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**Testimony of Caroline Fehr
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**Before the Committee on the Judiciary and Public Safety
Council of the District of Columbia**

Performance Oversight Hearing Regarding the Office of the Attorney General

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The Legal Aid of the District of Columbia¹ submits the following testimony regarding the performance of two branches of the Office of the Attorney General (OAG). At the outset of our testimony, we acknowledge the administration change that occurred in January of this year. Legal Aid has long worked with OAG on a range of issues spanning most of our practice areas, and we hope the collaborative relationship between our organizations will continue under Attorney General Schwalb. For example, over the last few years OAG'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 continue to be a vital tool for forcing much-

¹ Legal Aid 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 90 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.

needed repairs in buildings that have been allowed to languish for far too long. We hope the new administration will continue to focus the power and resources of this office on ensuring that low-income District residents can live in safe and dignified conditions. Our consumer unit also has worked collaboratively with OAG in the past and will be submitting separate testimony regarding that work.

This testimony, 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.

As we welcome the new Attorney General and his administration into office, we want to emphasize that our low-income client community continues to suffer from the lasting impact of the COVID-19 public health crisis and related economic recession, which disproportionately affected Black and Latinx Washingtonians, low-wage workers, and families with children. Now, three years into this crisis, as much of the city seeks to move past the pandemic into a new normal, our clients continue to face many of the same effects as they did over the past two years. Legal Aid's testimony is directly informed by the cases, conversations, and experiences our attorneys have had over the past year with clients who struggle to stay safe and afloat after three years of increased financial hardship, isolation, and risk of infection.

Through its operations in CSSD and the Domestic Violence Section, OAG touches the lives of so many of DC's lowest income families, most of whom are Black or Latinx. The reach of the office imposes on OAG a real responsibility to "get it right" so that families can rely on the office to act fairly in setting and enforcing support orders and to literally have their backs when a family's safety is at risk.

We encourage AG Schwalb and his administration to view the far-reaching ambit of its operations as an opportunity to demonstrate his commitment to putting families first; to change how DC residents view their government; and to impact change on a broad scale.

As we stated in our testimony from previous years², Legal Aid relies on our partnerships with OAG to ensure that the District's most vulnerable and marginalized residents receive the resources, services, and support they need. For a number of years, 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.

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

Our collaborative efforts with CSSD have increased significantly over the past two years, even while Legal Aid has continued to litigate both with and against attorneys from OAG/CSSD via the Child Support Resource Center (CSRC), one of our courthouse offices to assist otherwise unrepresented litigants.³ 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. We hope to continue our conversations with the OAG team under AG Schwalb to further explore ways OAG can advance fairness through its operations and act to alleviate poverty and improve safety, particularly among children, through its policy choices.

In light of our work with both of these branches of OAG, we offer the following perspective on their performance.⁴

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, 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 past two years, our relationship with OAG/CSSD has been collaborative and productive. As we expressed in our testimony last year, we applaud CSSD Director and Deputy AG Sophia Ticer for making herself and her agency significantly more accessible, transparent, and cooperative. Over the past year, we have maintained standing monthly meetings with the leadership of OAG/CSSD to discuss issues arising in court, ideas for policy reform, and new ways we can jointly serve low-income residents of DC and increase access to justice. We are pleased to report that the positive relationship that

³ Since 2011, Legal Aid and Bread for the City have jointly run the CSRC to provide same-day advice and legal representation in parentage and child support cases. During the COVID-19 pandemic, when the Parentage and Support Branch of DC Superior Court was closed for in-person hearings, we adapted to remote operations by shifting the CSRC to a call-in hotline. We are now once again staffing the CSRC in person while continuing to be accessible remotely through our hotline number.

