

**Testimony before the District of Columbia Council  
Committee on the Judiciary  
Child Support Services Division of the Office of Attorney General  
Agency Performance Oversight Hearing  
Fiscal Year 2015-2016**

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**February 18, 2016**

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The Legal Aid Society of the District of Columbia<sup>1</sup> and Bread for the City<sup>2</sup> respectfully submit this joint testimony regarding the performance of the Child Support Services Division (CSSD) of the Office of the Attorney General (OAG), the agency that initiates the vast majority of child support cases in the District’s Superior Court. Our testimony discusses significant concerns raised by the recent Office of the Inspector General report regarding CSSD, the continuing need for legislative reform of the District’s paternity laws, and the agency’s ongoing issues with enforcing child support orders in an efficient and timely fashion.

Legal Aid and Bread for the City have significant experience litigating with and against attorneys from OAG/CSSD. Both organizations have long represented custodial and noncustodial parents in child support cases in the District of Columbia. Starting in 2011, Legal Aid and Bread for the City received Access to Justice grant money from the D.C. Bar Foundation to fund a joint Child Support Community Legal Services Project. Through this Project, we operate the Child Support Resource Center, which provides court-based legal services at the Paternity and Child Support (P&S) Branch of the D.C. Superior Court. Five 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. In addition, we also represent custodial and non-custodial parents in the Domestic Relations Branch and Domestic Violence Unit of the Court, in which OAG/CSSD is often involved in the child support part of the case.

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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. Legal Aid also handles appellate cases in the D.C. Court of Appeals. More information about Legal Aid and its work can be found on our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

<sup>2</sup> Bread for the City, founded in the mid-1970s, provides low-income residents of Washington, D.C. with 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 legal help in the following areas: family law, housing, and public benefits.

We are now in the fifth year of running the Child Support Resource Center, and as a result of our longstanding commitment to representing litigants with child support cases and our ongoing presence at the District's Superior Court, we are intimately familiar with many of the challenges currently facing OAG/CSSD.

Although we frequently oppose OAG/CSSD in the courtroom, we unreservedly share OAG/CSSD's goal of reducing poverty among District children. In the past, we have discussed our ongoing concerns at length in order to provide this Committee with outside perspective on many of the ongoing, systemic challenges facing both CSSD and the many District residents living in poverty that the agency is tasked with serving. In 2012, 2013, 2014, and 2015<sup>3</sup>, we testified regarding the Council and the agency's role in the implementation of upcoming federal child support rules governing state programs, and the need for a more streamlined and simplified paternity establishment regime.

Last year, we noted that CSSD was entering an era of new leadership under an elected Attorney General and stated our intention of working in partnership with the agency and its leadership to address the needs of District residents living in poverty. Indeed, attorneys from our organizations were part of transition meetings tasked to identify necessary reforms within OAG/CSSD, and over the past year, Bread for the City and Legal Aid leadership have had some communication with the Attorney General regarding many areas for possible reform and improvement, including those relating to CSSD and its functioning. We look forward to continuing that conversation in earnest over the coming months to make productive changes in some areas of systemic reform within the agency.

Improving the administration of the District's child support system benefits both families and the District government. In October 2015, the Office of the Inspector General (OIG) released a report of inspection of OAG/CSSD, outlining various findings, areas for improvement, and recommendations. If CSSD directly addresses even some of the issues the OIG Report identified, not only would thousands of parents and children in the District stand to benefit, but so would the District as a whole. When parents can rely on the agency to seek the establishment of fair, accurate orders and pursue common-sense enforcement actions, parents who pay support will be more likely to comply and parents and children more likely to receive the support that they need. Families become more self-sufficient and reduce their reliance on public benefits. All District taxpayers benefit. We provide this testimony with that goal in mind

### **CSSD Should Work Diligently to Address the Issues Raised by the Office of the Inspector General's October 2015 Report.**

The October 2015 OIG Report raised a number of concerns about CSSD's operations, some of which Legal Aid and Bread for the City have discussed at past Oversight Hearings. Today, we will highlight just two of the many areas in need of rapid improvement, one of which was covered by the OIG Report, and the other which we believe deserves greater scrutiny. These important critiques—the lack of communication within the agency and the failure to maintain

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<sup>3</sup> We respectfully refer the Committee to our 2012, 2013, 2014, and 2015 Joint Testimony before the Committee on the Judiciary and Public Safety and the Committee on the Judiciary. We are happy to provide copies upon request.

consistent, accurate financial records —affect our clients’ lives on a daily basis, causing unnecessary harm to children and wasting taxpayer money.

