

# Georgia Child Support Guidelines Commission

## MEETING MINUTES

December 6, 2007

Senator Seth Harp, Chairman of the Commission, called the Commission Meeting to order at 2:00 p.m. Commission members introduced themselves, and members in attendance were as follows: Senator Seth Harp; Judge A. Quillian Baldwin, Jr.; Judge Thomas Campbell; Judge Debra Bernes; Judge Lisa Jones; Judge R. Michael Key; Mr. Michael Martin; Mr. Rick Smith; and Dr. Roger Tutterow.

### I. Introduction

Senator Harp [hereinafter "Chairman Harp"] welcomed the new members attending: Rick Smith, Judge Lisa Jones, and Michael Martin. By way of an introduction on the work of the Commission, Chairman Harp provided a historical overview of the Child Support Commission and discussed the mission and duties of the Commission, found in O.C.G.A. §§19-6-50 and 19-6-53. He also took notice that the revised Guidelines (House Bill 221/Senate Bill 382) went into effect January 1, 2007.

### II. Status of the Commission Subcommittees

#### A. Economic Subcommittee

Chairman Harp called on Dr. Roger Tutterow, Chairman for the Economic Study and Obligation Tables Subcommittee for an update on the Economic Subcommittee. Dr. Tutterow explained that the duty of the commission is, according to Statute §19-6-53(a), "(4) To determine periodically, and at least every two years, if the child support obligation table results in appropriate presumptive awards; and (5) To identify and recommend whether and when the child support obligation table or child support guidelines should be modified." In accordance with these duties, Dr. Tutterow stated that there will need to be a meeting called, hopefully in the next two weeks to begin reviewing this process.

#### B. Statute Review Subcommittee

Subcommittee Chair, Judge Louisa Abbot was not able to attend due to a death in her family, but there are plans for a Statute Review Subcommittee meeting on January 10, 2007, to review possible clean up provisions to the 2006 Bill (Senate Bill 382). A full discussion of suggested statutory revisions was deferred to the Statute Review Subcommittee Meeting, which has already been set for January 10, 2008.

Some of the possible suggested revisions for the Commission's consideration were raised at this meeting. They include:

##### 1. Military Benefits Included as Income:

Chairman Harp raised the issue of military personnel who are receiving allowances for housing, primarily overseas. These allowances, for the most part, are a pass through and are used to cover the very expensive housing costs in some foreign

locales, such as Paris. He asked that the Commission consider an exemption for this expense under “attributable” income category found in the child support guidelines. Judge Baldwin stated that the judge needs to be able to get to an “everyday normal” cost so that the litigant is not hit with extraordinary child support payment based on this “income.”

2. Modification—Temporary Hearings

Chairman Harp also asked that the Commission consider recommending a revision to clarify that temporary child support modification hearings are allowable within the “modification” subsection. Currently, the guidelines are silent on this issue. Several members of the Commission said that under prior domestic relations law, the court, at its discretion, could hold a temporary child support modification proceeding. Judge Baldwin stated that the main issue is having the temporary hearing within “x” number of days to the final hearing. He suggested that legislation be considered if the final hearing can not be held in “x” number of days. Chairman Harp said he wanted to assign this to the Statute Review Subcommittee to look at recommending a guideline revision to reflect prior domestic relations law as to temporary modification proceedings. He requested assistance from Jill Travis, of Legislative Counsel, to assist in drafting this provision and any other recommendations made by the Statute Review Subcommittee.

3. Alimony—Direct Deduction off Gross Income

Chairman Harp asked that the Statute Review Subcommittee also review the issue of alimony. Currently, alimony paid to a former spouse is treated as a possible specific deviation, and the actual amount that is deviated is also discretionary. He stated that under federal income tax law alimony is not discretionary and he asked the Commission to review making alimony a mandatory adjustment following discussion at the Statutory Review Subcommittee meeting. This would be a dollar for dollar adjustment similar to how preexisting orders are treated within the guidelines.

4. Nonparent Custodian

The final issue from Chairman Harp for consideration was including nonparent custodian’s income when calculating child support, including figuring a pro rata share of the support obligation. Jill Radwin, staff attorney for the Commission, clarified that the statute already allows the nonparent custodians’ expenses to be considered when calculating support. Judge Baldwin stated that there needs to be clarification in the statute. Chairman Harp commented that discretion could be given to the trial judge.

