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If You Don't Know There's a Problem, How Can You Find a Solution?

The Need for Notice and Hearing Rights in Child Support Distribution Cases

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Introduction

More than 25 years ago, Congress added Title IV-D to the Social Security Act.[1] Under this law, states receive substantial federal funding to provide child support services to single-parent families.[2] The services include locating absent parents, establishing paternity, establishing and periodically modifying support orders, and enforcing those orders.[3] Child support services were automatically provided to families receiving cash assistance from the Aid to Families with Dependant Children (AFDC) program, and continue to be automatically provided to those receiving cash assistance from AFDC's replacement, the Temporary Assistance for Needy Families (TANF) program.[4] Families not receiving cash assistance simply file an application for services.[5] Today, more than 60 percent of the families eligible for child support use the public child support system to obtain and/or enforce their support orders.[6] In addition, there are now families in the state system who have never sought government help in collecting their support. As of October 1, 1999, any custodial parent whose order was issued on or after January 1, 1994, and is using income withholding as a means to enforce that order must have the payments processed through the state's disbursement unit.[7]

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[1] Public Law 93-647, §101, 88 Stat. 2351. The current version of this law is codified at 42 USCA §§ 651 et seq. (West 2002).

[2] The federal government pays 66 percent of the basic costs of the state system. It pays an even higher percentage for certain automation costs and for genetic testing to establish paternity. 42 USCA § 655 (West Supp. 2002). States can also earn incentive payments for efficient performance. Id. § 658.

[3] Id. § 651.

[4] Id. § 654(4)(A)(i). Families receiving Food Stamps, Medicaid and foster care services may also be referred to the state child support program.

[5] Id. § 654(4)(A)(ii).

[6] MATHEW LYON, CHARACTERISTICS OF FAMILIES USING IV-D SERVICES IN 1995 (MAY 1999) at 2.This study is available on the federal Office of Child Support Enforcement's website at http://aspe.hhs.gov/hsp/CSE-Char99/CSE-Char99.

[7] 42 USCA § 654b(a)(1)(B)(West Supp. 2002).

In exchange for federal funding, states are required to adopt specific child support laws and policies. Failure to adopt these laws and policies puts the state at risk of substantial fiscal penalties.[8] One federal requirement is that states institute a system for collecting, recording, distributing, and disbursing child support payments. If a family has never received cash welfare, then the scheme is straightforward: collections are recorded and then sent to the family within two business days of the date of receipt.[9] If the family currently receives cash assistance or received such assistance in the past, the scheme is quite complicated. This is because families that receive federally funded cash assistance must assign their child support rights to the state.[10] Under this assignment, the state has the right to retain some or all of the child support paid on the family's behalf to reimburse itself for the cash assistance paid to the family.[11] Exactly how much the state can retain and how much must go to the family depends on a variety of factors including:

- How much cash assistance the family actually received. The state can never take more in child support than the family received in cash payments.[12]
- Whether the family currently receives cash assistance. The distribution rules are different for families that currently receive assistance and those that received assistance in the past but no longer do so.[13]
- If child support arrears are owed and for what periods of time. If there are no arrears, then the rules are simple. If there are arrears, it must be determined if they accrued before the family received cash assistance (pre-assistance arrears), during the time cash assistance was paid to the family (during-assistance arrears), or after the family left cash assistance (post-assistance arrears).[14]
- When the child support assignment was executed. Support assigned under the AFDC program is distributed differently from support assigned under the TANF program.[15]
- How the money was collected. Support collected through a federal income tax intercept is distributed differently than support collected in any other manner.[16]

Because so many factors are involved, it is not always easy to determine whether support has been properly distributed.[17] Yet, this is a matter of crucial importance to

[8] In order to draw down the federal child support funds, a state must have an approved state plan. The plan contains certifications by the state that it has adopted and implemented the relevant laws and policies. If the state does not have an approved plan, it forfeits the federal money. In addition, failure to have an approved child support state plan makes the state ineligible to receive federal block grants funds from the TANF program. 42 USCA § 602(a)(2)(West Supp. 2002).
[9] Id. §§ 657(a)(3) and 654b(c).
[10] Id. § 608(a)(3). A similar requirement was contained in the AFDC program at 42 USCA § 602(a)(26).
[11] Id. §§ 657(a)(1) and (a)(2).
[12] Id. § 608(a)(3)(A).
[13] Contrast id. § 657(a)(1) with id. § 657(a)(2).
[14] Id. § 657(a)(2).
[15] Id. § 657(b).
[16] Id. § 657(a)(2)(B)(iv).

families, especially those who currently receive cash assistance and those who have done so in the past. This support may well make the difference between housing and homelessness, good nutrition and hunger, regular health care and chronic illness.[18]

In order to know whether the support has been properly allocated, the custodial parent needs a basic *notice* describing what was collected, from whom, when, by what means, and how the state distributed the money. Once the parent possesses this information, he or she may feel that a mistake has been made. In that case, the parent needs access to a *hearing procedure* to dispute the allocation. These fundamental due process rights are granted by the federal constitution as well as federal law and regulation. Some states provide such rights by state constitution and statute as well.

However, many states follow neither the letter nor the spirit of the law, leaving custodial parents with little or no information about how their child support payments are being handled. As a result, families are deprived of much-needed resources because they do not know that such resources exist. Issues here can include[19]:

- *The failure to inform TANF recipients that support is being paid.* Many TANF recipients are working at low-wage or part-time jobs. They draw supplemental TANF benefits, using up their five-year lifetime TANF eligibility period in the process. If they knew that child support was being paid on a regular basis, they might forego TANF in favor of income from wages plus child support in order to preserve future TANF eligibility. Moreover, it may be that the amount of child support being paid exceeds the TANF grant. In that case, the family would be financially better off to leave TANF and obtain its child support. In the absence of a notice of collections, families do not have the information they need to make these important decisions.
- *The failure to redirect current support to post-TANF families*. Federal law requires that current support be redirected to families when they leave TANF.[20] In the absence of a notice that support is being collected, custodial parents may be unaware that this money exists and that it should be sent to them. If they do not know it exists, they cannot challenge the state's retention of these funds. As a result, money that should go to the family is retained by the state.

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[17] Those interested in a fuller understanding of the child support distribution rules should consult PAULA ROBERTS, CHILD SUPPORT DISTRIBUTION AND DISBURSEMENT (2000) available at www.clasp.org in the child support folder of Publications. It should also be noted that changes in child support distribution may occur as a result of pending federal legislation.

[18] For the latest research on the importance of child support income to low and moderate income parents see PAULA ROBERTS, THE IMPORTANCE OF CHILD SUPPORT ENFORCEMENT: WHAT RECENT SOCIAL SCIENCE LITERATURE TELLS US (2002) available at www.clasp.org in the child support folder of Publications.

[19] For documentation of these and other distribution problems see DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF THE INSPECTOR GENERAL, DISTRIBUTING COLLECTED CHILD SUPPORT TO FAMILIES EXITING TANF, OEI-05-01-00220 (October 2001).

[20] 42 USCA § 657(a)(2)(A)(West Supp.2002). See, also 45 CFR § 302.32(b)(3)(i).

- *Retaining arrears assigned to the state when there are still pre- and/or post-assistance arrears owed to the family*. In addition to current support, all former-assistance families are entitled to post-assistance arrears. Many families are also entitled to pre-assistance arrears.[21] In many cases, only when the arrears owed to the family have been paid does the state have the right to retain arrears owed under the public assistance assignment. In the absence of a notice of collections and information about how the money has been distributed, families are unable to determine whether the state is retaining money that rightfully belongs to the family.
- *Illegal distribution of support collected pursuant to a state income tax intercept.* Arrears obtained through a state tax intercept are supposed to be distributed under the general distribution rules, not the less generous rules applicable to federal tax intercepts.[22] Unless a notice indicates how the money was collected, a family cannot know if it was distributed properly. If it was not, the children are deprived of arrears owed to them.