⁴ In addition to the topics we raise in today's testimony, Legal Aid continues to monitor other issues that affect our client community, including the ongoing need for OAG/CSSD and the Department of Human Services to communicate effectively to prevent unwarranted sanctions for TANF recipients. Legal Aid provided in-depth discussion of this issue in last year's testimony, which is available at: <https://www.legalaiddc.org/non-litigation-advocacy/>

we noted in our previous testimony has continued. In particular, we are grateful that OAG/CSSD has been committed to including Legal Aid and other legal services providers in discussion of new policy proposals as well as plans for significant operational changes, such as the proposal of new parentage legislation that was introduced at OAG's request last year, and its new conciliation program, which provides opportunities for parents to resolve questions of parentage before their first court hearing. Legal Aid was excited to collaborate with OAG/CSSD on the language of the parentage legislation, and we are thrilled that the legislation has been passed by the Council. We firmly believe this legislation will make a difference to D.C. families who previously struggled to navigate a complicated legal process to resolve inaccurate Acknowledgments of Paternity. Legal Aid has also been grateful to be included as a partner in the launch of OAG/CSSD's conciliation program, and we applaud OAG/CSSD for taking proactive steps to offer D.C. parents more opportunities to resolve their parentage cases, and for actively preserving litigants' rights to consult with an attorney throughout the process. We fully expect that the positive and respectful collaboration between our organizations will continue under Attorney General Schwalb's leadership.

We will use our testimony today to highlight areas of OAG/CSSD's current operations that require attention and improvement. None of the issues we raise should be a surprise to OAG, as they are concerns we have raised with the leadership team throughout the year. We highlight them in this forum to ask that the Council join us in encouraging OAG under AG Schwalb to make his agency's CSSD operations fair, accessible, transparent, and helpful to all DC residents.

OAG/CSSD Should Communicate with Litigants in a Clear and Timely Manner

At the beginning of the COVID-19 public health crisis three years ago, OAG/CSSD was required to quickly adapt and expand the ways in which it communicated with litigants in parentage and child support cases. Legal Aid appreciates that OAG/CSSD has consistently encouraged litigants to contact the agency directly for answers and assistance regarding their child support cases.

However, as we have noted in our testimony in previous years, 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. Many parents do not know which specific case worker or attorney is assigned to their case and therefore must call OAG/CSSD's main phone number. These parents often tell Legal Aid that they have tried to contact OAG/CSSD through their main number, but that they do not receive any follow-up communication from the agency. When litigants come to Legal Aid for help, our attorneys may be able to get quicker responses by contacting attorneys or enforcement staff directly. However, *pro se* litigants do not have the benefit of these

“short cuts,” and may be stuck repeatedly calling OAG/CSSD’s main phone line until they get a response. The challenges are even greater for litigants who do not speak English.

Other litigants, frequently those who are non-custodial Respondents in their child support case, have expressed that they have contacted OAG/CSSD for assistance with their case, but that the agency has taken no action – and also did not explain the limits of OAG/CSSD’s role. Legal Aid regularly encounters callers and in-person applicants to the Child Support Resource Center who believe that OAG/CSSD is the same entity as the Court, as both are seen as “the government.” To prevent these issues, OAG/CSSD must clearly explain its role (typically as the initiator of a support case) and the differences between the agency (a party to the case), the Court (the neutral decision-maker), and private attorneys (who provide confidential legal advice to only one side in the case).

Beyond that, Legal Aid encourages OAG/CSSD to work for *all* D.C., not just custodial parents or those receiving TANF. OAG/CSSD can and should be proactive about requesting that the court adjust orders when warranted, even when the basis for the change is a non-custodial obligor’s circumstances. There is no need for an agency whose mission is to support D.C. families to be so adversarial. For example, if a Respondent loses his job and reaches out to OAG/CSSD to report the loss of income, OAG/CSSD will typically direct the Respondent to file a motion to modify at the court. The Respondent then has to travel to the physical courthouse to file a *pro se* motion or figure out how to access electronic filing online. He has to serve the motion on OAG/CSSD and await a hearing before the court, typically three to six months later. At the hearing date, OAG/CSSD will want to see proof that the job loss was not voluntary and will request to continue the hearing if the Respondent has not brought that with him. The issue could drag on unresolved for close to a year given the delay in setting hearings. In the meantime, the accumulated arrears could impact the Respondent’s relationship with his child and the child’s primary custodian. Instead, when the Respondent reached out to OAG/CSSD initially, the agency could simply contact the employer to verify the job loss and then file a consent motion requesting a temporary decrease in the order. The change could be granted without need for a hearing, the Respondent could be referred to the agency’s employment specialist, and there would be one less case pending on the court’s docket. As discussed further in the following section, a shift in OAG/CSSD’s agency mindset and resource focus from adversarial to facilitative of fair and accurate orders would make them and the entire system more efficient, while also garnering more good will and buy in from DC residents. Such a shift is in the interests of DC children and families, as Respondent obligors are more likely to pay consistently and have a relationship with their child when they perceive the child support system to be fair rather than stacked against them.

