

CHAPTER EIGHT – ADVOCACY SKILLS FOR CHILD SUPPORT ATTORNEYS

	PAGE
INTRODUCTION	8-1
PREHEARING FUNCTIONS	8-1
Interviewing Witnesses and Consultation with the Parties	8-2
Preparing for the Interview	8-2
Reviewing case information	8-3
Identifying interview objectives	8-3
Setting the stage	8-4
Conducting the Interview	8-4
Opening the interview	8-4
Obtaining information	8-5
Taking notes	8-6
Closing the interview	8-6
Pleadings	8-7
Establishment actions	8-7
Enforcement actions	8-9
Modification actions	8-9
Intergovernmental actions	8-10
Discovery	8-10
Preparing the Custodial Parent or Agency's Witness for Deposition	8-13
Negotiation	8-14
Mediation	8-15
Pretrial Conference with Tribunal	8-16
HEARING	8-16
Trial Preparation	8-17
Witness Preparation	8-18
Custodial parent	8-18
Lay witnesses	8-19
Expert witnesses	8-19
Proffered Testimony and Stipulations	8-20
Introduction of Evidence	8-20
Submission of Proposed Order	8-21
Settlement during Trial	8-21
POST-HEARING FUNCTIONS	8-21
Entry of the Order	8-22
Advising the Parties of Their Respective Duties	8-22
Appeals	8-23
CONCLUSION	8-24
CHAPTER EIGHT – TABLE OF STATUTES AND AUTHORITIES	8-25
Exhibit 8-1: Notice of Taking Deposition	8-27
Exhibit 8-2: Interrogatories	8-29
Exhibit 8-3: Request for Production of Documents	8-33
Exhibit 8-4: Living Expenses of Children	8-37

CHAPTER EIGHT

ADVOCACY SKILLS FOR CHILD SUPPORT ATTORNEYS

INTRODUCTION

Attorneys who work in the child support program are most efficient when sharing responsibility for routine information gathering and case preparation with agency nonlegal personnel. In many child support agencies, the caseworker assigned to the case is an excellent resource for the attorney, including assistance with development of the case strategy. Nevertheless, in complicated cases, an attorney may be involved in the interviewing of witnesses, gathering of evidence, and case preparation. This chapter discusses those activities within the context of the program.

PREHEARING FUNCTIONS

The initial task in any child support case is to determine whether personal jurisdiction over the respondent exists and what action is needed. This is usually done during the intake process when nonlegal agency personnel interview the applicant for services and review any previously submitted paperwork. Based on such information, the caseworker will determine whether to seek genetic testing to establish paternity, establishment of a child support order, or modification or enforcement of an existing order. Depending on agency practice, an attorney may participate in this initial interview process.

In order to determine where personal jurisdiction exists, the attorney must review the locate information obtained through the intake process. If the respondent's physical location is within the state or tribal jurisdiction, the case may be filed within that local jurisdiction, using local rules for service of process. If the respondent is located in another jurisdiction, the attorney must review the state or tribe's long-arm jurisdiction provisions to decide whether long-arm jurisdiction is available and appropriate. If long-arm jurisdiction is not available or appropriate, the case should be handled as an intergovernmental case, using the provisions of the Uniform Interstate Family Support Act (UIFSA).¹

The intake interview is also an opportunity to explore whether the other party may be amenable to negotiation. As noted in the chapter on Negotiation,² the child support program has begun to place more emphasis on consent processes. As a result, the role of the attorney becomes less centered on

¹ See Unif. Interstate Family Support Act § 201 (2008), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=e12481bd-ac36-07ba-7d64-7841e9db5e09&forceDialog=0> for the bases of long-arm jurisdiction over non-residents. For more information about UIFSA and long-arm jurisdiction, see Chapter Thirteen: Intergovernmental Child Support Cases.

² See Chapter Seven: Use of Consent and Negotiation.

litigation. Cases often settle when the custodial parent³ and noncustodial parent meet with the caseworker or attorney to discuss the issues and attempt to work out an agreement – whether it is an acknowledgment of paternity, an agreement to support based on the child support guidelines, or an agreement concerning parenting time in those jurisdictions where the agency is involved in negotiating such agreements.

