

**Testimony before the District of Columbia Council  
Committee on Public Safety and the Judiciary  
Child Support Services Division of the Office of Attorney General  
Agency Performance Oversight Hearing  
Fiscal Year 2012-2013**

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The Legal Aid Society of the District of Columbia<sup>1</sup> and Bread for the City<sup>2</sup> have long represented custodial and noncustodial parents in child support cases in the District of Columbia. Starting in 2011, both organizations received publicly-funded Access to Justice grants from the D.C. Bar Foundation to fund a joint Child Support Community Legal Services Project. Through this Project, we offer court-based legal services at the Paternity and Child Support (“P&S”) Branch of the D.C. Superior Court. Four days per week, attorneys from Legal Aid and Bread for the City provide legal information, advice, and same-day temporary representation to custodial and non-custodial parents in their paternity and child support cases. As a result, we are intimately familiar with the performance challenges currently facing the Child Support Services Division (“CSSD”) of the Office of the Attorney General (“OAG”), which initiates the vast majority of cases in the P&S Branch.

Although we frequently oppose CSSD/OAG in the courtroom, we unreservedly share CSSD’s goal of helping reduce poverty among District children and families. We are testifying today to share our concerns about CSSD’s performance in hopes of improving the agency’s functioning and helping CSSD reach this goal.

Over the nearly two years in which we have served litigants at the P&S Branch, we have encountered a variety of troubling issues with CSSD, some of which appear to be systemic. Below, we outline some of our concerns about CSSD’s performance, most notably the agency’s communication problems and lack of transparency.

Improving the administration of the District’s child support program will benefit both families and the District government. Given the current economic crisis, families’ need for increased income from child support is especially acute. At the same time, the financial crisis

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<sup>1</sup> The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last 80 plus years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the following four priority areas: consumer, family law, housing, and public benefits.

<sup>2</sup> Bread for the City, founded in the mid-1970s, provides vulnerable residents of Washington, DC with free comprehensive services, including food, clothing, medical care, and legal and social services, in an atmosphere of dignity and respect. Bread for the City’s Legal Clinic provides representation in the following areas: family law, housing, and public benefits.

has made it more difficult for noncustodial parents to pay child support. If CSSD improves its operations to ensure that fair, accurate orders are established and enforced, parents who pay child support will be more likely to comply and more families will receive the support that they need, allowing them to become self-sufficient and reduce their reliance on public benefits.

Additionally, this will inject more money into the District economy, helping all District residents. We hope that our testimony will continue the dialogue that we have joined to ensure that the District's children receive the support that they need.

**CSSD continues to have longstanding, ongoing problems with the administration of the District's child support program that negatively impact its ability to effectively fulfill its mandate.**

Last year, Bread for the City and Legal Aid submitted written testimony for the FY 2011-2012 OAG Performance Oversight Hearing. In this testimony, we identified several areas of concern regarding CSSD's performance, including the agency's failure to communicate effectively with the public. In the past year, Bread for the City and Legal Aid lawyers have seen positive changes in how CSSD's legal staff interact with litigants in the P&S Branch. For example, CSSD's legal staff appear to communicate with both custodial and noncustodial parents in a more respectful and approachable manner.

While we have seen considerable improvement in the demeanor of CSSD legal staff at court, CSSD continues to struggle in other areas, most notably with respect to inter-agency and intra-agency communication and communication with the public. In the course of advising and representing litigants with cases in the P&S Branch, Project attorneys encounter areas of repeated neglect in CSSD's performance. However, while Project attorneys can speak to these issues anecdotally, we are unable to determine whether these are actually widespread problems because the agency lacks transparency.

Project attorneys regularly encounter issues that suggest a basic lack of communication within CSSD. For example, OAG attorneys who appear in court on behalf of CSSD are frequently not aware prior to a hearing date of pleadings properly served upon the agency. This can lead to delay in proceedings if the agency then requests additional time to respond or produce witnesses. Another issue that Project attorneys see often is ineffective communication between CSSD and child support agencies in other states in "interstate" cases, which involve parents who live in different states. Essential information is often missing from CSSD's "interstate" case files, including court orders and wage withholding information. Sometimes the case file itself is missing. These issues exist regardless of whether D.C. is the issuing jurisdiction (requesting another state to establish or enforce a child support order) or receiving jurisdiction (contacted by another state to establish or enforce a child support order). In its FY 2013 Performance Plan, CSSD acknowledges that "interstate" cases present a problem for the agency and indicates that a pilot plan is being implemented to improve their response to other jurisdictions.<sup>3</sup> While we are pleased to see attention being paid to this issue, we lack meaningful information about this initiative.

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<sup>3</sup> Available at: <http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/OAG13.pdf>.

