CHAPTER SIX - EXPEDITED JUDICIAL AND ADMINISTRATIVE PROCESSES

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CHAPTER SIX
EXPEDITED JUDICIAL AND ADMINISTRATIVE PROCESSES

INTRODUCTION

As the child support program has evolved and in-state and intergovernmental caseloads have expanded dramatically, finding faster and more efficient ways to ensure that families receive support has become a top priority. For this reason, state and federal law increasingly require the use of administrative or expedited judicial processes to establish paternity and support and to enforce support orders.

Definitions

Administrative processes. Child support administrative processes are legal systems in which an administrative agency has authority to determine paternity and/or to establish, modify, and enforce child support orders. The administrative agency is created by statute, and it usually has rulemaking authority to further define its operations. The decision-maker in an administrative process may be an employee of the agency or may be an administrative law judge or hearing officer employed by a separate agency. The decision-maker is in the executive branch, rather than the judicial branch. There may be several levels of review in an administrative process with varying degrees of formality. An administrative law judge (ALJ) or hearing officer also takes testimony, examines evidence, and makes findings of fact. In most jurisdictions, an administrative order is final unless a party requests judicial review. In some jurisdictions, the ALJ or hearing officer may enter an order, which must be filed with, or approved by, the court in order to be effective.

Expedited judicial processes. Child support expedited judicial processes (sometimes referred to as “quasi-judicial” processes) are legal systems in which judge surrogates make judicial decisions regarding the determination of paternity, and the establishment, modification, and enforcement of child support orders. There are various titles for these judge surrogates, including masters, referees, commissioners, magistrates, and hearing officers. The decision-making occurs within the traditional judicial system as an extension or tier of the court. The judge surrogate takes testimony, examines evidence, and makes findings of fact. In some jurisdictions, an order issued by a judge surrogate is final unless appealed to a trial court. In other jurisdictions, a judge surrogate may enter an order, which must be approved by the trial court.

To classify a state as having a judicial or an administrative legal system is too rigid a description. There is a great variety among states in how they process child support cases, even among states that are primarily judicial or primarily administrative. In fact, few states use just one kind of process, and the process may differ depending upon whether there is consent or a contest.

FEDERAL EXPEDITED PROCESS REQUIREMENTS

Child Support Enforcement Amendments of 1984 and Implementing Regulations

Over the past 30 years, Congress has increasingly required states to enact streamlined child support processes in order to receive federal funding. The Child Support Enforcement Amendments of 1984[1] were the first federal statutes to address the legal systems that states use to establish and enforce child support orders. The Amendments required states to enact statutes providing for the use of expedited processes to establish and enforce support obligations.[2]

The implementing federal regulations initially defined expedited processes as "administrative or expedited judicial processes or both which meet specified processing times and under which the presiding officer is not a judge of the court."[3] The regulation was amended in 1994 to delete the requirement that the presiding officer not be a judge. The regulation now defines expedited processes as "administrative and judicial procedures (including IV-D agency procedures) required under section 466(a)(2) and (c) of the [Social Security] Act."[4] States therefore have discretion in the type of legal systems they use to process child support cases.

The federal regulations require expedited processes to establish paternity and to establish, modify, and enforce support orders. To be considered an expedited process, action to establish a support order in a IV-D case, regardless of whether paternity has been established, must be completed (either by order establishment or dismissal of the action):

- Within six months from service of process in 75% of the IV-D cases needing support order establishment, and
- Within 12 months in 90% of the cases.[5]

The following safeguards must be present:

- Paternities and orders established by means other than full judicial process must have the same force and effect under state law as

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[1] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305.
[2] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 3(b), 98 Stat. 1305, 1306 (codified at 42 U.S.C. § 666(a)(2) (2018)).
[3] 45 C.F.R. § 303.101(a) (amended 1994). The amendment deleted the requirement that the presiding officer could not be a judge.
[4] 45 C.F.R. § 303.101(a) (2019).
[5] 45 C.F.R. § 303.101(b)(2)(i) (2019).

paternities and orders established by full judicial process within the state;