Interviewing Witnesses and Consultation with the Parties

The extent to which an attorney becomes involved in the interviewing process depends on the complexity of the case; the structure, practices and policies of the state, local, and tribal programs; and procedural alternatives afforded by state and tribal law.

In pursuing administrative enforcement actions that do not necessarily involve a court hearing, the attorney commonly relies on the information gathered by a child support caseworker. Generally, unless requested by the child support caseworker, no communication occurs between the attorney and the parties in such a case.

In a case that requires a hearing before a tribunal, the most effective practice is to ensure that either the attorney or the caseworker has communicated with the petitioning party⁴ prior to the hearing. This helps to ensure the party understands the proceeding and the information that the attorney will elicit through testimony.

However, in routine cases, it is common practice for the attorney and the petitioning party to consult briefly, often immediately preceding the hearing, simply to review the information gathered by the child support worker and to prepare the petitioning party to testify. If after this consultation the child support attorney determines that the case will require additional time for preparation and the presentation of testimony from a number of witnesses, the attorney should immediately request that the tribunal continue the case and, if needed, specially schedule it due to lengthy testimony or complicated issues. In such contested cases, the attorney is much more likely to do a significant amount of pre-trial interviewing, discovery, and review of records.

Preparing for the Interview

During the interview, the attorney should evaluate the knowledge, verbal skills, and demeanor of the potential witness. That is more easily done when the witness is relaxed. While the very nature of the issues involved in child support tend to be stressful, the attorney should strive to conduct these interviews in a

³ The term “custodial parent” is used here to refer to any legal custodial relative.

⁴ In some jurisdictions, the child support agency is the petitioner rather than the custodial parent or noncustodial parent. However, when this chapter refers to the “petitioner,” it is referring to an individual parent or custodial party.

nonthreatening atmosphere. This section discusses skills and techniques that should make the witness more comfortable and likely to provide useful information for the attorney. The primary witness in a child support case is the petitioner. The petitioner is usually the custodial parent or the child(ren)'s caretaker, but the petitioner may also be the noncustodial parent or a person alleging to be the child's parent. In some jurisdictions, the petitioner may also be the child support agency.

Reviewing case information. The attorney should review the caseworker's referral to determine the witnesses to interview, formulate interview objectives, identify any legal documents that should be prepared prior to the interview, and determine what discovery is needed.

Most child support agencies maintain within their automated system a chronological narrative of all actions, correspondence, and communication pertaining to a case. This is an excellent starting point for the attorney's review. The attorney should review the case notes far enough in advance of the interview so that there is sufficient time to request the petitioning party or other witness to bring in any needed documents to the interview.

The agency should ensure that the appointment notice to the petitioning party or potential witness clearly states that the attorney will be seeking information needed for case preparation and identifies any specific documents the person should bring to the interview. This simple task can prevent hostility from a witness who has to return to the office with necessary documents or information that could have been requested before the interview. If there is any question as to the documents needed, the notice should tell the petitioning party or witness to contact the child support office. The notice should also highlight that the IV-D agency attorney does not represent any individual parent in the case. The appointment notice should state the length of time reserved for the interview. The notice should also inform the person whether the agency provides a location for children to wait or whether the person needs to make other child care arrangements.

Identifying interview objectives. After a review of the case information, the attorney should determine whether the caseworker has correctly identified the appropriate relief to seek from the tribunal. The attorney should formulate interview objectives based on what action the attorney will be asking the tribunal to take.

In addition to establishing rapport with the witness and gathering information, other interview objectives include:

- Determining the credibility of the witness.
- Testing the ability of the witness to withstand a rigorous cross-examination.

- Identifying potential defenses.
- Preparing the witness to testify in court.
- Identifying and locating other potential witnesses.

The interview can also present an opportunity to prepare the witness for the realities of litigation and the possibility of an order from the tribunal that is disappointing to the petitioning party or in fact adverse to the petitioning party's position.

Setting the stage. Prehearing interviews can create a high degree of discomfort for parents and other witnesses because of the sensitive and personal nature of child support issues. The physical setting for the interview can increase or decrease anxiety. The attorney should try to set aside a time and place that will allow the attorney to focus on the interview and ensure adequate privacy. The attorney should ensure that the interview is not interrupted with telephone calls or other distractions.

