

**Georgia Commission on Child Support
Administrative Legitimation Subcommittee
Minutes of Meeting: August 16, 2013**

The meeting was called to order at 10:00 a.m.

Present were:

Judge Michael Key, Chair of Statute Review Committee and Chair of Administrative Legitimation Subcommittee

Judge Louisa Abbot, Commission Chair (by telephone)

Pat Buonodono, Staff Attorney

Eric John, Director, Council of Juvenile Court Judges

Tracy Mason, Program Administrator, Office of Governmental and Child Court Liaison, AOC

Julia Fisher, Legal Policy Specialist, Division of Child Support Services

John Simpson, Superior Court Judge, Coweta Judicial Circuit (by telephone)

Kelley Owen, ADA for Child Support in Carrollton (by telephone)

Shirley Champa, ADA for Child Support in Rockdale County (by telephone)

Scott Stapleton, Paternity Manager, DCSS (by telephone)

Shannon Weathers, Council of Superior Court Judges (by telephone)

Catherine Fitch, Government and Trial Court Liaison; Lobbyist for AOC

Katie Connell, Private Practitioner and Commission Member

Judge Key welcomed everyone and made introductions.

The Commission was asked to look at the administrative legitimation statute; the Court of Appeals has discussed this statute in at least two opinions, most recently in July of this year, and has expressed some concerns about the statute.

Judge Abbot stated the problems with administrative legitimation include:

1. Fathers who do not legitimate their children and therefore have no parental rights to see them are less likely to pay child support.
2. People may not realize exactly what they're signing, so we have an administratively legitimated child and then have other petitions for legitimation filed in superior court by a different father which, when granted, leaves us with two legal fathers.
3. It is very difficult to prove an administrative legitimation, because you can only receive a copy of it via subpoena, which means you have to file a lawsuit of some sort in order to subpoena that information.
4. Most importantly, when a child forms a relationship to the man they believe to be their father – and then another father shows up – it can cause some serious harm to the child.

Judge Key asked if anyone present believes the review of this statute should not be within the purview of the Child Support Commission? [No response.] Obviously, it has implications

beyond child support. Judge Key interprets silence as whole-hearted support, so it seems like we want to move forward with this issue then.

Judge Key stated this has been an issue for Juvenile Court Judges for a long time. As a general rule, the juvenile court judges and the Council of Juvenile Court Judges do not get involved in legislative issues unless they directly involve the court or unless we are asked to be involved in it. And as Chair of this Committee, he asked for the CJCJ to be involved in the review and inform this Committee of its work. Judge Velma Tilley is going to be a member of the Subcommittee; she had a prior engagement today.

From the juvenile court perspective, the statute creates a lot of issues for us. Sometimes we'll have several fathers sitting in the courtroom. We can have a legal father because the mother had the child while married to one man, a biological father, and a man who legitimated the child administratively. Theoretically at least, we could have an administratively legitimated dad, and then a different dad file for judicial legitimation. When we are dealing with issues such as termination of parental rights, giving notice, to whom we give notice, who's a putative father and who's not a putative father, it creates a lot of issues for the juvenile courts and from that perspective, I know the juvenile court judges are glad we're looking at it.

Judge Key then asked for a perspective from other classes of courts, from lawyers who practice in the field, and your comments generally about the statute, I would appreciate that.

Scott Stapleton [DCSS] stated that he doesn't disagree at all with what's been stated. Fatherless children are 100-200x more likely to have behavioral and emotional problems. There are studies that have been done that fatherless homes produce 70% of high school dropouts, 70% of pregnant teens. So there's study after study that shows the father's role in the family is very critical. He just asks that we make necessary changes but do not throw out the whole process completely.

Judge Abbot concurred. The goal was to make it easier for a father to legitimate. The current statute does not do that but we need to continue to make that our goal. How do we lessen the complications of legitimation by the biological father? That's a key issue.

Judge Simpson stated he sees the need for some safeguards for the protection of the child, but we also need more child support established.

Judge Key clarified that he meant from a due process standpoint and making a best interest determination before legitimation can be granted—that should be a condition precedent.

Judge Simpson agreed, and pointed out that although they had the resources, through attorney volunteers, to make child visitation a part of their child support court program, the noncustodial parents never took advantage of it.

Judge Abbot is concerned that people don't even understand what legitimation means.

Pat Buonodono informed the subcommittee about Texas; once paternity is established there, legal rights automatically vest in the biological father.

Judge Key acknowledged that this issue is probably not going to be resolved this session. It's a very complicated issue. Before this legislation he could have a father appear who has been paying court ordered child support for 13 years, and it was extremely difficult for me to make him understand he had no rights to the child, just an obligation.