- The procedure must protect the due process rights of the parties;
- The parties must receive a copy of the voluntary acknowledgment of paternity, paternity determination, and/or support order; and
- Any action taken must be reviewable under the state's applicable administrative or judicial procedures or rules.[6]

The presiding officers must have authority to:

- Take testimony and establish a record;
- Evaluate evidence and make recommendations or decisions to establish paternity and to establish and enforce support orders;
- Accept voluntary acknowledgments of paternity or support liability and stipulated agreements regarding the amount of support to be paid;
- Enter default orders upon a showing of proper service, the defendant's failure to respond to service, and any additional showing required by state law; and
- Order genetic tests in contested paternity cases.[7]

In order to demonstrate that the concern is outcome, not process, the statute and regulation provide that a state may request an exemption from any of the requirements of the expedited process regulation for a political subdivision on the basis of the effectiveness and timeliness of paternity establishment, support order issuance, or enforcement within the political subdivision in accordance with the required state IV-D laws.[8]

The Child Support Enforcement Amendments of 1984 also implemented several additional expedited enforcement procedures, including federal[9] and state income tax refund offsets,[10] requirements for noncustodial parents to post a

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[6] 45 C.F.R. § 303.101(c) (2019).
[7] 45 C.F.R. § 303.101(d) (2019).
[8] 45 C.F.R. § 303.101(e) (2019).
[9] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 21, 98 Stat.1305, 1322 (codified at 42 U.S.C. § 664(a)(1) (2018)).
[10] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 3(b), 98 Stat. 1305, 1306 (codified at 42 U.S.C. § 666(a)(3) (2018)).

bond,[11] the reporting of arrearages to credit bureaus,[12] and wage or income withholding.[13]

Family Support Act of 1988 and the Omnibus Budget Reconciliation Act of 1993

Subsequent federal legislation has expanded the authority of child support agencies. The Family Support Act of 1988 required states to establish review and adjustment procedures for IV-D cases as a condition of receiving federal funding.[14] Under the Act, state child support agencies were required to notify each parent subject to an order being enforced by the agency, that either parent, or a state child support enforcement agency, could request a review of the order at least once every three years. Upon receiving a request, the agency was required to notify the parties at least 30 days prior to the review and notify the parties of any proposed adjustment or determination that there should be no change to the order. The procedures provided the parents at least 30 days for a challenge.[15] Federal regulations define "review" as "an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or [sic] administrative body or agency, of information necessary for application of the State's guidelines for support…."[16]

The Act also required states to implement immediate income withholding, with limited exceptions, regardless of whether a child support arrearage exists.[17] This requirement modified the income withholding provisions of the Child Support Enforcement Amendments of 1984, which did not require income withholding until an arrearage equal to the amount due for at least one month had accrued.

The Family Support Act of 1988 also encouraged states to adopt simple civil procedures for voluntarily acknowledging paternity.[18] In 1993, Congress mandated such procedures as part of the Omnibus Budget Reconciliation Act

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[11] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 3(b), 98 Stat. 1305, 1306 (codified at 42 U.S.C. § 666(a)(6) (2018)).
[12] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 3(b), 98 Stat. 1305, 1306 (codified at 42 U.S.C. § 666(a)(7) (2018)).
[13] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 3(b), 98 Stat. 1305, 1306 (codified at 42 U.S.C. § 666(a)(8) (2018)).
[14] Family Support Act of 1988, Pub. L. No. 100-485, § 103, 102 Stat. 2343, 2347.
[15] Family Support Act of 1988, Pub. L. No. 100-485, § 103(c), 102 Stat. 2343, 2347 (codified at 42 U.S.C. § 666(a)(10) (2018)).
[16] 45 C.F.R. § 303.8(b)(4)(i) (2019).
[17] Family Support Act of 1988, Pub. L. No. 100-485, § 101, 102 Stat. 2343, 2344.
[18] Family Support Act of 1988, Pub. L. No. 100-485, § 111(d), 102 Stat. 2343, 2350.