### *Lack of Communication Between Management and Employees and Amongst Units*

The lack of communication and collaboration within CSSD leaves many District families unable to secure critical services. The OIG Report found that, “[t]he environment at CSSD is one of deficient communication, collaboration, oversight, and discipline.” District of Columbia Office of the Inspector General, Office of the Attorney General (OAG) Child Support Services Division (CSSD) Report of Inspection, October 2015, at 32. In particular, the OIG team saw that CSSD management provides inadequate support, assistance, and guidance to lower-ranked employees. We agree. It is generally front-line employees who interact with District families seeking CSSD’s services, and in our experience, CSSD “customers” often receive inaccurate, uneven, and sometimes contradictory information and instructions from the agency. A lack of clear processes and oversight leads to uneven knowledge amongst front-line employees. This prevents District families from efficiently accessing CSSD services through their office, and it is often only with the help of outside counsel that families can obtain assistance.

In a recent case, a Legal Aid attorney assisted a client whose wages were being garnished for a child who was not his. The client had the same name, but different birthdate, social security number, and address, as that of another father with a child support order. CSSD had mistakenly requested wage withholding against a man who had never been ordered to pay child support. This situation should have been easily remedied with a visit to the CSSD office. With proof of his birthdate and social security number, CSSD should have been able to resolve this issue administratively. However, when the client went to the agency, CSSD staff refused to assist him and instructed him to file a case at D.C. Superior Court to obtain relief. After paying a fee to file his motion, the client had to appear in court. At that point, he was able to speak with one of our attorneys, who helped him work with CSSD to resolve the issue without the need for a protracted court battle. CSSD also agreed to reimburse him for wages improperly garnished, as well as the completely unnecessary filing fee. Just this week, the client has returned to Legal Aid for assistance, because his tax refund was recently garnished—once again, for a child and case that is clearly not his.

In its response to the Report, CSSD has agreed to implement a plan to improve communication between management and employees and to create more opportunities for cross-training, to increase communication and collaboration among units. This seems like a good start. But the Council should request follow-up information about the status of these trainings and whether management has implemented plans to improve communication with all agency employees.

### *Maintaining Accurate Records*

One of the core functions of CSSD is to collect and distribute child support, and in this regard, CSSD is not fulfilling its duty the District. When it comes to child support for children living in poverty, maintaining good records part of the time is not enough. Although this issue might seem mundane, it can have profound, real world consequences. As practitioners, we have

seen real-life examples of how CSSD's inability to maintain accurate records impacts our clients, who often have the fewest resources and ability to challenge the agency's positions. We counsel and represent non-custodial parents in cases involving ostensibly large amounts of child support debt or arrears that are owed to both custodial parents and to the District government itself. It is not uncommon for clients to express frustration that their child support payments were lost or not properly credited by CSSD. Clients will sometimes attribute what they believe to be lost payments to incompetence, corruption, or improper record keeping. Unfortunately, it is difficult for clients to produce proof of payments made ten and sometimes twenty years ago.

In one case Legal Aid litigated a few years ago, CSSD lost thousands of dollars paid by a father through wage withholding. This money never made it to the child who needed support. Legal Aid's client was able to get a decade's worth of records from his employer proving that the employer had withheld all the required child support and that it was sent to the District to reimburse the District of public benefits and to distribute to the child's mother. When faced with this evidence, CSSD still argued that the father should pay the child support a second time because there was no proof about where the money went once it was sent to the District. Through this case, Legal Aid tried (in vain) to get information about CSSD's financial accounting system.

Just this past year, an attorney from Legal Aid represented a client whose Social Security Disability Insurance benefits were being garnished by CSSD to repay old child support arrears for his 35 year old child. The attorney requested a payment history, which is a CSSD-produced accounting of child support debt. She received several. The first stated that he owed child support arrears; another stated that his arrears balance was \$0. There was no explanation for the discrepancy. The attorney requested that CSSD conduct an audit. CSSD's audit showed that the client had in fact *overpaid* his child support by over two thousand dollars, an incredibly large sum for this disabled client living in poverty. CSSD had no explanation for their wildly different accountings and was not required to provide one to the court. Had this client not obtained a lawyer, CSSD would have continued to garnish his modest Social Security benefits for a debt he did not owe.

