

**Testimony of Ameer Vora**  
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**Before the Committee on the Judiciary & Public Safety**  
**Council of the District of Columbia**

**Public Oversight Hearing Regarding the Office of the Attorney General**

**February 11, 2019**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits the following testimony regarding the performance of the Child Support Services Division (CSSD) of the Office of the Attorney General (OAG), the agency tasked with initiating child support cases, establishing and enforcing support orders, and collecting child support. Our testimony highlights two important areas that warrant the agency and the Council's attention:

1. The need for improvements to internal trainings on key areas of substantive child support law, as well as cultural competency; and
2. The need for the modernization of the District's outdated paternity law, as well as agency-level reforms to ensure the fair resolution of cases in which paternity is in doubt.

Legal Aid has significant experience litigating against attorneys from OAG, and has long represented both custodial and noncustodial parents in child support cases in the District of Columbia. Starting in 2011, Legal Aid and another legal services provider, Bread for the City, received Access to Justice grant money from the D.C. Bar Foundation to fund a Child Support Community Legal Services Project. Through this Project, we operate the Child Support Resource Center, which provides court-based legal services at the Parentage & 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 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 87 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 areas of housing, family law, public benefits, immigration, and consumer protection. More information about Legal Aid can be obtained from our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

We are now in the eighth 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. Our representation of thousands of clients in a variety of civil legal matters gives us insight into the barriers facing families living on low incomes in the District. Additionally, our litigation and advocacy in local court and government agencies has shown us how important it is to low-income District residents that agencies work together with community-based organizations, and the difficulties created for families when our government falls short.

In light of this experience, we believe that we can provide useful feedback to the Committee regarding OAG's handling of child support and parentage matters. We look forward to working with OAG and the Committee to address these areas of concern.

### **OAG Should Make Improvements to its Internal Training Program to Ensure that CSSD Staff Maintain Knowledge of Key Concepts and Improve Cultural Sensitivity**

Through our daily presence at the Child Support Resource Center, our attorneys have the opportunity to observe and work closely alongside OAG attorneys and legal support staff. We recognize that the day-to-day caseload of OAG is often heavy, and that working with *pro se* litigants in such an emotionally charged environment can be challenging at times. To ensure the entry of fair and accurate child support orders, as well as the just and respectful treatment of *pro se* litigants (particularly non-custodial parents), we encourage OAG to engage in more robust internal training for its staff on substantive and cultural topics that frequently arise in the course of child support litigation.

The Superior Court relies on Assistant Attorneys General to be specialists in the area of child support and parentage law. These prosecutors, along with their paralegals, are expected to be well-versed in the provisions of the D.C. Child Support Guideline, as well as other statutes governing the litigation of child support and parentage cases, and to seek relief that is within the confines of the law. However, we have come across several cases in which OAG attorneys have either sought or permitted child support orders to be entered in violation of the Child Support Guidelines, and we have experienced several instances in the past year wherein OAG attorneys have exhibited a lack of knowledge regarding important aspects of the law.

#### Improper Imputation of Income

In particular, we have seen multiple child support orders entered based on the improper imputation of income to a parent. For example, we recently worked with a child support litigant – a custodial parent who is the mother of five children and a customer of OAG – to whom the Court imputed income for the purposes of calculating child support after she explained that she did not intend to work until her youngest child, who was less than a year old, was old enough to go to school. This litigant, moreover, was a recipient of food stamps. The Child Support Guideline provision pertaining to the imputation of income states that a judicial officer may not

impute income to a parent who is receiving means-tested public assistance benefits.<sup>2</sup> Elsewhere in the Guidelines, food stamps is explicitly listed as an example of a means-tested public assistance program.<sup>3</sup> Notwithstanding the Guideline's clear prohibition on imputing income in this circumstance, and despite the involvement of an OAG attorney who should have argued that it was unlawful for the Court to impute income to their customer in this case, an order imputing a minimum wage income to the custodial parent was entered, resulting in a lower child support award for the minor children.