Lack of notice and hearing rights affects non-custodial parents as well. The state may be maintaining erroneous balances on their accounts and—without knowing what the state records show about payments or how to question the numbers—non-custodial parents are unable to challenge the amount of arrears owed. Issues here include:

- *Allocating payments to an incorrect account*. This can happen if there are many non-custodial parents with a similar name or when a non-custodial parent has multiple support cases.
- *Failure to credit the non-custodial parent with any payment*. This happens when a payment is received but the state has insufficient information to credit the proper account. These "undistributed collections" can languish for years and then be escheated to the state, with the non-custodial parent receiving no credit, even though he/she has paid.
- *Crediting the non-custodial parent with less money than was actually paid*. This can occur when the state passes through some child support to a family receiving TANF. If the custodial parent fully pays the support owed, that should be credited to his/her account. However, the state may only credit the amount paid minus the pass-through.

To correct these problems, notice and hearing rights for non-custodial parents are essential. However, with one exception, no federal law or regulation requires states to provide such rights to non-custodial parents. Some states provide these rights under state law;[23] however, this is not common.

[21] 42 USCA § 657(a)(2)(B)(West Supp. 2002).
[22] Id. § 657(a)(2)(B)(iv). Unlike other collections, arrears obtained through a federal tax intercept are first used to pay what is owed to the state under the welfare assignment. Only when the state has obtained all the monies owed to it are the funds given to the family to pay pre- and post-assistance arrears.
[23] See, e.g., Cal. Welfare and Institutions Code § 11478.1(c)(3)(2002). This California statute requires the agency to provide non-custodial parents with an accounting of collections and disbursement in their case on request.

States that do not now offer these rights to custodial and non-custodial parents should be encouraged to do so through legislation, administrative advocacy, or court order. The information provided in this paper should enable advocates to follow one of these strategies to obtain these rights for their clients.

Federal Statutory Rights to Notice of Support Collections

The State Plan Notice Provision

Since 1984, it has been a state plan requirement that states send notice to current and former public assistance recipients when child support has been collected on their behalf. This first law required states to provide annual notice.[24]

In 1985, a federal regulation implementing this requirement was issued.[25] Beginning October 1, 1985, the state IV-D agency was required to provide notice *at least* annually to current AFDC recipients and former AFDC recipients for whom an assignment of support was still in effect (essentially this is any case on which arrears are owed). The required notice was to separately list payments collected from each absent parent (when more than one absent parent owes support to the family) and indicate the amount of support paid to the family. The accompanying commentary to the regulation stated that "We recommend that the notice contain the period for which payments were collected and a telephone number or address for obtaining further information."[26] However, this action was not required by the regulation itself.

Early on, states questioned whether they had to send notices to all families or only those on whose behalf some support had been collected. In response, the federal Office of Child Support Enforcement (OCSE) issued guidance stating that notice was not required in situations "where neither a support order nor an agreement for voluntary payments has been established or where there is no possibility of obtaining support when, for example, the absent parent is deceased, disabled, or determined by the court to be unable to provide support."[27] However, if there is an order or voluntary agreement in place, then the individual is to receive an annual notice. If the family still receives AFDC, then the notice must be sent even if no collection is made. If the family no longer receives AFDC, then the notice must be sent only if there has been an assigned arrearage collection in the past year."[28]

OCSE also clarified that statutory notice requirements only applied to families still receiving services from the IV-D program. If a post-AFDC family opted out of the IV-D system, it lost the right to an annual notice. "It is not necessary to send notices to former AFDC recipients who are no longer receiving IV-D services, even though collections may be made to reimburse past assistance paid to their families."[29]

[24] Pub. L. 98-378,§ 3(e), 98 Stat. 1318 (1984) (current version at 42 USCA § 654(5)(A)(West Supp. (2002).
[25] 45 CFR § 302.54 (1985).
[26] 50 Fed. Reg. 19,621 (May 9, 1985).
[27] PIQ 88-1 (Feb. 1, 1988) at 1. See, also, PIQ 86-3 (August 1, 1986).
[28] PIQ 88-1 (Feb. 1, 1988) at 1.
[29] Id.

States also complained about the cost of sending notices to families. In response, OCSE said that separate notice was not required. The State was free to send the notice of collections along with other notices sent to AFDC families.[30]

In 1988, Congress substantially revised the federal law. Under the revision, states are required to send *monthly* notice to current- and former-assistance recipients whenever support is collected on their behalf. However, states are allowed to send *quarterly* notice instead for so long as the Secretary of the Department of Health and Human Services (HHS) determines that sending a monthly notice would impose an "unreasonable administrative burden on the state."[31]

Despite the fact that the law was clear, states were not immediately required to implement this statute. Instead, in 1990, HHS issued proposed regulations, which effectively kept the yearly notice law and regulations in effect until December 31, 1992. Monthly notice was not required to begin until January 1, 1993, some five years after the statutory requirement was passed.[32] That same Notice of Proposed Rulemaking indicated that OCSE viewed implementation of the monthly notice requirement as part of the state's automation process. Therefore, through September 30, 1995,[33] it planned to grant waivers to states that did not yet have automated systems or had automated systems that were unable to generate monthly notices. In that case, a quarterly notice (containing the same information as the monthly notice) could be provided.[34]

These proposed regulations were finalized in 1992.[35] The final regulations included much of the previous guidance. Under the final regulations, effective January 1, 1993, states were to issue a monthly notice to all individuals who had executed an AFDC assignment of support rights unless 1) no collection is made during the month; 2) the assignment is no longer in effect; or 3) there are no assigned arrears. The notice must list separately the amount collected from each absent parent and indicate the amount of current support collected, the amount of arrears collected, and the amount paid to the family.[36]

As described in the proposed regulations, HHS interpreted the statute to give it the authority to grant waivers to states until September 30, 1995, in cases where the state had not completed automation or had an automated system that could not generate monthly notices. **In addition,** under the final regulations, a state can obtain a waiver if it has a toll-free automated voice response system to respond to parental inquiries and sends custodial parents quarterly notice.

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[30] Id. at 2.
[31] Pub. L.100-485, § 104(a)(1988), codified at 42 USCA § 654(5)(A) (West Supp. 2002). The statute in its current form is reprinted in Appendix A.
[32] 55 Fed. Reg. 33,424 (August 15, 1990).
[33] This date was chosen because federal law required states to have their child support systems automated by October 1, 1995. The idea was that automation of the monthly notice could be done simultaneously with the other automation, saving time and resources for the states.
[34] 55 Fed. Reg. 33,415 (August 15, 1990).
[35] 57 Fed. Reg. 30,681 (July 10, 1992).
[36] 45 CFR § 302.54 (1999). The regulation in its current form is reprinted in Appendix A.

In 1996, AFDC was abolished and replaced with a new program called Temporary Assistance for Needy Families (TANF). The regulations remained substantively as described above, but have been revised twice to reference the new TANF program and extend the deadline for automation-related waivers.[37]

In short, under this statute and its implementing regulations, current and former cash assistance recipients who are using the IV-D program to enforce their child support orders are entitled to notice when child support is collected on their behalf for as long as the public assistance assignment is in effect. This notice will be either monthly or quarterly. If quarterly, the state must provide a toll-free automated voice response system that provides the same information as the monthly notice. The notice or voice response system must tell the amount of current support collected, the amount of arrears collected, and the amount paid to the family. If more than one non-custodial parent owes support, then the information must be provided separately for each non-custodial parent.