The OIG Report points out CSSD employees' own concerns with their record-keeping. 60% of all employees responded to a survey asking them to rate CSSD's performance in maintaining accurate records of payments from non-custodial parents. While many people have low expectations of government agencies, we think it significant to learn that that 31% of CSSD own employees rated the agency's performance with regard to record-keeping as either "fair" (22%) or "poor" (9%). While we appreciate the OIG's willingness to survey CSSD staffers and community stakeholders about the agency's performance in this area, we believe that a full inspection is necessary to delve more deeply into this troubling issue. We understand that the October OIG inspection was limited to the child support process up to the point of obtaining a child support order. But CSSD serves as the District's collector of child support payments through their Child Support Clearinghouse, and the state's Support Disbursement Unit, which is responsible for the accurate and timely disbursement of child support payments. This is a central and critical part of its operations, and CSSD must be accountable to both custodial and non-custodial parents, payors and payees. The ability of a parent to provide food and shelter for

District children is on the line, we should require that record-keeping be excellent. The Council should demand that the agency show improvement and transparency in handling this critical task.

### Recommendations

- The Council should hold a hearing in Summer/Fall 2016 to ascertain CSSD's progress in meeting addressing Areas of Improvement and incorporating Recommendations raised by the OIG Report.

### **CSSD continues to take untenable positions in cases where paternity is in dispute, which is contrary to District law and adversely impacts the families they serve.**

For years now, we have testified about our serious concern that OAG/CSSD has adopted a practice of opposing paternity challenges in almost all cases in which an Acknowledgment of Paternity has been signed even when (1) parents were not provided with required statutory notices and protections mandated by District and federal law before signing, (2) putative fathers were lied to about the probability of their paternity, (3) both the mother and putative father want genetic testing, and/or (4) DNA testing conclusively proves that the putative father is not actually the biological father. We regret that we have seen little change in how OAG/CSSD handles these cases. The agency's hard-line position diverts resources from the agency's goal of establishing paternity and setting accurate support orders for District families, and it prevents or delays many children from knowing or having relationships with their biological family.

By way of background, generally, in order to establish a child support order, paternity must first be determined for a child's father. In the District, unmarried parents can establish the father's paternity of a child by going to court to request DNA testing or by signing a legal form called an Acknowledgment of Paternity at the hospital or Vital Records. The Acknowledgment of Paternity was created by federal and D.C. law to provide unmarried biological parents with an efficient means of legally recognizing the relationship between a father and child. To safeguard the Acknowledgment of Paternity process and ensure that the system is not abused, federal and D.C. law include procedural requirements that must be followed for parents to validly execute an Acknowledgment of Paternity.<sup>4</sup> When these requirements are not followed, Bread for the City and Legal Aid take the legal position that the Acknowledgment should not be used to establish paternity or require a putative father to pay child support if a party wants genetic testing or has obtained private genetic testing conclusively showing the man is not the biological father. Indeed, Maryland law provides that a declaration of paternity in an order can be modified or set aside if a genetic test establishes that the individual named in the order is not the biological father.<sup>5</sup> Additionally, under Maryland law, the court shall order paternity testing if requested by either party or the government.<sup>6</sup>

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<sup>4</sup> For instance, parents must be under oath. They must also be given written and oral notice of the alternatives to, legal consequences of, and rights and responsibilities that arise from the Acknowledgment. D.C. Code § 16-909.01 (a)(1) (2015).

<sup>5</sup> Md. FAMILY LAW Code Ann. § 5-1038

<sup>6</sup> Md. FAMILY LAW Code Ann. § 5-1029

Based on the experience of parties served by Bread for the City and Legal Aid over the past several years, it appears that too often, hospital or Vital Records staff fail to provide statutorily mandated notices. Parties too often report that they were not told that they could obtain DNA testing prior to signing an Acknowledgement of Paternity at the hospital or at Vital Records. Problems arise when parties sign an Acknowledgement of Paternity without understanding the significance of the document or their right to not sign it. In many cases, fathers express understandable concerns about paternity, often because the mother has recently revealed that another man could be the child's father, or the parties have obtained a private genetic test that shows that putative father is not the child's biological father. Parties seek help from the court to clarify and resolve these extremely personal and complicated matters. Often, their main request is to have the court order a genetic test to determine paternity once and for all. In our experience, OAG/CSSD opposes almost all requests for genetic testing if a father has previously signed an Acknowledgment—even when it is clear that the parties were not given the proper notices and warnings at the hospital or at Vital Records, and in instances when the mother was unsure or lied about the identity of the child's father. This is true even when both parents are requesting genetic testing, or when an actual (or possible) biological father of a child of a child is seeking to establish paternity after another man improperly acknowledged paternity. This latter situation scenario permits an end-run around adoption.