This is not the only case we have seen where OAG was involved in the entry of a child support order that improperly imputed income to a parent. In another matter, OAG argued for imputation income to the non-custodial parent in an initial child support hearing at which the non-custodial parent did not appear. The Child Support Guidelines were amended in 2016 to add a provision explicitly addressing this exact situation, wherein a non-custodial parent fails to appear for a child support hearing, and no information is known about the parent's income. The new provision states that, in such circumstances, the Court may only enter a child support order in the amount of \$75 per month.<sup>4</sup> In this case, however, OAG sought the entry of a permanent child support order for \$440 per month, which was the child support award calculated by imputing a minimum wage income to the absent non-custodial parent, despite presenting no information about that parent's income. In reality, that parent was unemployed, and could not afford a \$440 per month child support obligation. There was no factual or legal basis to impute income to this litigant, and yet, OAG sought this relief, which clearly went beyond the bounds of the Child Support Guidelines.

#### Domestic Violence and the "Good Cause" Exception to Cooperation

We have also witnessed OAG attorneys and support staff exhibit a lack of familiarity with respect to the "good cause" exception to the statutory requirement that recipients of TANF benefits assist and cooperate with OAG in identifying, locating, and establishing child support orders against the non-custodial parents of their children.<sup>5</sup> It is well-established that a TANF recipient has "good cause" to avoid cooperation in child support litigation if "efforts to cooperate are reasonably anticipated to result in physical, sexual, or emotional harm"<sup>6</sup> to either herself, her child, or her immediate family.

However, when OAG recently initiated a child support case against the abuser of one of our clients, a TANF recipient who had been the victim of abuse at the hands of her child's father, we asked OAG not to pursue the case, given our client's safety concerns and request for a "good

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<sup>2</sup> D.C. CODE § 16-916.01(d)(10).

<sup>3</sup> D.C. CODE § 16-916.01(d)(6).

<sup>4</sup> D.C. CODE § 16-916.01(f-1)(1)

<sup>5</sup> D.C. CODE § 4-217.08(a)

<sup>6</sup> 29 DCMR § 1709.1(a)

cause” exception. We were, frankly, astounded when the OAG attorney handling this case initially denied our request, responding that the attorney had never heard of such a “good cause” exception relating to domestic violence. In fact, several other OAG attorneys involved in that case also expressed doubt that a TANF recipient’s fears of future violence was a valid basis not to cooperate with OAG’s pursuit of child support from an abusive non-custodial parent.

Moreover, in response to our insistence that such an exception existed, OAG asked to litigate in Court the issue of whether our client was truly a victim of domestic violence, and whether her fears were well-founded, and requested a continuance of the case for that purpose, despite the fact that this particular client had an active Civil Protection Order (“CPO”) against the child’s father. We were surprised by OAG’s response, particularly because in the responses it submitted to this Committee ahead of last year’s Performance Oversight Hearing, OAG stated that CSSD staff is trained to ask TANF recipients about domestic violence, give them an opportunity to claim the “good cause” exception, and grant the exception even where a survivor of domestic violence is unable to provide police reports or protection orders documenting their abuse.<sup>7</sup>

It was only through persistent advocacy that we were finally able to convince the OAG attorneys on the case that the law provides a clear exception to the TANF cooperation requirement based on a custodial parent’s fears of domestic violence. Although OAG ultimately agreed to dismiss the child support case against our client’s abuser, we remain troubled by the fact that OAG was prepared to force our client to litigate her status as a victim before it would respect her request not to pursue a child support case against her abuser, as well as OAG’s overall apparent lack of knowledge surrounding this issue.

Both the law governing the “good cause” exemption to cooperation, as well as the law specifying the circumstances under which income can be imputed to a parent are clear. It is essential that OAG attorneys, as well as the support staff that interact with child support litigants before they go into the courtroom, are well-versed in the nuts and bolts of child support law and are not misrepresenting that law to either litigants or the court. As the prosecuting body that initiates most child support cases in the District, calculates the amount of support owed, and submits proposed orders to the Court, the Court and litigants – particularly those who are *pro se* – rely on OAG attorneys to fairly and accurately apply the law. In light of our experiences, we urge OAG to make training improvements.

