

Georgia Child Support Commission Meeting
Statute Review Subcommittee

SUMMARY OF MEETING MINUTES

November 13, 2008

I. Welcome and Introductions

The meeting was called to order at 9:30 a.m. by Chair Judge Louisa Abbot. Members present included Judge Louisa Abbot, Senator Seth Harp, Judge Michael Key, Representative Edward Lindsey, Mr. Michael Martin, and Mr. Rick Smith; and via phone, Mr. Charles “Chuck” Clay and Dr. Roger Tutterow.

Judge Abbot also asked all attending guests to introduce themselves.

II. Review and Status of Senate Bill 483

Judge Abbot stated that the SB 483 was primarily a clean up of O.C.G.A. §19-6-15. There was no real impact to the child support calculator. The intent of the bill was to make the statute cleaner and provide more clarity. Most states find that when new guidelines go into place that there are changes needed for clarification of forms, statute, etc.

III. Report from Low Income Deviation Study Committee

Judge Abbot stated that the low income deviation portion of the statute has a self support reserve formula built into the calculator that many judges, courts, attorneys, and other legal representatives feel does not result in fair and appropriate awards. A Study Committee was formed and asked by the Statute Review Subcommittee to study the low income deviation. Judge Debra Bernes chaired the subcommittee. In her absence, Jill Radwin would report on behalf of Judge Bernes.

Report

The Low Income Deviation Study Committee consisted of judges, legal representatives, OCSS representatives, Commission on Domestic Violence representative and Child Support Commission members.

After many months of meeting, the Low Income Deviation Study Committee (“Study Committee”) approved a proposed revision, which was presented to the Statute Review Subcommittee on this date. Even though the majority of the Study Committee approved the format and language, there was some dissent regarding references to SSI income.

When developing a possible revision, Ms. Radwin explained that the first step the Study Committee took was to completely strike through the current low income deviation statutory language of O.C.G.A. §19-6-15. The Study Committee had determined that the current low income deviation formula was too complex and limited. As a result, the Study Committee suggested revising the deviation to provide the court or jury with discretion in determining a low income deviation. The suggested revision stated: “Following a review of such noncustodial parent’s gross income and expenses, and taking into account each parent’s adjusted child support obligation, the court or the jury may consider a downward deviation to attain an appropriate award of child support, which is consistent with the best interest of the child.”

The area that drew dissent from members of the Study Committee involved a minimum low income deviation. The exception as stated here is when the noncustodial parent’s sole source of income is SSI, as covered under Title XVI of the federal social security act. The intent of referencing supplemental security income (“SSI”) is to make clear that if one’s sole income is SSI, then one should not be ordered to pay even a minimum amount of child support. In fact, the noncustodial parent would not be ordered to pay child support until such time as he or she is no longer eligible for SSI benefits. Georgia’s Child Support Guidelines’ subsection (f), regarding “gross income,” clarifies under paragraph (2) that needs based benefits and income are excluded from child support calculation. §19-6-15(f)(2). In most instances, the benefits do not compensate or replace one’s income, such as Peach Care for Kids Program, food stamps, etc. However, with SSI benefits, the purpose is to provide subsistence to one who does not have the ability to earn income. As a result, SSI payments are not subject to federal taxes. Unlike Social Security Disability payments which fall under Title II of the Social Security Act, SSI benefits are based on the needs of the individual and are only paid to the qualifying person. There are no spouse’s, children’s or survivor benefits payable. In her report to the Statute Review Subcommittee, Ms. Radwin stated that as the issue of whether the court should order a noncustodial parent to pay child support when his or her sole income is SSI monthly payments is a difficult question and not easily answered by the federal laws and regulations. While it seems to be a policy decision to not order child support when the noncustodial parent’s sole income is SSI, there is no federal law or regulation which is precisely on point as to whether one is excluded from paying child support when the noncustodial parent’s sole income is SSI. Other states’ child support guidelines also did not provide any guidance on this issue.