(OBRA);[19] OBRA also required states to implement in-hospital paternity acknowledgment programs and voluntary acknowledgments of paternity.[20]

Personal Responsibility and Work Opportunity Reconciliation Act

In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).[21] Promoted as legislation that dramatically overhauled the country's welfare program, it also dramatically changed the child support program. Included within its requirements were the following:

Access to records. The child support agency must have access to information contained in certain records in its own state or in other states, including records of vital statistics agencies, tax agencies, licensing agencies, property recordation agencies, employment security agencies, motor vehicle agencies, and corrections agencies.[22]

Administrative enforcement in interstate cases (AEI). The child support agency must have the authority to respond to requests for assistance from other states in a fast, electronic manner, without the necessity of opening a case in the responding state.[23]

Administrative subpoenas. The child support agency must have authority to administratively subpoena financial or other information necessary to establish, modify, or enforce support, as well as authority to impose penalties for a failure to respond to its subpoena.[24]

Change of payee or payment amount. For cases where support has been assigned to the state or there is a requirement to pay through the state disbursement unit (SDU), the child support agency must have authority to direct the payor to pay support to the proper government agency after providing notice to the parties. Since all employer-withheld payments must be paid to the SDU, this requirement affects all income withholding orders, including both IV-D and

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[19] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13721(b), 107 Stat. 312, 659.
[20] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13721(b), 107 Stat. 312, 659 (codified at 42 U.S.C. § 666(a)(5)(C)(ii) (2018)).
[21] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.
[22] 42 U.S.C. § 666(c)(1)(D) (2018).
[23] 42 U.S.C. § 666(a)(14) (2018).
[24] 42 U.S.C. § 666(c)(1)(B) (2018).

non-IV-D orders.[25] The agency must also be able to increase the amount of the monthly payment when necessary to satisfy an arrearage.[26]

Consumer reporting agency reports. A consumer reporting agency must provide a child support agency with a requested credit report if the agency makes certain certifications.[27] The law also requires states to have procedures to periodically report the names of noncustodial parents and the amount of arrearages owed by those noncustodial parents to consumer reporting agencies in appropriate cases as determined by the state.[28]

Financial Institution Data Match (FIDM). Child support agencies must enter into agreements with financial institutions to develop a data matching process. This process must match information about noncustodial parents with arrearages against account holders at financial institutions in order to seize amounts owed for arrearages from the matched accounts.[29]

Genetic testing. States must have procedures that allow the child support agency to administratively order genetic testing for paternity establishment in contested cases.[30]

Income withholding. The child support agency must be able to initiate income withholding without the need for an order from any other judicial or administrative tribunal.[31]

Judgments by operation of law. Under this section, all payments or installments of support become judgments by operation of law on or after the date on which the payment is due.[32]

Liens. The child support agency must have administrative authority to impose liens arising by operation of law and, in appropriate cases, to force the sale of property and distribution of proceeds to satisfy the child support obligation.[33]

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[25] 42 U.S.C. § 666(c)(1)(E) (2018).
[26] 42 U.S.C. § 666(c)(1)(H) (2018).
[27] 15 U.S.C. § 1681b(a)(4) (2018).
[28] 42 U.S.C. § 666(a)(7) (2018).
[29] 42 U.S.C. § 666(a)(17) (2018).
[30] 42 U.S.C. § 666(c)(1)(A) (2018).
[31] 42 U.S.C. § 666(c)(1)(F) (2018).
[32] 42 U.S.C. § 666(a)(9) (2018). The Omnibus Budget Reconciliation Act of 1986 provided that support orders could not be modified retroactively. *See* Pub. L. No.99-509, 100 Stat. 1874 (1986). Under PRWORA, further amendments to the Social Security Act made it a state requirement that unpaid support become a judgment by operation of law.
[33] 42 U.S.C. § 666(a)(4) (2018).

Passport denial. Another tool that PRWORA provided for the expedited collection of support was the denial, revocation, and restriction of U.S. passports when a noncustodial parent's arrearage was $5,000 or more.[34] Using this tool, states submit the names of eligible noncustodial parents to OCSE for passport denial as part of the IRS offset submission list. OCSE, in turn, submits the names to the Department of State, where the passport restriction occurs. In order to have a passport released, a noncustodial parent must contact the local child support agency, which decides whether to release the passport based on state policies and procedures. Generally, these policies involve requiring a noncustodial parent to pay all or part of the arrearage prior to the release.[35]