As the D.C. Superior Court has reopened for in-person hearings, we have been glad to see that OAG/CSSD has tried to maintain some of the successful changes it made over

the past few years, such as contacting litigants in advance of their hearing date to confer, share information, and attempt to reach a resolution. Indeed – as discussed further in the following section – we whole-heartedly encourage OAG/CSSD to take this even further and reach out earlier in the life-cycle of a case rather than waiting until the eve of a hearing. Whenever the contact occurs, however, we are concerned that OAG/CSSD does not communicate in clear, consistent ways, and many litigants remain confused about OAG/CSSD’s role in their case and the expectations for their hearings.

Since in-person parentage and support hearings have resumed, Legal Aid has heard from many litigants that staff from OAG/CSSD contacted them prior to their hearing date. Unfortunately, many litigants find those communications to be inconsistent, last minute, and at times confusing. For example, one litigant asked Legal Aid for help determining the status of their case because they were contacted by OAG/CSSD after 6:00 p.m. on the night before their hearing and told they did not need to come to court, despite having received a printed notice from the court indicating that the hearing was in person. The litigant felt that they could not trust it was a legitimate call because of the last-minute timing and the fact that the OAG/CSSD staff seemed confused about the basic facts of the case. Other litigants have informed Legal Aid that they received a written notice from the Court stating that they have a virtual hearing, only for OAG/CSSD staff to call and tell them they were required to appear in person. Whether these conflicting communications are errors or genuine attempts to unilaterally change the format of a hearing, they engender confusion and distrust among litigants and risk inefficiencies and delays that might occur when litigants believe their hearing was cancelled.

Finally, we strongly encourage OAG/CSSD to provide contact information for legal services organizations in all of its communications with litigants, especially non-custodial Respondent obligors. We are grateful that OAG/CSSD has recognized the importance of including legal services organizations like Legal Aid in its conciliation program. We believe that providing parentage and child support litigants with information about legal services prior to their hearing date will greatly reduce confusion and ultimately make the court process more efficient, as litigants would have more of an opportunity to obtain advice or representation without delaying the court or the resolution of their own case.

Recommendations:

- The Council should question OAG/CSSD about its internal policies and procedures related to contacting litigants prior to their parentage and support hearings.

- OAG/CSSD should shift from an adversarial approach to Respondents to a focus on efficiently serving *all* families by ensuring orders are fair and accurate.
- OAG/CSSD should not contradict court notices or unilaterally change whether a hearing is virtual or in-person.
- OAG/CSSD should clearly explain its role in parentage and support cases and include contact information for legal services organizations in all of its contacts with litigants.

OAG/CSSD Must Review Cases in Advance of Hearings to Identify Possible Agreements and Encourage Efficiency