5. Low Income Deviation Revisions

Ms. Radwin asked for permission to speak on the low income deviation issue. The Council of Superior Court Judges, Legal Services, and Office of Child Support Services have all identified that the current low income deviation is problematic. Ms. Radwin provided the background that pursuant to §19-6-53, the Child Support Commission has a duty to create and recommend a child support obligation table to the General Assembly. The Commission staff retained Policy Studies, Inc. or “PSI” to develop the table. Three tables were presented, the Commission, with the advice of an

Economic Task Force, picked the table which exhibited the average of the other two tables.

When selecting the table, it was understood through running various fact patterns that the low income support awards would likely in some cases be higher than those found under pre-2007 child support guidelines. The Commission voted not to have a minimum order amount. The Commission felt that the matter could be handled as a deviation. The task of creating a low income deviation as a recommendation to the legislature was assigned to the Statute Review Subcommittee. At the time, the Statute Review Subcommittee reviewed best practices from other states. Georgia decided to adopt Arizona's basic formula but make it a deviation, at the court's discretion.

Georgia's version employed a mandated balancing test to ensure that a low income deviation to the noncustodial parent would not unduly impact the custodial parent. If the custodial parent was also a low income person, that parent's need for a self support reserve was analyzed. If that parent's presumptive amount of support is more than the self support reserve calculation, the noncustodial parent would be excluded from qualifying for the deviation.

However, Ms. Radwin pointed out that from the onset of the revised guidelines' implementation, the courts were reporting problems. The formula was complex and limiting. Many parties through settlement/consent orders or courts were using the nonspecific deviation to make this deviation work.

Elaine Johnson, Child Support Coordinator, reported to the Commission that statistical data collected by the Office of Child Support Services [hereinafter, "OCSS"] included a comparison of 110 cases for the amount of current child support awarded under the new income shares model and the former percentage model. The orders were obtained either by consent or court hearing, between May 14, 2007, and June 15, 2007. Of the 110 cases reported, 75% are considered low income based on the noncustodial parent's gross income. Only 25% included noncustodial parents whose gross income was above \$1850.00 per month. Additionally, in 76 of the cases, or 70%, both parents were considered low income. The results were that in 83% of the cases, the child support obligation under the revised guidelines was entered at a higher sum than would have been entered under the percentage model. It was not known how many of those qualified for a low income deviation or if the courts reduced the presumptive amount of child support through a nonspecific deviation. The remaining 17% reflected child support orders that were higher under the percentage model than they would have been if they had been entered under the income shares model. It is important to note that the time period used for the collection of data precedes the July 1, 2007 increase of the minimum wage.

Ms. Radwin said that these statistics support the following resulting issues:

a. Ability to pay versus best interest of the child standard—Georgia case law, decided under former guidelines, has held that the support amount should reflect a balancing of the child's needs and the parent's ability to pay. Yet, the statute, throughout said that any deviation should be in the child's best interest. Specifically found in subsection (c) of the guidelines is the statement that "[t]he rebuttable presumptive amount of child support may be increased according to the best interest of the child for whom support is being considered." As a result, some courts are hesitant to deviate downward.

b. Too limited deviation in which both parents are low income—The protection for the custodial parent found both as a policy statement under general principles of a deviation, and then, under the mandated calculation under the discretionary low income deviation, provides a sense of fairness. Nevertheless, in most cases where both parents are low income, the noncustodial parent will not qualify for a low income deviation.

c. There is not a minimum order amount, even though many argue that it appears that way through a plain reading of the statute. (See §19-6-15 (i)(2)(B)(ii).) To calculate the self-support reserve for the noncustodial parent, the court or the jury shall deduct \$900.00 from the noncustodial parent's adjusted income to ensure the noncustodial parent has a self support reserve. If the difference between the adjusted income and self support reserve amount is less than \$75, then the resulting amount is increased to \$75. If the resulting figure after subtracting out the self support reserve is less than the noncustodial parent's pro rata share of the presumptive amount of child support, the court or the jury may deviate to the self support reserve calculation amount. An example is that the noncustodial parent has an adjusted income of \$950 and a presumptive child support obligation of \$200/month. When \$900 is subtracted from the \$950, the result is \$50. Since that figure is less than \$75, the resulting amount is increased to \$75. This self support reserve calculation of \$75 is less than the presumptive amount of support at \$200. Thus, the court may deviate to \$75 as the new support obligation amount. That would also depend if the custodial parent is also low income. If so, the court will have to analyze the custodial parent's income and self support reserve using this same formula.