Response to state agency requests. All entities in the state, whether for-profit, nonprofit, or government, must promptly provide responses to inquiries from the child support agency about the employment and benefits being received by all employees and contractors of that entity.[36]

Seizure of assets. In cases with an arrearage, the child support agency must be able to secure assets to satisfy both arrearages and current support obligations by intercepting or seizing periodic or lump sum payments. The assets that may be seized include bank accounts, various government compensation payments, judgment proceeds, lottery winnings, and retirement funds.[37]

Suspension of licenses. States must have the authority to withhold, suspend, or restrict driver's, professional, occupational, and recreational licenses if an arrearage exists or if a noncustodial parent fails to comply, after receiving appropriate notice, with a subpoena or warrant relating to paternity or child support proceedings.[38]

Voluntary acknowledgment of paternity. PRWORA modified and expanded the required paternity procedures in OBRA to require states to use a more streamlined, civil paternity establishment procedure, and to use a Paternity Acknowledgment Affidavit with a standard set of data elements and specific legal requirements. Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child. PRWORA also required state birth records agencies to offer voluntary paternity establishment services.[39]

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[34] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 370, 110 Stat. 2105, 2251. The triggering arrearage was later reduced by the Deficit Reduction Act of 2005 to $2,500.
[35] *See, e.g.,* Ohio Admin. Code § 5101:12-50-34 (2020).
[36] 42 U.S.C. § 666(c)(1)(C) (2018).
[37] 42 U.S.C. § 666(c)(1)(G) (2018).
[38] 42 U.S.C. § 666(a)(16) (2018).
[39] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 331(a), 110 Stat. 2105, 2227 (codified at 42 U.S.C. § 666(a)(5) (2018)).

Substantive and procedural rules. In addition to the requirements noted above, PRWORA provided that a state's expedited procedures must have the following substantive and procedural rules and authority with respect to all proceedings to establish paternity or to establish, modify, or enforce support orders:

Locator information; presumption of notice. States must have procedures under which each party to a paternity or child support proceeding is required – subject to privacy safeguards – to provide the child support agency, upon entry of an order, information on his or her location and identity. For each party, this information must include the:

- Social Security number;
- Residential and mailing address;
- Telephone number;
- Driver's license number; and
- Name, address, and telephone number of the party's employer.

The procedures must also require each party to update this information whenever appropriate. In any subsequent child support enforcement action between the parties, if there is sufficient showing that diligent efforts have been made to locate a party, the court or administrative agency must deem that state due process requirements for notice and service of process are met by delivery of written notice to that party's most recent residential or employer address on file with the child support agency.[40]

Statewide jurisdiction. The child support agency, as well as an administrative or a judicial tribunal with authority to hear paternity establishment and child support enforcement cases, must have statewide jurisdiction over the parties. In addition, if the state issues orders through such a tribunal, jurisdictions must allow the transfer of cases to other jurisdictions, without the need for additional filing or service, in order to retain jurisdiction over the parties.[41]

The Child Support Performance and Incentive Act

The Child Support Performance and Incentive Act of 1998[42] also impacted the type of legal systems that states use to establish and enforce child support obligations in IV-D cases. The legislation ties federal incentive dollars to the state

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[40] 42 U.S.C. § 666(c)(2)(A) (2018).
[41] 42 U.S.C. § 666(c)(2)(B) (2018).
[42] Child Support Performance and Incentive Act of 1998, Pub. L. No. 105-200, 112 Stat. 645.

agency's performance in five areas: paternity establishment, support establishment, current collections, arrearage collections, and cost-effectiveness.[43] In order to ensure that the state agency's performance in each measure meets certain benchmarks, states are continually evaluating how they can make their child support programs more efficient and effective.