As we expressed in our testimony last year, OAG/CSSD must closely review litigant pleadings closer to the time of filing to identify cases where there is room for a consent agreement. Currently, motions filed in a child support case may not have a hearing date for several months. In some cases, OAG/CSSD will consent to the relief requested in a litigant's motion on the day of its hearing after they had months to investigate and respond. OAG/CSSD could greatly expedite the litigation process and reduce the backlog of hearings at court by closely reviewing filings and investigating the basis of the requests well in advance of the hearing date. For example, Legal Aid has been pleased to see that OAG/CSSD more frequently recognizes the District's Statute of Limitations law and that many old child support arrearages are unenforceable under this law. However, even in cases where the arrears in question are long expired and OAG/CSSD consents to vacating those arrears, OAG/CSSD often waits until the hearing date to express its consent to the court. These delays can be life-changing for individuals living in poverty. For example, one litigant came to Legal Aid for help after his bank account was frozen to collect unpaid child support arrears – even though his arrears were over 15 years old and legally unenforceable under the statute of limitations. With Legal Aid's help, this litigant filed motions in September 2022, asking the Court to vacate his expired arrears and explaining that his only source of income was Social Security Disability benefits. Despite Legal Aid's multiple attempts to urge OAG/CSSD to act, OAG/CSSD waited until the hearing dates in late December 2022 and early February 2023 to agree that the arrears were expired and unenforceable. The months-long delay had a tremendous negative impact on this litigant, who was without access to essential funds for many months, unnecessarily. If OAG/CSSD had proactively reviewed these motions as they were filed, investigated as needed, and filed consent answers where appropriate, it also would have freed up valuable court time and reduced the months long wait for matters that do require judicial resolution.

Similarly concerning, Legal Aid has witnessed multiple occasions when OAG/CSSD attorneys were not prepared to proceed with scheduled hearings. Many District families currently wait months for their next parentage and support hearings, and when OAG/CSSD attorneys are not prepared to go forward, it prevents them from getting the relief they need on anything close to a timely basis. It also implies a lack of respect by the agency for low-income DC residents and their financial needs. OAG/CSSD's unpreparedness is a disservice to DC families who need support as well as DC residents paying support, who deserve fair and accurate orders and the timely opportunity to be heard. We urge OAG/CSSD to devote more resources towards preparing for and resolving individual cases while working on systemic changes.

Recommendations:

- The Council should inquire about OAG/CSSD's staffing priorities and resources devoted towards reviewing cases before court hearings.
- OAG/CSSD should continue reviewing and revising its internal policies and practices regarding the circumstances under which it will consent to motions without waiting for a hearing.
- We encourage OAG/CSSD to continue to review and reevaluate its litigation positions, policies, and systemic priorities; to communicate changes clearly to their litigating attorneys; and review litigant pleadings closer to the time of filing to identify issues on which they may consent.

OAG/CSSD Must Continue Evaluating New Legislative Proposals and Reforms to Internal Policies

In Legal Aid's testimony submitted to the Council last year, we explained that Legal Aid had been advocating for important changes to the District's parentage law for over a decade. We were delighted that OAG/CSSD listened to Legal Aid and other voices in the community and proposed new parentage legislation last year on February 9, 2022. Now, one year later, we are thrilled that the Paternity Establishment Act of 2022 is waiting congressional review. This legislation will bring the District's parentage law into the 21st century by acknowledging the accuracy and importance of DNA testing. We are thankful for OAG/CSSD's leadership in proposing this legislation and this Committee's stewardship in seeing it enacted into law.

We encourage OAG/CSSD to continue reviewing existing statutes and internal policies to identify new ways to help DC families and alleviate child poverty in DC. In particular,

we urge OAG/CSSD to reevaluate its practice of filing Motions for Contempt against obligors who are receiving means-tested benefits such as Supplemental Nutrition Assistance Program (SNAP) benefits, commonly known as food stamps. Contempt proceedings threatening jail time and other enforcement actions such as suspending driver's licenses can end up making it more difficult for parents living in poverty to get back on their feet and support their children in the future. When OAG/CSSD does evolve its litigation positions to better, more fairly serve DC families, we urge the agency to ensure that all developments in OAG/CSSD's policies and positions are communicated clearly to line attorneys so they can be implemented in individual cases.