Following Ms. Radwin’s presentation, Karen Geiger, Georgia Legal Services and a member of the Study Committee, spoke on why she dissented to the SSI references within the low income deviation provision. Ms. Geiger stated that it would be in the best interest of the child to delete

the reference to SSI. If one has a child they have an obligation to support that child. Both parents should support that child. Children will not be well served by exempting SSI. Ms. Geiger provided an alternative version of the low income deviation provision, which deletes the reference to SSI and exclusion of child support. Ms. Geiger's version also offered a few other changes.

Shirley Champa, Assistant DA, Rockdale County and member of the Study Committee, addressed the sub-committee and stated that OCSS subcommittee members were comfortable with the Study Committee's proposed language. She added that in prosecuting Office of Child Support Services' child support cases, the Agency's policy is not to seek support in SSI only cases. However, the Agency will abide by the statute changes as recommended by the Commission.

Judge Abbot then asked if there were others who wanted to speak. No other audience member came forward. Judge Abbot put before the members to move and accept Georgia Legal Services proposal with changes as noted in the various divisions of the proposed statutory revision to 19-6-15(i)(2)(B): (i) stay intact; (ii) (Reinstate) In considering a noncustodial parent's request for a low income deviation... leave rest of (ii) intact; (iii) Change to: If a noncustodial parent successfully demonstrates a basis for a low income deviation, the court or the jury shall then weigh the income including all attributable and excluded sources of income, assets and benefits available to each parent and all reasonable expenses of each parent,...; (iv) remain intact; (v) For the purposes of calculating...; (vi) intact.

Motion to accept the revised version as presented by Georgia Legal Services was made by Representative Lindsey, seconded and approved by members to present before the full commission.

Additional discussion ensued regarding additional language changes. Upon clarification, Judge Abbot asked for a vote to amend the first vote for language clarification. Rep. Lindsey moved, members seconded and approved to present before the full commission. Rep. Lindsey suggested that Jill Travis and Jill Radwin work together to ensure the correct language overall before the next full commission meeting. Judge Abbot thanked Ms. Geiger and Ms. Champa for presenting today. She also commended the Study Committee for their hard work. [The final approved version is attached.]

IV. Additional Recommendations

Additional recommendations were considered for changes to be made to the Child Support Guidelines (19-6-15). All of the proposals are to correct

omissions or incorrect statements with regard to how something is calculated. She then asked Jill Radwin to present.

The first issue relates to the EZ form, which is still awaiting the full Commission's final approval. Under 19-6-15(m), it states that the Worksheet and Schedule E, pertaining to deviations, are to be attached to the final court order. However, the EZ form is basically one page for those who are not seeking any deviation. Thus, there is no Schedule E. As a result, the suggestion is that there be clarifying language added to Subsection M which states that "the child support worksheet and if there are any deviations schedule E shall be attached..." A motion was made to approve and make other changes as necessary to conform to the statute; approved by members to present to the commission.

Subsection (b) (8) of 19-6-15 exhibits a list of deviations; however, life insurance when the child is the beneficiary was left out of the list. Motion made to include, approved to present to full commission.

Subsection (f) (3) of 19-6-15 regarding Title II Social Security benefits states: "Benefits received... by a child on the obligor's account shall be counted as child support payments and shall be applied against the final child support order to be paid by the obligor..." Ms. Radwin stated that there had been one complaint that the language in paragraph (3) here needs to be more clear that the Social Security benefits the child receives on the noncustodial parent's account should be applied before getting to the final support amount. Judge Abbot stated that the current statute says "against" and did not feel that new language was needed. This recommendation was not accepted/approved by the Statute Review Subcommittee.

Language is needed to clarify that parenting time is treated as all other deviations. The form revisions have already been approved. This language does not change the calculations or the numbers, it is only for clarity. Motion made and approved to accept, and present to the full commission.

Judge Abbot asked for any other recommendations. There being none presented the meeting adjourned at 11:07 a.m.