#### Interactions with Litigants

In addition to these substantive topics, we think that OAG staff would greatly benefit from regular cultural sensitivity training. As OAG can attest, the Parentage & Support Branch of the Court is often a very intense environment in which the matters at issue are highly personal, and, as a result, parties may exhibit animosity and resentment towards one another, as well as towards the Court and the Government. In such a tense atmosphere, we have at times witnessed OAG

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<sup>7</sup> See “Re: OAG Responses for FY 2016-2017 Performance Oversight Hearing – March 1, 2018,” 64, Attorney General Karl A. Racine, February 27, 2018 (accessed on February 8, 2018 at <http://dccouncil.us/wp-content/uploads/2018/10/oag.pdf>).

staff react and respond to litigants in ways that are insensitive, inappropriate, and judgmental. These have included brusque treatment of litigants waiting for their cases to be called, remarks that litigants could afford to pay based on their clothing or presentation, and, in at least one instance, an OAG paralegal telling a non-custodial parent: “I’m not trying to railroad you with this order; I could have, but I didn’t.” We have witnessed this behavior often enough to conclude that it is indicative of a larger cultural issue that needs to be addressed with respect to how OAG staff engages with litigants at Court.

The vast majority of litigants with whom OAG interact are not well-off or represented by attorneys. For these individuals, their experience with OAG staff often define their relationship to their child support obligation. OAG paralegals are the first people litigants meet with regarding their child support case, and OAG attorneys are often the only attorneys in the courtroom during child support hearings. Given their ubiquitous presence at every stage of child support litigation, collection, and disbursement, it is essential that OAG staff receive regular sensitivity training to ensure that their interactions with litigants – particularly those who are low-income and *pro se* – are respectful, understanding, and unimpaired by implicit bias. We believe strongly that if litigants feel that they are being treated with dignity, courtesy, and fairness within the child support system, their compliance and engagement with the system will improve.

We are certainly encouraged by the fact that, according to the responses OAG submitted ahead of last year’s Performance Oversight Hearing,<sup>8</sup> some OAG staff had the opportunity to participate in cultural sensitivity training sessions back in 2016. We hope and recommend that such training be conducted regularly, and that attendance be mandatory, particularly for staff whose duties involve interacting with litigants at Court.

**The Council Should Prioritize Updating the District’s Outdated Parentage Laws and OAG Should Do More to Facilitate the Fair Resolution of Paternity and Parentage Matters**

Over the years, we have testified about OAG’s previously hardline positions in cases involving paternity challenges. We have worked on cases where OAG opposed granting parents genetic testing or fought against the disestablishment of paternity where there was an existing Acknowledgement of Paternity. This included situations where (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.

As we noted in last year’s oversight testimony, we are glad that OAG has begun to take a more reasonable and family-centric approach when litigating cases involving questions about a father’s paternity. However, OAG’s flexibility remains uneven. Ultimately, we believe that this is an area that requires the Council to resolve these issues once and for all by amending the

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<sup>8</sup> *Id.* at 404.

District's out-of-date parentage statutes. However, in the meantime, OAG can and should take important steps to ensure that it is taking a more efficient and fair approach to cases regarding the disestablishment of parentage.

### District's Parentage Law and Acknowledgements of Paternity

By way of background, generally, in order to establish a child support order, parentage 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. For instance, both parents must be placed 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.<sup>9</sup> When these requirements are not followed, Legal Aid takes the position that the Acknowledgment should not be used to establish parentage 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.

Unfortunately, our years of experience tell us that these procedural safeguards are not always followed – often with significant consequences. As we have noted in previous testimony, litigants report that too often, hospital or Vital Records staff fail to provide statutorily mandated notices. Parties often are not told that they could obtain DNA testing prior to signing an Acknowledgment of Paternity at a hospital or at Vital Records. Problems arise when parties sign an Acknowledgment 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. The breakdown of these safeguards makes it important that there be a clear, navigable process for addressing cases in which a party did not make an **informed** decision to sign an Acknowledgment of Paternity.

