

# POST ORDER CHANGE OF PHYSICAL CARE (POCPC)

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# WHAT IS A POCPC?

- It is any change in data on a child support guideline worksheet that causes either a role reversal of the existing parties or the need to add a (new) third party as a multiple obligee to the case/order.
- Not every change in a worksheet will be a POCPC; some will just be a modification and some will result in no change at all.

# SHARED PHYSICAL CARE ANYTHING CAN HAPPEN

- ◉ The primary custodian can be the Obligor
- ◉ A change in income to either party can impact the Obligor/Obligee roles

# WHEN CAN IT HAPPEN?

- At any time.
- It can be triggered by a change in
  - The primary residence of a child
  - Overnights
  - Gross Income
  - Adjustments to gross income
  - Qualified child support expenses, or
  - The emancipation of a child on the existing order

# WHY SHOULD YOU CARE?

- ◉ The existing order must be modified before you can initiate 60-day case closure (if appropriate) based on a new role of the applicant / continued services party.
- ◉ The monthly support obligation posted /collected after a POCPC can only be disbursed to the appropriate party pursuant to federal law.
- ◉ The MSO amount on the existing case cannot just be changed to zero. That is a deviation which only a court can do.

# DESK AID AND FORMS

- The desk aid contains numerous scenarios and information on how to handle the case ledger, applications for services, disbursement of child support payments and much more, however, does it need to be revised?
- Same for the POCPC forms
- We want your input because they were all created just for you!

# THE MODIFICATION STATUTE

- §14-10-122(1)(a), C.R.S. provides that an order may only be modified only **“as to installments accruing subsequent to the filing of the motion to modify”**, except as provided by subsection (5).
- §14-10-122(5), C.R.S. creates the exception to the general rule for when there has been a **mutually agreed, voluntary or court ordered change in physical care that pre-dates the filing of the motion.**

## TWO GENERAL TYPES OF POCPC

- ⦿ A Role Reversal. This is when something happens with a residency of a child and/or change in income, adjustments and/or qualified child care expenses that would cause the current roles (obligor and obligee) of the parents to switch
- ⦿ Addition of a “Third Party” (Caretaker) to the case/order.



# RETROACTIVE TERMINATION, MODIFICATION AND ESTABLISHMENT

- ⦿ The retroactive termination or modification of an order based on a POCPC “will be made” as of the date of the POCPC.
- ⦿ The retroactive establishment of an order based on a POCPC “may be made” as of the date of the POCPC.
- ⦿ This means that the court has no discretion to retroactively terminate an existing order but does have discretion to retroactively Establish a new obligation order

# EVIDENCE OF A POCPC

- ⦿ Statements of the parties
- ⦿ School records
- ⦿ Child Care records
- ⦿ Apartment / home leases
- ⦿ A Parenting Time or Allocation of Parental Responsibility can be some evidence

# WHAT THE COURT MAY / SHOULD ADDRESS

- ◉ Confirm that a POCPC occurred and when  
(This will be the date of the retroactive termination of the existing MSO)
- ◉ Confirm the MSO actually paid by the obligor on the existing order and the amount of any arrearages
- ◉ Determine if and when a retroactive establishment of MSO for the new obligor occurs

# WHAT THE COURT MAY / SHOULD ADDRESS (CONT.)

- ⦿ Any arrearages owed by the new obligor should be reduced to a judgment (like a retroactive support judgment)
- ⦿ **Do not back out and re-post MSO**
- ⦿ **There should not be any court order for offsetting obligations**

# CHANGE OF CARE / ROLE REVERSAL

Role reversal can be caused by:

- ⦿ Change in custody of one or more children on an order
- ⦿ Change in the guidelines calc, other than # overnights, such as substantial change in income, that causes a role reversal

# POCPC MODIFICATION IS JUDICIAL ACTION

POCPC must be handled judicially; do not use APA

- ⦿ APA statute does not address retroactive termination or establishment of orders.
- ⦿ Once judicial, always judicial.

# CONTINUING EXCLUSIVE JURISDICTION (CEJ) TO MODIFY THE ORDER?

Verify that CO has CEJ to modify the order if other states may be involved.

