

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

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

**March 4, 2021**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits this testimony regarding the performance of two branches of the Office of the Attorney General (OAG). At the outset of our testimony, we note that we work with OAG on a range of issues spanning most of our practice areas. The Office’s Social Justice Section has worked collaboratively with housing attorneys from across the legal services community (including Legal Aid) in our shared efforts to identify and address unsafe and unhealthy housing conditions in buildings where our clients live. In particular, receivership actions filed by OAG have continued to be a vital tool for forcing much-needed repairs in buildings that have been allowed to languish in disrepair for far too long. We also continue to have a collaborative relationship with OAG on consumer protection issues, having had key discussions with the Office regarding COVID-19 protections for consumers and homeowners.

Our testimony today, however, focuses on two areas of OAG’s operations: (1) the Child Support Services Division (CSSD), which is tasked with initiating child support cases, establishing and enforcing support orders, and collecting child support; and (2) the Domestic Violence Section, which helps survivors of intimate partner and family violence, sexual assault, and stalking obtain civil protection orders (CPOs), and which serves as the primary enforcer of these orders through its prosecution of CPO violations.

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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.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 89 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. 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).

Legal Aid offers this testimony during an unprecedentedly difficult time for members of our low-income client community. The ongoing COVID-19 public health crisis and related economic recession have disproportionately affected minorities, low-wage workers, and families with children. Legal Aid's testimony is directly informed by the cases, conversations, and experiences our attorneys have had over the last year with clients who are struggling to stay safe and afloat despite increased financial hardship, isolation, and risk of infection.

Now more than ever, we are relying on our partnerships with OAG to ensure that the District's most vulnerable and marginalized residents receive the resources, services, and support they need. Throughout the pandemic, Legal Aid attorneys have communicated and collaborated with our counterparts at both CSSD and the Domestic Violence Section on individual cases as well as systemic advocacy efforts. Legal Aid has continued to litigate both with and against attorneys from OAG/CSSD, via the Child Support Resource Center, which we and Bread for the City have been jointly running remotely to provide same-day legal advice to litigants attending virtual hearings in the Parentage and Child Support (P&S) Branch of the D.C. Superior Court. We also have been working closely with attorneys and staff from the Domestic Violence Section to help our clients who are survivors of abuse achieve safety, stability, and access to justice despite the limited operations of the Superior Court during the pandemic.

In light of our work with both of these branches of OAG, we offer the following perspective on their performance.

### **Child Support Services Division**

Although we frequently oppose OAG/CSSD in individual cases, we unreservedly share OAG/CSSD's goal of reducing poverty among District children. Since 2012,<sup>2</sup> we have testified before the Council regarding OAG/CSSD's performance, areas of concern, and ways in which we hope to collaborate with the agency in support of our goal of a better-functioning child support system in the District.

Over the course of the last year, Legal Aid has sought OAG/CSSD's cooperation, collaboration, and input on a number of projects specifically aimed at improving child support legal processes and increasing access to justice for low-income child support litigants during the pandemic. Legal Aid has reached out to OAG/CSSD with proposals that the District forgive TANF arrears accrued during the pandemic, consent to the easing of filing and service requirements on motions to modify child support due to loss of income or employment, and support increased access for the legal services community to otherwise confidential child support and paternity case records in order to facilitate outreach to and services for litigants. While OAG/CSSD has not supported all of Legal Aid's recommendations, it has always expressed a willingness to hear our ideas, for which we are grateful.

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<sup>2</sup> Testimony from prior years is available at: <https://www.legalaiddc.org/non-litigation-advocacy/>

In this spirit of communication and collaboration, we highlight the following areas of concern regarding OAG/CSSD's current operations. We point out these issues not to chastise OAG/CSSD, but with the hope that it continues to be willing to listen to the challenges our client have faced in dealing with the agency, seek Legal Aid's input on ways to improve its services, and implement solutions to ensure that litigants in child support and parentage cases can expect fairness, accessibility, and transparency when interacting with OAG/CSSD.

