**Georgia Child Support Commission**

**Statute Review Sub-Committee**

**MEETING MINUTES**

**September 25, 2009**

The Statute Review Subcommittee met September 25, 2009, as a follow up from the August 27, 2009 Economic Study and Statute Review Subcommittees joint meeting of the Child Support Commission. At the August 27, 2009 Statute Review meeting, Judge Louisa Abbot, Chair, Statute Review Subcommittee, had asked that any recommendations for revisions to the involuntary loss of income provision be submitted to Ms. Jill Radwin for consideration at today’s meeting.

Judge Abbot called the Statute Review Subcommittee meeting to order at 10:10 a.m. Members of the subcommittee present included: Judge Abbot, Judge Quillian Baldwin and Ms. Joy Hawkins. Judge Debra Bernes, Mr. Michael Martin attended via phone conference. Ms. Elaine Johnson was present as administrative staff.

**Background of August 27, 2009 Economic Study Subcommittee Meeting**

Judge Abbot reminded the members that the Economic Study Subcommittee met in August to consider whether or not to revise the tables, and had decided no revisions were needed at that time.

As a result of additional discussion, the Economic Study Subcommittee members decided to request that the Statute Review Subcommittee look at O.C.G.A. §19-6-15(j) which addresses involuntary loss of income to determine whether subsection (j) was in need of revision. Concerns were voiced about whether or not that subsection and the statute as a whole was adequate to address the severe economic circumstances that people may face. Judge Abbot said she would summarize the proposed ideas:

1. Require any court addressing a case where there is an involuntary loss of income to hold a hearing within a certain number of days.
2. Permit judges to restore driver’s licenses that have been suspended due to nonpayment of child support.
3. Specify that the hearing could be a temporary or final hearing.
4. Include some sort of sunset in the statute.

Judge Abbot explained that the subcommittee had solicited possible revisions from the members. Yet, in advance of this meeting, the Statute Review Subcommittee had not received any written requests for revision of the statute.

**Assessment/Discussion of Involuntary Loss of Income**

Judge Abbot proposed that the subcommittee review any additional information presented regarding whether or not the statute is adequate to address a severe economic downturn.

Judge Abbot stated that she asked other superior court judges through their common website whether judges were experiencing significant problems with subsection (j) and whether judges were even seeing it used. The responses that she received were that judges had not seen subsection (j) being used, and, that perhaps lawyers and litigants were relying on the traditional modification methods to modify the child support obligations. Judge Abbot stated that subsection (j) is really supplemental to the general right to seek modification when one has a change in financial circumstances, income or needs of the children. Judge Abbot also stated that some judges voiced concern about placing a time limit on when a hearing would have to be held. Further, §19-6-15(j) already requires an expedited hearing.

Judge Abbot solicited any further discussion on the involuntary loss of income subsection. Both Judge Baldwin and Joy Hawkins discussed that prior to making any changes to the involuntary loss of income subsection, the Commission should find out the impact of the newly revised low income deviation provision of the Child Support Guidelines. It was noted though that the low income deviation provision only went into effect on September 1, 2009. Thus, the Commission does not yet have any data on its impact. Mrs. Hawkins inquired as to any experiences the representatives at today’s meeting from the Family Law Section may want to share about the new low income deviation provision or the usage of the involuntary loss of income. Judge Abbot called on anyone in the audience who would like to speak.

John Collar, representing the State Bar Family Law Section, stated that with regard to whether to modify or address the modification issue in the involuntary loss of income, at the last meeting, three or four people talked about that perhaps there needed to be some consideration given to scheduling hearing within a particular period of time. He said there was discussion that lawyers may not be using the statute effectively and that the relief of an expedited hearing was not always granted.

Rebecca Crumrine, representing the State Bar Family Law Section, said she believes the matter of revising subsection (j) of the statute is a procedural issue and not a substantive issue and that we need to be careful about revising the statute. The statute is supposed to survive all economic times, good or bad. She indicated that we already have expedited hearing and voiced concerns about including specified time frames on judges. She pointed out that educating lawyers and the public about the provision would be beneficial.

Regina Quick, representing the State Bar Family Law Section, stated that subsection (j) is well crafted for people to get appropriate evidence before the court in its present frame work but that education of the Family Law Section members is needed. Regarding the low income deviation, Ms. Quick said that she served on Judge Bernes’ Low Income Deviation Study Committee and thinks with time the amended provision will alleviate some of the past issues. She related that she too sent out on her circuit’s listserv a query about the statute and there were no responses from anyone telling her that they were having problems.

