

**Georgia Child Support Commission  
Parenting Time Deviation Study Committee  
Meeting Minutes  
April 13, 2021**

**Attendees:** Katie Connell, Chair, Pat Buonodono, Byron Cuthbert, Judge Warren Davis, Adam Gleklen, Paul Johnson, Johanna Kiehl, Michael Manely, Mark Rogers, Jamie Rush, Charles Spinardi, Carol Walker, and guest Christine Stearns

**Staff:** Noelle Lagueux-Alvarez, Elaine Johnson, and Latoinna Lawrence

**Welcome, Introductions, Roll Call**

Katie Connell, chair, started the meeting at 10:00 a.m., and welcomed the members. Roll call was taken by Latoinna Lawrence.

**Meeting Notes Review from March 16, 2021**

The members were provided a soft copy of the meeting summary notes from the March 16, 2021 meeting. Ms. Connell asked if there were any recommendations for changes to the notes and there were no recommendations.

Ms. Connell explained that the committee would continue discussions on what other states do with parenting time. She acknowledged that we have reviewed several states and had great presentations made by members of the committee. She asked that Elaine and Noelle prepare a summary of each of the states that we've looked at so far to share with the committee. She stated that before we get into a presentation today on California, she reminded the members that we talked in the last meeting about reviewing our charge and objectives of this committee.

**Charge and Objectives of Committee**

Noelle and Elaine compiled a few bullet points on the charge and objectives of the committee, but the document is not finalized and will be made available to the members at the next meeting. One of the bullets concerned O.C.G.A. 19-6-53(a)(13), which states "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." Katie pointed out that, in this statute, it's not necessarily about a change or not, but to examine, the way that Georgia addresses parenting time. She said it is also important to acknowledge that the BCSO table does not consider any particular parenting time schedule. Katie also commented that she really likes points that were made by Carol Walker at the March 16<sup>th</sup> meeting. She asked Carol if she would share those points so they may be incorporated in our draft document. Carol agreed to share her notes.

**Presentation on California Parenting Time Method** – guest Attorney Christine Stearns, Connell Cummings, LLC

Ms. Connell welcomed Christine Stearns to discuss parenting time in California's child support guidelines law, as a continuation of discussions and analysis of individual states. Christine formerly practiced family law in California and was familiar with parenting time deviations and factoring parenting time into the child support calculation. There was a lengthy discussion with Christine and the bulleted notes are provided below.

- California is formulaic and the presumptive child support amount includes and provides for the exact parenting time of the parents, and the state doesn't actually have the concept of a deviation based on parenting time. The child support is calculated by a complex mathematical formula that includes a parenting time percentage called timeshare. The respective timeshare of the parents is included in the presumptive number.
- Parents sharing equal or close to equal parenting time is more common in California; the party who has the higher income generally still has a child support obligation based on the calculation.