At the end of her presentation, Ms. Radwin raised the question of whether statutory revisions are needed to this provision. She asked if the Commission would assign the issue to the Statute Review Subcommittee for further review and study. Ms. Radwin and her staff have been evaluating other states' practices and will present some possible alternatives to the Statute Review Subcommittee for their review.

#### 6. Other Issues

Ms. Radwin requested that the Child Support Commission assign other possible statutory revision issues to the Statute Review Subcommittee, including but not limited to: proof regarding the amount of self employment taxes; re-name the terms "noncustodial" and "custodial" parent; and, remove other family members from consideration regarding the extraordinary medical expenses deviation.

#### C. Training Subcommittee

Judge Michael Key, Training Subcommittee Chair, asked Jill Radwin to report on training activities which were initiated approximately six months prior to the effective date of the revised guidelines. Ms. Radwin reported that the training kickoff was at the 2006 Council of Superior Court Judges Summer Seminar in St. Simons. With the assistance of the Administrative Office of the Courts [hereinafter "AOC"] and co-trainers, Elaine Johnson, then with OCSS, and Shelia Brown, an employee of OCSS, hands-on computer labs to train were provided using the judges' version of the web based electronic worksheet were conducted. Following that date, Ms. Radwin conducted approximately 35 to 40 seminars from September 2006 through February 2007, training superior court judges, some juvenile court judges, magistrate judges and

court personnel, mediators and private attorneys in every judicial circuit in the state of Georgia. Training was on both the Ten Basic Steps of How to Calculate Child Support (taken directly from subsection b in the statute) and how to use the child support calculators. During this same time, OCSS personnel and others who represent the agency in establishment, modification and enforcement cases, were also trained by the Agency.

Following February 2007, periodic seminars/presentations were held by judicial circuits/districts, local bar associations, state mediators, etc. Most recently, public seminars have been held to educate potential pro se litigants. During the summer of 2006, an implementation guide was drafted and distributed to judges throughout the state. [Note: The implementation guide has undergone several revisions.] Also, a state wide mailing went out in December 2006, to all of the state's superior court clerks, with copy ready training materials and information to distribute. A new mailing is scheduled to go out within the next couple of weeks with a list of Guided Questions, which litigants will see when accessing the Guided Version of the Child Support Calculator. To assist with future public training, Chairman Harp asked that Ms. Radwin contact the State Bar for the purpose of providing information on the State Bar electronic newsletter.

#### D. Case Sampling Subcommittee

Jill Radwin gave the report on the status of the Case Sampling Subcommittee for Subcommittee Chair, Judge Debra Bernes. Ms. Radwin announced that this particular subcommittee was formed to provide a sampling to the Department of Health and Human Services in conjunction with federal regulations. The next required reporting date will not be until 2009.

#### E. Forms Subcommittee

Since Senator Seth Harp is now Chairman of the Child Support Commission, he announced that he will make an appointment to replace himself as Subcommittee Chair of the Forms Subcommittee. Chairman Harp also called on Office of Child Support Services/DHR OIT to report on the status of the child support calculators since implementation. The presentation was given by Phillip Ladin, and followed up by Jill Radwin, who spoke about a need for a Forms Child Support Calculator Task Force to be appointed to provide strategic planning for future calculator enhancements. Phillip Ladin from DHR/OIT provided the background on the child support calculators' project. OCSS, due to an already existing contract, re-awarded the development of the child support calculator (electronic worksheets) to Accenture. Since its preliminary version release in the Fall 2006, there have been several version changes due to issues/concerns from the judges, as well as needed "fixes" due to technical issues. Mr. Ladin stated that the process is ongoing with future needs for funding of ongoing maintenance and support of the calculator and approved enhancements.

