Georgia Child Support Guidelines Commission Meeting

STATUTE REVIEW SUBCOMMITTEE

MEETING MINUTES

Thursday, November 10, 2005

Room 403, State Capitol Building @ 10:00 am

Sub-Committee Chair, Judge Louisa Abbot

I. Welcome and Introductions

The meeting was called to order by Chair, Judge Louisa Abbot at @10:00 a.m. The Subcommittee members introduced themselves, and those in attendance were as follows: Judge Louisa Abbot; Judge Michael Key; Judge Quillian Baldwin; Judge Tom Campbell; Annetta Panatera; Sadie Fields; and Joy Hawkins. Staff and special invited guests were also introduced.

Judge Abbot announced that Meeting Minutes from the October 12 Meeting had been distributed at the last meeting, but due to their length, approval of the Minutes had been delayed until this meeting when the Members had a greater opportunity to thoroughly review them. Motion was now made to approve. The motion was seconded and the Members voted to approve them. Judge Abbot also announced that the Meeting Minutes from the October 24, 2005 had been sent to the members in advance for their review. A motion was made to approve theses minutes. It was seconded and Members voted to approve these minutes.

II. Review of Section 5, Subsections (k) through (m)

Judge Abbot said the plan for today was to go back through a discussion of some of the last subsections of 19-6-15. At the October 24 meeting, there was not a quorum by the end of the meeting and thus, no vote was taken on these subsections. Judge Abbot also explained that some new suggested revisions had been made and incorporated into the new Legislative Counsel draft of the statute (#2018). Judge Abbot said that Jill Radwin has some additional suggestions to bring to the Statute Review's Subcommittee, which in part come from members of the public.

Judge Abbot said the overall goal is to review the statute as a whole today since the Statute Review Subcommittee is scheduled to present the statute with revisions at that next Commission Meeting on November 30, 2005. Almost immediately thereafter, the Public Hearings will commence. The Commission will need this public feedback deriving from the Public Hearings before the Commission can make its final revisions prior to presenting to the Legislature.

Judge Abbot said at this point in time, the statute is looking very good. The statute now reads well and far better organized.

A. Modifications (5) (k)

Judge Abbot pointed out the suggested revisions here are to clarify that even when there is a 15 percent or more variance, the courts will still need to consider factors such as the material change in the parents' income and the needs of the child. Thus, it is not just a question whether the awards have a 15 percent or more variance from the prior guidelines, one still has to satisfy the legal requirements for a modification. The suggested recommendations also clarify that Title IV-D cases are subject to a separate statute (19-11-12) regarding modifications and agency review. In addition, the suggestion is that the two year rule regarding modification petitions not apply to a modification based on a parent's failure not to exercise the court ordered visitation or that a person is exercising greater visitation (as it affects the Parenting Time Adjustment).

Jill Radwin echoed that there have been many questions raised regarding this subsection due to uncertainty as to whether this is a two-part test concerning the exception to the two year constitutes a significant material change in the establishment and calculation of child support orders." Then, a further line below requires consideration of other factors, which has created confusion with the public.

1. *Discussion.* Judge Abbot believes that the statute, as passed, permits one to come into the court without having to wait two years if there is a variance of 15 percent or more. This will satisfy the presumption you are entitled to a modification. Judge Baldwin added that the two years would apply after the last modification, not with the establishment of the child support order or a divorce. Judge Key said there may be a jurisdictional issue involved, and suggested what is said in paragraph (3), rather than in paragraph (1) is actually the jurisdictional issue. He added that by simply applying the table to get a 15% change in the child support, then the court has jurisdiction to review the case for modification. Jill Radwin pointed out the inconsistency in this provision. In paragraph (1), it appears that one has to apply the entire guideline to determine the 15% variance, while in paragraph (3), it reads if there is a 15% difference as determined from the Child Support Obligation Table. Judge Key asked Senator Harp whether the legislative intent was to have the jurisdictional requirement determined first if it had been less than two years since the last modification. In addition, does one determine the 15 percent or more from the Child Support Obligation Table or the entire guideline calculation process? Senator Harp believes the intent was a determination of the 15 percent or more difference found in the Child Support Obligation Table as the threshold question. Senator Harp added that one could get into court by meeting the 15 percent threshold but still may not come out of court with a modification. Judge Abbot reiterated that once one gets into the court, modification law would apply as to what is the income, what are the needs of the child and should it be modified at all, and if so what is the amount.