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 19-6-15 of the Official Code of Georgia Annotated, relating to child
2 support in final verdict or decree, guidelines for determining amount of child support award,
3 and the duration of support, so as to revise a definition; to correct cross-references and clarify
4 certain provisions of the Code section; to revise and clarify provisions relating to the low
5 income deviation; to provide for related matters; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

8 Code Section 19-6-15 of the Official Code of Georgia Annotated, relating to child support
9 in final verdict or decree, guidelines for determining amount of child support award, and the
10 duration of support, is amended by revising paragraph (17) of subsection (a) as follows:
11

12 "(17) 'Parenting time deviation' means a deviation ~~from~~ allowed for the noncustodial
13 ~~parent's portion of the basic child support obligation~~ parent based upon the noncustodial
14 parent's court ordered visitation with the child. For further reference see subsections (g)
15 and (i) of this Code section."

SECTION 2.

16 Said Code section is further amended by revising paragraph (8) of subsection (b) as follows:
17

18 "(8) In accordance with subsection (i) of this Code section, deviations subtracted from
19 or increased to the presumptive amount of child support are applied, if applicable, and if
20 supported by the required findings of fact and application of the best interest of the child
21 standard. The proposed deviations shall be entered on the Child Support Schedule E –
22 Deviations. In the court's or the jury's discretion, deviations may include, but are not
23 limited to, the following:

- 24 (A) High income;
- 25 (B) Low income;

- 26 (C) Other health related insurance;
- 27 (D) Life insurance;
- 28 (E) Child and dependent care tax credit;
- 29 ~~(F)~~(F) Travel expenses;
- 30 ~~(G)~~(G) Alimony;
- 31 ~~(H)~~(H) Mortgage;
- 32 ~~(I)~~(I) Permanency plan or foster care plan;
- 33 ~~(J)~~(J) Extraordinary expenses;
- 34 ~~(K)~~(K) Parenting time; and
- 35 ~~(L)~~(L) Nonspecific deviations;"

36 **SECTION 3.**

37 Said Code section is further amended by revising paragraph (4) of subsection (c) as follows:

38 "(4) In all cases, the parties shall submit to the court their worksheets and schedules and
 39 the presence or absence of other factors to be considered by the court pursuant to the
 40 provisions of this Code section. The child support worksheet and, if there are any
 41 deviations, Schedule E shall be attached to the final court order or judgment; provided,
 42 however, that any order entered pursuant to Code Section 19-13-4 shall not be required
 43 to have such worksheet and schedule attached thereto."

44 **SECTION 4.**

45 Said Code section is further amended by revising subparagraph (i)(2)(B) as follows:

46 "(B) *LOW INCOME*. For purposes of this subparagraph, 'low-income person' means a
 47 parent whose annual gross income is at or below \$1,850.00 per month:

48 ~~(i) If the noncustodial parent is a low-income person and requests a deviation on such~~
 49 ~~basis, the court or the jury shall determine if the noncustodial parent will be~~
 50 ~~financially able to pay the child support order and maintain at least a minimum~~
 51 ~~standard of living by calculating a self-support reserve as set forth in division (ii) of~~
 52 ~~this subparagraph. The court or the jury shall take into account all nonexcluded~~
 53 ~~sources of income available to each parent and all reasonable expenses of each parent,~~
 54 ~~ensuring that such expenses are actually paid by the parent and are clearly justified~~
 55 ~~expenses. The court or the jury shall also consider the financial impact that a~~
 56 ~~reduction in the amount of child support paid to the custodial parent would have on~~
 57 ~~the custodial parent's household. Under no circumstances shall the amount of child~~
 58 ~~support awarded to the custodial parent impair the ability of the custodial parent to~~
 59 ~~maintain minimally adequate housing, food, and clothing and provide for other basic~~
 60 ~~necessities for the child being supported by the court order.~~

61 ~~(ii) To calculate the self-support reserve for the noncustodial parent, the court or the~~
62 ~~jury shall deduct \$900.00 from the noncustodial parent's adjusted income. If the~~
63 ~~resulting amount is less than the noncustodial parent's pro rata responsibility of the~~
64 ~~presumptive amount of child support, the court or the jury may deviate from the~~
65 ~~amount of support provided for in the child support obligation table to the resulting~~
66 ~~amount. If the child support award amount would be less than \$75.00, then the~~
67 ~~minimum child support order amount shall be \$75.00.~~