Ms. Radwin added at the conclusion of Mr. Ladin's presentation that the goal of many who have been involved with the development of the calculator is that the Commission take ownership of the calculators and provide direction. While OCSS, with DHR OIT, and an outside vendor developed the various versions of the electronic calculators, every time a judge, private attorney, etc., pointed out an idea for an enhancement, OCSS felt mandated to make the changes. Although the service has been superb, planning and funding was set aside to please the end user. To better facilitate

changes and develop strategic planning in regard to the electronic calculator, Ms. Radwin suggested that the following steps take place:

- a. The Commission Chair appoints a new Forms Subcommittee Chair, which was formerly held by our current Commission Chair, Senator Seth Harp.
- b. The Forms Subcommittee appoint a task force consisting of judges, attorneys, OCSS representatives, DHR OIT representatives, etc., who have a familiarity with the revised guidelines and its tools for the purposes of identifying enhancements to all versions of the calculators/worksheet; the proposed task force would approve designs of enhancements and set priorities for roll out of the enhancements; and, identify funding resources to finance enhancements.

Ms. Radwin suggested future projected enhancements to include: 1) an EZ form—one page calculator; 2) a plan to update the maximum limits of self employment income taxed on a yearly basis; and 3) revisions to a multiplier to convert an hourly amount to a weekly amount, and a weekly amount to a monthly amount, based on Superior Court Rule 24.2A. Chairman Harp asked for clarification on the one page worksheet. Ms. Radwin stated that the “EZ” form would be a one pager, exhibiting the presumptive amount of support, including health insurance and work related child care expenses. However, this EZ form most likely will not be for those cases with deviations. All judges agreed that a single page form for simplified cases would be beneficial to litigants and representatives of litigants and to the court.

### III. Implementation of the Revised Guidelines

Jill Radwin was further called on to give a report about a series of surveys which were distributed to the state’s superior court judges, their staff, some private attorneys, and mediators. The purpose of the surveys was to identify the impact and issues regarding the implementation of the new calculator and guidelines. The surveys covered the time span from January through June 2007, the first six months of implementation of the revised Child Support Guidelines.

### IV. Other Areas of Review

#### A. Creation of New Subcommittees or Task Forces

Jill Radwin asked the Commission whether there was any interest in forming a subcommittee on any of the following issues: Pro Se Assistance Programs; Parenting Time Deviation; and/or Domestic Violence. There was no interest from the Commission members regarding forming any new subcommittees on these issues; however, Commission Member Judge Key requested that Ms. Radwin have ongoing dialogue with the Commission on Domestic Violence about facilitating child support orders within Temporary Protective Orders (“TPOs”). Chairman Harp asked that Ms. Radwin report back on the status of this issue.

#### B. Furthering Other Duties of the Commission, Including Studying the Impact of the Parenting Time Deviation

Pursuant to O.C.G.A. §19-6-53(a)(13), one of the duties of the Commission is to “study the impact of having parenting time serve as a deviation to the presumptive amount of child support and make recommendations concerning the utilization of the

parenting time adjustment.” To implement this, the Commission staff developed a survey to question the courts about their experiences with a parenting time deviation. After discussing the survey results and other considerations, the Commission agreed not to seek any legislative changes about the parenting time deviation for this legislative session. However, Chairman Harp announced that the Commission will study it again in future years.

V. Other New Business

Chairman Harp stated that there were no rules for what constituted a quorum for voting in the Commission meeting. A motion was made to establish a rule of a quorum as a majority vote. A majority of the fifteen person Commission would be eight members. The motion was seconded and approved. The Commission has the authority to establish this rule per §19-6-53(b)(5) as to establish rules and procedures for conducting the business of the Commission.

VI. Future Meeting Dates and Agenda Items

Chairman Harp announced that the Statute Review Subcommittee will meet on Thursday, January 10, 2008, at 10:00 a.m. in CAP 125. To ensure that any recommendations the Statute Review Subcommittee may make are reviewed and voted on immediately by the full Commission, Chairman Harp called a full Commission meeting on that same date, and in the same room, at 2:00 p.m. The meeting was adjourned at 4:05 p.m.