# WHY SHOULD YOU DO ANYTHING IF NO ONE WANTS OUR SERVICES?

- ◉ The short answer is because that may change later
- ◉ If you do nothing, the current MSO continues to be due from the current obligor. This can have far reaching consequences such as when a child is placed in foster care
- ◉ The order of modification and specifically the new MSO can be abated, if and until another motion to modify is filed. This will help prevent the new obligee from later claiming child support for any period of time that the MSO is abated



# EXAMPLES

- ◉ Mutually Agreed
- ◉ Voluntary
- ◉ Court Ordered
- ◉ See the “POCPC Examples” handout.
- ◉ **Note:** Any “private agreement” between the parties is not binding on the court or the county CSEU. Sometimes parents/caretakers will agree to a change of the child’s residence conditioned on a promise to not seek child support

# ROLE REVERSAL V. CHANGE IN PRIMARY CUSTODY ARE NOT THE SAME THINGS

- ◉ A CHANGE IN PRIMARY CUSTODY DOESN'T NECESSARILY CAUSE A REVERSAL OF OBLIGEE/OBLIGOR ROLES
- ◉ A REVERSAL OF OBLIGEE/OBLIGOR ROLES ISN'T NECESSARILY A RESULT OF A CHANGE OF PRIMARY CUSTODY



# COUNTING THE WAYS ROLE REVERSAL CASES COME TO US?



- From Enforcement: we are already enforcing the existing order.
- From Intake: New Obligee has applied for services and we've not been involved with case previously. These modifications are done manually.
- From Intake and/or Enforcement: We are enforcing the most recent order and the potential new Obligee has also applied for our services.

# CHANGES THAT COULD REVERSE PARTIES ROLES AS OBLIGEE/OBLIGOR

- ◉ Change in primary care of one or more children
  - If there's one child on the order a role reversal is likely
- ◉ Emancipation of one or more children
  - Sometimes there are two children in a split custody situation & one of them emancipates.
- ◉ Change in over nights / parenting time
  - Sometimes over nights / parenting time can increase from a Worksheet A to a Worksheet B
- ◉ Change in income used in a Worksheet B
  - Where you land, nobody knows. It can go either way.



# A CHANGE IN PRIMARY CARE- A REVIEW CAN BE DEPARTMENT INITIATED IF THE CHANGE IS COURT ORDERED

## Best Practice



- Department receives information of a change in primary physical care by party or Court Order.
- Worker with 1<sup>st</sup> knowledge of change notifies Review & Adjustment and places ledger on hold & adds ledger comment regarding the change of physical care
- Review & Adjustment initiates a review of the child support order.
- The order is modified to reflect new circumstances.
- Direct allocations based on new order.

# WHEN IT'S NOT AS CLEAR CUT AS A CHANGE IN PRIMARY PHYSICAL CARE

- These are handled in a case by case basis.
- The Department or a party requests a Review.
- The Child Support Guidelines Worksheet(s) is/are completed to determine Department's recommendation for MSO.
- If roles are reversing:
  - Put ledger on hold until modification is completed but arrears/ retro payments go out.
- The order is modified to reflect new circumstances
- Direct allocations based on new order



# PRACTICAL CONSIDERATIONS

## CASE CLASS & STATUS



- ◉ Do not close or change your case to arrears only when custody has changed.

- The order needs to be modified **ASAP**. If the case is closed, we will likely have to address it at some point in the future



- Addressing custody changes in relation to child support at a much later date complicates matters and current support isn't owed to the new custodian for the benefit of the children.



- Keep the ledger and enforcement in mind at all times.

# PRACTICAL CONSIDERATIONS OFFSETTING ARREARS??

- ◉ The rules state that we should not do an offsetting of arrears in role reversal modifications.
- ◉ Consider your Court's typical practices.
- ◉ The Court doesn't have to retro MSO for the new Obligor, but can.
- ◉ Is the modification taking place some time after the change on physical custody?





# SCENARIOS



- ◉ Worksheet B, Dad has 104 overnights and is on Supplemental Security Income, Mom is makes \$10 per hour at 40 hours per week.
- ◉ Split Custody of two children-Worksheet A's, Dad makes \$20 per hour, pays \$300 for insurance for the two children, Mom makes \$16 per hour and pays \$250 in daycare.
- ◉ Worksheet B, 50/50 Custody, Dad makes \$11 per hour, Mom makes \$13 per hour and pays \$100 per month in daycare.



# QUESTIONS?

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