### OAG/CSSD Did Not File New Child Support Petitions For Eight Months

The challenges brought about by the pandemic are far-reaching, well documented, and ongoing. Everyone in the District has had to endure these challenges in their own way, and Legal Aid recognizes that government workers and personnel are no exception. With the D.C. Superior Court effectively closed to the public, OAG/CSSD faced the daunting challenge of converting a primarily in-person process into a virtual platform. Unfortunately, as it struggled to meet this challenge, OAG/CSSD did not file any new child support petitions for eight months, nor did it inform the public of this fact. As a result, families relying on OAG/CSSD's crucial assistance in initiating cases were left in the dark without much needed financial support.

OAG/CSSD is responsible for initiating new child support and parentage cases for families receiving TANF as well as District parents who have requested the agency's assistance. Prior to the pandemic, OAG/CSSD filed petitions for new child support cases in person at the Superior Court's Family Court Central Intake Center. At the outset of the pandemic, in mid-March 2020, the Court stopped accepting in-person filings, although it always remained open for electronic filings via the CaseFileXpress Platform and later quickly established a system to accept filings from *pro se* litigants via email. Despite these electronic avenues to submit new pleadings, OAG/CSSD did not file any new cases for D.C. families seeking support from the start of the pandemic until December 2020. Legal Aid recently learned that OAG/CSSD's inability to do so was the result of a variety of technological challenges on its end. While we do not doubt the very real technological challenges the agency faced to convert its operations from a paper system to a digital one, the result of OAG/CSSD's failure to find a timely workaround was a complete roadblock in the system: No new child support cases were initiated by OAG/CSSD during this eight-month period, and families who may have found themselves in increasingly dire economic circumstances were left without the ability to pursue a vital source of financial assistance.

Furthermore, during this period, OAG/CSSD never communicated its struggles to the public or members of the legal services community, who would have helped spread the message that litigants interested in seeking child support should self-initiate new cases rather than waiting for OAG/CSSD to do so. Because community partners such as Legal Aid and Bread for the City were unaware that OAG/CSSD was incapable of filing new petitions, we were unable to properly advise *pro se* litigants, the vast majority of whom are low-income residents of the District, of their available options and alternatives.

Predictably, a significant backlog of petitions accumulated in the eight months it took for OAG/CSSD's virtual platform to become operational. As it attempts to catch up, OAG/CSSD has been limited to filing 10 new petitions per day. Only 165 new petitions have been successfully prepared and submitted since March 2020. It is unclear when these or the doubtless

many other cases still awaiting filing will be scheduled for a hearing. We have heard the Court is scheduling cases into the fall. Custodial parents and their children are likely to endure many more months before they are able to receive the child support to which they are entitled.

We recognize that OAG/CSSD, like so many other agencies, experienced a sudden and unprecedented strain in its attempts to convert its in-person operations to a virtual platform. But OAG/CSSD's inability to more quickly create a workaround to file new petitions or even communicate about its challenges for eight months left custodial parents and the legal services community in the dark. The unique financial hardships imposed on our community by this pandemic make OAG/CSSD's lack of communication and public assistance particularly disheartening.

We believe that it is vital to low-income communities that OAG/CSSD strive to operate transparently and at its highest capacity. We call on OAG/CSSD to be more forthcoming with information about its operating status, the timeline or anticipated wait for services, and challenges it faces that affect the financial resources available to families in District communities. It is our desire to continue to work with OAG/CSSD on all issues affecting low-income child support litigants in hopes to ensure that the residents of this District are effectively and timely served.

**Recommendations:**

- We call on the Committee to question OAG/CSSD about its plan to clear the backlog of new petitions that should have been filed in the eight-month period from March 2020 to December 2020 when no new cases were filed.
- We ask the Committee to encourage OAG/CSSD to be more transparent and collaborative with community partners in times of limited operations to spread awareness and brainstorm possible solutions.

OAG/CSSD Should Provide Clear Guidelines About How Litigants Can Contact Staff, How Long it Will Take Staff to Return Calls, and When and How OAG/CSSD Will Communicate With Litigants Prior to Their Child Support Hearings

Since the beginning of the COVID-19 public health crisis, OAG/CSSD has been required to quickly alter its practice to comport with the current need for remote operations and virtual child support hearings. Legal Aid appreciates that OAG/CSSD has consistently encouraged litigants to contact the agency directly during this period for answers and assistance regarding their child support cases. We are concerned, however, that OAG/CSSD has not communicated its procedures and operations to the public in an effective, transparent, or timely manner.

