

2015
Colorado Family
Support Council

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APA for Attorneys*

**Or, How I Learned to
Stop Worrying and Love APA*

How do County IV-D staff obtain APA certification?

- Must be designated in writing by County Director to conduct APA for that county
- Must attend a two-day training class
- Must pass an initial certification exam
- Must pass a re-certification exam every three years

How are County IV-D Staff Trained to Conduct APA?

- 13 hours of live APA training (see attached handout)
- Follow up live training with review of Initial Certification Test results
- Assign homework; read the APA Manual and all attached documents and attend other trainings

IV-D Attorney Training on APA

Attorneys may attend an APA
Training and Certification class

Would a separate specialized training
just for attorneys be preferred?

APA and Paternity Establishment and Contest

See:

- Step-By-Step APA Paternity Establishment / Contest handout
- APA and Judicial Contest of Paternity handout
- Paternity 101 handout

Retroactive Support Judgments

Establishing, Waiving and Reserving
Retroactive Support in an APA case

See:

- Retroactive Support & Child
Support Debt handout
- Retroactive Support desk aid and
the Calculating Debt desk aid

Retroactive Support Judgments

Counties have the option to establish (in whole or in part) or not to establish a retroactive support judgment

Either way, the claim belongs to the CP for the period of time in question but, he/she must submit the Retroactive Support Affidavit to obtain this judgment via APA

Retroactive Support Judgments

The APA Stipulated and Default Orders advise the obligor that the Obligee may seek retroactive support from the Court within the same APA Case

No need to reserve or waive
Retroactive Support in an APA Order

Child Support Debt Judgments

See §14-14-104, C.R.S (The Debt statute)

Counties have the option to Establish (in whole or in part) or not to Establish a Child Support Debt Judgment pursuant to Volume 6.

A county may not waive/compromise Debt due another county/state without written consent

How to Calculate Child Support Debt

See the Calculating Child Support Desk Aid

One (big) problem remains; How is Child Support Debt calculated when there are multiple children with multiple parents on one TANF grant or in foster care?

The Doctrine of Laches may apply to any Reserved Debt

Do not reserve or waive Child
Support Debt (either TANF or
Foster Care Placement Fees) in an
APA Order

See the *Montezuma* case

Pre-order Change in the Physical Care Arrangement (Role Reversal) on an APA Case

Role reversal of the obligor & obligee occurs after an APA case is initiated (process is issued) but before entry of an APA Order

What can cause a Pre-Order Role Reversal?

A guidelines worksheet calculation, usually in a Shared or Split Physical Care Arrangement where the NCP has many overnights and/or the CP has more Adjusted Gross Income than the NCP or a change in the physical arrange of one or more children on the case

See the Pre-Order Change of Physical Care handout

What then in APA and Judicial Cases?

In APA cases, close the APA without entering an APA order of any type. Do not refer to court because the real Respondent/Obligor needs to be served with process.

In Judicial cases, this is not necessary and the Court may simply re-align the parties

Post-Order Change of Physical Care

§14-10-122(5), C.R.S

See the Post-order Change of Physical Care desk aid

Possible changes to the statutory time period for obtaining retroactive modification based on a claim of a Post-order Change of Physical Care

Can APA be conducted when the Applicant or Referred Party is the NCP?

No. The APA statute is written for situations where the obligor is the respondent.

Imputing Gross Income to a Self-Employed Parent

What is the Law?

How is it Computed?

Gross Income may be Imputed to a Self-Employed Parent for Three Reasons

1. The parent is voluntarily unemployed or underemployed
2. The parent is failing to disclose income of the business and/or the parent (obstructing discovery), and
3. Investment income (usually interest income) needs to be added to net capital gains or other lump-sum asset

Guidelines Training on March 11, 2015; How to Calculate Gross Income for a Self-Employed Parent

Send Robert an e-mail requesting
that all training handouts be
delivered to you

NCP'S Post-order Objection to the APA Establishment Order (Stipulated or Default)

NCP retains attorney who objects to an APA Order after it has been entered

Can an objection / appeal of an established APA order containing a Paternity judgment be made? If so, when? How?