Conducting the Interview

Increasingly child support agencies are using negotiation techniques in order to reach an agreement between the parties. Child support attorneys may be involved in these negotiations, which include both parties. Chapter Seven of this Guide discusses negotiation techniques. This section focuses on the interview of an individual person for the purpose of obtaining information and preparing for a hearing. Each interview that an attorney conducts will be different based on details such as the status of the case, the nature of the witness, and the contested issues. The following basic steps, however, are common to all interviews. The steps are written from the perspective of interviewing the recipient of IV-D services, who is usually the custodial parent. If the attorney plans to interview the opposing party, and the party is represented by counsel, it is important that the child support attorney communicate directly with the party's attorney, not with the party. In order to avoid any perception that the IV-D attorney represents the custodial parent, it may be appropriate to include a caseworker during the interview. The caseworker can assist in taking notes, ensuring the attorney's attention is focused on the witness.

Opening the interview. From the very beginning of the interview, it is important to establish rapport with the parent. There are several ways for an attorney to do this:

- Avoid making the parent wait for the interview to begin. Greet the parent in the waiting area and escort the parent to the interview location.
- If the parent has brought their current spouse or other family members, decide who should be present when interviewing the parent. There are

many reasons why a parent may want to have someone with them during the interview, including language barriers. A minor parent may often feel more comfortable if accompanied by a family member. If you decide not to include such other individuals, politely explain to the parent why the attorney wishes to speak to the parent in private. In the case of a minor parent, there may be issues that require the presence of the minor's parent or guardian, depending on the law of the jurisdiction.

- It is important to use normal “ice-breaking techniques” such as spending a minute or two on pleasantries. Be mindful of introductions so as not to appear overly authoritative.
- As a transition between the pleasantries and the interview, consider spending some time asking the parent positive questions about their background; this increases the parent's self-esteem and personalizes the interview.
- Inform the parent of the status of the case and the attorney's role in the matter. Do not assume that the parent is familiar with the subject matter. This is an excellent opportunity to advise the individual that the attorney does not represent the parent's interest, that no attorney-client relationship exists, and that the individual might want to seek private counsel to represent their interests.⁵ A brief explanation regarding the lack of confidentiality between a IV-D attorney and parent is important to avoid misleading the parent.
- Try to project empathy for the parent's situation while maintaining your role as a professional legal representative of the child support agency. Empathy is recognition of the emotions the parent may be feeling, which is different than sympathy that may come across as paternalistic or feeling sorry for the parent.
- Do not expect or demand the immediate confidence of the parent, but rather acknowledge the parent's anxiety to discuss intimate details, if needed, and attempt to alleviate it by stressing the goals that you and the parent share in trying to ensure the child receives the appropriate amount of support from both parents.⁶ Most importantly, listen to the parent and respond appropriately so that the parent is reassured that you understand what they are saying.

Obtaining information. One of the dangers of working in a very specialized area of the law is that cases can begin to look alike, and the attorney may stereotype a case before the fact-gathering process begins. This inhibits

⁵ For more information on the identity of the client in IV-D cases, see Chapter Four: Ethical and Regulatory Requirements Governing Attorneys in the Child Support Program.

⁶ It is important, however, that the attorney not mislead the individual. There is no attorney-client privilege, and, therefore, no protection in cases of welfare fraud.

successful interviewing, closing off potential areas of inquiry and negotiation, as the interviewer fills in factual gaps with assumptions based on experiences with other cases.

To minimize these problems, the attorney should:

- Allow the parent to relate “the whole story” unimpeded, directing him or her with questions that call for open-ended, narrative responses.
- Lead the parent through the story a second time with structured questions, sequenced according to logic and legal relevance, while taking constant notes, using key words in lieu of complete thoughts.
- Validate what the parent has said by repeating back in a slightly different way to ensure that there is mutual understanding.
- Pay close attention to what the parent is reluctant to say or discuss.
- Maintain as much eye contact as possible.
- Speak slowly in a calm tone.
- Refer to the notes and politely cross-examine the parent, testing memory and credibility, and following up on leads.
- Immediately after the interview, convert the notes and perceptions into either hard copy or online notes for future review and reference.