Throughout the public health crisis, Legal Aid has heard from both custodial and non-custodial parents who have experienced difficulties getting in touch with the OAG/CSSD representatives assigned to their child support cases. We heard from one custodial parent— a TANF recipient—who attempted over the course of two months to reach her OAG/CSSD caseworker multiple times, without success, in order to provide the necessary information to lift sanctions on her

TANF benefits. The caseworker's delay in responding to this TANF recipient ended up prolonging the period during which the recipient family's benefits were reduced. One non-custodial parent reported that he tried to contact his longtime caseworker at OAG/CSSD early on in the pandemic to seek guidance regarding his inability to keep up with his child support order after he lost his job, but was unable to get in touch with that staff member and ended up leaving a voicemail for him. The voicemail went unanswered for months, and eventually, the non-custodial parent tried calling OAG/CSSD again only to learn that he had been reassigned to another caseworker. As a result, it was months before this litigant was informed by OAG/CSSD that he needed to file a formal motion with the court to ask to lower his child support obligation.

These examples do not seem to be outliers. Many *pro se* litigants we have spoken with have gone months with little to no information about the status of their existing child support case or what actions OAG/CSSD may or may not be taking to move their case forward. Even when litigants receive a notice from the court regarding a child support hearing, they are often not contacted by OAG/CSSD until one or two days before their hearing. Litigants are not told when to expect these calls, and as a result, many miss the opportunity to speak with OAG/CSSD staff before their hearing. This can result in even further delays in the resolution of cases that have been pending for many months or even a year. Even if litigants know to try to contact OAG/CSSD on their own, their only recourse is to call OAG/CSSD's main phone number, where they may not be able get through to a representative familiar with their case.

Even when *pro se* litigants are able to connect with OAG/CSSD staff ahead of their hearing, many still experience difficulties providing requested documents to OAG/CSSD and are not afforded much leeway or flexibility by the agency. For example, litigants have told us that OAG/CSSD staff have required litigants to upload documents to Box.com, rather than send them by email. For some *pro se* litigants with only limited technological access or understanding, it can be a struggle to scan and upload documents in this specific manner.

#### OAG/CSSD Should Devote More Resources to Providing Information to Litigants Who Have Limited English Proficiency

All of these communication issues are greatly exacerbated for litigants who have limited English proficiency. Although there are many Spanish-speaking District residents, OAG/CSSD only provides limited public-facing information in Spanish. OAG/CSSD's website, for example, does not provide vital documents, forms, or resources in Spanish as it is required to as an entity with major public contact by the Language Access Act. For example, while OAG/CSSD recently introduced a web form for individuals seeking to request OAG/CSSD's assistance with initiating or enforcing a child support case, the form is only available in English. Our raising this concern should not be a surprise to OAG/CSSD; the Office of Human Rights flagged OAG/CSSD's website as an area for improvement in its FY2019 Language Access Program Annual Compliance Review.<sup>3</sup>

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<sup>3</sup> See

[https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/OHRLAR19\\_FINAL\\_121820.pdf](https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/OHRLAR19_FINAL_121820.pdf)

Spanish-speaking litigants also receive long form letters from OAG/CSSD solely in English, with only a small, hard-to-find sentence noting that litigants can call OAG/CSSD's main number for assistance in Spanish. Receiving these letters can be alarming and confusing for Spanish-speaking litigants. As with other issues, OAG/CSSD recommends that all Spanish speakers call their main number to get assistance. However, litigants report long wait times and difficulty connecting to a live person. Litigants with limited English proficiency who speak languages other than Spanish likely face even greater barriers to connecting with OAG/CSSD, potentially negatively impacting their case and the ability for their children to receive the support to which they are entitled.

### **Recommendations:**

- The Committee should request information about the staffing and resources that OAG/CSSD is able to devote to communication with the public, including communication in languages other than English. The Committee should ensure that these resources over the remainder of Fiscal Year 2021 and FY22 are sufficient for prompt communication.
- OAG/CSSD should be more transparent with litigants about how to get in touch with staff and how long it will take for staff to return calls.
- OAG/CSSD should establish a fixed window of time when litigants can expect to be contacted for a pre-interview before their hearings.
- OAG/CSSD should send all vital notices in Spanish as well as English.
- OAG/CSSD should ensure that all vital documents and forms on its website are available in Spanish as well as English.
- OAG/CSSD should work with community partners such as the CSRC to help publicize their communication procedures.