2. *Outcome.* Judge Key said then paragraph (1) is inconsistent and need to change this paragraph to reflect the intent of the legislature regarding the jurisdictional requirement. Jill Radwin suggested making paragraph (3) as paragraph (1) since it addresses the jurisdictional issue. There was no objection to moving this paragraph. The Subcommittee agreed that the

former paragraph (1) should become paragraph (2). As Judge Key stated, former paragraph (3) is the jurisdictional requirement.

It was also suggested to delete the first sentence of the former (k) (1), and part of the second sentence due to its inconsistency. The second sentence will specifically apply to situations where an action was filed within a two year period. In addition, there was a consensus that the second sentence of the former (k)(1) will now state "an increase or decrease of 15 percent or more between the amount of the existing order and the amount of child support resulting from the application of the Child Support Obligation Table", instead of the *child support guidelines.* Further, it was agreed to add "entered prior to July 1, 2006" to the above sentence, so it now reads: "In any proceeding to modify an existing order entered prior to July 1, 2006, an increase or decrease of 15 percent or more between the amount of the existing order and the amount of child support resulting from the application of the Child Support Obligation Table shall be presumed to constitute a substantial change of circumstances…" It was suggested to add "on a previous petition to modify" to former (k) (3) so it clarifies and distinguishes that the two year requirement does not apply to an original petition to modify. Judge Abbot reiterated that while you can get into court with the 15% threshold due to the adoption of the guidelines, one still will have to meet the modification standards. Even so, a recent revision stating that the Court shall consider factors such as a material change in the Parent's income and the needs of the child or of either parent was now removed because it was redundant when reorganizing this subsection. (*Note: On the newly revised version (#2023), this change still needs to be made.)* Judge Abbot said it is her opinion that this provision needs to remain consistent to Georgia modification law. Yet, the legislature may have another intention and the Commission will need to alert them of this issue.

Judge Key also asked why would subsequent changes to obligation tables be a reason to request a modification only with Title IV-D cases, such as Title IV-D cases get special consideration and can be modified where private cases cannot. Mark Cicero explained that federal regulations require that a review for a modification by the IV-D agency be based solely on economic changes and not taking other factors into account. Currently, private petitions to modify are treated differently from the Title IV-D modifications to some extent.

A motion was made to accept the discussed revisions to subsection m. It was seconded and approved.

B. Child Support Obligation Table (5)(l)

Judge Abbot pointed out that the revisions under this subsection were strictly stylistic. They were not formally adopted at the last meeting due to the fact there was not a quorum. The changes were capitalization and changing the name of the Commission to Child Support Guidelines Commission.

A motion was made to accept the discussed revisions to subsection l. It was seconded and approved.

C. Worksheets (5)(m)

As with subsection (l), the revisions were not formally adopted at the last Statute Review Subcommittee Meeting due to not having a quorum. The changes here include a description of the worksheet and schedules which have been developed by the Worksheet Task Force. The suggested revision states that the Child Support Worksheet is the document used to calculate child support. In addition, subsection m incorporated the language of the previous subsection dealing with "split parenting." Thus, it sets forth that in the split parenting situation a worksheet is filed for each case. A motion was made to approve these changes. The motion was seconded, and the Members approved the changes.

III. Re-Review of the Statute

The Subcommittee reviewed section by section to see if there were any additional issues that the Subcommittee had not reviewed previously. Jill Radwin commented there was one issue that has been discussed but she did not believe that the issue had been resolved within the Statute Review Subcommittee. This issue is whether the new guidelines apply to those cases that are filed on or after July 1, 2005, or do the new guidelines apply to cases which may have been filed on an earlier date but are not heard until on or after July 1, 2005. The Subcommittee had previously said it would point this issue out to the legislature. Jill Travis suggested that language be added to an applicability section at the end of the statute which would state, "The Act shall become effective on July 1, 2006, and shall apply to all cases pending on and after July 1, 2006."

A. Section 2 of HB 221 on Appeals

None of the Subcommittee Members had any remaining or new issues with this section.

B. Section 3 of HB 221 on Interest

The issue here is the added sentence which stated, "[o]n and after July 1, 2006, all interest shall be calculated at 7% interest regardless of the date the arrears accrued." Jill Radwin said that the unintended consequence is that interest accrued prior to July 1, 2005 will be recalculated at 7% which was not the intention. Thus, the consensus was to remove the sentence completely. The previously added sentence only could confuse users and does not add anything. A motion was made to adopt the recommendation to delete the sentence. It was seconded and approved by a unanimous vote.