Taking notes. For the child support attorney, taking good notes during the interview is extremely important in formulating trial strategy, but it can also undermine effective communication with the parent. The mere act of taking specific notes may create in the mind of the parent that some facts are far more important than others. As a result, the parent may react by concentrating on issues that they perceive as more important, which may result in the attorney encountering difficulties in controlling the interview. Asking a caseworker to assist in taking notes allows the attorney to focus on the parent. Often, it is helpful to explain to the parent that notes are taken only to help remember the discussion. Similarly, keeping the notes visible to the witness can help make the parent feel more comfortable than trying to be secretive with the notes.

Closing the interview. Upon completing the interview, the attorney should review with the parent the information gathered during the interview and request that the parent either confirm that the information is accurate or provide any needed clarifications or corrections. Following the review of the information, it is helpful for the attorney to explain what has been accomplished and what will happen next. This creates rapport with the parent and provides the opportunity for the parent to ask any questions about the case. If the parent needs to execute

any legal documents and time permits, the attorney should prepare the documents for the parent to sign prior to the parent's departure.

If it is office or agency policy to provide copies of correspondence and legal documents to parents, the attorney should pledge to do this at the close of the interview. If copies need to be mailed, the attorney should be sure that the mailing address and telephone numbers for the parent are current. Additionally, the attorney should encourage the parent to supply updated or new information pertaining to the case and inform the parent of the best way to do so.

Pleadings

In most states, pleadings are now standardized forms developed by the state child support agency and/or the state court. Usually child support agencies have caseworkers prepare the pleadings after consultation with the petitioning party. Typically, the petitioning party completes supporting affidavits if needed.⁷ The child support attorney should review the pleadings in a case and ensure that the alleged facts support the relief sought. If additional pleadings or supporting documents are needed, the attorney should contact the caseworker to schedule an appointment with the custodial parent to arrange for their preparation and execution.

If the case involves legal issues that are unique or atypical, such as a special needs child or disputed support for an adult disabled child, the attorney should prepare the pleadings.

Sometimes support cases may originate from a prior order such as a divorce decree, which included provisions related to parenting time or custody. The child support attorney should remind the parties, and any counsel they may have, that the IV-D program cannot assist with modification or enforcement of custody provisions. Depending on the jurisdiction, in the absence of any existing parenting time plan the child support attorney may be able to assist in the development of a parenting time plan in conjunction with the establishment of a child support order.⁸

Establishment actions. In most establishment actions, the petitioning party will be the custodial parent. When a child support agency files a Petition to

⁷ Depending on the law in the jurisdiction, minor parents may not be permitted to sign pleadings.

⁸ Recent federal legislation noted "the sense of the Congress that establishing parenting time arrangements when obtaining child support orders is an important goal which should be accompanied by strong family violence safeguards. State should use existing funding sources to support the establishment of parenting time arrangements, including child support incentives, Access and Visitation Grants, and Marriage Promotion and Responsible Fatherhood Grants." Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 303, 128 Stat. 1919, 1946 (2014). See also Office of Child Support Enforcement, [Child Support Fact Sheet #14: Discretionary Grants for Parenting Time Opportunities for Children in the Child Support Program](#) (July 2013). For more information about parenting time, see Chapter Fifteen: Access and Parenting Time.

Establish a Support Order or similar pleading, it should include the custodial parent's financial affidavit or other document providing the financial information required to compute the child support guideline amount.⁹ Child support attorneys are a valuable resource in providing guidance or training to staff on proper completion of these documents. When the resulting summons is served on the noncustodial parent, it will usually require the noncustodial parent to also submit financial information. If the financial information the noncustodial parent furnishes is insufficient, an option for the child support attorney is to serve the parent with a set of interrogatories or request for production of documents (discussed herein), or issue a subpoena for the required financial information. If the subpoena is unsuccessful, the attorney may choose to file a motion to compel or seek an order from the tribunal requiring the parent to complete financial statements.¹⁰

If parents have signed a voluntary acknowledgment of paternity, the acknowledgment constitutes a legal determination of paternity without the necessity of filing a paternity action.¹¹ Indeed, federal law prohibits a state from requiring or permitting judicial or administrative proceedings to ratify an unchallenged acknowledgment of paternity.¹² If parentage is contested, the agency will need to file a Petition to Establish Parentage, which will usually be accompanied with a request for establishment of a support obligation. Most states have also developed standardized pleadings to establish parentage. Cases that may require attorney involvement in the drafting of pleadings are those involving both presumptive and alleged fathers,¹³ same sex couples,¹⁴ artificial reproductive techniques,¹⁵ and the posthumous establishment of paternity.¹⁶ State statutes, court rules, and case law will govern the specificity of the pleadings and what additional relief may be sought such as retroactive support and recovery of medical expenses related to childbirth.¹⁷ The authority of the child support agency to require the parties to submit to genetic testing without a court order¹⁸ alleviates the need to include a request for genetic testing in paternity pleadings.