- The debates between parents for child support revolves around what is the true parenting time of each parent. In contentious cases, there's a huge fight over one or two percentages and what numbers will be entered into the child support calculator.
- Deviations are provided through statute and case law and are not typical. Probably the only relevant basis for a deviation would be in an instance where a party, the payor spouse, or the payee spouse, is not contributing to the needs of the children at a level that's commensurate with their timeshare. If this occurs, the court will sometimes come in and increase the support amount for those purposes.
- The court will consider if one parent has an especially high income.
- In the actual support calculation, there's a factor line item where you input the percentage for the noncustodial parent. So, you would start out with the exact percentage being incorporated into the child support number.
- Question (Carol): Are the percentages based upon hours of parenting time or nights? Is there a definition in the California statute as to how you arrive at a number?  
Christine: I don't think it's actually statutorily defined but there are resources available to help one determine how many hours each parent has based on the number of days. They consider the number of hours, but it's complicated when considering which parent gets to assume the hours during which the child is in school. The fight is around, do you really pick up your child at two o'clock?
- Question (Katie): So, if you're working on a parenting plan, would you address the parenting plan, custody, visitation, and parenting time before you would turn to child support because you would need to know what the respective parenting time is before you can get to an analysis of child support?  
Christine: Yes, you would need to know what the respective parenting time is before you could get to an analysis of child support. In California, there's a big push for 50/50 timeshare from the state.
- Question (Carol): Is there actually a statutory presumption of 50/50 parenting time?  
Christine: I don't think it's a statutory presumption of 50/50, but there is a constant push for the 50/50. There's a statutory presumption that both parents are equally capable of caring for the child. I don't believe there is a statutory presumption of 50/50 because the overarching goal is to protect the best interests of the children.
- Question (Noelle): 50/50 parenting has components of physical parenting and administrative parenting. Is there any accounting for the fact that physical custody doesn't always line up? How often do parents complain of having 50/50 custody and it working out great when one parent does more of the administrative parenting, such as, signing the kids up for the religion classes, paying for camps, paying for extracurricular expenses, and actually paying for a lot of the one-off costs?  
Christine: In California, there's a presumption that all extracurricular activities are shared 50/50 and can be deviated but is rarely deviated. And even when one parent has much less income than the other, the court kind of wants the parents to assume an equal responsibility for those expenses. Regarding the administration issues, that doesn't come up so much in the way you framed it. And I would say that when it comes up it would be in situations where the parents wouldn't actually have 50/50, but rather 30/70, for example because one parent is actually taking care of the child.
- Question (Katie): Did you see people seeking different parenting plans for financial reasons?  
Christine: There are two things to share about your question. One is that when parents separate, an immediate temporary child support order goes into effect and is retroactively implemented to the time of filing. The court also has discretion with the retroactive establishment of the order. And then what happens is, there's a very lengthy period of time, unless the parties can agree, where the parties are both trying to figure out a permanent parenting plan schedule and trying to figure out the finances. What often happens is, you'll get to the final trial and things are fleshed out regarding the parenting time and finances.
- Question (Katie): Would you say you have seen in practice that a potential noncustodial parent might, for financial reasons, seek more parenting time than they otherwise would have?  
Christine: It seems there is more concern in Georgia for the protection of the children's best interest because there isn't a push for 50/50 parenting. Yes, it's a huge issue in California that is rarely discussed openly, but that is what is going on. Generally, the high earner wants 50/50 parenting time, when they probably use less parenting time because they're working more, but they want 50/50 so they don't have to pay as much child support, which may not be in the children's best interest.

- Question (Mark): Does the custodial parent game play to preclude parenting time to retain more child support?  
Christine: Yes, there is game playing by a custodial parent sometimes, but I would say that more frequently, at least in my experience, it's the former issue with the noncustodial parent.
- Question (Johanna): Is the parenting time at levels like 20% - 30%? Is that what you were saying that you plug in to begin with? Or like 21% to 22%? Is it triggering a big jump in support to go from 19% to 20% or is it a gradual reduction in child support based on the increase in the amount of time?  
Christine: Yes, like 21%, 22%, 23%; it's very gradual and incremental, but accurate and specific, which requires a lot of oversight and back and forth in terms of determining what the percentages are and the parents really fight about it. It is not a big jump, but important to the parents.
- Question (Carol): How do pro se litigants deal with the complexity of parenting time in California?  
Christine: There are a lot of resources in California, such as self-help centers, legal aid, and pro bono organizations to help. The line items input in the calculator are pretty straightforward, particularly for pro se litigants and they don't typically have complicated financial lives. They may also be receiving government benefits and the child support agency handles the case or child support is determined by the court.
- Question (Johanna): Is the California child support agency permitted to take what parties say as their agreement on parenting time and factor it in the calculation? Is time sharing factored into those cases? If they don't have a court order already including parenting time, is there zero consideration given for parenting time?  
Christine: DCSS won't get involved until there is an order for time sharing entered; it is my understanding they won't get involved in the parenting time dispute.
- Question (Noelle): Did you say California, when determining parenting time, will drill down to the hour?  
Christine: In California, it is more that the parents will drill down to the hour and figure it out between themselves. And I don't believe the statute actually provides for anything that specific. This is something that has been fleshed out in practice.