The Deficit Reduction Act of 2005

The Deficit Reduction Act of 2005 (DRA) amended the passport denial program by reducing the amount of an arrearage required to restrict, revoke, or deny a passport from $5,000 to $2,500. It also allowed the Department of Health and Human Services to conduct matches with insurers concerning insurance claims, settlements, awards, and payments and to furnish information resulting from the matches to IV-D agencies. DRA also further streamlined the review and adjustment process by requiring states to have procedures for the review and adjustment of orders within 36 months of establishment, or the most recent review, for cases where there is an assignment under Title IV-A of the Social Security Act, or upon request of either parent.[44]

STATE IMPLEMENTATION OF EXPEDITED PROCESS REQUIREMENTS

As noted earlier, the Child Support Enforcement Amendments of 1984 were the first federal requirements that states have "expedited processes" to establish and enforce child support obligations in Title IV-D cases. At the time of the Amendments, states already had a variety of legal systems for processing child support cases. Some states, such as Maine and Washington, were using administrative processes that dated back to the creation of the Title IV-D program in 1975.[45] In Maine, which continues to use a highly administrative process, the agency sends a Notice of Intention to Establish a Support Order and a Notice of Proposed Order to the noncustodial parent. If requested by the noncustodial parent, the state holds an administrative hearing to establish the support order. If the parent does not request a hearing, an administrative decision is entered based on the Proposed Order.[46] Oregon uses a similar process and provides for

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[43] Child Support Performance and Incentive Act of 1998, Pub. L. No. 105-200, § 201(b), 112 Stat. 645, 648.
[44] Deficit Reduction Act of 2005, Pub. L. No. 109-171, §§ 7302; 7303, 120 Stat. 4, 145
[45] Although relatively new for the resolution of child support cases, administrative processes have been used for hundreds of years. The First Congress of the United States, meeting in 1789, enacted legislation authorizing administrative officers to regulate imports and determine import duties, and to adjudicate claims to military pensions for invalids who were wounded and disabled during the Revolutionary War. By the Nation's 1976 bicentennial, the federal administrative process had achieved considerable status, embracing more than 60 independent regulatory agencies and several hundred administrative agencies in the executive branch. Today the use of an administrative process is also widespread within state governments.
[46] Me. Rev. Stat. Ann. tit.19-A, § 2304 (2019).

both a negotiation conference for the parties to discuss the proposed amount of support and a hearing, if requested.[47]

Other states in 1984 were using judicial systems to resolve child support cases. In response to the Amendments' expedited process requirement, these states began to explore quasi-judicial systems and administrative processes. The shift from a pure judicial system to one incorporating more administrative and consent processes was more dramatic after PRWORA with its emphasis on administrative processes for enforcement.

Initial Constitutional Challenges to Administrative Processes

PRWORA did not mandate the administrative establishment of child support orders, but instead left the decision up to the states as to whether to remove this function from the judicial branch and place it with the executive branch. The movement of some states from judicial processes for child support to administrative processes initially raised issues of constitutionality. These were generally issues of separation of powers and due process.

Separation of powers. The separation of powers issue that the use of administrative processes raised was whether the legislature may delegate a traditionally judicial area to the executive branch of government. The answer depended, in large part, on state constitutional law.[48] Generally, state legislatures have broad authority to determine the right and responsibilities of citizens and to establish processes for enforcing those responsibilities. In resolving the separation of powers issue, courts reviewed the extent of authority given to the administrative agency.[49] Was it consistent with jurisdiction given to the courts under the state constitution? For example, the Minnesota Supreme Court held that the initial child support administrative process that the legislature created violated the separation of powers doctrine, in part, because it infringed on the district court's jurisdiction in contravention to the Minnesota Constitution.[50] The legislature amended Minnesota laws in accord with the decision.

Due process. The other major issue raised was whether certain state child support administrative processes provided the parties with due process. Federal regulations establishing the requirements for expedited process require the protection of the due process rights of the parties.[51] Due process derives

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[47] Or. Rev. Stat. § 416.419 (2019).
[48] *See In re Marriage of Sandra Lee Holmberg v. Ronald Gerald Holmberg*, *and In re Marriage of Denise M. Kalis-Fuller v. Lee V. Fuller, and In re Marriage of Kristi Sue Carlson v. Steven Alan Carlson,* 588 N.W.2d 720 (Minn. 1999). *See also Drennan v. Drennan*, 426 N.W.2d 252 (Neb. 1988).
[49] *See State ex rel. Hilburn v. Staeden*, 91 S.W.3d 607 (Mo. banc 2002).
[50] *Holmberg, supra* note 48.
[51] 45 C.F.R. § 303.101(c)(2) (2019).

