

## Utilizing, Overseeing, and Negotiating with the Local Child Support Enforcement Office

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*The time is 1630, and your client arrives. She is a custodial parent who needs help in locating a noncustodial parent, establishing paternity and child support on one child, enforcing a prior child support judgment on another child, obtaining a proper dependent identification card, defending nonsupport contempt charges on her current husband, and dealing with the local child support enforcement office.*

Of the many issues facing a legal assistance attorney (LAA), perhaps the most complex is family support, especially child support. The purpose of this article is to help LAAs enhance relations with local child support enforcement offices (CSEO) to achieve quicker and better results for legal assistance clients. To build this relationship, LAAs should do the following:

- (1) Learn federal and state law, as well as the tools available to the client to maximize use of the CSEO;
- (2) Cultivate a relationship with the local CSEO and recognize *its* responsibilities under federal and state laws to oversee the case; and
- (3) Ensure that the local CSEO properly understands the federal law, state law, and military regulations.

This article provides tips in dealing with the local CSEO, summarizes the federal requirements imposed on these offices, outlines the tools available to clients through these offices, and reviews resources available to LAAs.

## Use the Services of the Local Child Support Enforcement Office

To use the CSEO's services, LAAs must understand the clients' needs and the CSEO services available. First, a client may be the custodial parent (CP) who needs to establish paternity or child support, modify the support order, or locate the noncustodial parent (NCP). Second, a client may be an adult dependent who needs to establish paternity or collect child support arrearages. Finally, a client may be a military member who needs a genetic test, or assistance in setting a fair amount of child support, modifying a child support order, or defending against the enforcement tools often used in the collection of child support. For certain issues, LAAs may refer the case or seek assistance from the CSEO for a CP, NCP, or the child(ren).

As a result of the dramatic increase in the number of divorces and illegitimate births in the United States,<sup>1</sup> Congress created the child support enforcement program<sup>2</sup> and mandated that it obtain a vast arsenal of powers,<sup>3</sup> offer a wide range of services, and improve their services each year.<sup>4</sup> The state CSEO's main mission is to locate NCPs, establish paternity, set child support, modify child support, and enforce the provisions of child support orders. Depending on the judge and the state involved, these cases may also include life insurance, educational expenses, medical support, recreational expenses, and alimony. Anyone who is receiving public assistance or who has completed an application qualifies to receive these services.

The federal office of child support enforcement provides support and direction to state CSEOs.<sup>5</sup> The federal government's role is to interpret federal law concerning child support, mandate the duties of the CSEO, conduct audits to ensure compliance with federal law and regulations, provide assistance implementing mandates, and measure the results.<sup>6</sup>

## Oversee the Case with the Local Child Support Enforcement Office

When a CP legal assistance client has child support needs, the LAA should consider referring the case to the local CSEO, and monitor the progress of the case. The first step is to contact the local CSEO and complete their application process. Some

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1. NAT'L CTR. FOR HEALTH STATS., 47 MONTHLY VITAL STATS. REP. 21 (provisional 1998 data); NAT'L CTR. FOR HEALTH STATS., 48 MONTHLY VITAL STATS. REP. 16, NON-MARITAL CHILDBEARING IN THE UNITED STATES, 1940-1999 (Oct. 2000).

2. 42 U.S.C. §§ 651-669 (2000).

3. *Id.*; see Legal Assistance Items, Legal Assistance Branch, Admin. & Civil L., The Judge Advocate General's School, U.S. Army, *The Child Support Enforcement Amendments of 1984*, ARMY LAW., Dec. 1984, at 11.

4. *Office of Child Support Enforcement*, Preliminary FY 2000 Data Report (2000) (on file with author).

5. 42 U.S.C. § 652.