### OAG/CSSD Must Increase Communication with DHS Regarding Parents Receiving TANF and the Child Support Cooperation Requirement

Legal Aid supports the action taken by OAG/CSSD and DHS to suspend the imposition of new child support sanctions during the pandemic. However, as we testified for at the DHS Oversight hearing earlier this week,<sup>4</sup> DHS and OAG/CSSD can do more to clarify procedures and effectively communicate with TANF recipients around the child support cooperation requirement, sanctions for non-compliance with cooperation, and good cause waivers for compliance with cooperation. DHS and OAG/CSSD must do a better job of communicating, both with the parents and each other, so that parents are not put at risk of unwarranted TANF sanctions. We urge the Committee, in coordination with the Committee on Human Services, to work with OAG/CSSD and DHS to address this problem and focus on improving procedures for communication between the agencies and clarifying the process for TANF recipients to ensure effective implementation and prevent a significant number of TANF households from receiving sanctions for non-compliance once the suspension is lifted.

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<sup>4</sup> See <https://www.legalaiddc.org/wp-content/uploads/2021/03/Legal-Aid-FY20-FY21YTD-Oversight-Testimony-re-DHS-ESA-Programs-FINAL.pdf>

By way of background, parents in households receiving TANF assign their right to receive child support to the District government while they are receiving TANF.<sup>5</sup> This means that TANF recipients must cooperate with the District in identifying, locating, and establishing child support orders against the non-custodial parents of their children.<sup>6</sup> If a TANF recipient does not cooperate with the government's efforts to pursue child support from the non-custodial parent, the customer is subject to a TANF sanction equaling a 25% reduction in the family's TANF grant.<sup>7</sup> There is a "good cause" exception to cooperating with the child support enforcement if cooperating with the government, or seeking child support, may result in harm to the TANF recipient or the recipient's family.<sup>8</sup>

When individuals apply or recertify for TANF, they must complete a Combined Application,<sup>9</sup> which asks the person to write information about the non-custodial parent, including their last known address, whether paternity has been established, and the parent's last place of employment, for each child in the household. Prior to the pandemic, DHS caseworkers were responsible for reviewing and having the customer sign a notice explaining the child support cooperation requirement and that individuals could apply for a good cause waiver from the cooperation requirement if they had experienced domestic violence or if pursuing child support would put themselves or their families at risk. Many consumers would provide information to DHS about the domestic violence they had experienced, including filling out statements describing what they had been through and detailing fears about pursuing child support.

Oftentimes, TANF recipients who have provided all of the information they have about the non-custodial parent or completed a statement about potential violence associated with child support believe that they have complied with the District's child support cooperation. However, this is only the first step in the process of cooperating with child support efforts or obtaining a good cause waiver. DHS then sends the case information about the non-custodial parent, and/or any related information related to a good cause request, to OAG/CSSD for follow up. OAG/CSSD decides whether "good cause" exists for non-cooperation, which requires further follow-up from custodial parents. If OAG/CSSD requests information or participation from a TANF recipient and does not receive a response, it notifies DHS that the family should be sanctioned. DHS is then supposed to send a notice about the impending child support sanction before implementing the sanction, which reduces the family's benefits by 25%.

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<sup>5</sup> D.C. CODE § 4-205.19(b).

<sup>6</sup> D.C. CODE § 4-217.08(a).

<sup>7</sup> 29 DCMR §§ 1715.2-.3.

<sup>8</sup> 29 DCMR § 1709.1(a).

<sup>9</sup> Available at

[https://dhs.dc.gov/sites/default/files/dc/sites/dhs/publication/attachments/Combined\\_Application\\_December-2015\\_%28English\\_%202020.pdf](https://dhs.dc.gov/sites/default/files/dc/sites/dhs/publication/attachments/Combined_Application_December-2015_%28English_%202020.pdf)

At the point that a TANF customer has a sanction imposed for non-compliance with child support cooperation, they should have received three notices: (1) a notice from OAG/CSSD describing the opportunity to meet and explaining the potential consequences of failing to do so; (2) a notice from OAG/CSSD explaining the basis for finding non-cooperation; and, (3) a notice from DHS explaining that a sanction for non-cooperation will be imposed and detailing the steps the consumer can take to become compliant and the right to request a fair hearing. Yet, many consumers have their TANF sanctioned by 25% for non-compliance with child support cooperation without receiving proper notice.