APA Default Order

When can a Default Order be entered in the APA Establishment and Modification process?

Failure to attend a Negotiation Conference as Scheduled in the Notice of Financial Responsibility

And no request for continuance
had previously been made by the
NCP

Failure to attend a Re-scheduled Negotiation Conference

This one is by rule, Volume 6.710 A

Failure to attend a Genetic Testing appointment as Scheduled by the County CSEU in an APA Order for Genetic Testing

This also includes failure to cooperate with genetic testing or obstructing the test (including the commission of fraud)

Failure to attend a Scheduled or Re- scheduled Negotiation Conference for an APA Order of Modification

The APA statute at §26-13.5-112,
C.R.S. authorizes modification of
orders using APA

These events triggering a default
order are also by rule; Volume
6.261.8 6B

The Different Ways of Conducting an APA Negotiation Conference

Entry of an APA Default after
Communicating with the NCP via
Telephone or E-mail

See the “Ways to Conduct an APA
Negotiation Conference” handout

Entering/Filing an APA Order in to a JV or DR Case

Pending Court Cases and Orders that
are “Silent “ as to Child Support

See “Subject Matter Jurisdiction in
APA cases” handout

Transfer of Subject Mater Jurisdiction to Magistrates and Judges in APA Cases

Original Jurisdiction and Transfer of
Jurisdiction in APA Cases

May a Court Vacate or Modify an APA Temporary Order?

Authority of a court to Vacate (Set
Aside) or “Revise” an APA
Temporary Order is limited

See §26-13.5-105(3) and §26-13.5-
107(3), C.R.S.

APA and Venue

Can Proper Venue be Waived, “Lost” or Changed after an APA Notice of Financial Responsibility has been issued?

Do the C.R.C.P. control?
See Rule 81, C.R.C.P.

Overnights

v.

Parenting Time Order

Always use actual overnights in a guidelines worksheet calculation, as proven, even if it does not match an existing Parenting Time (PT) Order (unless PT order and separation are both recent)

See the *Barry* and *Emerson* cases

Paternity Establishment and Contest

How does *In re E.K.* affect APA and
Judicial Establishment of Paternity
cases?

Paternity Establishment and Contest

A strict interpretation of both cases means that an alleged or presumed father must be joined in an action to establish paternity against another alleged or presumed father

APA Orders “Null and Void” by Operation of Law

If the mother and father on an existing APA (or judicial) child support order marry each other, the order is null and void.

File a motion to “save” a Paternity or Debt judgment

Role of the IV-D Attorneys in APA cases

A IV-D attorney may get involved in an APA case for many reasons from order establishment to enforcement to closure of the IV-D case

See the handout on the “Court’s and Attorney’s Role in APA”

Roll of the Court in APA Cases

What APA-related matters may a court hear, what can it do or not do and what it must do?

...following entry of an APA
Temporary Order?

Establishment Cases

Court must only address child support and paternity in a separate hearing which must be decided before Parenting Time and Allocation of Parental Responsibilities

Modification Cases

Court must address only modification of child support and medical support at the hearing which must be held separate from and before other matters

Court (IV-D Program) Deadlines to Conduct a Hearing Following Entry of an APA Temporary Order

Establishment Cases

If Support Only – 90 days
from date of APA Service of Process

If paternity – 6 months from
date of Service of Process

Modification Cases

45 days from date APA Order
was filed with the Court

Valid Transfer of Subject Matter Jurisdiction to the Court

*Adams Cty. Dept. of Soc. Serv. V.
Huynh, 883 P.2d 573 (Colo. App.
1994)*

Ethics Training for county staff

- What to say and not say
- What to do and not do
- How to explain child support processes and procedures without giving legal advice
- How to act in court
- How to testify in court

APA Resources and Training Materials

Sign up to receive e-mailed copies
of documents on the Child Support
Services website / Worker's Home
Page

Questions?

Thanks!