a search to see how many other places “child support obligation” is used in the Code.

3. To revise the definition of “Preexisting order” in OCGA 19-6-15(a)(18) to clarify that any child support order filed before a modification order is preexisting.

Jill Travis suggested some clarifications in language so Pat will amend this proposal.

4. To revise OCGA 19-11-30.2 and 19-11-32 to correct a citation to a code section.

No discussion.

B. Substantive

1. To revise OCGA 19-6-15(i) to allow the judge to apply a low income deviation.

Pat discussed that the Division of Child Support Services (DCSS) wants this Code Section to say “either part or the judge may request....” She expressed a concern that if DCSS attorneys are asking for a deviation on behalf of the noncustodial parent (NCP), that might represent a conflict of interest.

Stephen Harris is Associate General Counsel for DCSS. He suggests that by giving DCSS SAAGs and ADAs the authority to make this request, we will get more realistic orders that would have a better chance of being paid.

Jill Travis made some suggestions about language.

Katie Connell suggested taking out language altogether about someone requesting the deviation. She believes this would eliminate the potential conflict of interest. Judge Key asked if it is more than just considering the included and attributable sources of income, etc. Is it that in addition to applying the low income deviation? You can consider all of that and still not deviate. Katie went on to say our concern with this portion of the statute is that the onus to make the request for the low income deviation is on the non-represented, non-custodial, low income parent, and we are trying to let other people bring up the deviation. Pat pointed out that these are often default orders. The NCP doesn’t show up for the hearing or respond to the petition, so the judge is looking at a proposed order and does not as the statute now reads have the authority to apply this deviation or make the order a more reasonable amount.

Stephen Harris said IF the NCP requests it, DCSS rarely if ever opposes it. The statute not only makes them request it, the NCP must also demonstrate their earning capacity and justify the low income deviation. In default cases, DCSS gets wage information from the Department of Labor and other sources, so they can usually identify what the income of the NCP is. If they can’t find any income, they impute minimum wage.

Judge Key suggests (1) we need to start the language with “the court or the jury shall examine...” as set forth in division (ii). But then in division (iv) we could say the court or jury, either upon request of either party or by the court sua sponte, may consider a downward deviation. Also have to say the judge may charge the jury on the low income deviation. That would do away with the new subsection altogether. Anne asked if we needed to make the same change to division (i) and Judge Key agrees that we do.

Katie is less concerned about the NCP having to demonstrate earning capacity and justify the low income deviation, because parents in every child support case have to provide evidence of their income under the shared income model.

Judge Key asked Jill, from a legislative standpoint, her opinion about this proposal. She understands what we want to do in division (ii); she does not understand what changes you are suggesting to make in division (i). If we are eliminating the NCP’s obligation to request the low income deviation, that whole division probably needs to be reworked.

Pat suggested the following language: “Either party may request, or the judge or jury may consider without request from a party, whether the pro rata share of the presumptive amount of child support would create an extreme economic hardship for the noncustodial parent.” She stressed that we need to leave the requirement of “extreme economic hardship” intact.

Judge Key believes we understand what we hope to accomplish, and asked Pat to redraft it and let Jill look at it before we vote on it.

Jill needs a legislator to give her permission to be doing this drafting with us. We need to figure out who we want to sponsor it, and then the sponsor usually contacts Jill and asks her to do it. Judge Key noted that the legislators present last time we met thought that would be their responsibility as long as it was something they could support. We will put this draft aside for now, but hope to have it ready in time to present it to the Commission in two weeks.

- B.2. To revise OCGA 19-6-15 to allow the judge to continue child support up to age 20 for children in IEP or federal Job Corps programs.

Pat explained that the judge has discretion to order that child support be paid up to age 20 if a child is still in high school past the age of 18. If the child is in any program under an IEP or federal Job Corps, we would like to continue child support up to age 20 for them as well.

Jill suggested some revisions and clarifications. Pat will redraft and recirculate to the Committee.

No other comments were offered.

III.A. Follow Up Issues from the last meeting

1. Pat included the Eubanks v. Rabon case mentioned by Judge Abbot at the last meeting. This case addresses the issue of building changes in the amount of support as children emancipate into the court order. Pat still needs to get the supplemental order that Deborah Johnson crafted so would like to get that so we can discuss this further at the next meeting.

No objection.

2. On the issue of variable income, Pat looked at a few states. Most states average variable income; some limit it to the past three years. She will continue to review other states and report back to the Committee.

Katie Connell asked if we are talking about defining it as opposed to where it is now, which is a reasonable average, and putting specifics on it. From the Huguenot case we passed out last time there was a question on how to average variable income. We had some discussion last meeting and Judge Key wanted to know what other states were doing. Katie just wants to be careful not to remove discretion from the trial court. There are plenty of divorce cases that last for years, and people monkey with their incomes.

Pat will continue to look at other states and report back. Generally, Judge Key is not interested in limiting judicial discretion on any of these issues. Federal and state law require us to have a model that results in consistent outcomes. But some of these cases are so unique they need to be individualized decisions within those parameters.