If DHS sanctions a TANF recipient who did not receive all notices or seeks more information, the burden lies on the recipient to work with both agencies to resolve the issue. Doing so involves several steps. First, the person generally contacts DHS to ask why their benefits were reduced. Second, they must work with OAG/CSSD to come into compliance with the child support cooperation and obtain proof of compliance. Third, OAG/CSSD is supposed to communicate to DHS that the person is now compliant so the TANF sanction can be lifted the following month. In fact, many consumers receive information that they are responsible for providing DHS with proof of compliance. During the pandemic, it has been especially difficult for consumers with TANF sanctions for child support non-compliance to come into compliance and lift the sanction because OAG/CSSD is closed for in-person services.

Additionally, delays between communication between OAG/CSSD and DHS have negative impacts on TANF sanctions. For example, on the DHS side, delays in adding household members to a TANF household when a second parent returns to the home and the failure to update OAG/CSSD in a timely manner result in OAG/CSSD filing child support actions when there is no legal basis for support. On the OAG/CSSD side, the agency often fails to timely update DHS when a person has become compliant, leading to additional months that the family's TANF grant is improperly sanctioned by 25%.

The failure of DHS and OAG/CSSD to adequately communicate, with either the TANF family or each other, places an enormous burden on TANF recipients. We ask the Committee to work with DHS, the Committee on the Judiciary and Public Safety, and OAG/CSSD to answer questions and take additional steps to ensure efficient communication and fair administration of child support cooperation requirement, including:

1. DHS verifying that OAG/CSSD sent two notices—one about the cooperation opportunity and the second about a finding of non-cooperation—to the most recent address on file in DCAS, the DHS computer system, before DHS sends notice regarding a TANF sanction to a consumer;
2. Establishing a contact person at OAG/CSSD for DHS to facilitate communication and information gathering for TANF customers who have a sanction, are at risk of a sanction, or seek a good cause waiver;
3. Clarifying the technological interface and access that OAG/CSSD has to DHS's system, DCAS (e.g., does OAG/CSSD receive updated information about a TANF parent's contact information when the parent reports it to DHS?);

4. Ensuring that DHS and OAG/CSSD work together to provide clear, updated information to TANF recipients on how to get in touch with OAG/CSSD, including during the PHE; and
5. Clarifying expectations around prompt communications between DHS and OAG/CSSD regarding TANF recipients who express interest in a good cause waiver, recipients with a TANF sanction that come into compliance; and updates from TANF recipients, like household composition, that impact a potential paternity and/or support case.

**Recommendation:**

- OAG/CSSD should develop and implement a clear plan of communication with DHS when a parent receiving TANF has come into compliance with the cooperation requirements.

OAG/CSSD Should Not Impede the Fair Resolution of Paternity and Parentage Matters and Should Support Efforts to Modernize the District's Parentage and Paternity Laws

Every year, Legal Aid attorneys encounter mothers, putative fathers, alleged biological fathers, and even children who wish to vacate inaccurate paternity judgments that were entered as a result of mistakes, fraud, confusion, or lack of knowledge. These clients seek our help correcting erroneous paternity judgments because of the disastrous legal, emotional, and financial repercussions they can have on children and families.

As we have testified over the years, however, OAG/CSSD often adopts a hardline position against disestablishment of paternity – even in cases there is absolute proof that the paternity judgment at issue is inaccurate. We have worked on cases where OAG/CSSD 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 wanted genetic testing and disestablishment, and/or (4) DNA testing conclusively proved that the putative father was not actually the biological father.

Inappropriate use of an Acknowledgement of Paternity by a non-biological parent – whether intentional or inadvertent – denies the biological parent his fundamental parental rights while allowing someone without a genetic relationship to claim custody of a child. Acknowledging paternity at the hospital does not, on its own, increase a father's involvement or a child's well-being. Due to the widespread availability of low-cost DNA testing, parents and children alike often know who is and is not the child's biological father. Many people have learned the truth and adjusted their family structures long before coming to court.