6. *Id.* § 608(a)(3). To ensure child support enforcement is successful, the CSEO has an unlimited sixty-six percent federal grant for matching state funds spent in fulfilling its child support mission. At present, the CSEO receives an unlimited ninety-percent federal grant for matching state funds spent for the cost of genetic testing. *Id.* § 655.

states' applications are on-line and others direct clients to local offices. While this process will differ from state-to-state, at a minimum, a CP will need to provide all applicable supporting documentation and information (if known), including the following:

- birth certificates for all of the children;
- marriage license;
- other proof of paternity;
- location information of an NCP;
- the social security number of an NCP;
- his or her place of employment and address; and
- any court papers obtained under a divorce or child support hearing.<sup>7</sup>

With this information, the state will locate and contact an NCP, schedule an appointment, arrange for genetic testing if requested, encourage the NCP to sign stipulated agreements or agreed judgments for paternity and child support, serve an NCP with process or obtain a waiver,<sup>8</sup> and proceed to establish paternity, if necessary. The costs of genetic testing are dramatically lower for the CSEO due to the sizeable volume discount offered by large genetic testing labs. An LAA should ensure that the CP or CSEO takes all necessary steps to modify the dependent's birth certificate, as necessary, since certain benefits may require the modified birth certificate, and the CSEO may not routinely correct birth certificates.<sup>9</sup>

Next, the court or the CSEO sets the child support obligation. Each state's child support guidelines focus either on an NCP's income or a combination of both spouses' income with other factors.<sup>10</sup> Since states must reexamine these guidelines every few years, LAAs should monitor the guideline statute closely. Also, the LAA may want to explain the leave and earnings (LES) statement to a CSEO so it properly establishes the child support based on the military member's income.<sup>11</sup>

A child support obligation also includes providing for the medical support needs of the child(ren). The local CSEO should ensure the proper spouse provides for the medical needs of the child(ren). The CSEO sends a national medical support notice to the employer who forwards it to the plan administrator. If the court or the CSEO determines that private medical insurance is not available at a reasonable cost, a CP may look to some form of Medicaid or state-sponsored medical insurance. The definition of reasonable cost will vary from state-to-state. The CSEO, however, may also need assistance from an LAA to understand when and how the child(ren) qualify for medical insurance through the military.<sup>12</sup>

Every three years, upon the request of either parent, the CSEO will review and modify the order, if appropriate.<sup>13</sup> A CP needs to document all of the increased expenses in raising the child(ren) and provide proof of an NCP's present income. The modification process may be either administrative or judicial, depending on the state guidelines. A request for review and adjustment outside the three-year cycle requires proof of a substantial change in circumstances.<sup>14</sup>

The CSEO also assists CPs in enforcing child support orders and spousal support orders. First, the state agency will most likely exhaust any administrative remedies available. For example, the CSEO will administratively withhold and seize the child support from an NCP's income, any state and federal income tax, unemployment benefits, workers' compensation benefits, and any account at a financial institution. In addition, the CSEO can suspend any of an NCP's licenses, revoke passports, report arrearages to the credit bureau, and file an order of contempt against an NCP either administratively or judicially (depending on the state) and seek, among other things, an adjudication of the arrears and incarceration. The CSEO can also turn certain cases over to the District Attorney, Attorney General, or the U.S. Attorney's Office for possible criminal prosecution.<sup>15</sup>

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7. See ESSENTIALS FOR ATTORNEYS IN CHILD SUPPORT ENFORCEMENT HANDBOOK, DEP'T. OF HEALTH AND HUM. SERVICES ADMIN. FOR CHILD. AND FAMS. OFF. OF CHILD SUPPORT ENFORCEMENT 19 (3d ed. Aug. 2002) [hereinafter CHILD SUPPORT ENFORCEMENT HANDBOOK].

8. Major Alan L. Cook, *The Armed Forces as a Model Employer in Child Support Enforcement: A Proposal to Improve Service of Process on Military Members*, 155 MIL. L. REV. 153 (1998).

9. See generally *id.*

10. LAURA W. MORGAN, CHILD SUPPORT GUIDELINES: INTERPRETATION AND APPLICATION 1.03 (1996, supp. 2001).

11. See *A Quick Guide to Working with Military as an Employer*, 2003, at <http://www.acf.hhs.gov/programs/cse/pol/IM/im-03-03a.htm> (2003) (providing an excellent summary of child support issues in the military from the CSEO's perspective).

