Georgia Child Support Guidelines Commission Meeting

STATUTE REVIEW SUBCOMMITTEE MEETING MINUTES

Tuesday, December 13, 2005

Albany State University

Sub-Committee Chair, Judge Louisa Abbot

I. Welcome and Introductions

The meeting was called to order by Chair, Judge Louisa Abbot at @ 2:00 p.m. The Subcommittee members introduced themselves, and those in attendance were as follows: Judge Louisa Abbot; Judge Debra Bernes; Judge Quillian Baldwin (via telephone); Representative Earl Ehrhart; Senator Seth Harp; Annetta Panatera and Joy Hawkins (via telephone). Staff and special invited guests were also introduced. Jill Travis from Legislative Counsel participated in the meeting via telephone.

Meeting Minutes from the Thursday, November 10, 2005 meeting were distributed, and they had also been e-mailed prior to this meeting. Judge Abbot asked if there were any corrections or revisions to the Minutes. Hearing none, she called for a vote of the Minutes. The Minutes stand approved.

II. Remaining Issues

A. THEORETICAL CHILD SUPPORT ORDER LANGUAGE

Judge Abbot pointed out that a memorandum on this issue had been distributed at the last meeting, and the suggestive language has now been inserted Legislative Bill #2029. Judge Abbot stated that the proposal is to remove the language in the gross income subsection requiring consideration of stepparent's income when adjusting one's income due to qualified other children in the home. In addition, under this same paragraph regarding "Theoretical Support" for Other Qualified Children, there has been a proposed change regarding the actual calculation. Instead of calculating 100% of one's Basic Child Support Obligation if the parent has remained a single parent or 50% if now with a new partner, a straight 75% will be calculated regardless if the parent has remarried or a new partner is in the household. The 75% is more consistent with what has been done in other states and is seen as an equalizing number. Judge Abbot commented that the prior memo did a good job of providing a state by state analysis and explaining that 100% of the Basic Support Obligation would provide too large of an adjustment and 50% would possibly provide an adjustment too low. Jill Radwin stated that the goal was also to simplify the language here on how to calculate the Theoretical Support Orders. Judge

Bernes asked what if someone had remarried and there was extraordinary income on the other side. Judge Abbot answered that the court is to determine whether the failure to consider Other Qualified Children would cause a substantial hardship to the parent with the qualified child. Thus, if the parent has remarried and the child is very comfortable, it should not cause a substantial hardship and gross income need not be adjusted by this factor. Judge Abbot, also in response to Judge Key's recent e-mail seeking that this be a mandatory adjustment, said she would prefer to leave it in the court's discretion and do it as an adjustment to income rather than leaving it as a deviation which could produce some inconsistent results. Judge Abbot said this revised revision is now more similar to what is seen in other states.

Judge Abbot sought a motion to adopt the revisions to the Theoretical Child Support Order provisions. It was seconded and the members approved, including votes by Judge Baldwin and Joy Hawkins who voted via phone.

B. JURY DETERMINATION OF GROSS INCOME AND DEVIATIONS

Judge Abbot announced that the next issue on the agenda is consideration of adding language allowing juries to determine both gross income and deviations. The proposed language has also been included in Bill #2029. Judge Abbot explained that the Legislature had concluded that the jury's role would be limited solely to determining gross income. However, the jury would determine gross income and then the court would have to take those gross incomes and insert into the worksheet and determine the Basic Child Support Obligation and then adjust the Basic Child Support Obligation. The court will also have to determine the deviations, if any. One of the potential deviations, though, is payment of alimony. So, the judge would provide that amount not knowing if the jury would later determine that there should be alimony. The jury may have awarded a different amount of alimony. Therefore, it became a bit of a *catch 22*.