The State Disbursement Unit Notice Provision

By October 1, 1999, every state was required to have a State Disbursement Unit (SDU) for the collection and disbursement of child support payments in all IV-D cases and any non-IV-D cases in which the orders were issued after January 1, 1994, and are being enforced through income withholding.[38] The SDU must, in a timely manner, provide any parent who so requests information on the current status of payments.[39] The provision of this information is not limited to custodial parents who are current or former public assistance recipients. Any custodial or non-custodial parent whose support is being processed through the SDU is entitled to this information.

Because non-custodial parent's information rights are addressed for the first time and because non-IV-D custodial parents have rights under this statute, federal guidance makes clear that a state cannot rely on its existing automated system for current and former assistance recipients to fulfill its SDU notice requirement. A state can continue to use its current automated system to provide information to current and former assistance recipients, but "the SDU must have procedures to provide *all* parents with information on payments received and disbursements made (emphasis added).[40]

A Critique of the Statutory Notice Rights

Even if the statutes and regulations were fully implemented, the required notices would not provide parents with sufficient information. For each non-custodial parent from whom support is owed, on a monthly basis, custodial parents currently receiving assistance need to know:

- The name and case number assigned to that non-custodial parent.

[37] 61 Fed. Reg. 67,241 (Dec. 20, 1996) and 64 Fed. Reg. 6,249 (Feb. 9, 1999).
[38] 42 USC § 654b(a)(1) (West Supp. 2002).
[39] Id. § 654b(b)(4). The text of the statute is reprinted in Appendix A.
[40] See OCSE Action Transmittal 97-13 (September 15, 1997).

- The amount of the current support order and the amount of any arrears owed under that order.
- The amount of assistance the state believes was paid to the family in that month and the total amount of un-reimbursed assistance the state believes the family has received over the course of its participation in the cash public assistance program.
- The amount of support actually collected in that month as well as the manner and date of collection.
- The amount of the collection that was attributed to current support, and the amount that was attributed to arrears. If the state charges interest on arrears or assess other fees or costs, the amount of the collection attributed to those charges.
- An explanation of the reasons for distributing the support in the manner it was done.
- The amount (if any) passed through to the family.
- The arrears balance and the un-reimbursed assistance balance (if any) owed after distribution of the collected support.
- The procedure for contesting the distribution if the custodial parent believes an error was made and the time frame (if any) for contesting the manner in which the collection was distributed.

Custodial parents that formerly received assistance need even more information. They need to know:

- The name and case number assigned to that parent.
- The amount of the current support order.
- The total amount of arrears owed by the non-custodial parent. Of that amount, how much is considered pre-assistance arrears, how much is during-assistance arrears, and how much is post-assistance arrears.
- The total amount of un-reimbursed assistance the state believes was paid to the family for the period or periods in which it received public assistance.
- The amount of support actually collected in that month and the manner and date of collection.
- The amount of the collection that was attributed to current support and the amount that was attributed to pre-assistance, during-assistance, or post-assistance arrears. If the state charges interest on arrears or assesses other fees or costs, the amount of the collection attributed to those charges.
- An explanation of the reasons for distributing the support in the manner it was done.
- The amount (if any) passed through to the family.
- The arrears balance and the un-reimbursed assistance balance (if any) owed after distribution of the collected support.
- The procedure for contesting the distribution if the custodial parent believes an error was made and the time frame (if any) for contesting the manner in which the collection was distributed.

In addition, a copy of this notice should be made available to non-custodial parents whose children receive or have received cash assistance. In that way, they will know what the states' records reveal about their support obligation, their obligation to repay public assistance provided to their children, and how much of their payment is actually reaching those children. They will also be able to identify and request correction of any errors in those records.

Under federal law and regulations, custodial and non-custodial parents whose children never received cash assistance will receive no regular, unsolicited notice. As with current and former cash assistance recipients, they may request information. If they do so, the SDU will tell them the status of their cases (e.g., whether a payment has been received, the amount received, and when it will be sent to the family) but nothing more. Moreover, their ability to obtain even this information is dependant on the quality of the voice response system the SDU has established.

State Practice

For nearly 20 years, states have been required to provide current and former public assistance recipients with a notice of child support collected on their behalf. States must attest that they comply with this requirement in their child support state plans.[41] Nonetheless, it appears that many states never implemented this law and others have done so in a very limited way. (See litigation summaries in Appendix C.)

By contrast, some states have enacted laws setting forth the right to notice both for *custodial parents* who are current and former public assistance families and *both parents* when their cases are being processed through the SDU. For example, Tennessee law sets minimum collection and distribution notice requirements for TANF and former-TANF families. The monthly notice must include the custodial parent's name, the non-custodial parent's name, the case identification number, the date the child support was collected, the amount collected that was treated as current support; the amount that was treated as arrears, and the amount sent to the custodial parent.[42] In addition, custodial parents whose cases are processed through the state's SDU will receive a notice with each payment "in an easily understood format" including the custodial parent's name, the non-custodial parent's name, the case identification number, the court docket number, the amount of the current support payment, the date on which the payment was issued, and the total of all payments issued in the current year.[43] While not as comprehensive as necessary,[44] this statute provides a good deal more information than the minimum required by federal law and regulation.

At least one state also provides statutory right to information to non-custodial parents whose cases are being handled through the state child support program. If a non-

[41] 42 USCA § 654(5). See, also Section 3.10 of the state plan.
[42] Tenn. Code Ann. § 36-5-116(e)(1)(A)-(G) (2002).
[43] Id. § 36-5-116(e)(2)(A)-(G).
[44] See *Harp v. Metcalf,* discussed in Appendix C.

custodial parent requests his/her payment history, California requires the SDU to release the information.[45] Again, this is not a perfect notice system, but it is a step in the right direction and acknowledges the non-custodial parent's right to obtain important case information.

Advocates may wish to look at practice in their states. Are monthly notices being sent to current and former public assistance recipients? What is the quality of those notices? Are both custodial and non-custodial parents whose payments are processed through the SDU able to obtain at least current case status information?

Of particular concern are states that have obtained a waiver of the monthly notice requirement based on the existence of an automated voice response system. Is this system truly accessible to custodial parents? Is it easy to use? Does it provide all the information needed to determine whether a payment has been properly distributed?

Similar questions should be asked about the SDU system. Are both parents able to obtain the information they need in a timely fashion? Is the system user-friendly?

The Federal Regulation Establishing the Right to a Grievance Procedure

The Regulatory Framework

For many years, the federal OCSE took the position that, while federal financial participation was available to cover the cost of a IV-D grievance procedure, states were not required to have such a procedure. This changed in 2000. Federal regulations now require states to have a grievance procedure.[46] Federal funding continues to be available to defray the costs.[47] This procedure must be available to all participants in the IV-D program, not just current and former public assistance recipients.

The regulation clearly states that the administrative procedure, while required, is to be "defined by the state."[48] Informal processes, as well as formal ones, are acceptable.[49] Indeed, states are free to design the type of grievance procedure they think is appropriate.[50] Nonetheless, some minimum standards can be gleaned from the regulation itself and the explanation contained in the Response to Comments that accompanied the final regulation.

- The procedures must be clear.

[45] Cal. Wel. & Inst. Code § 11478.1(c)(3).
[46] 45 CFR § 303.35 (2001); reprinted in Appendix A.
[47] 42 USCA § 655 (West Supp. 2002) and 45 CFR §304.20(b)(2001). See also, 65 *Fed. Reg*.82180 and 82194 (Dec. 27, 2000).
[48] 45 CFR § 303.35(a)(2001).
[49] Id. § 303.35(b).
[50] The Response to Comments states this in several different places. For example, "The rule does not dictate how States must implement the complaint procedure" and "The rule sets minimal requirements and States are able to set their own procedures." 65 *Fed. Reg*.82,193 (Dec.27, 2000).