Several concerns we raised in our joint testimony last year continue to be a problem and bear repeating. For instance, the agency also often fails to keep parents adequately informed of the status of their case. Timely service of process of court pleadings continues to be a particular area of difficulty. Often, custodial parents appear for hearings only to be told that the noncustodial parent has not been served with process. While we recognize that respondents in the District's child support cases may be a particularly challenging population to serve, the custodial parent should be informed, prior to a court date, of problems with service of process, particularly if the custodial parent can assist in achieving service.

Another area of concern for Legal Aid and Bread for the City is CSSD's refusal to share information regarding case files with the parties involved. We recognize that the agency is responsible for sensitive information and that privacy is of paramount importance. However, the agency's refusal to provide case files or accounting information to the custodial or noncustodial parent is troublesome in many situations. For example, in the past, the agency has refused to provide the custodial parent information that is available only in the agency file and not available in the court file. Where the agency has previously provided legal services to the custodial parent as a client or a customer, this policy impedes the parent's ability to adequately litigate a related matter.

Additionally, the agency's failure to provide adequate accounting information is also disconcerting. The agency is responsible for keeping the payment records upon which parents and the Court rely. In several cases, Project attorneys have found significant discrepancies in audits and payment histories, which detail a litigant's child support balance. In those cases, CSSD declined to "show their work" or provide the calculations on which their accounting is based. While attorneys can speak to these issues anecdotally, the cause or extent of the accounting problems is unknown because the agency proves reluctant to produce financial records. This is particularly troubling because many litigants may not have the ability or resources to identify and challenge a possibly inaccurate arrears balance.

Finally, we raise again concerns about reduced child support petition filings. Since our testimony last year, the D.C. Superior Court reported that new case filings in the P&S Branch dropped from 3,028 in 2010 to 1,928 in 2011.<sup>4</sup> And while CSSD set a FY 2012 goal of establishing 2,350 support orders, it actually established only 1,208 orders over the course of the year.<sup>5</sup> Why CSSD failed to meet its targets remains unknown to the public, partially because the agency has not yet released a narrative FY 2012 Performance Accountability Report.<sup>6</sup>

CSSD has been reluctant to provide information regarding its policies and operations, which thwarts the ability of the public to hold the agency accountable to fulfilling its mandate. We are pleased to have received recent assurances from the Attorney General to address our

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<sup>4</sup> See District of Columbia Courts Statistical Summary 2010 available at <http://www.dccourts.gov/internet/documents/DCC2010AnnualReport-StatisticalSummary.pdf>; District of Columbia Courts Statistical Summary 2011 available at [http://www.dccourts.gov/internet/documents/AnnualReport\\_2011-Statistical-Summary-1.pdf](http://www.dccourts.gov/internet/documents/AnnualReport_2011-Statistical-Summary-1.pdf).

<sup>5</sup> Available at: <http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/OAG13.pdf>.

<sup>6</sup> Additionally, while the OAG/CSSD set four performance measures for FY 2012, data is only available for two of those measures.

concerns with accessing information from CSSD. Nonetheless, we feel further Council oversight could be beneficial.

**CSSD has failed to involve community stakeholders and advocacy groups in discussions regarding the proposed transfer of CSSD from OAG to the Department of Human Services.**

One area of particular concern to Legal Aid and Bread for the City, and the legal services community more broadly, is the proposed transfer of Child Support Services Division out of the Office of the Attorney General and into the Department of Human Services (DHS). Legal Aid and Bread for the City have not yet taken a specific position on the proposed move, mostly due to the lack of engagement by CSSD and the dearth of information available to community stakeholders. We are glad that there will be a stand-alone hearing regarding this issue. We hope, prior to and throughout the hearing process, we (and the Council) will have critical issues addressed, such as: (1) what analyses have been done to demonstrate that the proposed move would be in the best interests of the District's children who rely on the establishment of fair and accurate child support orders; (2) what analyses have been done regarding the feasibility of the move of these critical services from OAG to DHS; (3) why is it proposed that all of CSSD, including its in-court litigating functions, be transferred out of OAG, while, in what appears to be an analogous situation with respect to the Child and Family Services Administration (CFSA), the in-court litigating functions of CFSA, we believe, will remain with OAG; (4) whether a CSSD operating under the auspices of DHS will be responsible for the large number of cases involving parents who do not receive TANF benefits; (5) whether the separate computer systems of CSSD and DHS will be (or can be) consolidated or integrated in a way that makes sense; and (6) whether DHS plans to continue the more recent efforts on the part of CSSD to increase access of unemployed obligors to employment opportunities.