⁹ For information about a specific state's or tribe's laws and procedures for the establishment of a support order, see Section I Support Order Establishment of the OCSE [Intergovernmental Reference Guide](#) (IRG).

¹⁰ For additional information, see Chapter Ten: Establishment of Child Support and Medical Support Obligations.

¹¹ See, e.g., *State Dep't of Revenue ex rel. Reyes v. Kathcart*, 67 So.3d 442 (Fla. Dist. Ct. App. 2011).

¹² 42 U.S.C. § 666(a)(5)(E) (2018).

¹³ See, e.g., *Dep't of Revenue v. Cummings et al*, 930 So. 2d 604 (Fla. 2006).

¹⁴ For more information on parentage establishment involving same sex couples, see Chapter Nine: Establishment of Parentage.

¹⁵ For more information on parentage establishment where the child was conceived through artificial reproductive techniques, see Chapter Nine: Establishment of Parentage.

¹⁶ See, e.g., *Hardy v. Colvin*, 930 F. Supp. 2d 1196 (C.D. Cal. 2013) (posthumous establishment of paternity).

¹⁷ For information about a state's law and procedures for the establishment of paternity, see Section H Paternity of the OCSE [Intergovernmental Reference Guide](#) (IRG).

¹⁸ 42 U.S.C. § 666(c)(1)(A) (2018).

Enforcement actions. Attorneys can play a key role in making sure that caseworkers are appropriately screening cases for enforcement action, based on the noncustodial parent's ability to pay.¹⁹ In a situation where the custodial parent has received direct payment, the caseworker or child support attorney should interview the parent and assist the parent in completing an accurate affidavit of arrears.²⁰ Many of the enforcement options available to the child support agency are administrative and automatic, and therefore require no formal court pleadings.²¹ Supporting documentation may also be minimal, and often little or no attorney involvement is necessary.

Enforcement remedies that require a hearing by a tribunal, such as contempt, are usually initiated by a motion. A caseworker often prepares such pleadings, using standardized forms. It is important to note, however, that attorneys are often required to sign pleadings, and must supervise their preparation, even though they may be prepared by a non-attorney caseworker.²²

Modification actions. To modify an existing child support order, most jurisdictions traditionally required proof of some criteria, such as a material change in circumstances that is substantial and continuing.²³ In 2005, the Deficit Reduction Act required states to have laws using procedures to review and, if appropriate, modify orders at least once every three years upon the request of either parent without proof of a change in circumstances.²⁴ Pleadings requesting modification must, however, still set forth the basis for requesting the modification; statutes, court rules, and case law provide direction on what is an acceptable basis.²⁵ Even if the agency files a petition or motion to modify under the requirement for review and adjustment in Title IV-D cases, the agency must allege the basis for the modification request. Child support guidelines may establish a threshold in order for a party to seek a modification. For example, a guideline may provide that there is a rebuttable presumption that the current child support award should be modified when the difference between the existing award and the amount determined by application of the guidelines varies more

¹⁹ See [OCSE-AT-12-01: Turner v. Rogers Guidance](#) (June 18, 2012).

²⁰ For additional information on enforcement, see Chapter Eleven: Enforcement of Support Obligations.

²¹ For a discussion of enforcement remedies, see Chapter Eleven: Enforcement of Support Obligations. For information about a particular state's law and procedures for enforcement, see Section J Support Enforcement of the OCSE [Intergovernmental Reference Guide](#) (IRG). Although pleadings may not be required, due process requires that the obligor receive notice of the enforcement action.

²² For more information on attorney supervision of caseworkers, see Chapter Four: Ethical and Regulatory Requirements Governing Attorneys in the Child Support Program. For more information on contempt actions, see Chapter Eleven: Enforcement of Support Obligations.