Inaccurate Acknowledgements of Paternity only serve to circumvent biology. It is better for children for their acknowledged and biological father to be the same person: it promotes their sense of identity and emotional wellbeing, guarantees they have access to essential medical history information, allows them to connect with their biological extended family, and ensures they are not forced into a relationship or custody with a biological stranger. A paternity judgment may also affect a child's inheritance, citizenship, entitlement to public and private benefits, and the right to bring a wrongful death claim. Aligning legal determinations of parentage with the biological truth of DNA is more likely to result in stronger, longer-lasting bonds between father and child, which is also to the benefit of the children and society as a whole.

We urge OAG/CSSD to take important steps to ensure that it is taking a more efficient and fair approach to cases regarding the disestablishment of parentage. However, the problems we have seen highlight the urgent need for the Council to update the District's paternity law, which is unnecessarily complicated, does not reflect the widespread availability and use of DNA testing to answer questions about paternity, and creates unnecessary barriers for parties who simply want to ensure the records documenting parentage are accurate.

#### *The 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>10</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 advised that they could obtain DNA testing prior to signing an Acknowledgment of Paternity at a hospital or at Vital Records. Parties even sign Acknowledgements of Paternity when they lack capacity. We have heard from clients who

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<sup>10</sup> See D.C. CODE § 16-909.01 (a)(1) (2018).

signed these documents when they were under the influence of drugs or alcohol, suffering from untreated schizophrenia, or heavily medicated in the wake of an emergency Cesarean Section. We have also seen situations where the documents were provided and signed in English by non-English speakers who did not comprehend what they were signing.

Problems arise when parties sign an Acknowledgement of Paternity without understanding the significance of the document or their right to not sign it. 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 Acknowledgement of Paternity. Unfortunately, over the years OAG/CSSD has consistently argued to uphold invalid Acknowledgements of Paternity.

### *Private Genetic Testing*

As genetic testing becomes increasingly available to the public, parties regularly come to court seeking disestablishment of paternity after taking a private DNA test. Parties are easily able to obtain tests at drug stores, and they come to court armed with the truth. In the face of these tests, OAG/CSSD has still refused to support disestablishment. The following are several examples we noted in our FY19-20 oversight testimony of cases where this has occurred:

- In one case, a putative father signed an Acknowledgement of Paternity after having a one-night stand with the child's mother, but began to doubt his paternity after spending time with the child. He obtained a private DNA test which showed a 0% probability of paternity, and he filed a Motion to Disestablish Paternity immediately after receiving the results. Although this information was easily accessible to OAG/CSSD, it proceeded with filing a separate child support case against him, despite there being a clear paternity issue already underway. The two cases were eventually consolidated and OAG/CSSD was stern in its position not to disestablish paternity. To add insult to injury, OAG/CSSD asked the court to order the client to pay for the court-ordered genetic test, placing an unnecessary financial burden on the unemployed individual.
- In another case, our client was diagnosed with paranoid schizophrenia and manic depression. Despite these mental health issues, this client signed an Acknowledgement of Paternity for a child he believed to be his. A private DNA test later showed that he was not the child's biological father. The case resulted in a permanent child support order of \$0 per month after the client was hospitalized indefinitely due to his mental health. Paternity was not disestablished.
- A client in a similar situation informed us that he had bipolar schizophrenia, but that he had signed an Acknowledgement of Paternity. He did not understand the legal effect of the Acknowledgement of Paternity, specifically that he was waiving his right to future court-ordered DNA testing. When this client was brought to court for child support, he raised concerns about paternity. He testified that he took a private DNA test years earlier, and that test showed that he was not the child's biological father. Nonetheless, OAG/CSSD opposed his request.

In many cases, putative fathers express understandable concerns about paternity. They come to court with the results of genetic testing, or after the mother has revealed that another man could be the child's father. Or, not realizing they need the court to undo the legal consequences of what they signed in the hospital, they take no action until brought to court by OAG/CSSD for child support. Yet, in each of these cases, they are told that they are bound by the Acknowledgement of Paternity they signed, and that they must pay child support for a child they know is not theirs. OAG/CSSD should be more flexible in these cases, especially when presented with scientific proof that a birth certificate is factually incorrect.