The new language here would allow the jury to return a verdict of gross income, and then the court would determine the Basic Support Obligation and all of the adjustments. The jury would then determine whether there were any applicable deviations and make those findings through a special interrogatory. The jury would have make the findings regarding "best interest," determine which deviations apply and arrive at the amount. The court would take those figures and finish calculating the support and prorate the uninsured medical expenses. Judge Baldwin raised concerns that the juries would not understand the issue of deviations. He said that it needs to be kept "simple" for the jury. Judge Abbot said the right to jury trials is preciously guarded here in Georgia. She said she did not have a strong sense that the Legislature wanted to do away with jury trials for divorces and related domestic relations issues. She said she has talked to a number of attorneys who wanted to retain the right to request a jury and was concerned about the limitations to jury trials here.

Judge Abbot said it was also suggested by the Office of Child Support Enforcement to add language to Line 34 at Page 12 to clarify that there was no intention on the part of the Legislature to create a statutory right to a jury trial in those cases. The sentence would read at the end of Line 34, which would say, "The Court shall make all determinations of fact, including but not limited to gross income and deviations in any action brought under Chapter 11 of this Title." That would clarify there is no right to a jury trial in Title IV Cases and UIFSA cases. Jill

Travis suggested that this language would fit best as a stand alone paragraph at the end of subsection (c).

Senator Harp recommended that we should also clarify exactly what is contained in the Chapter so no one will be confused with where a right to a jury trial exists. Senator Harp suggested spelling out the Articles. Judge Abbot also recognized Elaine Johnson from OCSE. Elaine asked if Jill Travis and Jill Radwin could provide any revised language here to her office by the end of the week for their review. Since, Jill Travis will make a few revisions in light of the issue raised by OCSE, the revised language will be introduced again at the full Commission Meeting on Monday. Jill Travis suggested that she will draft this language up an amendment to the statute instead of creating a new version of the Legislative Proposal.

Judge Abbot, though, asked if there was a motion to approve the original language here regarding a jury's determination of deviations, as well as gross income. A motion was made and seconded. The members approved, including those on the telephone.

C. SELF SUPPORT RESERVE

Judge Abbot said the term "Self Support Reserve" may be mislabeled somewhat. When looking at the two tables which the Commission is considering, the lower income basic support obligations tend to be higher than the current awards. The Legislature, not knowing what the tables would look like, created a deviation to allow a court to deviate downward for low incomes but only if one was at the federal poverty level. Consequently, three questions arose: (1) Should the Commission recommend to the Legislature that the low income deviation be based at a higher number than just the federal poverty level in order to ensure that there are not unintended consequences of having higher awards than which is fair; (2) Whether the Legislature should adopt some form of a self support reserve; and (3) Whether the Legislature should provide for a minimum order amount. However, the intent is to ensure that the new child is not left without support. Most of the states do address the issue of low income obligors in a similar way. Jill Radwin provided a memo which provided some suggestions for a Self Support Reserve which the Commission may want to adopt. Jill went through the memo and spoke primarily on the Arizona model which she and Jill Travis actually adopted some recommended statutory language which incorporates this model. Jill explained that the Federal Poverty Guideline for 2005 is $797.50, which is the net amount. When that amount is transferred to gross, it is close to the $900 range. Jill also mentioned that the Arizona model is bilateral in that the custodial parent is also evaluated to ensure that the custodial parent can meet his or her financial obligations. In addition, a minimum order amount was added to ensure that the Noncustodial Parent would not be left with a zero amount for his or her obligation. Thus, a minimum order amount of $75 was added.

Judge Abbot said even though each model offers different mechanisms, they each get to the same result. They each allow the court the ability to ensure that both parents have the ability for self support and to ensure that there is child support ordered. Additionally, each gives the court discretion to deviate at a higher amount than the federal poverty level to consider the low income situation for both the custodial and noncustodial parent. Other Commission Members agreed that there is a need for a self support reserve.

Senator Harp asked if there are any conflicts with the federal regulations; while, Joy Hawkins asked if the Office of Child Support Enforcement had the opportunity to review yet. Elaine Johnson said that she will take the suggested language back to the Office of Child Support Enforcement for their opinion. The final language will be approved at the Commission meeting.