²³ For information about a state's law and procedures for UIFSA cases, see Chapter K Modification and Review/Adjustment of the OCSE [Intergovernmental Reference Guide](#) (IRG).

²⁴ Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 7302, 120 Stat. 4, 145 (codified at 42 U.S.C. § 666(a)(10) (2018)).

²⁵ For additional information on modification of support orders, see Chapter Twelve: Modification of Child Support Obligations. See also Office of Child Support Enforcement, [Modifying Child Support Orders: Child Support and the Judiciary Bench Card](#) (May 15, 2012).

than a certain percentage. When reviewing the completeness of the pleadings, a child support attorney should ensure that appropriate supporting documentation exists, such as proof of income or medical expenses that substantiate any claim of changed circumstances, as well as a guideline calculation.

Intergovernmental²⁶ actions. With states' enactment of the Uniform Interstate Family Support Act (UIFSA)²⁷ and the promulgation of mandatory intergovernmental forms²⁸ by the federal Office of Child Support Enforcement (OCSE), it is no longer necessary to draft case-specific pleadings in intergovernmental cases. Section 311 of UIFSA mandates that the petition and accompanying documents must conform substantially with the federally approved forms. Attorneys or staff can complete these forms by following the instructions that accompany the OMB-approved forms.²⁹

Discovery

Prior to the filing of a child support proceeding, nonlegal personnel may informally conduct much of the preliminary investigation in a child support case. After the action is filed, the child support attorney may find it helpful in a contested case to use formal discovery. A majority of state discovery rules are patterned after Federal Rule of Civil Procedure 26, which defines the permissible scope of discovery. In general, attorneys can obtain any non-privileged information that is relevant to the subject matter of the pending action, through the use of one of the discovery options discussed below.³⁰

Discovery options often include the following:

- Deposition by Oral Examination – a discovery option used to elicit information from a party or other person. It permits face-to-face oral examination and cross-examination by the child support attorney, while the person is under oath, but not during the course of a hearing. The Federal Rule of Civil Procedure governing depositions is Rule 30, which is the basis for many state rules of civil procedure governing depositions. For a form notice of scheduling a deposition, see Exhibit 8-1.

A deposition provides the attorney an opportunity to pose a question, have it answered, and then use this information at trial. Depositions are expensive, and the child support program attorney should seek approval for this expenditure. An attorney should never depose their own witness unless absolutely necessary to preserve testimony for

²⁶ Effective January 3, 2011, federal child support regulations replaced the term “interstate” with “intergovernmental.”

²⁷ Tribes are not required to enact UIFSA.

²⁸ See [OCSE-AT-19-08: OMB-Approved Standard Intergovernmental Child Support Enforcement Forms – December 2019](#) (Dec. 26, 2019).

²⁹ For additional information on intergovernmental remedies, see Chapter Thirteen: Intergovernmental Child Support Cases.

³⁰ In some states, the attorney may need to seek prior court permission to conduct discovery.

use at trial. Likewise, the attorney should rarely ask their own witness any questions when the witness is being deposed by the other party except to clarify a response.

- Interrogatories to Parties – a document that requires another party to provide written answers under oath to written questions concerning relevant subject matter. The Federal Rule governing interrogatories is Rule 33; it limits the number of interrogatories that a party can submit to 25 unless a stipulation is entered or an order from the court allows for additional questions. The child support attorney should review their state or tribal court rules to determine if there is a limitation to the number of questions that can be asked. Such rules will also state any time limit for filing answers. A party has a duty to supplement an interrogatory response at any time after the answers are filed, up to the time of trial.

An advantage to interrogatories is that they can be served on any party at any time after service of process and, in many jurisdictions, can be served with the initial pleading. Interrogatories are also inexpensive and do not take extensive time to prepare. Interrogatories are an excellent method of determining defenses that a party may raise at trial, identifying potential witnesses, and discovering probable testimony of witnesses. However, the attorney should tailor a set of interrogatories to the individual case. Filing a set of “canned” interrogatories may result in objections from opposing counsel and sanctions being imposed by the trial judge. To review a list of suggested interrogatories, see Exhibit 8-2.