- Individuals who receive IV-D services must be told that administrative review processes exist. This notification should be included in the initial information packet that goes to applicants and TANF recipients referred for program services.[51]
- Proper subjects for review include challenges to how support was distributed.
- States are free to establish parameters that avoid excessive or repeated review of the same case.[52] They can also place a limit on how long the IV-D participant has to file a complaint.[53].
- The burden is on the recipient to provide evidence that an error has occurred.[54]
- If review indicates that an error has occurred, the error must be corrected.
- Recipients must be notified of the results of the review and any actions taken.

These procedures must be available in interstate as well as in-state cases.[55] Recipients of IV-D services must be able to file a complaint in the initiating state. That state will then determine whether the complaint involves its own actions or the actions of a responding state. If the complaint involves the actions of the initiating state, that state will conduct the review under its procedures. If the complaint involves the actions/inactions of a responding state, the initiating state will refer the complaint to the responding state for resolution under that state's grievance processes.[56]

A Critique of the Grievance Regulation

Because there is no specific federal statute requiring states to offer grievance procedures to families using the IV-D system, some states argued that it was beyond HHS' authority to mandate one.[57] HHS responded by pointing out that Section 1102 of the Social Security Act gives the Secretary of HHS authority to promulgate regulations deemed necessary for the efficient administration of the IV-D program. Using this authority, the Secretary has determined that an administrative complaint procedure is a necessary component of an efficient and effective IV-D program. Indeed, it is a "key element" of the system.

However, given the states' position on grievance procedures, OCSE was reluctant to be very prescriptive. It specifically declined to:

- Establish a federal time frame within which states must respond to administrative complaints.[58] Thus, states decide whether to establish time frames and what those time frames will be.

[51] See discussion at id.
[52] Id. 82,194.
[53] Id. 82,196.
[54] Id. 82,180 and 82,195.
[55] 45 CFR § 303.35(a).
[56] 65 *Fed. Reg.*82,196 (Dec. 27, 2000).
[57] Id. 82,194.
[58] Id. 82,193.

- Require states to refer complaints to independent decision-makers.[59] Nonetheless, it seems self-evident that at some point in the process a neutral decision-maker should be involved.
- Give complainants access to information in their files.[60] This is troubling given an individual's need to know what is in the case file to argue that an error has occurred. Advocates may want to push for access to materials in the file as part of the administrative process.

State Practice

As outlined in Appendix B, states take a variety of approaches to administrative complaint procedures for child support customers. These range, from the District of Columbia's highly informal telephone process to California's detailed and structured proceedings. In general, the states with more formal procedures have enacted legislation or adopted regulations to establish such procedures. Such states are therefore bound by state law rather than the less demanding federal regulation.

Indeed, many of the states operating without state law or regulations seem to be violating even the minimal federal requirements. Some troubling aspects of these processes include the lack of:

- procedures for informing complainants about the process;
- written policies and procedures governing the grievance process itself;
- neutral party decision-maker involvement at any point in the process; and
- enforceable time frames for action.

For example, the District of Columbia does not notify customers of the administrative complaint procedure. Only customers who inquire about further review are informed of the review process. In addition, the complaint procedure is not written anywhere, and all the reviewers are child support agency staff.

In contrast, California has developed a procedure that might serve as a model for other states.[61] It has established a three-level complaint resolution process that can be used by both custodial and non-custodial parents.[62] The *first* level is informal. An aggrieved person files a complaint with the local child support agency. The complaint must be filed within 90 days of the date the person learned about the problem. The local agency has 30 days to respond to the complaint and must do so in writing.[63] If the

[59] Id.
[60] 65 *Fed. Reg.*82,196.
[61] See, California Family Code §§ 17800-17804 and § 17401.
[62] This is an important point. The federally mandated process need only consider complaints from recipients of IV-D services. These are overwhelmingly custodial parents. Thus, there is no opportunity for non-custodial parents to contest an action in their case such as failure to credit a payment or misapplication of a payment of current support to arrears.
[63] To implement this part of the law, each county will shortly have an ombudsperson whose job is to "resolve complaints at the earliest possible time with the highest degree of customer satisfaction possible

aggrieved person is not satisfied with the resolution or does not receive a response within the 30-day period, he/she can move to the *second* stage by seeking a formal hearing within 90 days. A hearing must be provided if the case involves 1) the denial of an application for services; 2) failure to timely process an application for services; 3) an alleged violation of any state or federal law, regulation, or department letter ruling; 4) failure to distribute a child support collection; 5) incorrect distribution of a child support collection; or 6) an improper case closure. The hearing is conducted using the same formal procedures used in state welfare hearings. If the person is still not satisfied, he/she may go to the *third* stage and request judicial review of the agency decision.

Parents are informed about the availability of this process in several ways. Information is provided in the summons and complaint forms, the child support booklet published by the California Department of Child Support Services, and many of the notices distributed by the local child support offices.

While some states may balk at such an extensive system, many will see the advantage of improving customer satisfaction and reducing the number of complaints about the program that are brought to the desks of state legislators. Some state administrators may also be persuaded that, by tracking complaints filed, they will be better able to identify and correct systemic problems as well as identify areas in which staff may need additional training. Persuasive arguments can be made in favor of a system that serves individual client's needs as well as the needs of the state.

Constitutional Right to Notice and a Hearing

While a step in the right direction, federal law and regulation do not provide true due process notice and hearing rights to aggrieved citizens. Advocates may want to develop arguments based on state or federal constitutional due process provisions to bolster their arguments for more robust processes.[64] Some states also have state administrative procedure laws that might be useful. Arguably, IV-D grievance procedures should follow the formal requirements of the state administrative procedure act and provide a full range of notice, hearing, and appeal rights.

The Fourteenth Amendment to the federal constitution provides that no state shall deprive any person of life, liberty, or property without due process of law. This has been held to mean that government must provide notice and an opportunity to contest when it takes action affecting people's property rights.[65] The frequency and quality of the notice and hearing required by the constitution are directly related to the risk that government

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within the parameters of the state and federal child support program requirements." CS Letter 00-07 (November 7, 2000).

[64] There has been some litigation around the constitutional need for complaint resolution processes. See, e.g. *Beasley v. Harris,* 671 F.Supp. 911 (D. Conn. 1987); *Berg v. Gardebring,* 708 F.Supp. 238 (D. Minn. 1989). See, also *Barnes v. Anderson, No. 95-15969.* Papers on this case are available from the National Clearinghouse, C.H. No. 51,047.

[65] See, e.g., *Goldberg v. Kelly,* 397 U.S. 254 (1970); *Fuentes v. Shevin* , 407 U.S. 67 (1972).

action will lead to erroneous deprivation of property.[66] Before a court will order detailed notice and hearing rights, it must be convinced that without these procedures there is substantial risk the government will take someone's property by mistake.

In the child support context this is not a difficult case to make. Clearly both custodial and non-custodial parents have a property interest in the support payment. The non-custodial parent is giving up his or her money to the state for processing. That parent is relying on the state to record the payment accurately and to distribute it appropriately. The custodial parent is relying on the state to do the same. Even if the payment has been assigned to the state (as in current TANF cases), the custodial parent retains the right to any payments in excess of the amount owed to reimburse the state for assistance provided to the family. In former TANF cases, the custodial parent has the right to current support, post-assistance arrears, and (possibly) pre-assistance arrears. As discussed above, the rules are extremely complex. Without detailed notice, neither parent can determine whether the support has been appropriately credited and disbursed.

Since those who use the IV-D system are overwhelmingly low- and moderate-income families, the risk of deprivation is serious. Non-custodial parents can have their professional and driver's licenses revoked, their credit rating ruined, their tax refund intercepted, and their bank accounts seized if the state makes a mistake in attributing payments. Custodial parents may be unable to pay their rent, provide food for their children, or pay their utility bills if money does not reach them when it should.