C. Section 4 of HB 221 on Form of the Order

The previously added additions here had been to clarify that the Child Support Worksheet would be attached to the order, and the amount of the child support order would be in a sum certain which comports with Georgia case law. There were no new suggested changes to this section.

D. Section 5 of HB 221, Revisions to Code Section 19-6-15

1. DEFINTIONS, (5)(a)

Jill Radwin said that some of the pre-meeting suggested changes here had been to the wording of the definitions, which were changed for accuracy and clarification. None of these suggested changes were substantive.

a. Suggested Changes to Definition of Custodial Parent—Judge Abbot suggested that the last line of this definition be revised to state, "the Court shall determine which parent to

designate as the Custodial Parent for the purpose of this Code section." Previously, it stated, "the court shall determine which Parent to designate as the Custodial Parent for the purpose of calculating child support." The phrase "for the purpose of calculating child support" was removed. The justification is that there could be a situation when a parent may not owe actual child support, but only work related child care, insurance or reimbursement of other expenses. Thus, there may not be any child support to be calculated, only reimbursement of expenses. The Subcommittee agreed to this change. This same change would also be made to the definition of Noncustodial Parent.

b. Suggested Change to the Definition of Nonparent Custodian

Jill Radwin suggested that within the definition of "nonparent custodian," the Subcommittee may want to remove the words, "custodial parent" as in "nonparent custodian means the custodial parent…" since it would be contradictory. The Subcommittee agreed.

c. Suggested Change to the Definition of Theoretical Child Support Order

Judge Abbot suggested that the phrasing be changed from "to determine the amount of a child support if an order existed," to "as if an order existed." The Subcommittee Agreed.

2. PROCESS OF CALCULATING CHILD SUPPORT (5)(b)—Judge Abbot said this section is similar to a recipe as this section provides the steps on how to calculate child support. The only issue raised here was whether paragraph (8) of (5)(b) was clear. This paragraph describes how the Presumptive Amount of Child Support is determined. A sum certain amount due to the Custodial Parent will result by "assigning or deducting actual payments for Health Insurance and Work Related Child Care Costs." Judge Abbot expressed concerns that the language was not clear. The process: (1) the parent actually paying the health insurance and/or the work related child care expenses will place that expense in that parent's column on the worksheet; (2) that parent then either subtracts or adds a credit for the amount the parent actually paid for the expenses against his or her pro rata share. Yet, after discussion, the Subcommittee thought this was clear, especially in light that the description under (5)(b) will be complimented by other provisions in the Statute and the Worksheet and Schedules.

3. APPLICABILITY AND REQUIRED FINDINGS (5)(c)—Judge Abbot expressed concern about the line in this subsection regarding the guidelines not applying to orders for prior maintenance for reimbursement of child care costs incurred prior to the date an action for child support is filed or to child support orders entered against stepparents or other persons…" She felt it did not have any real meaning here. It appears to have come from the Tennessee statute and has no real relevance to Georgia law. The consensus was to strike the entire sentence.

There was also a suggestion to remove the term "in the instant case" in the line which states, "A finding that states how application of the child support guidelines would be unjust or inappropriate in the instant case considering the relative ability of each Parent to provide support…" The Subcommittee agreed to this change.

Jill Radwin suggested a revision to (5)(c)(3) that would delete the term "contemplated." Currently, the line said the court is to specify the number of days of visitation "contemplated by

any order of visitation." The suggested revised language would state "as set forth in the order of visitation."

Judge Abbot also pointed out the inconsistency in paragraph (3) which stated that "[i]n any contested case, the parties shall submit to the Court their Worksheets and schedules…" However, the requirement is to submit the Worksheets and schedules is in all cases, not just contested. Thus, the line was changed to "all cases" and the term "schedules" was added with Worksheets.

4. Nature of Guidelines (5)(d) and Duration of Child Support Responsibility (5)(e)

Both of these sections are carryovers from current existing law. The Office of Child Support Enforcement raised a concern regarding (5)(c) where it said that "a Child" may enforce the Child Support order. Judge Abbot said it is in current law and feels changing it would beyond the purview of the Subcommittee. Thus, no further changes were made to this subsection.