D. PARENTING TIME ADJUSTMENT

Judge Abbot intended to give a short report on the status of the Parenting Time Adjustment because staff was still evaluating the various models. Judge Abbot said there were two primary concerns with Tennessee's Parenting Time Adjustment formula which Georgia used as a model. One was the provision allowing for an increase in support when the noncustodial parent exercises visitation less than sixty days. This provision was a carryover from an earlier provision in Tennessee and Tennessee does not intend to continue with this provision. A reason that it does not work is that many parents do not even have a right to visitation, and these are those same low income parents where it was just mentioned there was a concern whether the awards were already fair and just. Further, there is the concern raised by the military when it may be impossible to visit the child. Thus, the recommendation is to remove this provision from the Parenting Time Adjustment.

Another issue with the Tennessee law is the threshold of 100 days in which parents have litigated on attempting to meet it and thus, disruptive to settlement negotiations. Due to these issues, Jill Radwin and her staff have begun researching how other states have implemented this adjustment. One such state which has been scrutinized carefully has been Arizona. Arizona's plan had been initially considered by the Legislature but had been rejected to their low threshold. Georgia was now carefully considering going back to Arizona's plan but looking at a higher threshold, such as 25% parenting time expended by the noncustodial parent. However, when applying it to Georgia, it was found that the 25% threshold (91 days) using Arizona's Parenting Time Tables (the state uses specific tables to determine the adjustment) produced a higher adjustment than Georgia's current 100 days threshold. Thus, staff is now analyzing South Dakota's model which is a Cross Credit theory. Jill Radwin inserted that most states use the Cross Credit Model. Judge Abbot explained that you recognize there are duplicating expenses in both households. One uses a multiplier of the Basic Support Obligation and looks at the time each parent spends with the child and then makes a cross credit subtraction. It recognizes that the cost of raising a child actually increases with two households. Judge Abbot also mentioned that Tennessee is in the process of developing a whole new system and Dr. Venohr suggested that Georgia look again at Tennessee.

Judge Abbot said another issue that the Commission may or may not want to look at is the issue of "Days" and whether to only give credit for more than twelve hours of a calendar day or to also include overnights into that definition. By only looking at twelve plus hours in a calendar day, the Commission is overlooking or failing to recognize substantial amounts of time and expenditures in the noncustodial parent's home when the child spends the night. Judge Abbot said the parenting time adjustment is such an important component and one that is drawing much attention that she would like to see as much time as possible spent reviewing it. To ensure that a recommendation though is made, a decision was made to send around several recommendations regarding parenting time adjustment. Representative Ehrhart raised the concern that the Cross Credit formula was too complicated. Jill Radwin read the definition of

Cross Credit as provided in South Dakota's guidelines. Judge Abbot added that the adjustment needs to be based on economically valid principles, but we need to determine at what point in the number of days does the duplicated costs become significant to allow a credit? This is the underlying idea of parenting time adjustment. With that said, Rep. Ehrhart said he would be interested in introducing Arizona's formula but with the 25% threshold since Arizona's system is easy to use and the numbers have a true economic basis. However, Judge Abbot was concerned about the cliff effect that may be found in Arizona. Annetta Panatera opined that if data driven, Arizona's system can be validated. Senator Harp agreed. Judge Abbot recommended that the Commission still look at the various options and ensure how each system looks with our tables. Representative Ehrhart said that would be fine as long as the Commission does make a recommendation.