Unfortunately, even after court-ordered DNA testing proves that the man in question is not the child's father, OAG/CSSD remains inflexible. For example, OAG/CSSD has taken the position that a man is legally obligated to pay child support even when genetic testing shows conclusively that he is not the biological father and a court has denied that individual custody or visitation rights based on that genetic testing. Recent developments suggest that OAG/CSSD recognizes the importance of genetic testing in establishing accurate parentage for children in the District. Unfortunately, this does not seem to apply after an Acknowledgement of Paternity has been executed. In its FY 2015 Performance Plan, CSSD discussed an initiative to provide free paternity tests to parents at a conference it hoped to organize to educate fathers about their legal rights and responsibilities, called a "Fatherhood and Family Strengthening" conference.<sup>7</sup> Unfortunately, OAG's FY 2015 Performance Accountability Report states that the conference was not held due to logistical complications.<sup>8</sup>

CSSD's opposition in these cases diverts resources that could be used to assist custodial parents in finding actual biological parents and obtaining child support from those who have a legal and moral obligation to provide for their children. CSSD's position puts the executed Acknowledgement of Paternity – no matter what the circumstances – above all, to the detriment of families in the District.

#### Recommendations:

- The District should offer free or low-cost genetic testing to low-income individuals at hospitals or at Vital Records prior to presenting them with an Acknowledgement of Paternity.

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<sup>7</sup> <http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/OAG15.pdf>.

<sup>8</sup> [http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/OAG\\_FY15PAR.pdf](http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/OAG_FY15PAR.pdf).

- The laws governing paternity establishment in the District are admittedly complex. The Council should prioritize legislative reform to simplify and streamline the District's paternity laws, thereby making them more accessible to District residents. Bread for the City and Legal Aid would welcome the opportunity to work with the Council and OAG/CSSD to craft legislation that clarifies the law.

**OAG/CSSD should continue working towards the timely enforcement of current child support orders.**

We have observed significant improvement in OAG/CSSD's efforts to enforce child support orders in a timely manner. Under District law, a twelve-year statute of limitations applies to the collection of all civil judgments, which includes child support obligations. Bread for the City and Legal Aid have represented noncustodial parents in many cases in which OAG/CSSD is collecting unpaid child support arrears well past the expiration of the statute of limitations. In many cases, the children for whom support was owed are in their late 20s, 30s, or even 40s when OAG/CSSD begins garnishing up to 65% of the noncustodial father's Social Security Disability Insurance (SSDI) or Social Security retirement benefit to pay back child support arrears. In a particularly egregious example, Legal Aid helped a 94-year-old World War II vet whose disability benefits CSSD was still garnishing for long-expired, decades-old arrears. Bread for the City also recently assisted a father whose monthly \$575 retirement benefit, which was his sole income other than food stamps, was being garnished by over \$330 per month to pay back arrears he owed for his children, who are now aged 33 and 35. Enforcement of this type makes it impossible for our clients – who rely on these benefits, which they have earned through their work history, as their sole source of income – to meet their daily living expenses. In many cases, we have successfully argued – over OAG/CSSD's strong objections – that the District is barred from enforcing these expired arrears and must cease withholding for arrears that are unenforceable.

Recently, we have observed that OAG/CSSD has begun asking the court to extend the statute of limitations before the arrears begin to expire by filing Motions to Revive the child support judgments. It is important that OAG/CSSD continue to take action to enforce child support orders at the time the support is owed and is needed by the child. Research has shown that timely enforcement of child support arrears is associated with an increase in formal child support payments, as well as an increase in noncustodial fathers' involvement with their children.<sup>9</sup> We are hopeful that OAG/CSSD will continue to enforce child support obligations in a timely fashion, in order to ensure that children are receiving support at the time they need it.

Recommendations:

- OAG/CSSD should stop directing its resources toward arguing that the statute of limitations does not bar arrears that are clearly expired under District law.
- OAG/CSSD should continue to enforce child support orders while the children need the support, not years or decades later when the children are adults.

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<sup>9</sup> Robert I. Lerman, Capabilities and Contributions of Unwed Fathers, *The Future of Children: Fragile Families* 20, no. 2, Fall 2010, at 76-78.