5. Gross Income (5) (f)

Judge Abbot remarked that the changes to this subsection were primarily reorganizational. Jill Radwin suggested that a statement be added to this subsection that nonparent custodians will not be responsible for child support. Yet, after discussion, the Subcommittee felt that it was clear enough in the introductory paragraph under "Attributable Income" and in the definition of Nonparent Custodian to not warrant any further language.

Jill Radwin brought up an issue that has been asked by private attorneys regarding the "Rehearing" section under "Reliable Evidence of Income." The question is how will the 90 day rehearing provision affect one's right to appeal and appeal timeline. To help resolve this issue, the Statute Review Subcommittee, after consulting with some legislators, has previously changed this provision to allow one to come back to court for reconsideration only if one can prove the other party's income should be imputed higher. In this case, it may be beneficial to have the 90 day window. Judge Abbot suggested from a practice standpoint, attorneys may want to file a motion for a new trial and a reconsideration which will toll the appeal time.

As to the section on Adjustment to Gross Income, the debate continues as to how to properly state the amount of self employment taxes one should adjust their income, if this provision applies. Senator Harp explained that the intent behind this provision was to make the self employed person comparable to the wage earner. The wage earner has FICA and Medicare taken out of his or her paycheck by law or federal statute. Basically, the Legislature was attempting to level the playing field between the self employed and wage earner. One of the concerns is that there are income caps to the amount of self employment income to be taxed. Senator Harp commented that Medicare is not capped, unlike FICA. In addition, the amount deducted is one-half of the amounts to which OASDI or Medicare applies. Jill Radwin said that this provision needs to be clear that one-half of the FICA and the Medicare taxes shall be calculated. This amount is to be calculated on Schedule B—Adjusted Income. The Subcommittee worked with the wording to take out the cap amount since that will change via federal law on a possible yearly basis. To avoid putting in numbers which will change on a yearly basis pursuant to federal law, it was agreed that the suggestive language will be "up to the

maximum amount to which OASDI applies…" The consensus was to revise as follows: "One-half of the self-employment and Medicare taxes shall be calculated as follows: (1) Six and one quarter percent of self employment income up to the maximum amount to which OASDI applies; plus (ii) One and forty-five one-hundredths of a percent of self-employment income for Medicare shall be deducted from a self-employed Parent's Gross Income." Judge Abbot asked if there was a motion to adopt this new language. A motion was made and seconded. It was adopted by a unanimous vote.

6. Parenting Time Adjustment (5) (g)

Judge Abbot announced that the Commission, rather than the Subcommittee may want to review both the Theoretical Support Orders and Parenting Time Adjustment provisions. It will be difficult to clarify either one, unless the formula for each is changed. Judge Abbot said that the Theoretical Support Order is what it is. The biggest question is the legislative intent as to whether this provision should adjust one's income or adjusted as a deviation. In Judge Abbot's opinion, the Legislature needs to elect one or the other. In Tennessee, one's gross income is adjusted by qualified children in the home. Therefore, Judge Abbot hopes that the recommendation from the full Commission to the Legislature is to pick one method, one way or the other to ensure uniformity and predictability.

The full Commission may look at the potential changes to the Parenting Time Adjustment, such as is this best formula or does the current version have some unintended consequences associated with it. It is a major issue and will be taken up by the Full Commission rather than this Subcommittee. Yet, while the formula may be changed, the Subcommittee is not recommending that the Parenting Time Adjustment concept be removed. Senator Harp recognizes that the current version may have some unintended consequences and has spoken to PSI, as well as Rep. Ehrhart, regarding this issue. A proposal regarding changing the formula to reflect best practices from other states, such as Arizona, will be presented to the Commission. Judge Abbot said the same applies to the Theoretical Support Orders in that we may want to look at best practices from other states.

Jill Radwin said a remaining issue in this section is the definition of a "Day," which remains pertinent regardless of which Parenting Time Adjustment formula is used. She has found that when giving presentations there has been much confusion regarding what constitutes a day. The recommendation is to define calendar day to mean from "12:00 Midnight to 11:59 P.M. The Subcommittee agreed.