12. See *id.*

13. 42 U.S.C. § 666(a)(10) (2000).

14. *Id.*

15. Major Janet Fenton, TJAGSA Practice Note, Fam. L. Note, *The Child Support Recovery Act: Criminalization of Interstate Nonsupport*, ARMY LAW., Dec. 1997, at 26. Since this note, Congress passed the Deadbeat Parent's Act creating a presumption of ability to pay upon proof of a legal obligation and nonpayment. See 18 U.S.C. § 228.

If a CP does not have sufficient information about an NCP's location, income, or situation, the CSEO uses a considerable number of data matches to assist in information gathering. For instance, the CSEO exchanges information electronically with many relevant state, federal, and private agencies like the financial institutions, employment commission, the tax commission, workers' compensation commission, social security administration, and unemployment agency.<sup>16</sup> Because locator tools available to the military, such as the World Wide Locator,<sup>17</sup> are often superior to those of the CSEO, LAAs can greatly assist clients in this area. The state may also administratively subpoena information for entities like the telephone company, water company, cable, and any other necessary entity. Perhaps the single most rewarding information source is the New Hire Directory—an electronic compilation of all new hires in every state, which the federal office of child support enforcement compiles and matches with each state's computer system.<sup>18</sup>

If an NCP leaves the state, the CSEO can send its income withholding order directly to any employer in the United States under the terms of the Uniform Interstate Family Support Act (UIFSA).<sup>19</sup> Under the UIFSA, the CSEO may refer a case to any state to perform any services required. For example, one state may request another state to assist them with one of the following types of actions:

- serving an NCP with process;
- copying the court file;
- seizing an account from a financial institution;
- performing a quick location search for an NCP; or
- performing any other service not requiring the CSEO to open a full case on an NCP.

Legal assistance attorneys may need to explain to the CSEO the difference between the income withholding order (garnishment) and an involuntary allotment. The CSEO is one of the "authorized persons" allowed to request an involuntary allotment; BAH and BAS are added sources of income available under the allotment.<sup>20</sup>

Despite a federal grant, most of the CSEOs are understaffed and underfunded. Thus, if the LAA refers the CP to one of these agencies, it may take longer to receive help than it would through a local private attorney. To save time, the LAA should consider contacting the CSEO directly for a CP if it is not working the case in a timely manner. The federal office of child support enforcement has encouraged local CSEOs to work with private attorneys to ensure that these cases are processed in a timely manner.<sup>21</sup> Some CSEOs, however, have concerns about certain private collection agencies that may appear to use questionable practices in collecting child support at a percentage of the arrearages owed.<sup>22</sup> In some states, the CSEO may not even address certain issues. For example, the CSEO may not address escalation clauses, life insurance, college expenses, tax consequences, visitation, and custody. Instead, the LAA should consider them.<sup>23</sup> As a CSEO may not be familiar with military laws and regulations, an LAA should counsel a CP about the various military benefits available to child(ren) and thoroughly explain *Army Regulation (AR) 608-99*.<sup>24</sup> This is even more crucial due to the recent changes to *AR 608-99*.<sup>25</sup> Also an LAA may want to invite some key officials from the local CSEO to the legal assistance office and establish a relationship with them. This may help the LAA more easily get assistance for his clients in the future.

The LAA may also represent the grown dependent as a client who wants to establish paternity or collect child support from an NCP who has never paid, and the CSEO may be able to help the child in one of these areas. The CSEO should contact a CP and make him a party to any action the CSEO initiates, if pos-

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16. 42 U.S.C. § 666(c)(1)(D).

17. U.S. Army Human Resources Command, *World Wide Locator*, at <http://www.erec.army.mil/wwl/> (last visited June 16, 2004) ("As a result of the September 11, 2001 terrorist attack, other suspected terrorist's events, on-going and potential military action, the Department of the Army has deemed it necessary to temporarily suspend its World Wide Locator service, except from military (.mil) network domains only, until further notice.").

18. 42 U.S.C. § 653a.