- Production of Documents, Electronically Stored Information, and Tangible Things – the process through which an attorney makes a request to review certain items. The Federal Rule governing production of documents is Rule 34, which is the basis for many state rules of civil procedure governing production of documents or other items. For a list of suggested documents that the child support attorney may wish to request, see Exhibit 8-3.
- Subpoena *duces tecum* – a document requiring a party or witness to appear at a hearing and produce documents or items in the control of the individual. While interrogatories can solicit information about income, the best evidence of income and assets is usually documentation in the party’s possession, such as pay stubs, income tax returns, bank statements, and titles to property. A child support attorney can obtain these documents through a request for production of documents (see Exhibit 8-3) or the issuance of a subpoena *duces tecum*. Both of these methods require the responding party to provide the requested information; the subpoena *duces tecum*, however,

requires the responding party to appear at a certain location with the requested information.

- Physical examination – an examination by an expert of certain biological attributes of a party. In the context of child support enforcement, the most common examination is genetic testing for purposes of establishing parentage. The relevant Federal Rule is Rule 35, which serves as the basis for many state rules of civil procedure governing examination.
- Request for Admission – a written request to the opposing party to admit the truth of the matter as to facts, application of law to facts, or opinions about either, as well as the genuineness of any relevant document described in the request. The relevant Federal Rule is Rule 36, which serves as the basis for many state rules of civil procedure governing requests for admission.

Matters appropriate to include in a request for admissions include:

- Jurisdictional facts such as residences of the parties.
- Failure to support the child.
- Occurrence of sexual intercourse between the mother and the alleged father within the probable period of conception.
- The existence of any written documents signed by the alleged father acknowledging paternity.
- Oral acknowledgments of paternity by the alleged father.
- Acts by the alleged father evidencing belief that the child is his.
- Authenticity of any hospital and doctor bills providing the basis of a claim for pregnancy and birth expenses.
- Financial information regarding the alleged father's or noncustodial parent's ability to pay support, including sources of income and other relevant financial information.

After a party receives a request for admissions, the responding party has several options: admit, deny, file a timely objection, or state reasons why the request cannot be admitted or denied. Failure to respond within the statutory answer period will, in some jurisdictions, deem the matter set forth to be true. A matter admitted is conclusively established unless the tribunal, by motion, permits the party to withdraw or amend the admission.

In addition to these traditional discovery methods, the child support agency has administrative authority to subpoena information needed to establish, modify, or enforce a support order “without the necessity of obtaining an order from any other judicial or administrative tribunal.”³¹ This greatly expedites the discovery process. All entities in a state – including for-profit, nonprofit, and governmental employers – are required to promptly respond to requests by the child support agency for information about an employee’s or contractor’s employment, compensation, and benefits.³² State and local government agencies, as well as private entities, must provide the child support agency with access to information contained in a number of records about individuals who owe or are owed support, or against whom the agency is seeking to establish a support obligation.³³

Preparing the Custodial Parent or Agency’s Witness for Deposition

In Title IV-D child support cases, depositions are rare. Because of time constraints, the costs associated with conducting a deposition, and the ability of the child support attorney to obtain the information through other mechanisms, it is usually counsel representing the respondent who requests a deposition. If the responding party files a request to depose the custodial parent or a witness for the child support agency, the child support attorney should immediately schedule an appointment to prepare the witness for this deposition. This may be the first time the respondent’s counsel has an opportunity to meet the witness and evaluate the individual’s demeanor. Points to review with the witness include:

- Always tell the truth.
- If possible, answer only “yes” or “no” to the question and do not voluntarily elaborate.
- Ask for clarification if a question is unclear.
- Do not argue with or try to persuade the respondent’s attorney about the merits of the case.

Depending on agency policy, it may be necessary for the child support attorney to secure prior approval from the regional or central office if the attorney deems it necessary to depose the respondent or a particular witness. In requesting approval to schedule a deposition, the child support attorney should make the formal request in writing and provide an estimate of the costs involved.

³¹ 42 U.S.C. § 666(c)(1)(B) (2018). To review the federally approved Administrative Subpoena form, see [OCSE-AT-18-05: Administrative Subpoena and Notice of Lien Forms – Expire July 2021 \(July 26, 2018\)](#).

³² 42 U.S.C. § 666(c)(1)(C) (2018).

³³ 42 U.S.C. § 666(c)(1)(D) (2018).