These are just some of the unanswered questions that Legal Aid and Bread for the City have about the proposed move. We are committed to protecting the rights of low-income families in the District, and look forward to raising our concerns with members of the District government. Indeed, many active and well-informed community stakeholders are anxious to work with CSSD to explore the proposed move and discuss the potential impacts to the families who utilize CSSD's services. We sincerely hope that CSSD will take advantage of these resources, listen to the voices of community members, and keep them apprised of the decision-making process. This proposed move will not occur in a vacuum, and the potential impact of this move could be far-reaching, and undoubtedly will be borne by those who are the least likely to have their voices heard. We seek a greater measure of transparency from CSSD because it is essential to the functioning of our government, and because members of our client community deserve a place at the table. In the days leading up to this hearing, we are pleased to have received assurances from the Attorney General that he is interested in hearing the views and suggestions of community stakeholders on this important issue.

More broadly, we believe that any plan to transition current OAG employees to the various Executive Agencies must be analyzed for whether the change will impede attorney independence and whether such a change was appropriately contemplated by District voters upon amending the Home Rule Act in May 2011 to provide for an elected Attorney General. It is not

yet clear to Legal Aid or Bread for the City that the wholesale transfer of OAG employees, as contemplated by the Mayor's proposed legislation, would constitute a more effective or necessary structure for these employees providing vital services to District residents.

We look forward to the upcoming hearings on the proposed legislation, and anticipate that the legal services community will be in dialogue with the Council and the Office of the Attorney General to examine the suggested structural realignment.

**CSSD's continued opposition to disestablishing paternity – even in cases in which justice demands it – is contrary to District law and undermines CSSD's mission of “enhancing the lives of District children.”**

CSSD's mandate requires the agency to establish and enforce accurate and just child support orders for children. An essential preliminary step in this process is establishment of paternity. For children of unmarried parents, a father can establish his paternity by signing an Acknowledgment of Paternity (“AOP”) or by genetic testing.

Both federal and District law include strict procedural safeguards to ensure that an AOP is the result of a knowing, voluntary decision. Specifically, District law requires that, “before the parents sign the acknowledgment, both [must] have been given written and oral notice of the alternatives to, legal consequences of, and the rights and responsibilities that arise from signing the acknowledgment.”<sup>7</sup> The parents must also sign under oath.

Most unmarried parents sign the AOP at the hospital shortly after the child's birth, without any opportunity to obtain a genetic test before doing so. Regrettably, there appears to be a widespread failure in hospital compliance with the written and oral notice requirements of the law. Our legal position is that when the strict notice requirements are not followed, the resulting AOP is invalid, does not establish paternity, and should not limit the use of an alternate means of establishing paternity such as genetic testing.

When parties raise concerns about paternity in cases in which an AOP has been signed, CSSD continues to oppose most requests for genetic testing. OAG attorneys routinely insist that any signed AOP establishes paternity, regardless of whether the procedures required by the District's statutes for valid execution were followed. To our knowledge, CSSD attorneys do not inquire as to whether the statutory procedures were followed before putting the document forth as the basis of paternity establishment. Even in instances when both parents request genetic testing to aid the parties in determining paternity, OAG commonly opposes those requests if the parties already signed an AOP.

In one case, a mother and putative father who were fifteen and sixteen, respectively, at the time of the child's birth sought legal assistance from our Project the day of their initial child support hearing. The young man had planned all along to get genetic testing to confirm his paternity of the child, but because the hospital failed to provide him with the required notice, he did not understand that by signing what he thought was the “birth certificate” (but was actually an AOP), he was relinquishing that right. The young mother admitted that she had been with

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<sup>7</sup> D.C. Code § 16-909.01(a)(1).

another man around the time of conception and agreed that they needed genetic testing to confirm that he was the father. Despite evidence regarding the lack of procedural compliance, the OAG attorney argued aggressively against the parties combined challenge to the AOP.

CSSD has also continued in many cases to oppose the disestablishment of paternity in cases where genetic tests – obtained privately or through a related custody or other family law case – exclude the man as a possible father. In these cases, both mothers and fathers look to the court to determine who the actual biological father is and to establish an appropriate child support order, yet CSSD nearly always attempts to block their requests.

We acknowledge that the laws governing paternity establishment in the District are complex. A legislative change will likely be necessary to clarify the law's appropriate application. In the meantime, CSSD should examine the factual circumstances in every case and ensure that they are upholding District law.

## **CONCLUSION**

CSSD is charged with a very important mandate: to take the action necessary to establish and enforce fair and accurate child support orders for the District's children. The agency's success and efficiency is especially critical in today's troubled economic times. We believe that Council oversight is necessary to ensure that CSSD makes improvements over the next year. We ask the Chair to consider scheduling a stand-alone hearing to address CSSD's performance. We hope to continue to work with CSSD and the Council to provide the District's children with the support that they need and deserve.