from a fundamental federal constitutional protection. The 14th Amendment to the United States Constitution provides that a state shall not "deprive any person of life, liberty, or property, without due process of law." The U.S. Supreme Court has established some very important criteria[52] for due process, falling into three general areas:

Right to notice. A person has a right to be notified of any action that concerns his or her liberty or property. All child support administrative processes require the executive agency to notify the responsible parent of the amount being claimed and the procedure for contesting the claim. State and federal laws further require that the executive agency serve the notice in a manner reasonably calculated to give the parties actual notice.[53]

One common method of notice is certified mail. Unclaimed certified mail is a common occurrence in child support administrative proceedings. The child support attorney should help the agency develop policy regarding notice, based on statutory and case law. When certified mail providing notice of an administrative proceeding is returned as unclaimed, the agency should have procedures in place to take reasonable steps to increase the likelihood of actual notice.[54] As a result, the child support attorney should be prepared to argue the sufficiency of any notice, as appropriate.

Right to a hearing. Courts have also specified the type and quality of hearing necessary before a person is deprived of property. The hearing must be fair and impartial, and the person entitled to the hearing must have reasonable opportunity to present evidence through documents or witnesses, confront the opposing party, and refute any evidence.

Administrative proceedings must also be fair and impartial and provide an opportunity to be heard. However, federal and state law often establish different procedural rules for administrative proceedings than for judicial proceedings. Administrative processes may allow a party to present all evidence in their favor,

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[52] The leading case is *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, due process is a flexible concept with the process due varying, depending on the circumstances. The factors giving rise to due process are: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

[53] *See Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 70 (1950). *See also Arrington v. Helms*, 438 F.3d 1336 (11th Cir. 2006); *Bostic v. Dept' of Revenue,* 968 P.2d 564 (Alaska 1998); *Mississippi State Dep't of Human Servs. v. Fargo*, 771 So.2d 935 (Miss. App. 2000).

[54] *See Jones v. Flowers*, 547 U.S. 220 (2006), which holds that in a real property tax sale, due process requires the taxing authority to attempt notice through other means, such as sending by regular mail or posting the notice on the front door, when certified mail comes back unclaimed.

with the aid of an attorney, if desired.[55] However, an opportunity to be heard may involve "something less than an evidentiary hearing" depending on "the degree of potential deprivation that may be created by a particular decision."[56] For example, in a federal employment case where an employee argued that due process entitled him to a "trial-type pre-removal hearing" prior to his dismissal, the court upheld the government's use of an informal, written decision-making procedure, followed by an opportunity for a post-discharge hearing.[57]

Right to judicial review of administrative action. The administrative decision must be in writing and based solely on evidence submitted at the hearing. Courts have held that a proper hearing includes the right to appeal to a judicial authority. For example, in a Missouri case where a defendant challenged the constitutionality of an administrative hearing process, the court reviewed the process under Missouri law and upheld the statutory process, saying "The limitation of the authority of the administrative agency, together with the right of judicial review, saves the statute from the separation of powers argument."[58]

Other Implementation Issues

As states implemented expedited processes, many chose to keep some aspects of judicial involvement in the process, creating hybrid systems. These hybrid systems raise some interesting legal issues. For example, many administrative enforcement remedies, such as income tax refund intercept, are high-volume computer-generated procedures where cases are automatically included in a state's submission if they meet certain criteria. This action takes place regardless of the status of the obligor's compliance with an existing payment plan or income withholding. One question that has arisen is whether a child support agency can proceed with administrative enforcement when there is already a judicial order with which the noncustodial parent is complying. States have reached different conclusions on this matter.[59]