In addition, there is documentation from the federal government itself that there are serious problems with proper distribution of collected support in a substantial number of cases. Documented difficulties include problems with automated interface between the TANF and child support programs that resulted in payment delays for families leaving TANF, as well as underpayments of support in 7 to 30 percent of post-TANF cases.[67] Problems with the distribution of support to TANF and, former-TANF families and families who never received TANF have also been identified in litigation and verified through the discovery process. (See Appendix C.) Thus, it is not surprising that courts have consistently held that IV-D clients have a constitutional right to detailed notice and an adequate hearing.

In the late 1980s, nearly two dozen lawsuits were filed by custodial parents seeking comprehensive monthly notice of child support collections and distributions. Most of these lawsuits resulted in settlement agreements or consent orders under which notice and hearing rights were to be provided. Several went through extensive litigation.[68] The decision in *Vanscoter v. Bowen*[69] is typical. *Vanscoter* was a federal class action brought by AFDC recipients to challenge the way the state was calculating families' rights to the statutorily mandated $50 pass-through and disregard of child support collected on the families' behalf. Plaintiffs also argued that they had a due process right

[66] *Mathews v. Elderridge,* 424 U.S. 319 (1976).
[67] See OEI-05-01-00220, *supra*, n. 19.
[68] These are described in more detail in Appendix C.
[69] 706 F. Supp. 1432 (D. Wash. 1989), aff'd 920 F.2d 1441 (9th Cir. 1990).

to notice of collections so that they could determine whether the state was making proper pass-through payments. While the plaintiffs were current recipients of public assistance, the reasoning used by the court could also apply to former TANF recipients and those who have never received cash assistance. The court found that once a property interest is acknowledged, then "due process requires that the recipients [of child support services] be given sufficient notice to permit them to determine whether they are receiving the support to which they are entitled."[70] Therefore, the court ordered the state to provide program participants with periodic (quarterly) notice of the amount of child support received and an explanation of how it was distributed. The court also found that families were entitled to notice of their hearing rights. This decision was upheld on appeal.

This same result was reached in *Barnes v. Healy.*[71] This class action was brought on behalf of all custodial parents using California's child support (IV-D) program. Plaintiffs challenged the annual notice requirement as insufficient to provide due process. The district court agreed and required quarterly notice. The decision that both public assistance and non-public assistance families were entitled to notice of how their support payments had been distributed was upheld on appeal.[72] The district court also required the state to provide a somewhat detailed notice. Plaintiffs felt that the ordered notice was still insufficient and appealed that part of the decision. The Ninth Circuit agreed with the plaintiffs and ordered an even more detailed notice saying "… due process mandates a notice that provides the kind of information necessary to evaluate the timing and accuracy of distributions."[73] There must be "…sufficient detail that the affected party can prepare a responsive defense."[74] Recent case law follows this same reasoning.[75]

While the cases to date involve custodial parents, the same reasoning could be applied (in conjunction with the SDU notice requirement discussed above) for providing adequate notice to non-custodial parents as well. They too have an interest in the proper distribution of support payments made on behalf of their children.

Conclusion

On issues relating to the distribution of child support, constitutional analyses, as well as federal statues and regulations, acknowledge that custodial and non-custodial parents have detailed notice and adequate hearing rights. However, many states do not recognize these rights. Other states recognize these rights but have developed systems that do not provide adequate due process. As a result, children are being deprived of much-needed child support payments and their parents are powerless to have distribution errors corrected.

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[70] 706 F.Supp. at 1439.
[71] 980 F.2d 572 (9th Cir. 1992).
[72] Id. at 580.
[73] Id. at 578.
[74] Id. at 579.
[75] See, e.g., *Harp v. Metcalf*, No. 99C-3278 (Cir Ct. Tenn. 2001).

Advocates concerned about this issue in their states could petition for rulemaking in this area. Their IV-D agency might be willing to adopt better notice and hearing procedures and this is one way to achieve that goal. The very detailed regulations developed in California (and cited in Appendix B) might serve as a model here. If this is not possible, state legislation might provide relief. The statutes described in Appendix B are a useful place to start in developing possible legislation and educating legislators about how other states address this important issue. If this is not possible, litigation should be considered. In the past, such litigation has been successful and there is no reason to believe that it would not be again. Given the amounts of money involved and the fundamental rights of both parents to have accurate records and proper distribution of collections, the rewards of litigation in this area are high.

APPENDIX A
Federal Statutes and Regulations Relating to Notice and Hearing Procedures

Notice Rights

42 USCA § 654(5)

> A state plan for child and spousal support must—
> (5) provide that (A) in any case in which support payments are collected for an individual with respect to whom an assignment … is effective … the individual will be notified on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden) of the amount of support payments collected.

42 USCA § 654b(b)(4)

> The State disbursement unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments, including procedures—
> (4) to furnish to any parent, upon request, timely information on the current status of support payments under an order requiring payments to be made by or to the parent, except that in cases described in subsection (a)(1)(B) of this section, the State disbursement unit shall not be required to maintain in automated form records of payments kept pursuant to section 666(a)(8)B)(iii) of this title before the effective date of this section.[76]

45 CFR §. 302.54 Notice of collection of assigned support.

> (a) Effective January 1, 1993, the State plan shall provide that the State has in effect procedures for issuing notices of collections as follows:
>
> (1) The IV-D agency must provide a monthly notice of the amount of support payments collected for each month to individuals who have assigned rights to support under section 408(a)(3) of the Act, unless no collection is made in the month, the assignment is no longer in effect and there are no longer any assigned arrearages, or the conditions in paragraph (c) of this section are met.[77]

[76] The qualifier refers to non-IV-D cases being processed through the SDU because they are being enforced through income withholding. In those cases, the SDU's records need only go back to the date of implementation.

[77] Readers will note that there is no subsection (c) in this regulation. The 1992 version of the regulation contained a subsection (a) about the state's obligation through 1993; a subsection (b), which described the new monthly notice; and a subsection (c) that contained the waiver language. Subsection (a) was deleted in 1996 and subsections (b) and (c) renumbered to (a) and (b). The reference to subsection (c) was left in the

(2) The monthly notice must list separately payments collected from each non-custodial parent when more than one non-custodial parent owes support to the family and must indicate the amount of current support collected, the amount of arrearages collected and the amount of support collected which was paid to the family.

(b)(1) The Office may grant a waiver to permit a State to provide quarterly, rather than monthly notices, if the State:

(i) Until September 30, 1997, does not have an automated system that performs child support enforcement activities consistent with Sec. 302.85 or has an automated system that is unable to generate monthly notices; or

(ii) Uses a toll free automated voice response system which provides the information required under paragraph (b)(2) of this section.

(2) A quarterly notice must be provided in accordance with conditions set forth in paragraph (b)(1) of this section and such notice must contain the information set forth in paragraph (b)(2) of this section.[78]

Hearing Rights

45 CFR § 303.35 Administrative Complaint Procedure

(a) Each State must have in place an administrative complaint procedure, defined by the State, to allow individuals the opportunity to request an administrative review, and take action when there is evidence that an error has occurred or an action should have been taken in their case. This includes both individuals in the State and individuals from other States.

(b) A State need not establish a formal hearing process but must have clear procedures in place. The State must notify individuals of the procedures, make them available to recipients of IV-D services to use when requesting such a review, and use them for notifying recipients of the results of the review and any actions taken.

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new subsection (a) of the regulation although the waiver provisions are now in subsection (b). It appears that this should be a reference to subsection (b).

[78] Readers will note that the references to subsection (b) make no sense. As noted in footnote 37, this is probably the result of a failure to account for the re-lettering of the section that took place in 1992. The reference should be to the requirements of subsection (a).

APPENDIX B

A Brief Description of Some State Hearing Procedures

The following is not an exhaustive list of every state grievance procedure. Rather, it is the result of an examination of policies posted on the child support websites of 48 states, supplemented by additional legal research. In some states, written materials were augmented by an interview with a person involved with the customer service process. Information about the District of Columbia was obtained through meeting with the Supervisor of the Customer Service Unit of the Child Support Enforcement Division (CSED), as well as the Deputy Director and Counsel for CSED.