Mark Cicero, Assistant Attorney General, spoke on behalf of the Department of Human Services (DHS). Mr. Cicero stated that he does not believe any amendment to §19-6-15(j) is necessary. He agreed the statute is very strong and as passed is intended to grant a form of emergency relief, and that it is as broad as it can be right now without violating federal law. Any modification before service of process would violate the federal statute which is why it was drafted the way it was. Mr. Cicero further stated that the issue may be one of public education and that an education campaign geared to the members of the bar might be more effective than considering any amendments to the statute.

Judge Bernes was in agreement that no changes to the statute were needed.

Mr. Martin had no suggested changes to recommend.

**Summary of Discussion on Involuntary Loss of Income**

Judge Abbot suggested that in view of comments made, the Statute Review Subcommittee should draft an explanation of how the statute can be used to address economic hardships. There are three ways – the general modifications subsection, the involuntary loss of income and the new low income deviation. Additionally, she suggested we ask the State Bar Family Law Section if they would publish the information in The Family Law Review newsletter; ask the Division of Child Support Services to have the information available in their offices as a handout; and present information to the Council of Superior Court Judges at the winter meeting. Judge Abbot stated this information could be issued as a press release and could be posted on applicable websites. Judge Abbot stated she thinks these actions would give us what everyone was saying we are missing – the education piece.

The goal, too, Judge Abbot said is to reach pro se litigants. Judge Abbot suggested that if we do an outreach program and ask two or three judicial circuits to track the usage of subsection (j) over about a nine month period after we get out some educational materials. She offered, too, that we might then be in a better position after the upcoming legislative session to determine if there is in fact any need for legislation.

Judge Baldwin responded by asking the lawyers in attendance how some of the judges have been handling cases where the involuntary loss of income subsection of the statute had been involved? John Collar responded that in his experience, he sees courts having to do some due diligence on what really transpired during the months preceding the hearing and if it is a legitimate involuntary loss of income action. Moreover, if the relief that is sought under the involuntary loss statute is applied, how does one pay the arrearage?

Rebecca Crumrine added that a person obviously has to be in willful contempt to be found in contempt and that is one of the issues. She related that in a couple of cases, judges have found the individual in contempt but not in willful contempt, since the noncustodial parent is attempting to pay. It all has to do with facts and circumstances, as to whether the non-paying party is held in contempt.

Judge Abbot concluded that the discussion had been productive and thanked everyone. She stated further that she Jill, Debra and Elaine will work on getting out an explanation of how one can use the child support laws to address severe economic hardship situations.

**Report by DCSS on Modification**

Judge Abbot reminded everyone there was a recent Superior Court order issued in a child support case where there may be a question of constitutionality involving an equal protection issue by Georgia having two different statutes for modification, §19-6-15(k) and §19-11-12. She related that Mark Cicero had a report on this subject.

Mark Cicero reported that even though §19-11-12 says “significant inconsistencies between the guidelines and an existing order”; it does not really set forth any kind of numeric standard. It is his understanding that the Division of Child Support Services, by policy, utilizes a 15% standard. If the difference between the calculations of the guidelines and an existing order is less than 15%, the agency is going to recommend a “no change” order. To that extent, it is somewhat similar to §19-6-15. He reported that any change in code section §19-11-12 would be extremely perilous with regard to federal funding. He explained that states receive not only money for operating the child support enforcement program but states also have to have these programs in order to qualify for TANF, block grants and Medicaid. Any change that affects the federal program not only impacts Division of Child Support Services’ funds, but also puts at risk TANF and Medicaid funds. The result is that the Department wants to express extreme caution with changing §19-11-12.

Mr. Cicero explained further that federal law requires states to have quantitative child support guidelines and to review and modify support orders every three years based on those guidelines. He added that Georgia Supreme Court has previously noted, the provisions of the child support recovery act are in addition to, but not in substitution of, other rights provided under law. Basically what the child support recovery act created is a bifurcated scheme where parties with child support issues can either proceed under Title 19, chapter 6 on their own or they can apply for services through the department, and can even do so at the same time. *See Kelly v. Dept. of Human Resources (1998).* One statute is for modification of awards; the other is complying with federal mandates. The bottom line is that under the Supreme Court’s decision in Kelly there really isn’t an equal protection issue presented by the two differing standards.

**Amended Superior Court Rule 24.2**

Judge Abbot stated that Superior Court Rule 24.2 has been updated. She explained that one no longer has to file the domestic relations affidavit and the child support worksheet at the time of filing the action. This is now done 15 days prior to any temporary or permanent hearing and then the respondent has to serve their worksheet and affidavit ten days later. The rule went into effect September 17, 2009 and Judge Abbot stated that we need to spread the word about this rule change. Judge Abbot added that the Supreme Court has issued an order that will sunset all local rules and procedures.

The meeting was adjourned at 10:48 a.m., EST.