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[55] *See Bostic v. Dep't of Revenue,* 968 P.2d 564 (Alaska 1998), holding that although the defendant was given a hearing, the administrative agency hindered the defendant's attempts to present evidence, thus denying him due process.
[56] *Mathews v. Eldridge,* 424 U.S. 319 (1976).
[57] *Arnett v. Kennedy*, 416 U.S. 134 (1974).
[58] *See Dye v. Div. of Child Support Enforcement,* 811 S.W.2d 355, 359 (Mo. banc 1991).
[59] *See Palais v. Dep't of Admin. Servs.*, No. CV 960566803, 1997 Conn. Super. LEXIS 1588 (Conn. Super. Ct. June 10, 1997)*; Gray v. Comm'r of Revenue*, 665 N.E.2d 17 (Mass. 1996); *Fazio v. Fazio,* C.A. No. 2719-M, 1998 Ohio App. LEXIS 4180 (Ohio Ct. App. Sept. 9, 1998) holding that tax intercept is an appropriate enforcement tool regardless of the existence of a paying support order. *But see also Davis v. Dep't of Human Resources*, *Child Support Enforcement Section*, 505 S.E.2d 77 (N.C. 1998) and *In re R.C.T.,* 294 S.W.3d 238 (Tex. App. Houston [14 Dist.] 2009), holding that tax intercept is not an appropriate enforcement tool if the obligor is complying with the terms of a payment plan, or if alternative collection means are available.

Another issue arises with modification of support orders. States have flexibility under the law in reviewing and adjusting support orders, and states can meet the review and adjustment requirement by including a cost-of-living adjustment (COLA) in support orders. One question that state courts have addressed is whether an administrative agency can modify a judicial order. States have resolved the question in different ways. Missouri, for example, has held that as long as an administrative modification is not effective until it has been filed with and approved by the court that entered the [original] court order, the administrative modification of judicial orders is permitted.[60] South Carolina has resolved this issue by granting its administrative agency concurrent jurisdiction with family court to modify support orders.[61]

The Role of an Attorney in an Expedited Process

The role of attorneys in an expedited process varies widely among states. For example, in highly judicial states, attorneys are often at every stage of the establishment process, from participating in pre-hearing meetings, to negotiating an agreement, to preparing and arguing cases in court. In contrast, in quasi-judicial and highly administrative states, attorneys may only appear in contested cases or assist in case preparation. States using administrative proceedings often require that administrative hearing officers be attorneys. The attorney's role includes ensuring that IV-D non-attorneys who work within the administrative process have adequate instruction in due process of law, the substantive law of the state, procedural rules, and ethical considerations.[62] In both highly judicial and highly administrative systems, attorneys may be required to argue appeals of cases. Because of state variances, child support attorneys should research the laws and procedures of their particular state to determine their level of involvement in the expedited process.

CONCLUSION

There is a great variety among states in how they process child support cases. Currently, few states can be characterized as purely judicial or purely administrative. All states meet the federal requirements for certain administrative enforcement procedures, and many states fall somewhere along a continuum in

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[60] *See Hansen v. State of Missouri, Dep't of Social Servs., Family Support Div.*, 226 S.W.3d 137 (Mo. banc 2007).
[61] S.C. Code § 63-17-710 (2018).
[62] For more information regarding supervision of non-lawyers, *see* Chapter Four: Ethical and Regulatory Requirements Governing Attorneys in the Child Support Program.

the use of consent procedures with regard to establishment and modification of orders.[63]

Increases in the use of administrative processes, expedited judicial processes, and consent processes mean there is often less involvement of judges in child support cases than in the past. However, parties continue to receive due process protections, and there is always the opportunity to seek judicial review. Likewise, the role of the child support attorney has evolved. In addition to litigation – whether before a judge, a quasi-judicial decision-maker, or an administrative hearing officer – attorneys often play an important role in negotiating consent agreements.[64] The exact responsibilities of the child support attorney will vary depending on the extent and type of expedited processes used by the state.

[63] The federal Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063 (1994) (codified at 28 U.S.C. § 1738B) and the Uniform Interstate Family Support Act (UIFSA) 2008, https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=e12481bd-ac36-07ba-7d64-7841e9db5e09&forceDialog=0 (last visited June 16, 2020), recognize the increasing use of administrative processes in establishing and enforcing support orders. The former defines “court” to include "a court or [sic] administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.” 28 U.S.C. § 1738B(b) (2018). UIFSA uses the word “tribunal,” which is defined as “a court, [sic] administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage of a child.” Unif. Interstate Family Support Act § 102 (2008).

[64] For more information on use of consent processes and the attorney’s role, *see* Chapter Seven: Use of Consent and Negotiation.

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