3. On work-related child care, there was a question last meeting about whether it is federally mandated to include it in the child support calculation. Pat reported that it is not. Staff is looking at what other states are doing with respect to work-related child care and will report back.

Judge Key stated that this may be an issue that is so substantive that it would be a 2015 legislative issue but certainly we need to get a head start on it and see what other states are doing.

Pat asked if Judge Key wanted to form a task group to study the issue. Judge Key responded that Katie has agreed to sound out the family law bar around this issue, and we need to hear from DCSS on it. Katie and Stephen will work together on this.

IV. New Issues

- A. Continuing child support for disabled children beyond the age of majority. Several states allow this. Pat cited a Texas statute that says the child support obligation may be continued indefinitely if the child is disabled, if the child requires substantial care and supervision because of a mental or physical disability and is not capable of self-support; and the disability exists on or before the child's 18th birthday. Staff is pulling information together on what other states are doing on this. Pat would like the Committee to consider this issue, maybe for 2015 or beyond.

Jill thinks she has drafted this before and so she will check to see what legislation has been proposed on it in the past.

- B. Veterans Administration disability is not included in the list of what constitutes income in OCGA 19-6-15(f)(1)(a). Pat would like to draft a revision to add it to the list.
- C. Judge Key raised an issue that came up in one of his cases, about the first child impact. The first child in the home costs a certain amount of money and we have economy of scale after that. So next child does not really cost as much. The situation he wants to address is where we have a mother with two children for whom she is receiving child support from two different fathers outside the home. Child support is calculated in each case as a first child benefit or impact.

For example, child 1 is by legitimation and child support was calculated based on the one child. Then mother has a child by another father, and again in that calculation she receives the first child benefit. In the situation he is describing, in both cases, mom was making \$3416.68 a month as her income [including what she receives for child support]. With the first child, dad was making \$2500.00 per month. So that dad's basic child support obligation was about \$400. For the second child, the father was making \$3000 per month, so he had a basic child support obligation of \$441. In the final analysis, if both these children were by the same father living in that household, mom is still supporting the same two children, feeding the same two children, then the basic child support obligation for both children would be \$1416, and mom in the example I have is receiving \$1122 in child support. So out of the \$1416 basic child support obligation for those two children, mom was only contributing \$213. This is a disproportionate share because she is receiving first child benefits for two children.

The first dad in this case had a child by another person, for whom he was paying support. So he was paying first child support for both children, and this particular mom was receiving first child support from two different dads. There are a lot of inequities in that.

Judge Key doesn't have a solution for this, but thought it was something we could talk about this year or perhaps next year.

Pat said we will see some of this in the presentation about Right Size Orders that will be made at the Commission meeting on September 27, 2013. She suggested that he discuss it more in depth at the Commission meeting.

Judge Key agreed and asked any of the judges on the Committee to share any similar experiences they have had with this situation.

V. Next Steps

Pat stated the next thing we need to decide what we are going to be reporting out to the Commission when we meet in two weeks.

Per Judge Key, we will present the proposed legislation that we've discussed today, including those that will have some changes to them.

1. Those that Katie and Stephen will be talking about and they can perhaps report out on where they are;
2. A list of those things that we've identified that we think most likely will not be addressed during the 2014 session, but subsequent to that.

Committee concurs.

There were a few drafts to which no changes were made. Judge Key asked Pat to recap:

1. Changing review time for guidelines from two years to four years.
2. Changes to incorporate the word "monthly" into the definitions and how to calculate support sections – Jill is going to take a look at that and get back with me. Judge Key thinks this one may be okay as it is, we just need to do a broader search to see if it needs to be addressed somewhere else. Include in vote today.
3. 19-6-15(a)(18) relating to the definition of pre-existing child support, Pat can correct to change "subparagraph" to "subsection" and add the words "child support" as discussed. Include in vote today with those changes.
4. 19-11-30.2 and 19-11-32, which corrects citation to code section defining "financial institution." We need to remove the proposed change to the title, we can't fix that through legislation. Include in vote without the typo in the title.

Jill Travis again raised the issue that if we make the proposed changes to the definition of child support to add "monthly," we have to change it everywhere it appears. This is not necessarily the case. She will meet with Pat to discuss. Judge Key says we need to

review the entire code to make a case by case determination on when we need to use the term “monthly” and when we don’t.

5. Pat will revise the code section on the low income deviation and send it back out for comments by the Committee.

Katie Connell moved that the Committee approve revisions listed in 1-4 above and recommend them before the Commission. Seconded by Lisa Rambo. Approved by Committee.

Unanimous vote.

Judge Key confirmed that the information Pat went over in her report contained all the action items from the previous meeting. Pat confirmed.

Judge Baldwin asked that, when scheduling meetings, we might check for other meetings that affect the availability of certain groups, such as judges.

Discussing next meeting, Judge Key noted that the legislators told us that we need to have our work done before November, so that’s going to involve the work of this Committee and probably one more Commission meeting. He suggested Pat speak with Judge Abbot and see when she anticipates calling the next full Commission meeting, and scheduling it on a Friday before that.

Meeting adjourned at 11:00 a.m.