7. Adjusted Support Obligation (5)(h)

Judge Abbot said this subsection had language which dealt with income deduction orders. Yet, since this language was not found elsewhere in the statute and was more procedural in nature, the wording has been eliminated. Besides that, the only changes to this subsection involved reorganization, so that one section deals with the mandatory adjustment for work related child care costs and the other with costs of health insurance premiums. Jill Radwin also added that Uninsured Health Care Expenses was added to this subsection. Additionally, Jill Radwin pointed out a mistake found under the paragraph pertaining to Uninsured Health Care Expenses. Currently it stated that "(i) The other Parent or the Nonparent Custodian may enforce payment of the expense by any means permitted by law; **and** (ii) The Child Support Enforcement

Agency shall pursue enforcement of payment of such unpaid expenses…" The "and" should be changed to "or" as it is an enforcement by either/or, not both. The Subcommittee agreed with this change.

8. Grounds for Deviation (5)(i)

Judge Abbot pointed out that the major change to this subsection was reorganization so that it has a 'general principle' section (what a court has to do first before it can deviate from the guidelines); 'specific deviations' section (an attempt was made to collect all of the specific deviations in one place now). There were a couple of deviations which were added that were not in the original statute but reflect those items which were in the current 19-6-15, as well as increasing the high income to $30,000/mo and adding a child care tax credit, and vision and dental insurance. However, Judge Abbot said she has several remaining questions regarding the provisions of this subsection. (1) She believes the low income deviation is too narrow and more restrictive than the current guidelines. Currently, if one has a high debt or unusually low income, the court can use broad discretion to deviate. However, under the new system, one can deviate only if the person is at or below the federal poverty guidelines. Judge Abbot would like to direct a question to the Legislature as to whether they intended to narrow the statute that much because it limits the court's discretion when you have a low income person who might not be at the federal poverty guideline but is close to it. Judge Abbot said after we get the tables, we may have a better idea of the situation and may want to talk to legislators about making the definition more broad. (2) Under the extraordinary and special expenses, Judge Abbot wanted to ensure that the statute was clear that these types of expenses were to be pro rated. The Subcommittee agreed to add it here since it does not seem to be mentioned or explained well in other parts of the statute. Judge Abbot also suggested that we need to make it clear that when placing these figures on the schedule or Worksheet, these expenses need to be prorated.

Jill Radwin also suggested that a statement be inserted which makes it clear that the 'Nonparent Custodian's expenses for daycare, Health Insurance and Uninsured Health Care expenses may be the basis for deviating from the Presumptive Amount of Child Support.' The Subcommittee agreed.

9. Involuntary Loss of Income (5)(j)

Judge Abbot announced that since the last meeting, we have learned from OCSE that "date of filing" would conflict with federal law and regulations. Mark Cicero, Assistant Attorney General, clarified that the federal regulations state that Georgia law cannot allow retroactive modifications except when the modification dates back to the date when notice was provided. Senator Harp suggested that OCSE or Mark Cicero provide this information to Rep. Wendell Willard, chair of the House Judiciary, as justification for this suggestive change here. The Subcommittee's recommendation is to change "date of filing" to "date of service" to omit the conflict in laws.

Further, Judge Abbot pointed out that the last sentence of this subsection is what has been suggested to clarify that the involuntary loss of employment must be for some reason not caused by the parent. Senator Harp said that the legislative intent was not to allow this for one who was terminated for cause.

In addition, Jill Radwin brought up the issue as to what will occur if one receives unemployment compensation. Judge Abbot said the court could consider this issue when determining if there has been a loss of income.

A motion was made to adopt all of the changes within Subsection (5). The motion was seconded and passed by a unanimous vote.

Judge Abbot spoke on how these suggestions/recommendations will be presented to the Full Commission. In advance of the meeting, Jill Radwin, Jill Travis and Sara Larios will be working on preparing the revisions for the Commission to study. Joy Hawkins suggested that the best way to present this to the Commission is select those provisions which had the biggest changes, and then emphasize that the other changes were primarily organizational and procedural changes. Judge Key said we may need to emphasize that there will not be time to discuss each section in length and to study the recommendations in advance. Judge Baldwin added that we should send out an e-mail that if anyone does have any questions to submit them in advance. In conclusion, Senator Harp thanked everyone for their participation and the work put into this statute has been invaluable. He said that the tables will be distributed soon and there may be criticism but the intent has always been to take care of the children and ensure that the family fractured by the separation is still a viable unit. He stated that after the legislature reviews the recommendations, the Commission will continue. Judge Abbot also thanked everyone for their hard work. With no further business, the meeting was adjourned.