Much of this material was gathered by law students Leah Vu and Karina Juarez under the supervision of Professor Jeffrey Gutman of the George Washington University Law School. The author gratefully acknowledges their fine work in preparing this part of the paper.

CALIFORNIA

California's child support program is county administered and state supervised. Accordingly, its process begins at the county level and proceeds to the state level if the issue cannot be resolved at the county level. Regulations governing the county process are found at 22 Code of California Rules 120101-120108 (2001). Regulations governing the state level process are found at 22 Code of California Rules 120200-120222 (2001).

All requests for complaint resolution must be made within 90 days after a complainant knew, or should have known of the alleged action or inaction. Initial complaints must be directed to the local child support agency. That agency provides the complainant with form LCR001, "Request for Complaint Resolution." Complainants are encouraged to make written complaints using this form. However, they may complain orally as well, in which case the local worker will fill out the LCR001 and mail a copy to the complainant within five business days of the original oral complaint. The local child support agency also mails the complainant a form LCR002, "Request for Complaint Resolution Acknowledgement," and SH001, "Request for State Hearing." The LCR002 includes an explanation of the complaint resolution process and the time frame for filing complaints and appeals.

Each local child support agency has at least one designated person to handle complaints. Within five business days, that person will determine whether there is jurisdiction. If the complaint involves a matter that needs to go to court for resolution or involves visitation, custody, or spousal support, the agency does not have jurisdiction and the complainant will be so informed. If the complaint involves a matter other than child support, the complainant will be notified and the complaint will be referred to the appropriate agency. If the complaint belongs in a different county, the complaint will be transferred to that county, and the complainant will be notified of the transfer. If there is disagreement about which county has jurisdiction, the state Department of Child Support Services (DCSS) will make the jurisdictional determination.

The county investigator will then discuss the complaint with the complainant. The investigator may also request additional information necessary for the resolution of the complaint, analyze it, and determine action to be taken. Normally, the complaint must be resolved within 30 days. However, if more time is needed, the director of the county program may grant an extension of up to 30 additional days. If this occurs, the complainant will be notified.

A decision is reached and incorporated into a "Notice of Complaint Resolution," LCR006. This document explains the decision (including citations to any applicable laws, regulations, and policies) and what action will be taken. The complainant will also receive a "Request for State Hearing," SH1001. This informs the complainant of the right to appeal and the process for doing so.

If the complainant appeals, the county child support agency is responsible for helping the complainant file the appeal, providing all relevant information, and preparing a position statement. The county will also appoint a local agency representative, who will represent the local agency at the hearing, and must be authorized to participate in any binding agreements or stipulations on behalf of the local agency. The State Hearing Office will notify all the parties, at least 10 days in advance, of the date, time, and location of the hearing.

Before the hearing, both the complainant and the local child support agency have the right to petition the State Hearing Office to subpoena documents and witnesses. Once the hearing commences, the Administrative Law Judge conducting the hearing may also subpoena documents and witnesses. The DCSS will pay witness fees and mileage charges for witnesses subpoenaed by the complainant. The local child support agency will pay costs for witnesses it subpoenas.

At the hearing, testimony will be taken under oath and the proceedings will be recorded. If necessary, an interpreter will be provided. All parties have the right to be represented by a person of their choice, present evidence, cross-examine witnesses, introduce documents and other evidence, and make oral and written arguments.

A proposed decision must be drafted and sent to the Director of the DCSS or his/her designee within 10 business days of the date the record is closed. Within 20 days of the date the record is closed, the Director may adopt the proposed decision, issue an alternate, written decision based on the record, or order a further hearing. If no action is taken, the Administrative Law Judge's decision is deemed adopted by operation of law. The complainant and the local child support agency will then be given a copy of the decision. Both parties have 30 days to request a rehearing. The complainant also has the right to seek judicial review.

If the decision upholds the complainant's position, the local child support agency must comply (even if it requests a rehearing) and must submit a compliance report to the DCSS within 30 days of receipt of the adopted decision. If the local child support agency does not comply, the DCSS will take whatever action is necessary to obtain compliance.

DISTRICT OF COLUMBIA

The District of Columbia has a unified child support system in which the IV-D agency functions as both a state and a local entity. The Child Support Enforcement Division (CSED) in the District has an informal complaint resolution process. It begins with a 24-hour, automated hotline, through which customers may obtain general information about payment and case status. In addition, customers may speak to a Customer Service Representative from 8:15 a.m. to 4:15 p.m. These Customer Service Representatives informally resolve disputes and update the computer file accordingly. There is one Spanish-speaking Customer Service Representative and there are arrangements for interpreters in other languages when needed.

A person who is not satisfied with the Customer Service Representative's action is referred to the Customer Service Unit Supervisor who will attempt to resolve the problem within two days of receipt of the referral. If this is not possible because of the complexity of the problem, a written referral is made to the specific unit responsible for the issue area (e.g., distribution, legal, interstate, intake, and enforcement) and the referral is logged into the computer in the complainant's file. The specialized unit then sends out a written letter of acknowledgment to the complainant. This is supposed to be done within one week of the referral. The acknowledgment letter also informs the complainant when he or she should expect to receive a response. The specialized units try to resolve problems that were referred to them within 30 days, unless extensive auditing is required as sometimes is the case with a distribution problem.

The Customer Service Unit follows up on all problems that were referred out to the specialized units on a weekly basis. It makes sure that the specialized unit has received the referral and that either an acknowledgement letter was sent out or the problem was quickly resolved. The Customer Service Unit is also responsible for following up with complainants and complainants are instructed to call that unit (not the specialized unit) if they have questions or concerns.

Customers are informed of decisions either in writing or by a telephone call. Customers who do not agree and wish to appeal are instructed to send a written complaint to the Deputy of Child Support at Child Support Enforcement Division (CSED). If the customer is still dissatisfied, the matter is referred to the Director of CSED, who is the final authority on the matter.

MONTANA

The Child Support Enforcement Division (CSED) in Montana is state administered and operates through regional offices. An informal complaint procedure is available at the regional office level. If the complainant is dissatisfied, he or she may seek judicial review pursuant to Montana Code Annotated 2-4-702 et seq.

Complainants call their regional office and speak with their caseworker. If the caseworker is unable to resolve the problem, the complainant is instructed to write a letter

explaining the complaint to the person who supervises the caseworker. The regional office will send a written response to the complainant explaining the reasons for the action taken.

The letter also informs the complainant of the right to a hearing before an administrative judge, explains the procedure, and provides the form to fill out requesting such a hearing. The request must be filed within 30 days of the agency's decision.

MASSACHUSETTS

Massachusetts has a state-administered program and provides its participants an informal complaint procedure. One way to access this procedure is by calling the customer service line. The customer service line is set up to provide customers with general information (e.g., when checks will be mailed out) and to resolve simple problems. When a complaint is lodged, a representative makes a notation in the file, and enters the complaint code. If the issue is complex and cannot be resolved over the phone, the representative writes up the problem and gives it to a superior for further referral to the appropriate unit. The unit reviews the write-up and will send a letter to the complainant asking for more information (if needed) or informing the customer of the resolution of the complaint.

Complainants may ask to speak to a supervisor at any point if they are dissatisfied with the processing of their complaint. If still dissatisfied, a complainant may write, call, or e-mail the Child Support Advocate's Office for further assistance. If a complainant continues to have an unresolved issue, he/she may appeal in writing to the Deputy Commissioner or the Commissioner of OCSE.

Walk-in consultations are also available to those wishing to file a complaint. The customer service unit is designed to take walk-ins and complainants are informed that they may go to the closest child support office in their county to lodge their complaints. Walk-in complaints follow the same channels of resolution as complaints that are called in.