### **Continuation of Group Reports on In-depth State Reviews**

- A. William Alexander – Florida**
- B. Discussion on States for Further Study**
- C. Report to Commission - April 23rd Meeting**

- A. William Alexander was unable to attend the meeting, resulting in no presentation about Florida.
- B. Katie asked the members what everyone was thinking in terms of the study done to this point on other states? Katie explained she believes we need a summary of the eight to 10 states we've looked at and settle on a general consensus as to which 2-4 states seem to be models that we want to work from, and maybe pick the best parts from various states. We would use this information to make a recommendation to the Commission. She commented that we need to decide what to do next and is open to suggestions on next steps. We've been very much in a brainstorming, learning, and in an information gathering stage thus far. At some point we need to pivot to potential applications for Georgia. I feel like maybe we're about ready to start that next step and welcome your input. Katie reminded the committee that the Commission extended the study to the end of this calendar year. She asked what timeframe the committee has for next steps?

Mike asked if we could prepare a very rough outline of the next steps from now to year end?

Adam commented that next steps seem to be if we're going to receive a summary of the states we've looked at thus far, he would then review them to see which methodologies are the most complicated vs. the most realistic. Then he would select two or so states he likes. Maybe we come to a general consensus of the two, three, or four states that seem to be models we want to work with. Maybe break down an analysis of taking

part of one state and part of another state as our way to narrow down what we like. I think that is the process that will take some time.

Katie commented that she could probably find a family law practitioner where we could have a conversation similar to what we just had with Christine, where we get to do that brainstorming and questioning. If that's of interest to the study committee, I would love to hear from an attorney in Nevada. I like the simplicity of an overview as a simpler way to figure all this out. And I will go back to my position that the easier we can make it for our legislature to understand, the better chance we have of getting it passed. And the easier we can make it to understand, the less likely we're going to have problems with implementation.

Pat commented she would like to hear from a Nevada attorney because she likes the simplicity of that state's process. She restated her position that the easier we can make it for our legislature to understand, the more likely it will be to get it passed.

Judge Davis commented that he agrees with Pat Buonodono that Nevada has an easy approach. I think we need to identify what is the most standard visitation plan in Georgia. In my world, it's the old common alternate weekends, which I see more than anything else. I hear about Wednesday nights, but those don't ever last, at least not in metro Atlanta, because people can't get around (in traffic) on Wednesday nights. You can run an Excel spreadsheet through a year to get the math. We've got the standard plan, which is Friday to Sunday, then we have variations like Friday to Monday morning. Then just add in the additional hours. You've then got another variation that starts on Thursday. We need to identify what is standard, at least currently, and take that as a presumption. I see holidays counting as zero because they rotate between the parents, i.e., one Thanksgiving is mom, next Thanksgiving is dad, and back and forth between holidays which equalizes holidays. Once we've got our math down, you can take any little variance on that and plug it into a formula. Really, we're only talking about three or four variations for the most part.

- Questions for Judge Davis (Johanna): Judge, are you suggesting templates that would be available and we'd all know this is how many days, but that wouldn't be built into the statute or anything? What exactly are you saying about what we would use those calculations for?

First of all, you start with what's our standard, and then we just go up or down from there. Remember, a standard parenting plan can go from 18 to 28%, depending on how you calculate it. There would be a difference between choosing portions of days or hours versus overnights. It doesn't make any difference which model you choose, or which unit you choose because once you choose a unit, it just changes where we start. In other words, mathematically after that, it's always going to be the same. For example, I take 10% of the BCSO and that gives me a parenting time deviation. So, I'm only looking at saying this is what the parenting time deviation is. Then I think because our statute allows a deviation at judicial discretion, it's up to practitioners and the judge to apply it.

- Question for Judge Davis (Mark): I'm curious, how do you consider differences in income, say, the custodial parent is low-income relatively, or the custodial parent has relatively high income?

I have a 10% deviation; I look at what the basic amount of support is and that gives me a ballpark figure. I can go an additional step and prorate it like one parent earns 70% and multiply that as 10 times 70% and end up with a 7% deviation. Most of the time these numbers aren't big and most of my deviations are within \$200 to \$400 a month.