*OAG/CSSD Actively Sought to Maintain Erroneous Judgments of Paternity, Despite the Wishes of Families*

Over the years, Legal Aid and Bread for the City have represented putative fathers, biological fathers, and mothers, in their requests to disestablish paternity. We have seen that these requests can come from all sides of the case, and that, often, parties agree on how to proceed. Parties may agree that the circumstances around signing the Acknowledgement of Paternity warrant genetic testing to confirm what they believe to be true. They may agree that it is appropriate to remove a non-biological parent from a birth certificate so the child's legal documents are accurate. They may even agree on what rule putative and biological fathers will play in the life of the child going forward. Even in these cases, OAG/CSSD adheres to its rigid internal policy of honoring Acknowledgements of Paternity.

- Legal Aid recently learned of a case where the Court ordered a DNA test at the request of a putative father who had signed an Acknowledgement of Paternity, but later learned he may not be the child in question's biological father. Not only did OAG/CSSD oppose the request for DNA testing, but even after DNA test results showed that the putative father was not the child's biological father, OAG/CSSD opposed disestablishment of paternity even though that is what the putative father and the biological mother wanted.
- In another case we recently encountered, OAG/CSSD persisted in initiating a child support matter on behalf of a TANF recipient mother who disclosed to DHS that the man listed as the father on her child's Acknowledgement of Paternity is not the biological father, requested that support not be sought from the putative father, and even offered up information regarding the identity of the likely biological father.

We have seen other instances where OAG/CSSD 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/CSSD to routinely take this position. In doing so, it is conflating two separate legal issues that ought to be dealt with in succession, not simultaneously. By requiring the combination of these two steps, the agency is effectively requiring a person that OAG/CSSD may know with certainty not to be the father 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.

In these and other matters, OAG/CSSD has inserted itself into complex private family situations and has attempted to overrule the desires of family members who are in agreement about what is

in their and the child's best interests. OAG/CSSD frequently justifies its routine opposition to paternity disestablishment by citing concerns of disruptions to the existing family structure and the need to secure financial support for the child. Based on our years of experience working on these types of cases, we know these erroneous establishments of paternity are harmful to families, and we fear that OAG/CSSD's standard refusal to consider requests for genetic testing and disestablishment of paternity denies families their right to choose how to raise their children and can lead to the disrupted family dynamics they fear.

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

Though we believe OAG/CSSD could be more reasonable in paternity cases, District laws remain complicated and out-of-date. 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. 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>11</sup> Additionally, under Maryland law, the court shall order paternity testing if requested by either party or the government.<sup>12</sup> Virginia, as well as California, Alabama, Alaska, Colorado, Florida, Iowa, Georgia, Minnesota, Missouri, South Dakota, and Louisiana, all specifically allow a "father" who signed an Acknowledgment to subsequently disestablish paternity based on genetic testing,<sup>13</sup> and numerous other states at least provide some means for a "father" to challenge paternity after the rescission period.<sup>14</sup>

**Recommendations:**

- OAG/CSSD should revise its internal policies and practices regarding the circumstances under which it will oppose requests to disestablish paternity. The agency should not create barriers to addressing acknowledgments of the paternity that did not comply with District law or prevent efforts to correct erroneous paternity determinations.

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<sup>11</sup> MD. CODE ANN., FAM. LAW § 5-1038.

<sup>12</sup> MD. CODE ANN., FAM. LAW § 5-1029.

<sup>13</sup> See VA. CODE ANN. § 20-49.10; CAL. FAM. CODE § 7581(d); ALA. CODE § 26-17A-1; ALASKA STAT. § 25.27.166; COLO. REV. STAT. § 19-4-107.3(1)(a); FLA. STAT. ANN. § 742.18(2); IOWA CODE § 600B.41A; GA. CODE ANN. § 19-7-54; MINN. STAT. § 257.75; MO. REV. STAT. § 210.854; S.D. CODIFIED LAWS § 25-8-64; LA. STAT. ANN. § 9:406.

<sup>14</sup> See, e.g., 750 ILL. COMP. STAT. ANN. § 46/309; ARK. CODE ANN. § 9-10-115; CONN. GEN. STAT. ANN. § 46b-172; HAW. REV. STAT. ANN. § 584-3.5; IDAHO CODE ANN. § 7-1106; KAN. STAT. ANN. § 23-2209; MONT. CODE ANN. § 40-6-105.