OHIO

Ohio is a state-supervised, county-administered program. It provides an informal complaint procedure. Each county has a Customer Service (CS) unit, which receives and resolves complaints. If CS cannot resolve the problem, it is referred to the appropriate department, such as the collections and distribution department. If the problem cannot be resolved there, it goes to the State Office of Child Support Customer Service Unit. If the problem cannot be resolved there, it keeps moving up the hierarchy to state unit directors and finally to the Director of Child Support Services.

CS telephone operators keep track of incoming complaints and create reports that track recurring problems. These reports are distributed to each unit and they are also made available to the Director of Child Support.

OREGON

Oregon has a state-supervised IV-D program. A state statute delineates parents' right to hearings, Oregon Revised Statute 461-200-1600 (2001). Under this statute, parties in child support cases can lodge a complaint at a local (county) Oregon Child Support Office. If a regular CS specialist cannot resolve the problem, the case is passed on to a unit supervisor. If a supervisor does not succeed in resolving the issue, a customer may file a grievance. A grievance form can be obtained by calling a toll-free 24-hour telephone information line. The form contains instructions for filing the grievance, including the address where it should be sent.

Once a grievance is filed with the Department of Child Support Services (DCS) it will be screened. Some grievances are rejected at this stage. Those include grievances that protest actions that 1) are required or permitted by state administrative rule or law or federal law or regulation; 2) involve support payments that have not been made if the contractor has taken appropriate steps in accordance with state and federal rules to obtain payments; or 3) involve actions taken or not taken by the child support agency of another state. A complainant's grievance will be screened, and if accepted, responded to within 90 days.

The decision to reject a grievance or send it to the appropriate office for resolution is at the discretion of the DCS. If it accepts a grievance, DCS forwards the complaint to the grievance coordinator(s) of the involved office for resolution. That office investigates the grievance and either takes corrective action and notifies the complainant or contacts the complainant to explain why corrective action is not appropriate. The process must be completed within 90 days from the date the grievance is received at DCS.

UTAH

Utah has a state-administered child support program, which operates through regional offices. It provides an informal complaint resolution process.

Customers with concerns or a complaint(s) about how a child support agent has handled a case may contact the Customer Service Unit in their region. The Customer Service representative will take the complaint and make recommendations to the original agent for it resolution. If the customer does not hear from the original agent within three days, he/she is advised to call the Customer Service Unit again. The Customer Service representative will then follow up with the agent's direct supervisor.

If the problem is not resolved through the Customer Service Unit, the complainant can ask to be transferred to the appropriate Quality Assurance Specialist in the region. If the complainant still does not feel that the issue has been adequately addressed, he or she may ask to be transferred to the appropriate Associate Regional Director. If the Associate Regional Director is unable to resolve the problem, the complainant can call the ORS Administration Office and ask to speak with a Regional Director, Deputy Director, or the IV-D Director.

VIRGINIA

Virginia has a state-administered child support program that offers a formal complaint procedure to custodial and non-custodial parents to address support payment issues pursuant to Virginia Code § 63.1-267.1. However, these hearings cannot address the validity of a court order or address the issue of non-paternity.

All requests for a hearing must be in writing and mailed to the Department of Child Support Enforcement (DSCE) Section in Richmond, Virginia. Before the hearing, the DCSE Section Hearings Manager will assign the appeal to a qualified hearing officer. If the hearing officer determines that the appeal is valid, the hearing officer will schedule the hearing within 45 days from the postmark date.

The custodial parent, non-custodial parent, and their counsel, if any, will be notified in writing of the date, time, and location of the hearing. The hearing will typically be held at the district office where the custodial parent resides. The complainant may also request a telephonic hearing by contacting the hearing officer either in writing or by phone.

The hearing will generally proceed in the following order: (1) introductory statement and introduction of attendees by hearing officer; (2) presentation of the district office's case; (3) questions by the district office; (4) presentation of the complainant's case; (5) questions by the district office; (6) district office's closing statement; and (7) complainant's closing statement. A written decision is sent to all parties by certified mail within 45 calendar days of the date of the hearing request.

Complainants have the right to: (1) examine all documents and records used by the district office in determining the support obligation; (2) present the case or have it presented by legal counsel or another person; (3) bring witnesses to the hearing; (4) advance arguments without interference; (5) question or refute all pertinent facts and circumstances in the case; and (6) submit evidence to support their case.

The hearing officer's decision may be appealed de novo through the juvenile and domestic relations district court of the jurisdiction where the appellant resides pursuant to Virginia Code §63.1-268.1. All appeals must be filed within 10 calendar days of receipt of the hearing officer's decision.

VERMONT

Vermont has a state-administered IV-D program. When a problem arises, a customer contacts the caseworker or a representative of the Office of Customer Service (OCS). If the problem is not resolved, the customer may file a written request for administrative review if he/she does so within 30 days of the event giving rise to the complaint.

An OCS Administrative Review is the formal procedure used to resolve complaints. The review board consists of the administrative unit supervisor and two OCS employees who are assigned to the board as an additional duty. Customers may appeal the denial of services, the failure to provide timely services, improper allocation or distribution of child support payments, inaccurate arrears calculations, and the failure to keep accurate child support payment records.

The complainant has the option of having the review in person, over the telephone, or by mail. During the preliminary stage of the process, OCS will try to resolve the problem within 10 days. The supervisor of the administrative unit will review the issue based on material provided by the complainant. If the supervisor determines that the problem cannot be resolved without further consultation with the complainant, a telephone or in-person interview will be scheduled. After this, a written decision is mailed out and if the complainant agrees with the decision, he/she may sign it and return it to OCS. If she does not agree with the decision, she may appeal the decision within 30 days of the date of the decision. The process for filing an appeal is described in the written decision.

WASHINGTON

Washington has a state-administered program that operates through field offices. It offers a formal administrative hearing procedure for some types of complaints. Customers with disputes involving establishment of child support obligations, petitions for modifications of child support, driver's license suspensions, employer non-compliance, and debt adjustment are typically entitled to a formal adjudicative hearing.

Customers with other types of problems may seek redress through less formal channels. For those cases, the process begins by discussing the issue with the caseworker, who is called a support enforcement officer (SEO). If the SEO cannot resolve the problem, then the complainant may speak with the SEO's Lead Worker. If the issue is still not resolved, then the matter may be taken up with a supervisor. If the supervisor cannot resolve the problem, then the complainant may request a Conference Board review whose process is governed by Washington Administrative Code §388-14-385 et seq.

The Conference Board is composed of staff from the field office that handles the child support case, except the DCS worker assigned to the case. Requests for a Conference Board review must be made in writing along with a thorough description of the grievance and sent to the appropriate field office. Complainants may appear before the Board in person or over the telephone. However, if the dispute can be resolved as a matter of law without necessitating a resolution of disputed facts, the Conference Board Chair may issue a decision without convening a hearing.

If a hearing is held, the complainant has the right to be represented and may present evidence and examine witnesses. Interpreters will be provided at state expense so long as the complainant provides one-week's advanced notice. Based on the evidence

presented, the Board members will make a decision. The Board Chair will write up the decision and mail it to the complainant. If the complainant does not like the Board's decision, there is no formal appeal process. However, the complainant may request an informal review by writing to the Conference Board Unit supervisor.

APPENDIX C

A Brief Summary of Some of the Litigation Regarding Notice and Hearing Rights in Child Support Distribution Cases

ALABAMA

Arrington v. Fuller, Case No. 2001-D-923-N was filed as a federal class action in the Middle District of Alabama, Northern Division on July 27, 2001. Plaintiffs include 1) custodial parents who participate in the IV-D system, including those who do and do not receive public assistance; 2) custodial parents who do not participate in the IV-D system but whose support is collected by the state disbursement unit; and 3) non-custodial parents whose support payments are processed through the state disbursement unit.