Areas of child support law that could benefit from thoughtful legislative reforms include the process of suspending current support orders for incarcerated obligors and the application of D.C.'s statute of limitations on the collection of money judgments to child support arrears. However, we particularly urge OAG/CSSD to examine ways to maximize the amount of child support that reaches those families who need it most, to break the cycle of poverty. Again, because of the number of DC families who interact with OAG/CSSD and rely on the agency to establish and enforce fair and accurate support orders, OAG has a real opportunity to have a large-scale impact on the city through its proposed policy changes.

Based on our recent experiences, we are confident that OAG/CSSD will seek feedback from the community, including legal services organizations like Legal Aid, as the agency considers and formulates its next proposals for policy changes. We eagerly look forward to working with AG Schwalb and his team at OAG/CSSD to explore options to put DC families first and solidify OAG's position as an agency with an anti-poverty mission. We thank the Council in advance for its support of OAG/CSSD and its future legislative proposals.

Recommendations:

- We encourage OAG/CSSD to continue to review, reevaluate, and adjust its litigation positions, policies, and systemic priorities and to engage with legal services organizations and other community partners.
- The Council should consider impactful legislative proposals to ensure more DC child support money reaches the low-income DC families and children who need it most, instead of being captured by the government.

Domestic Violence Section

Legal Aid would also like to highlight the performance of the Assistant Attorney Generals who comprise the Domestic Violence Section of OAG, and who play an important role in serving and protecting survivors of domestic violence.

The Domestic Violence Section of OAG serves survivors of domestic violence through direct representation in Civil Protection Order (CPO) proceedings as well as criminal prosecutions of violations of CPOs. Through Legal Aid's work representing and supporting survivors of domestic violence, we often work hand in hand with the attorneys in the Domestic Violence Section.

The Domestic Violence Section of OAG plays a crucial role in enforcing CPOs and ensuring survivors' safety. Our clients regularly report that other actors in the criminal legal system minimize their experiences or refuse to enforce terms of their CPOs. Our clients have told us countless stories about police officers who do not show up to the scene in a timely manner when they report violations of CPOs, as well as Assistant U.S. Attorneys who do not return their calls, fail to inform them on the status of criminal domestic violence cases, and disregard survivors' requests to prosecute domestic violence cases or violations of their CPOs or criminal stay away orders.

We rely on OAG as the primary prosecutor of CPO violations to listen to our clients with respect and empathy and to hold offenders accountable when they violate court orders. Because the Domestic Violence Section of OAG also directly represents survivors in CPO cases, they are highly knowledgeable of and sensitive to the dynamics of domestic violence. We applaud them for understanding and respecting the complex reasons why survivors may change their minds about moving forward with a criminal case, especially when the person who harmed them is a co-parent. We also have seen how the Domestic Violence Section's attorneys and staff are responsive to the needs of immigrant survivors and ensure they receive the same level of service as any other District resident.

As an organization that specifically serves low-income individuals, Legal Aid is particularly impressed by how sensitively the staff of the Domestic Violence Section treat survivors who do not have access to many resources. We have witnessed its attorneys' thoughtful consideration of our clients' circumstances, including working around hectic schedules and lack of telephone and computer access. We have also witnessed OAG attorneys develop close working relationships with survivors such that they are able to identify other legal issues they may be dealing with and refer them to organizations like ours for further assistance.

Domestic Violence Section attorneys are consistently accessible, responsive, and approachable when contacted by Legal Aid on behalf of our clients. We regard them as our allies and fellow advocates for the interests of our clients. Our close collaboration with them on contempt cases has helped many of our survivor clients feel 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. 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.

Recommendations:

- We encourage the OAG Domestic Violence Section to continue providing high quality services to survivors and maintaining a close relationship with organizations, such as ours, so we can continue to provide holistic wrap around services to survivors.

Conclusion

Legal Aid appreciates the opportunity to share our perspective on the performance of these two key parts of OAG. We are grateful to former Attorney General Racine for encouraging both CSSD and the Domestic Violence Section to collaborate with organizations such as Legal Aid to better serve our shared client populations. We are optimistic that the good work of both will continue under Attorney General Schwalb and that he and the agency's leadership will devote sufficient attention to the concerns that we raise in this testimony.