### OAG Has Impeded the Resolution of Some Parentage Matters

Problems with the execution of Acknowledgments of Paternity can be made worse when OAG presents obstacles to disestablishment. In a recent case, for example, Legal Aid represented a putative father who had undergone private DNA testing, the results of which showed that our client was not the biological father of the custodial parent's child. Our client and the child's mother had signed an Acknowledgment shortly after the child was born, which had established Legal Aid's client as the child's father. Both the custodial parent and our client jointly sought to disestablish paternity, and our client initiated the court case upon the advice of the Department of

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<sup>9</sup> See D.C. CODE § 16-909.01 (a)(1) (2018).

Vital Records. At Court for the initial hearing, we learned that the parties never received the requisite warnings or explanations before they signed the Acknowledgment of Paternity at the hospital, and did not understand the legal significance, permanence, and implications of signing this form.

When the parties jointly argued that paternity should be disestablished in light of the invalidly executed Acknowledgment of Paternity and the DNA testing results, OAG opposed their request. Upon hearing the parties' testimony regarding the legally deficient execution of the Acknowledgment of Paternity, the Court agreed to order DNA testing, over OAG's objections. At the next hearing, despite the official DNA testing results confirming that the putative father was not a biological parent of this child, OAG asked the Court not to disestablish paternity until it could first subpoena the alleged biological father of the child to essentially guarantee that his paternity would be established immediately after our client's paternity was disestablished. The Court denied this request, agreeing with Legal Aid that the subsequent establishment of the biological father's paternity was a separate legal issue that needed to be addressed in a separate, subsequent case, and that this was not a legitimate reason to further delay the resolution of the disestablishment case at hand.

We have seen other instances where OAG is unwilling to consent to disestablishment of parentage unless the biological father is present and on hand to have his own paternity established simultaneous with the disestablishment. We think that it is unreasonable and illogical for OAG to routinely take this position, for, in doing so, it is conflating two separate issues that ought to be dealt with in succession, not simultaneously. To do otherwise would be to effectively force a biological stranger to remain the legal father of a child unless and until the biological father can be located and brought to court to have his own paternity established.

Another common obstacle to disestablishment created by OAG is its frequent request that putative fathers be denied the benefit of lower-cost or government-subsidized genetic testing and instead ordered to pay what is called the "private rate." This "private rate" is approximately \$400, whereas the "government rate" may be closer to \$150. Although we are not privy to the details of OAG's pricing contract with the lab that conducts court-ordered testing, it is not clear that providing putative fathers with the benefit of the "government rate" does any harm to OAG's budget or the District's bottom line. A \$400 bill for genetic testing is a daunting prospect for many parents of limited means, and that sum could be the difference between a parent going through with genetic testing to conclusively establish paternity or choosing to drop a valid request. A lack of income should not be the reason that a man who is not actually a child's biological father remains listed on that child's birth certificate.

#### It is Time to Modernize the District's Parentage Laws

Although OAG has begun to take less hardline positions on paternity and parentage cases, District laws remains complicated and out-of-date, and the Council should take this opportunity to update the District's parentage laws to better account for the availability and accuracy of genetic testing. A number of other jurisdictions, including neighboring ones, do this, and these laws could be models for any modernization effort here in the District. For example, 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>10</sup> Additionally, under Maryland law, the court shall order paternity testing if requested by either party or the government.<sup>11</sup> Virginia, as well as California, Illinois, Alabama, Colorado, Georgia, Minnesota, Missouri, Florida, South Dakota, and Louisiana all specifically allow a “father” who signed an Acknowledgment to subsequently disestablish paternity based on genetic testing, and numerous other states at least provide some means for a “father” to challenge paternity after the rescission period.

### Agency Reforms

We hope that the District swiftly recognizes the need to revise its current parentage scheme, which is outdated and prone to error. In the meantime, however, we encourage OAG to support efforts to both prevent and correct erroneous establishments of paternity through the increased availability of low-cost DNA testing, and further cooperation in response to requests for disestablishment where it is clear that establishment of paternity was legally deficient, and the putative father is not the biological father of the child.

### **Conclusion**

We thank the Committee for the opportunity to testify today and look forward to working with the Committee and OAG to address the issues raised in today’s testimony.

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<sup>10</sup> MD. CODE ANN., FAM. LAW § 5-1038.

<sup>11</sup> MD. CODE ANN., FAM. LAW § 5-1029.