According to the complaint, the only notice of collection and distribution available to custodial parents is the information on the check itself and this does not meet the requirements of the federal regulation, let alone the requirements of due process under the federal and state constitutions. Non-custodial parents receive no notice, a violation of their state and federal constitutional rights. In addition, there is no process available to custodial or non-custodial parents to correct distribution errors, a violation of state statute and the state and federal constitutions. Plaintiffs seek declaratory and injunctive relief to adequate notice and hearing rights. On June 27, 2002, they filed a motion for preliminary injunction. Plaintiffs recently filed a second preliminary injunction motion to stop the agency from improper distribution of support collections. A trial is scheduled for January 2003.

ARIZONA

Hoffman v. Clayton, Case No. C331471 (Sup. Ct. Ariz.) is a state suit involving distribution of support. It also challenges the state's failure to provide adequate notice about child support collections and the failure to provide a grievance system that meets minimal due process requirements. In response to the suit, the state updated its notice and hearing regulations and procedures. The parties have negotiated a new notice form. In addition, the state will conduct a quarterly audit of the IV-D system in order to identify whether additional collection and distribution policy changes are needed.

ARKANSAS

Walters v. Barclay, Case No. 4:01 CV 628 JMM (Eastern District of Ark. Western Division) was filed in state court on August 29, 2001, and was removed to federal court. The nine named plaintiffs in this state court action include:1) custodial parents who are not recipients of IV-D services but are in the state disbursement unit because their support is collected from the non-custodial parent through income withholding; 2) custodial parents who never received assistance and who have requested child support services from the IV-D system; and 3) current and former public assistance

recipients who are in the IV-D system by virtue of the child support assignment required of public assistance recipients. The case has been certified as a class action.

Plaintiffs seek timely disbursement and distribution of their support, proper notice of collection and disbursement, and procedures for correcting processing errors. One interesting aspect of this case is that Arkansas charges substantial fees to those not currently receiving assistance. These fees are collected by taking them off the top of support collected on the family's behalf and sending the remainder to the family. Plaintiffs challenge this practice as a violation of the federal disbursement statute, 42 USC §657. Discovery is now being conducted. More information on this case (including the pleadings) can be found at www.arkidslast.com.

CALIFORNIA

Barnes v. Healy, 980 F.2d 572 (9th Cir. 1992) was a federal class action brought on behalf of custodial parents using the IV-D system. They challenged the yearly notice requirement for current and former public assistance recipients then in effect as constitutionally insufficient. They also challenged the lack of notice to non-public assistance families as violating due process. At the district court level, they won the right to quarterly notice for all IV-D participants, but were unhappy with the content of the notice ordered.

On appeal, the Ninth Circuit agreed that all families in the IV-D system were constitutionally entitled to periodic notice of collections made on their behalf along with a detailed explanation of how those collections were distributed.

CONNECTICUT

Beasley v. Harris, 671 F.Supp. 911 (D. Conn. 1987) affirmed sub nominee *Beasley v. Ginsberg*, 1989 U.S. Dist. LEXIS 16682 (D. Conn.) was a federal class action brought on behalf of AFDC recipients who sought declaratory and injunctive relief from defendants' violations of regulatory and statutory provisions regarding the pass-through of child support. They also challenged the state's failure to provide adequate notice of the dates and amounts of support collected on their behalf.

The court held that while the lack of notice does not violate federal statutory and regulatory requirements, it does violate the 14th amendment's guarantee of procedural due process.

MISSISSIPPI

Brown v. Department of Human Services, No. 1998-CA-01213-SCT, (Ms. Sup. Ct. 2000) was a state court action involving a TANF recipient who believed the state had collected more in child support than it had paid her in public assistance. She sought an accounting and payment of the excess funds to her. The state refused to give her an accounting, arguing that by virtue of the assignment, she had relinquished all her rights to support collected and thus was not entitled to an accounting. Neither the statutory right to

notice nor due process issues were argued. Rather, the decision hinged on the meaning of the assignment. The court held that under federal and Mississippi law, the assignment was "a limited one" and did not extinguish all the assignor's rights. Since she had a property right under federal and state law to the excess payments, she was entitled to an accounting and to the recovery of excess payments.

PENNSYLVANIA

Bennett v. White, 671 F.Supp.343 (E.D. Pa. 1987) aff'd 865 F.2d 1395 (3d Cir. 1989) was a federal class action brought on behalf of current and former AFDC recipients living in Philadelphia who had assigned their support rights to the state. Plaintiffs alleged that the state had collected support in excess of the amount of the assistance they received but failed to give this support to the families in violation of federal law. At the time the suit was filed (1979), there was no statutory right to notice.

By the time the suit was heard, federal law had been changed to provide for yearly notice of collections. The district court found that this was constitutionally insufficient and that the class members had a due process right to monthly notice of support collected on their behalf. The court also found that the state had violated a number of federal statutory requirements on the distribution of collected support. On appeal, the Third Circuit agreed that notice was constitutionally required and that the notice must include an explanation of how the support was allocated.

TENNESSEE

Harp v. Metcalf, No. 99C-3278 was filed in the Fifth Circuit Court for Tennessee in 1999. This state class action challenged the state's failure to provide notice and hearing rights to IV-D program participants (TANF, post-TANF, and never-TANF) on whose behalf child support was collected as well as the failure to promptly distribute collected support. Also at issue was the state's practice of deducting fees and recouping overpayments out of collected support in violation of the federal child support distribution statute, 42 USC §657.

In response, the state began providing monthly notice in the form required by federal and state law to current TANF recipients and post-assistance families. See Tennessee Code Annotated §36-5-116(e)(1)(A)-(G). However, the court issued a Memorandum and Order finding that these notices did not meet due process standards and directed the state to develop a more detailed notice about how support was distributed. A Settlement Agreement was then reached. The state will now send notices that include all of the required federal and state elements as well as: 1) the case number; 2) the amount of court-ordered current support and arrears; 3) an explanation of the distribution rules; 4) case-specific information about how the money was distributed; 5) a notice of the right to file an administrative appeal and the time frame (15 days) for doing so; 6) if the family currently receives TANF, the family's unmet need amount; 7) a message explaining the different distribution rules for collections made through federal tax intercept; and 8) toll-free contact numbers for both the child support and the TANF agency to facilitate inquiry about any questions or concerns.

State law also provides for notice to never-assistance families using the state IV-D system and non-IV-D families using the services of the state disbursement unit. See, Tennessee Code Annotated §36-5-116(e)(2)(A)-(G) as of April 1, 2002. These notices will provide similar detail to the notices given to current- and former-assistance families to meet due process requirements.

The Settlement Agreement also addresses the notice of a right to a hearing. The form will contain a list of issues that can be appealed, along with statutory citations, as well as a general description of distribution issues that can be addressed in a hearing. It will contain a date signature line and allow the complainant to describe the problem.

Finally, Tennessee now has a process for raising distribution issues. If a family thinks a mistake has been made, they call the toll-free number for the Customer Service Unit. A form will then be sent to the family to fill out. The state has 30 days to resolve the issue and inform the family. If the state does not respond, or the complainant is still dissatisfied, then a full administrative hearing will be held under Tennessee Code Annotated §36-5-1001.

WASHINGTON

Vanscoter v. Bowen, 706 F. Supp. 1432 (D. Wash. 1989), aff'd 920 F.2d 1441 (9th Cir. 1990) was a federal class action brought by AFDC recipients to challenge the way the state was calculating the family's right to a child support pass-through. Plaintiffs also argued that they had a due process right to notice of collections so that they could determine whether the state was making proper pass-through payments.

The district court ordered the state to provide program participants with periodic (quarterly) notice of the amount of child support received and an explanation of how it was distributed. Families were also found entitled to notice of their hearing rights. This decision was upheld on appeal.