The statute as it presently exists is also very limited. It establishes a legal connection, which gives a father more notice rights and opportunity to participate at a different level in some things, but that's really all it gives him. No custodial rights, no visitation rights, which of course you tie to a judicial legitimation. So Judge Key thinks we need to talk about what a father gets for going through this process as well.

Judge Simpson advocates for genetic testing; it would lead to support for many more children and the cost could be quite low if we had a lot of volume of testing. We would then have the true biological father established and wouldn't have this business later on of competing fathers.

Kelley Owens stated that this was discussed the last time the Committee met and the big question was who would implement that and negotiate that cost.

Pat Buonodono stated that per the DCSS website, their cost for DNA testing for a mom, dad and child is \$88 and change. So it's a lot lower than it used to be.

Judge Abbot believes insurance should cover it. If it's required by state law, that may move us closer to that. So cost issues are important. At some point we have to recognize that we have fathers having multiple children by multiple women, and we have mothers having multiple children by multiple fathers. And often they are going to end up with cases before DCSS and if we can make this a little less complicated I think we would be accomplishing a great deal.

Judge Key asked in what percentage of out of wedlock births we have administrative legitimations?

Scott Stapleton replied that the last time we looked at this back in 2008, Vital Records reported that about 90% of the parents who signed a paternity acknowledgement also did the voluntary legitimation, and last year in Georgia we had 59,333 children born out of wedlock. So that gives you an idea of the number we're looking at.

Judge Key then asked what percentage of fathers of children born out of wedlock do not sign either a paternity acknowledgement or an administrative legitimation form.

Scott Stapleton replied that in Georgia, about 69% of the parents complete the paternity acknowledgement at the hospital or later at the vital records office.

Katie Connell finds it surprising from a practitioner's standpoint that the number of AL is so high. But the issue remains that if they don't remember or they can't get the records, they still have to go through a judicial legitimation.

Judge Abbot pointed out that under Raider, the Superior Court is deprived of jurisdiction if there was an earlier administrative legitimation. It is critical that we figure out how a mom or dad could just get the piece of paper that shows the child has been legitimate since birth.

Scott Stapleton reported that when this was discussed in 2008, they had someone from Public Health and Vital Records come to the meeting; it is important that someone from there be at the table.

Judge Key pointed out that The Department of Family and Children Services is getting the administrative legitimation records fairly easily or at least regularly, but he doesn't know if that is just an agreement between DFCS and Vital Records.

Catherine Finch stated that probate judges have had to issue subpoenas to get the forms.

Judge Abbot stated that the problem in Raider is there was no way of getting information on an administrative legitimation without filing a lawsuit of some sort, and so the dad files to legitimate and they tell him "that won't work" because you've already done an administrative legitimation. But you can't get a subpoena until you've filed a lawsuit.

Katie Connell stated she has had to call and call and call, and has sent clients down to Vital Records to just stand there till someone can help them.

Judge Abbot believes that if we can involve someone from Vital Records, we might be able to fix whatever they think their problem is. They may think their problem is HIPAA. This is something we could put into priority items so that at the very least, if a father comes to a lawyer or is pro se, they could easily obtain a document if it exists. You shouldn't have to file a lawsuit and pay \$207.50 in order to establish that you've already legitimated this child. So maybe we can look at that as a priority item. At least we can define what the critical issues are and see if there are some things we can tweak immediately to address what the Court of Appeals has questioned. They put it in italics in their decision about how disturbed they were about some of these issues.

Judge Key began a list of action items.

1. Make sure we have the right people at the table, on or working with the Subcommittee.
2. Someone else mentioned the statutes from other states, and that's something we need to do.
3. We need to look at genetic testing. Judge Simpson agreed to take this on, review statutes and bring information back on that.

Judge Key clarified who wished to be on the Administrative Legitimation Subcommittee.

Judge Simpson; Shirley Champa; Katie Connell; Judge Tilley; Judge Abbot – automatically as Chair of the Commission on Child Support.

We should reach out to probate judges as suggested by Catherine Finch.

Eric John pointed out that DHS Commissioner Keith Horton was involved in the genetic testing work in 2008 and was very helpful so we hopefully have an ally in him. We should also have someone from administration in DHS or policy/paternity unit in DCSS, who might have direct knowledge of how that agency works with their genetic testing contracts. Mr. Stapleton fits the bill.

Judge Abbot suggested we should include someone to be a representative of Father's rights.

Judge Key and staff will try to identify those people or organizations.

The meeting ended at 10:50 a.m.