19. Uniform Interstate Family Support Act, § 501 (amended 2001), 9 U.L.A. 336 (1999).

20. 32 C.F.R. § 54.3(a) (2003).

21. See CHILD SUPPORT ENFORCEMENT HANDBOOK, *supra* note 7, at 40; see also Office of Child Support Enforcement, *Policy Interpretation Questions 02-02*, at <http://www.acf.hhs.gov/programs/cse/pol/PIQ/piq-02-02.htm> (last visited June 17, 2004).

22. Captain Drew A. Swank, *Child Support, Private Enforcement Companies, and the Law*, ARMY LAW., July 2002, at 57.

23. See Lieutenant Colonel Mark E. Sullivan, *Child Support: Shopping for Options*, ARMY LAW., July 1992, at 4 (providing an excellent treatment of many important child support issues that LAAs need to consider).

24. U.S. DEP'T OF ARMY, REG. 608-99, FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY (29 Oct. 2003) [hereinafter *AR 608-99*]; see Major David B. Howlett, *Illegitimate Children and Military Benefits*, 132 MIL. L. REV. 5 (1991); see also Major Michael Boehman, *A Guide to Child Support Enforcement and Military Personnel* (Mar. 2003), available at <http://www.supportguidelines.com/articles/art200303.html>.

sible. Finally, the CSEO will provide services to anyone who is on public assistance or anyone who fills out an application and pays the required application fee.<sup>26</sup>

### Negotiate with the Local Child Support Office

Periodically, LAAs also assist NCPs who are facing child support issues and need assistance in negotiating with the local CSEO. An NCP, like a CP and the child(ren), can contact the local CSEO and request a genetic test in the paternity establishment process.<sup>27</sup> Many states will allow a paternity test even after a child support judgment, regardless of res judicata and collateral estoppel issues.<sup>28</sup> A negative result may stop the child support in some states. If the test is positive, the CSEO will establish child support. An LAA may need to contact the CSEO and negotiate with them to provide this test.

In some instances, the local CSEO will file a modification at the request of an NCP if a change in circumstances has occurred.<sup>29</sup> An LAA may need to inform an NCP as to his or her options if a child support arrearage has developed through

nonpayment. Possible defenses to a contempt complaint include the NCP is unable to pay due to injury, the NCP made the payments, or the child received Social Security Benefits. An LAA, however, should be wary of any bankruptcy issue since child support is nondischargeable and a priority debt.<sup>30</sup> An LAA may want to contact the CSEO and negotiate any arrearages on behalf of the NCP.

An NCP will need assistance negotiating with the local CSEO. Often, the local CSEO does not know how to read the LES to determine the proper income at which to set child support.<sup>31</sup> Also, the LAA should carefully explain the Servicemembers Civil Relief Act<sup>32</sup> to the local CSEO to avoid default paternity, child support, modification, and contempt cases and to properly set the interest rate, if any.<sup>33</sup>

Many child support reference and resource tools are available to LAAs. First, the federal office of child support enforcement has an impressive web site that contains a wealth of information on federal law, regulations, contact information for the federal, regional and state offices, and the basic child support laws for all the various states.<sup>34</sup> Their interstate roster and

25. AR 608-99, *supra* note 24; see John T. Meixell, *Revisions to Army Regulations 27-55, Notarial Services and 608-99, Family Support, Child Custody, & Paternity*, ARMY LAW., Dec. 2003, at 37. The following is a list of significant changes to AR 608-99:

- (1) Clarifies the responsibility of Staff Judge Advocates to establish office policies to avoid conflicts of interest in implementing this regulation (para. 1-4h(2)).
- (2) Substitutes "Basic Allowance for Housing" for "Basic Allowance for Quarters" (para. 1-7 and throughout).
- (3) Clarifies what actions trigger a command's obligation to take action under this regulation (para. 2-1b).
- (4) Clarifies a soldier's obligation to provide support in the case of paternity orders that do not include a financial support obligation (para. 2-2a).
- (5) Expands the definition of "court order" for paternity purposes to include the functional equivalent of court orders as established under state law (para. 2-2b).
- (6) Clarifies a soldier's obligation to provide support in the case of a foreign paternity order (para. 2-2c).
- (7) Eliminates the interim support requirement for families residing in government family housing (para. 2-6d).
- (8) Defines the events that begin or end an obligation to provide support under the terms of this regulation (para. 2-7).
- (9) Defines interim support requirements for periods of less than one full month (para. 2-8).
- (10) Creates an exception authority for a battalion commander to release a soldier from the interim support requirements to a spouse if the soldier (without children) has been separated from his or her spouse for eighteen months and has not acted to prevent a court from establishing a financial support obligation (para. 2-14b(6)).
- (11) Creates procedures whereby the Special Court-Martial Convening Authority (SPC-MCA) may grant exceptions to this regulation (para. 2-15).

Meixell, *infra* note 25, at 37; see AR 608-99, *supra* note 24, ch. 2.

26. 45 C.F.R. § 302.33 (2003).

27. See Paula Roberts, *Truth and Consequences: Paternity Disestablishment and the Plight of the Non-Marital Children, Part II: Questioning the Paternity of Marital Children, Part III: Who Pays When Paternity Is Disestablished* (June 2003), at <http://www.clasp.org/>. If an NCP has access to the child(ren) and the mother is not cooperating, an NCP can still obtain a test. See generally *id.*

28. See *id.*

29. 45 C.F.R. § 303.8.

30. Captain Connor, Legal Assistance Items, Fam. L. Note, *Can the Use of the Bankruptcy Code Avoid a Court-Ordered Division of Military Retired Pay?*, ARMY LAW., Dec. 1990, at 45.

31. See Boehman, *supra* note 24.

32. Servicemembers Civil Relief Act, Pub. L. No. 108-189, 117 Stat. 2835 (2003) (to be codified at 50 U.S.C. app. 501).

33. Lieutenant Colonel Paul Conrad, TJAGSA Practice Note, SSCRA Note, *Child Support and Paternity Case Stay Actions Impacted by the Welfare Reform Act of 1996*, ARMY LAW., June 1998, at 13.

referral guide link contains phone numbers, addresses, and e-mails that should make it easier for LAAs to contact CSEOs in any state. Much of the basic child support law from paternity to child support establishment and enforcement for each state is available in this referral guide. This site also contains power point presentations that LAAs can download and adapt for legal training. Also, the *Essentials for Attorneys in Child Support* is an excellent publication by the federal office of child support enforcement, designed especially for attorneys practicing in this area of the law; it is a resource every LAA should use.<sup>35</sup> Another good resource containing many state child support calculators, articles, case law updates, and interesting child support stories is the *Support Guidelines* web site.<sup>36</sup> Also,

JAGCNET has preventive law information on child support garnishment. This information, however, may need modifying to include state specific laws since this area of the law changes regularly.<sup>37</sup>

In conclusion, LAAs should use the local CSEO's services as much as possible. There will be many opportunities to do so—referring a CP to the local CSEO for the full range of child support services; assisting the child(ren) in establishing paternity; enforcing the support provisions; or advising an NCP in an action involving the child support agency. By understanding the resources and tools available through the CSEO, LAAs will better serve their clients.

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34. U.S. Dep't of Health & Human Services, *Federal Office of Child Support Enforcement Home Page*, at <http://www.acf.hhs.gov/programs/cse/> (last visited June 16, 2004).

35. DEP'T OF HEALTH AND HUM. SERVS. ADMIN. FOR CHILD & FAMS., *ESSENTIALS FOR ATTORNEYS IN CHILD SUPPORT* (3d ed. 2003).

36. *Support Guidelines.com*, at <http://www.supportguidelines.com/> (last visited June 17, 2004).

37. U.S. Dep't of Army, Legal Assistance Policy Division, *For Counsel*, available at <http://www.jagcnet.army.mil/> (last visited Jan. 7, 2004) ("Our goal: to regularly provide LA-related items of interest to you, your LA personnel, and/or the community you support"). Also, review the preventive law information sheets on various legal assistance web sites for more information on child support.