

Add A Child

2016 CFSC Conference
Loveland, Colorado

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What is “Add A Child”?



Establishment?

A white thought bubble with a grey outline and a small tail pointing downwards and to the left.

Modification?

A white thought bubble with a grey outline and a small tail pointing downwards and to the left.

Something
Else?

A white thought bubble with a grey outline and a small tail pointing downwards and to the left.

Terminology

- “Existing” child, case, order or Monthly Support Obligation (MSO)
- “Subsequent” child
- “Amended” Petition or Notice of Financial Responsibility (NFR)
- “Amended” or “New” MSO
- “Additional” judgments
- Never use “Amended Order”

Why “Amended”?

- Amended Petition (judicial actions) and Order
- Amended Notice of Financial Responsivity (APA actions) and Order
- Why not “Amended” Order?
- Be careful and consistent with the terminology

Why do we have Add A Child statutes?

- There was no clear procedure/law
- Court were all over the place
- This just lead to inconsistent treatment in cases / court

Administrative Process Action (APA) and Judicial Statutes and Rules

- APA – Section 26-13.5-103.5, C.R.S.
 - Administrative Procedure for Child Support
- Judicial – Section 19-6-101.5, C.R.S.
 - Support Proceedings Act
- Volume 6. 700, et seq.

Add A Child is an establishment action because:

- You are creating a new child support obligation for a child that is not already involved in the case/order
- Not all states agree and some treat it as a modification with no new service of process

Do not use Add A Child if.....

- There are multiple alleged/presumed paternity case
- The existing order is a Domestic Relations (Divorce) order
- The existing order was established by another state/jurisdiction

Types of Relief and Orders in an Add A Child **Action**

- Establish paternity, the ‘new” MSO, child support debt, retroactive support and a judgment for costs of collection
- Establish an APA stipulated, temporary or default order and for judicial cases, also an adjudicated order

Who are the “subsequent” child’s “legal” parents?

- Even though you must have a “presumption of paternity” to conduct an add a Child action, it may still be necessary to “establish” paternity
- Soooooooooo....

Presumptions of Paternity Statutes

- §19-4-105, C.R.S.
 - (Uniform Parentage Act)
- § 14-15-107, C.R.S.
 - (Civil Union Act)
- See Handout

More Requirements to Conduct an Add A Child Action

- An application or a mandatory referral for IV-D child support services
- An open IV-D case with an active order
- An allegation that another child has been “conceived” by the parents on the existing case
- A “presumption of paternity” exists that the parents of the child(ren) on the existing order are also the parents of the “subsequent” child

Establishment of Paternity

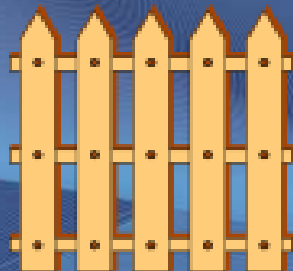
- Even though paternity must be “presumed” it may still be necessary to establish paternity
- If there is no presumption or there are multiple alleged/presumed fathers, open a separate case and file a separate action to resolve paternity
- Then consolidate if the father on the existing case is the same on the add a child case

Any Legal Defenses to Add A Child Action?

- The same defenses that an alleged or presumed parent has in a regular establishment case also apply in an add a child case with one exception....

A parent may not contest paternity of the existing child(ren) in the add a child case





Bronco's Quarterback Brock Osweiler is GTT*



* Gone to Texas

Establishing Paternity

Can we always use add a child to establish paternity



Establishing Paternity

- No, sometimes a separate case must be opened and a separate order entered even if there is a presumption of paternity
- When?
 - The existing order is from another state/jurisdiction
 - There are multiple alleged/presumed fathers
 - The existing order is from a DR / Divorce case and the subsequent child is not “of the marriage” (born after the Divorced was final)

Establishing Paternity

- Is there anything I can do to avoid two separate orders?
- Not really but you can handle the add a child case judicially and ask the court to deviate so that the MSO amount in the add a child case + the MSO in the existing case/order will = the MSO amount in a two-child order

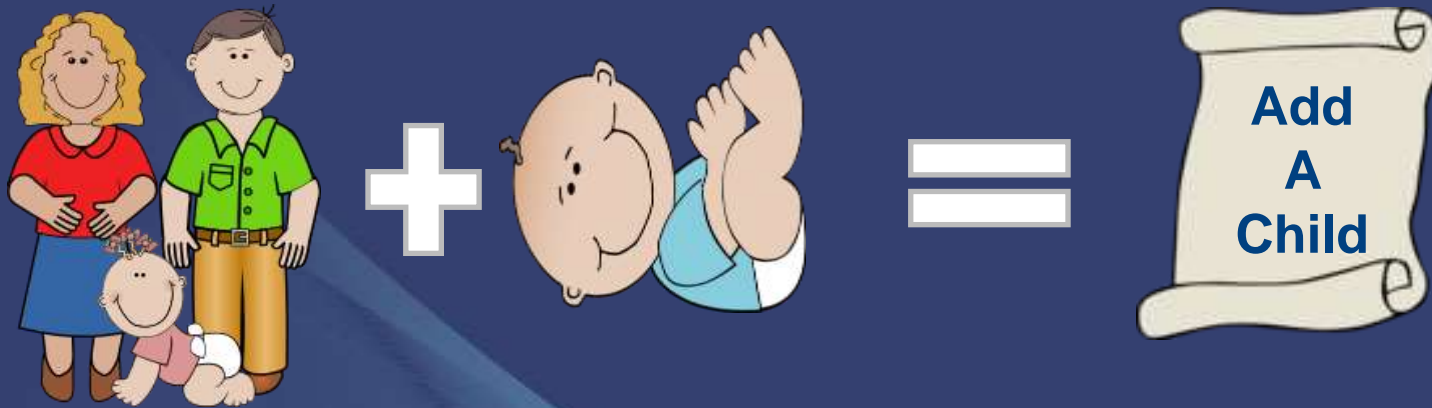
Calculating the “New” MSO

- It's new, not modified because..
 - The MSO does not have to change 10% or more
 - The obligor can obtain the adjustment for supporting other children without an order
- You can also establish a judgment for Costs of Collection.....but what about.....

Calculating Child Support Debt and Retroactive Support in an Add A Child Case

- The statutes don't address a special way to calculate Debt and Retro
- Following the “letter” of the law may result in a double recovery
- Following the “spirit” of the law avoids double recovery

Add A Child vs. Modification



Add A Child and Enforcement

- Enforcement of existing order
- For judicial enforcement (contempt) advise the court of any Add A Child action

Add A Child Resources and Forms

- Add A Child desk aid
- Add A Child IV-D Administrator letter (Under establishment and dated February 19, 2010)
- ACSES Users Guide (AUG) C.5.5
- APA and judicial forms
 - CSE Support Only
 - CSE Paternity and Support

Thank You!

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