E. OTHER CONSIDERATIONS

1. Involuntary Loss of Income

Judge Abbot said that an issue that is back on the agenda is the Involuntary Loss of Income Provision because Jill Radwin felt that this subsection had some procedural issues and could be problematic. Judge Abbot said one of the big issues here is if relating back to the date of service, there is no way that the Office of Child Support Enforcement can provide a re-coupment of the money already paid to the custodial parent. Jill Radwin suggested that the provision become bilateral and allows one to have an expedited hearing and take out the retroactivity here. Jill Radwin said no other state has this provision. This provision had already been changed from the date of filing to date of service. Judge Abbot, on behalf of the Superior Court Judges, said she would have concern supporting an "expedited" hearing or a suggested "30 day" hearing. Senator Harp said that the intent was for this provision to apply to either parent. Further, he said if one's income has been wiped out due to some economic factors, then the person should be able to come back to court in an expedient manner to get some relief. Judge Abbot suggested that perhaps the language can read, "The courts shall give due regard to expedite the hearings…" Judge Abbot suggested some form of phase in language to recapture the money paid prior to the modification hearing, but to ensure that both sides are balanced. Both sides have a loss of income, so want to ensure that neither party is financially devastated. Judge Abbot said that once the language is added regarding the expedited hearing, there will be less a need to recapture much money. The judge will recognize the longer it takes to get a hearing date set, the more the recapture issue will impact both parties. Jill Radwin also reminded the Commission that the Two Year Modification Rule needs to be amended to allow one to come back prior to two years. Senator Harp said that this being an exception to the two year rule was legislative intent. Rep. Ehrhart said this provision is discretionary, but the recapture is mandatory if the court orders a modification. Jill Radwin and Jill Travis will work on some revised language and present it at the Commission Meeting on Monday.

2. Modifications

Judge Bernes raised concern about the Modification subsection in that often when settlements are made in regard to child support, the negotiation may include discussions on alimony. If in the end, only child support is given, the issue of alimony is forever waived. Then, when Modifications are sought due to the new Obligation Tables, the issue of alimony cannot be raised or brought back to the "table." Judge Abbot acknowledged that once you waive alimony, you cannot bring it back up in a modification proceeding. Representative Ehrhart said he has

also been receiving some e-mails regarding this issue, but this does not seem to be an issue in the other states. Jill Radwin said the Commission will continually monitor this issue after the statute goes into effect, and if this proves to be problematic the Commission could make a legislative proposal. Judge Bernes said she does not have a resolution but just wanted to raise the concern.

3. Incorporation of Worksheets into Statute

Judge Abbot mentioned that the Statute Review Subcommittee received a recommendation that it may not be a good idea to incorporate the worksheet and schedules into the statute due to the likelihood that they may need to be modified. If you promulgate the worksheets as law, it will impede the ability to modify them as we see they do or do not work well. Yet, the downside to not incorporating into the worksheet is that there will be a lack of uniformity. Senator Harp asked if the better option would be to have a Supreme Court Rule for the worksheets and schedules. Jill Travis said the rule making process is quite long. Rep. Ehrhart said without the consistency and uniformity which you will have by incorporating into the statute, you may negate the benefits of electronic filing. One of the benefits of having the electronic calculator is that the courts can submit their final worksheet to be collected as data. Judge Abbot said it may be possible that the worksheet and schedules will have to be revised yearly, but the Tables may also have to be revised on a yearly basis. Judge Bernes recommended a revision to the Statute allowing the Commission under its statutory purposes to be responsible for revising the worksheet and schedules in the future. This new language will be presented at Monday's Commission Meeting.

4. Seven Percent Rule Deleted from Special Expenses

Judge Abbot said she was concerned that there was not any meaningful basis for the 7% threshold under Special Expenses, and Dr. Jane Venohr confirmed this. Further, Dr. Venohr did not add special expenses to the tables when creating them for Georgia. Judge Abbot asked if there was a motion to approve this change. It was seconded and then approved by the Commission.

III. Additional Items of New Business

Joy Hawkins asked what types of discussions have been there regarding Temporary Protective Order proceedings. Judge Abbot said there are opinions on all sides. She is not aware of any judge who orders child support at the ex parte hearings. However, judges are concerned with the lack of financial information they receive now from the parties. Judge Abbot said that others are concerned that if Temporary Protective Proceedings are exempting from the guidelines, judges will order low amounts of support. Thus, the guidelines need to apply across the board. Jill Radwin added that this shows the need for training, and Judge Abbot said the lay advocates will need to reinforce that the parties need to bring financial affidavits or information to court.

With no further business, Judge Abbot adjourned the meeting.