

**MY COURT
DOESN'T SPEAK
IV-D!**

**CHALLENGES IN ORDER
ESTABLISHMENT &
MODIFICATION**

2017 CFSC

By: Robert Kurtz

IV-D LAW AND PROCEDURE IS NOT
TAUGHT IN LAW SCHOOLS AND
THERE IS LITTLE OR NO TRAINING
FOR
IV-D ATTORNEYS AND MAGISTRATES

WE ALL MUST HELP OUR
ATTORNEYS AND MAGISTRATES IN
HANDLING IV-D MATTERS IN COURT

HOW DO WE DO THAT?

- ◉ Providing Training
- ◉ Resource Materials (Bench Cards)
- ◉ Regular meetings outside the courtroom
- ◉ Working with Kennetha Julien (720-625-5952), Judicial Department Liaison with Child Support

- ◉ Judicial Department Training 6/15/17 (11-1:30 ?); Kennetha Julien will send e-mails to all IV-D attorneys and magistrates
- ◉ APA & Judicial Work Group

IV-D ISSUES

- General IV-D Law (Social Security Act and C.F.R.s)
- Judicial Actions (Establishment (including foster care fees), Add A Child, Modifications and Enforcement)
- Enforcement (Contempt's/Other enforcement actions, setting MAD amount, no offsetting of obligations, etc.)
- APA Law & Procedures Special Issues/Problems
 - D & N court
 - Other counties/states
 - Non-IV-D orders
 - Genetic testing
 - Applications v. Mandatory referrals

HANDLING MATTERS TIMELY AND IN DUE ORDER / EXPEDITED PROCESS

- In General: Advise court of your deadlines and ask court what you can do to help court let you meet those deadlines
- Review:
 - Federal laws
 - Volume 6
 - APA statute

VALID TRANSFER OF SUBJECT MATTER JURISDICTION / APA TO JUDICIAL

- ◉ Once an APA action is initiated, a court may not “take over” the APA case even if requested to do so by child support
- ◉ See *Adams County v. Huynh* (Handout)

APA TEMPORARY ORDERS (ORDER ESTABLISHMENT)

- APA Temporary Order to Judicial Permanent Orders:
 - Advise court of the expedited process actions & deadlines (and why they exist)
 - Need to schedule and conduct court hearing within 90 days of date the obligor was served with process (this may not be much time!)
 - If Paternity is being contested the court has up to 6 months from the date of service of process to conduct the hearing on permanent orders

APA TEMPORARY (ESTABLISHMENT)ORDER

- ⦿ If a party has asked for Parenting Time, Allocation of Parental Responsibilities and/or Decision-Making Responsibilities, the court must address those matters in a separate hearing and after child support has been resolved
- ⦿ Check the courts docket on the case. If any of these matters are scheduled for hearing before child support, let your supervisor and IV-D attorney know and determine appropriate action

APA TEMPORARY ORDER / COURT CHANGING OR VACATING AN ORDER

- ⦿ The APA statute states that a court may not retroactively change the terms of the APA Temporary order
- ⦿ See §26-13.5-107(2), C.R.S.
- ⦿ There is no statutory or Volume 6 authority for a court to “abate” an APA Temporary order (Why would they do that anyway?)
- ⦿ A court can enter permanent orders and then abate those if they chose to

APA MODIFICATIONS / AGREEMENT / DEFAULT OR NO AGREEMENT

- ◉ If no agreement, file the NFR for Modification and schedule a hearing on the modification
- ◉ If a default, file default order and calendar for follow up in:
 - 15 days for any objections, and
 - Two weeks (and thereafter) on court approval or default order

APA DEFAULT ORDER & COURT “APPROVAL”

- In approving an APA Default Order (Establishment of Modification), the court may only confirm that you filed the required documents with the court pursuant to the APA statute (see the *Huynh* case)
- A court may not
 - Schedule a hearing to receive evidence and oral arguments
 - Require more evidence
 - Recalculate child support obligations

POST-FILING OBJECTION TO APA ORDER OF MODIFICATION

- ⦿ The objection must be filed with the court within 15 days of filing the order with the court
- ⦿ The Court may then:
 - Affirm the APA order (overrule the objection)
 - Summarily change the terms of the APA order, or
 - Schedule a hearing (must be within 45 days of the date the order was filed and only the issue of child support is addressed)

OTHER TRANSFERS OF SUBJECT MATTER JURISDICTION

- ◉ Obligor excluded by Genetic Testing Results (“other appropriate action as allowed by law”)
- ◉ Obligor incarcerated (no default order)
- ◉ Other reasons?

IMPUTING GROSS INCOME / NEW RULE AND LAWS

- ◉ New federal rule (effective 12/16/17) that child support must investigate certain matters and document findings before imputing income
- ◉ See Handout for new language
- ◉ Colorado child support is already complying with the *Martinez* case so this is not really new
- ◉ This will help standardize when and when not to impute income when a parent is believed to be “underemployed”

FILING AN APA ORDER IN TO AN EXISTING JV OR DR CASE

- If there is a pending judicial case relating to child support, APA must be used and the APA order filed in to that judicial case
 - Stays APA
 - Not (really) a consolidation but the judicial case docket number is used
- If there is an existing judicial order relating to child support that is “silent” as to child support, the APA order is filed in that county where the judicial order is filed
 - Stays APA

APA & VENUE

- Colorado Rules of Civil Procedure do not apply
- The APA statute states that venue is proper in any county where the...
 - Obligor resides
 - Obligee resides
 - Child resides, or
 - Public Assistance was paid

See §26-13.5-109, C.R.C.P.

APA ORDERS DISMISSED OR MADE “NULL & VOID”

- If an APA order is filed in to a pending judicial case and then the court dismisses that cation for “failure to prosecute” or any other reason, you need to take action to “preserve” your APA order
- If you establish an APA order and then the parents marry each other, that APA order becomes “Null & Void” by operation of law (no motion to deem null and void is necessary)
- File Motion and order to Preserve
 - Establishment of Paternity
 - Child Support Debt judgment
 - Judgment for Costs of Collection

QUESTIONS?

Thanks!

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