68 ~~(iii) If the custodial parent is a low-income person, the court or the jury shall subtract~~
69 ~~\$900.00 from the custodial parent's adjusted income. If the resulting amount is less~~
70 ~~than the custodial parent's pro rata responsibility of the presumptive amount of child~~
71 ~~support, the court or the jury shall not deviate from the amount of support required to~~
72 ~~be paid by the noncustodial parent as provided for in the child support obligation~~
73 ~~table.~~

74 ~~(iv) The self-support reserve calculation described in this subparagraph shall apply~~
75 ~~only to the current child support amount and shall not prohibit an additional amount~~
76 ~~being ordered to reduce an obligor's arrears.~~

77 ~~(v) The court shall make a written finding in its order or the jury shall find by special~~
78 ~~interrogatory that the low-income deviation from the presumptive amount of child~~
79 ~~support is clearly justified based upon the considerations and calculations described~~
80 ~~in this subparagraph.~~

81 (i) If the noncustodial parent requests a low-income deviation, such parent shall
82 demonstrate no earning capacity or that his or her pro rata share of the presumptive
83 amount of child support would create an extreme economic hardship for such parent.
84 A noncustodial parent whose sole source of income is supplemental security income
85 received under Title XVI of the federal Social Security Act shall be considered to
86 have no earning capacity.

87 (ii) In considering a noncustodial parent's request for a low-income deviation, the
88 court or the jury shall examine all attributable and excluded sources of income, assets,
89 and benefits available to the noncustodial parent and may consider all reasonable
90 expenses of the noncustodial parent, ensuring that such expenses are actually paid by
91 the noncustodial parent and are clearly justified expenses.

92 (iii) In considering a noncustodial parent's request for a low-income deviation, the
93 court or the jury shall then weigh the income and all attributable and excluded sources
94 of income, assets, and benefits and all reasonable expenses of each parent, the relative
95 hardship that a reduction in the amount of child support paid to the custodial parent
96 would have on the custodial parent's household, the needs of each parent, the needs

97 of the child for whom child support is being determined, and the ability of the
 98 noncustodial parent to pay child support.

99 (iv) Following a review of such noncustodial parent's gross income and expenses, and
 100 taking into account each parent's adjusted child support obligation and the relative
 101 hardships on the parents and the child, the court or the jury may consider a downward
 102 deviation to attain an appropriate award of child support which is consistent with the
 103 best interest of the child.

104 (v) For the purpose of calculating a low-income deviation, the noncustodial parent's
 105 minimum child support for one child shall be not less than \$100.00 per month, and
 106 such amount shall be increased by at least \$50.00 for each additional child for the
 107 same case for which child support is being ordered.

108 (vi) A low-income deviation granted pursuant to this subparagraph shall apply only
 109 to the current child support amount and shall not prohibit an additional amount being
 110 ordered to reduce a noncustodial parent's arrears.

111 (vii) If a low-income deviation is granted pursuant to this subparagraph, such
 112 deviation shall not prohibit the court or jury from granting an increase or decrease to
 113 the presumptive amount of child support by the use of any other specific or
 114 nonspecific deviation."

115 **SECTION 5.**

116 Said Code section is further amended by revising division (i)(2)(K)(ii) as follows:

117 "(ii) If the court or the jury determines that a parenting time deviation is applicable,
 118 then such deviation shall be ~~applied to the noncustodial parent's basic child support~~
 119 ~~obligation~~ included with all other deviations and be treated as a deduction."

120 **SECTION 6.**

121 Said Code section is further amended by revising paragraph (1) of subsection (m) as follows:

122 "(1) The child support worksheet ~~is~~ shall be used to record information necessary to
 123 determine and calculate child support. Schedules and worksheets shall be prepared by
 124 the parties for purposes of calculating the amount of child support. Information from the
 125 schedules shall be entered on the child support worksheet. The child support worksheet
 126 and, if there are any deviations, Schedule E shall be attached to the final court order or
 127 judgment; provided, however, that any order entered pursuant to Code Section 19-13-4
 128 shall not be required to have such worksheet and schedule attached thereto."

129 **SECTION 7.**

130 All laws and parts of laws in conflict with this Act are repealed.