- Follow-up on what Judge Davis said (Adam): I generally agree with what judge Davis said about starting with the standard. I think my only tweak to what he said is what I see as the "standard" is probably starting as a Thursday to Sunday and similar to where you started. But now the question is, my practice is metro Atlanta - Gwinnett, Fulton, and Cobb, and if we're going to make a recommendation for the state, and Judge Davis is essentially speaking for all judges, it sounds like we need to do a questionnaire throughout the state to judges. What are you presuming as a standard starting point?

Judge Davis replied: And most of the parents tend to track exactly what you said. It's either going to be the Friday to Sunday, or it's going to be Thursday to Sunday, and a smaller portion go to Monday morning depending on factors such as when a parent leaves for/returns from work and traffic concerns.

Pat Buonodono commented that a judge survey was sent out when she still worked for the Commission. Elaine remarked that another judge survey had been conducted since that time and that judges primarily said their standard visitation was around 90 days. She explained that we actually surveyed the public side and the judicial side simultaneously and the answers from both sides were pretty close—“standard visitation” being about 90 days. Noelle confirmed the “standard” visitation time frame was 91 days from the last survey.

Elaine brought up questions on legitimation and parenting time for the committee to consider. She stated that in Georgia, once you've established paternity that's only one step of the process. She stated that we have a lot of families in Georgia who never marry, and the children are born out of wedlock. And that even if paternity has been established, a father has to legitimate a child before they can establish parental rights and visitation. She asked if she was correct on this information and members agreed the information was correct. She asked then how will we factor those people out until legitimation is done? Stating also that they can't just go into a calculation and plug in numbers saying they want parenting time when there has been no legitimation. She explained that she brought this up because it's a factor the committee needs to consider.

Johanna stated we do have a huge percentage of the population that is not coming up with a court order for visitation, resulting in a huge difference in custody cases vs. non-custody cases. She stated Carol sent her a note before she had to leave the meeting, and that both of them like the idea of looking at least at some states that do have a more complicated formula for parenting time with the math being done in the calculator. She stated she feels like if we were going to take the time to revisit this now, then she wouldn't want there to necessarily to be a standard that we're all choosing when we look at the way that things are shifting now. We had a legislative proposal this year to move towards a presumption of 50/50. If that's going to continue down the line, and we're basing parenting time deviation on a standard that in five years may be considered antiquated, then it seems to make more sense to just have a complicated formula. The only complicated piece that we have to worry about is figuring out the number of days in the year and then you plug it in, but of course, then you have to look at Georgia's table and what are the percentages in there already. This is what New Jersey calls variable fixed and controlled. I think it's good to point out that we should narrow it down to a couple of different ideas, concepts, then pick a state that represents each one of those and then have a vetting discussion on whether or not we really think something complicated could be proposed. But I hate to just take complicated off the table, if we're trying to make it right, or to set a standard in place that may shift in a couple of years and work from that, especially since there's no parenting time built into the current table. Mark agreed with Johanna's comments.

Katie remarked that our time was running out and we need to put a pin in this conversation for further discussion. Katie stated that Mark asked a question about a discussion about some of the “legal principles that should drive our decisions,” as he wrote it, I'm going to say, “possibly drive or influence our decisions.”

### C. **Schedule Next Meeting and Adjourn**

Katie explained that she will make a report of the work of this committee to the Commission at the April 23<sup>rd</sup> meeting, and that we need to determine a next meeting date for this committee. Maybe the intention or the goal of the next meeting will be to continue this conversation to address Mark's open-ended question. And as a product of the meeting, we identify three or four states where we might do a more in-depth dive, not unlike what we did with Christine today. Maybe we could find a practitioner familiar with a state who will be able to answer follow up questions like we did today. And I do agree with the idea that we pick a state or two where one is a more complicated calculation and another that is a less complicated, just so that we can appreciate the difference. I will just remind everybody that a lot of this discussion makes me think that as we have said in the past that we need to examine how other states define the time, i.e., overnights, days, hours? I'm just putting that out there for everybody's food for thought.

The meeting was adjourned at 11:30 a.m.