- The Council should amend the District’s paternity statute to recognize the role of DNA testing in addressing erroneous paternity documents and align the District with other jurisdictions’ more progressive paternity laws.

### **Domestic Violence Section**

We also commend OAG’s Domestic Violence Section, which has played a crucial role in protecting survivors, and continues to do so with thoroughness and sensitivity despite their own operational challenges during the pandemic and even with the marked increase in domestic violence. Legal Aid would also like take this opportunity to highlight the performance of the Assistant Attorneys General who comprise its Domestic Violence Section, which has played an important role in serving and protecting our clients who are survivors of domestic violence

The Domestic Violence Section of OAG serves survivors of abuse by both representing them directly in CPO proceedings, as well as criminally prosecuting violations of CPOs. As a significant portion of Legal Aid’s Family Law/Domestic Violence practice is devoted to representing survivors of domestic violence in CPO cases, our attorneys and clients often work closely with attorneys in the Domestic Violence Section.

Obtaining a CPO is often one of the first and most crucial steps a survivor takes towards escaping the cycle of violence, holding their abusers accountable, and building a safe and independent life free from abuse. On behalf of our survivor clients, Legal Aid attorneys are in Domestic Violence Court on a daily basis, negotiating with and litigating against abusers and their lawyers in order to secure CPOs that require them to stay away from, not contact, and not harass, assault, stalk, or threaten our clients.

Although these CPOs can be powerful tools in keeping our clients safe, they do not always succeed in deterring abuse. Even after securing CPOs for our clients, we may receive frightened and fearful reports that their abusers are still calling, texting, and showing up outside our clients’ homes, workplaces, and schools, in violation of the ‘stay away’ and ‘no contact’ provisions of their protection orders. In some instances, abusers continue to threaten or inflict violence on our clients during the pendency of a CPO. An abuser’s refusal to abide by the terms of a CPO is often compounded by the justice system’s refusal to believe and take a survivor’s story seriously. Our clients have told us countless stories about police officers who shrug their shoulders when they report violations of CPOs, and Assistant U.S. Attorneys who do not return their calls, fail to keep them informed on the status of criminal domestic violence cases, and decline to prosecute domestic violence cases or violations of their CPOs or criminal stay away orders.

The Domestic Violence Section of OAG operates in stark contrast to these other government agencies. As the primary prosecutor of CPO violations, we rely on OAG to take our clients’ stories of abuse seriously, and to hold abusers accountable when they violate the terms of our clients’ CPOs. We have observed that its attorneys and support staff are highly knowledgeable of and sensitive to the dynamics of domestic violence. They are understanding when a survivor has second thoughts about going forward with a criminal case against her abuser, who also happens to be her child’s father. They are patient when a low-income survivor says she is interested in pursuing criminal charges but is unable to meet with them because of her work or childcare

schedule. They are reassuring when a survivor admits her fears about having to face her abuser in court and testify about his conduct. When our clients inform us that their abusers are violating the terms of their CPOs, we never hesitate to refer them to file complaint for criminal contempt with OAG's Domestic Violence Section because we know that its staff will treat them with dignity and respect.

As an organization that specifically serves low-income individuals, Legal Aid is particularly impressed by how sensitively the staff of the Domestic Violence Sections treats survivors who are not well-off or do not have access to many resources. We have witnessed its attorneys being consistently diligent about providing our clients with witness vouchers, considerately working around their hectic schedules and transportation limitations, and sparing their presence from court hearings at which their presence or participation is not necessary.

Domestic Violence Section attorneys are also very accessible, responsive, and approachable. Legal Aid attorneys are frequently in communication with the Assistant Attorneys General who are assigned to prosecute our clients' contempt cases, and we regard them as our allies and fellow advocates for the interests of our clients. Our close collaboration with them on contempt cases has led to many of our survivor clients feeling safe, protected, and empowered.

We offer this testimony because the important work and contributions of the Domestic Violence Section of OAG should not be overlooked or undervalued. We are thankful that its skilled attorneys have chosen to devote their careers to helping survivors of domestic violence, and we look forward to maintaining a close and effective working relationship with them.

### **Conclusion**

Legal Aid appreciates the opportunity to share our perspective on the performance of these two key parts of OAG. We hope to continue to work with the agency and this Committee to address the concerns that we raise in this testimony.