To make the deposition more cost effective, the child support attorney should consider filing the notice of deposition accompanied by a request that the party produce certain documents for the purpose of inspection and copying at the deposition. Examples of such documents are:

- Income tax returns for the past three years.
- Pay stubs or any documents reflecting total earnings for the current year.
- Tag receipts or titles indicating ownership of vehicles owned, individually or jointly.
- Bank statements for checking, savings or other accounts, evidencing deposits in any financial institution in the party's name or held jointly with anyone else.

Section 316 of the Uniform Interstate Family Support Act (UIFSA) requires a tribunal to permit a nonresident party or witness to be deposed or testify under penalty of perjury by telephone, audiovisual means, or other electronic means. UIFSA also requires tribunals to cooperate with each other in designating an appropriate location for the deposition or testimony.³⁴

Negotiation

The goal of agency contacts with the respondent or the respondent's attorney should be to reach a settlement and avoid lengthy litigation. Common sense suggests that parents more often comply with voluntary agreements and consent orders than with orders imposed following a contested hearing. Settlement of the case by agreement is conducive to fostering a peaceful relationship between the parents and is important to the growth and development of the child. For the child support attorney and agency, settlements also advance the goals of expedited processing and efficient disposition of cases. However, obtaining agreements may not be appropriate in all cases. For example, cases involving minors or victims of domestic violence are usually not appropriate for negotiated agreements.³⁵

Where negotiation is appropriate, many child support agencies invite the respondent to meet with a caseworker prior to any hearing. In some jurisdictions, the meeting occurs before the filing of pleadings. The notice of a conference typically asks the respondent to bring financial information to assist in completion

³⁴ Unif. Interstate Family Support Act § 316(f) (2008). For a discussion of issues that arise in coordinating a telephonic hearing, see Office of Child Support Enforcement, [*TEMPO: Interstate Child Support Enforcement Hearings*](#) (Dec. 2005).

³⁵ For more information on negotiations in child support cases, see Chapter Seven: Use of Consent and Negotiation. For information on domestic violence in relation to child support, see Chapter Sixteen: Domestic Violence and Child Support.

of the guideline calculation or in development of a payment plan toward arrears. In some jurisdictions, the negotiation may involve a child support attorney rather than a caseworker. This is especially true if the respondent is represented by counsel.

Detailed information about preparation for, and participation in, a negotiation conference is in Chapter Seven: Use of Consent and Negotiation. If the parties reach a consent agreement, jurisdictions vary regarding how the agreement becomes an order. In some jurisdictions, after the agreement is filed with the tribunal, it has the legal effect of an order. In some jurisdictions, the tribunal must ratify the agreement. Some jurisdictions require the parties and attorneys to appear before the tribunal in order to present the agreement and ensure that the parties understand it.

Even if a consent agreement resolving all issues cannot be reached, the caseworker or child support attorney may be able to obtain a waiver of service of process from the respondent, thus avoiding the need for the sheriff or process server to serve the original pleading.

During the negotiation process, the child support caseworker or attorney must be mindful of the procedural due process rights of the parties. Even though the respondent may elect to waive service of process by the sheriff, waive a court appearance, and agree to the terms resolving the case, the respondent must be informed in writing of their entitlement to exercise these rights in order to satisfy due process. Prior to any waiver or signed agreement, the child support caseworker or attorney should also inform both the custodial and noncustodial parents of their right to retain counsel and to consult with counsel at any point in the proceedings. Curtailing these rights for the sake of a quick negotiated settlement can have later ramifications such as a motion to vacate the agreement or fraud in the inducement resulting in discredit to the integrity of the child support program.

Building a positive relationship with the parties is extremely important. At the end of the negotiations, the parties should feel justice has been served and the child support obligation is a fair one. Research has shown that parents are more likely to comply with child support orders that they perceive to be fair.³⁶ Any other result fosters noncompliance with the order, diminishes the likelihood of voluntary payments, and detracts from the child support agency's role in promoting the best interests of the child and family.

Mediation

A negotiated agreement involves the parties and may include attorneys for either party and the child support agency's attorney or caseworker. Another excellent alternative to litigating a child support case is mediation. Mediation is

³⁶ See Office of Child Support Enforcement, [Project to Avoid Increasing Delinquencies, Fact Sheet #3: Access to Justice Innovations](#) (June 20, 2012).

generally defined as a form of alternative dispute resolution in which a neutral third party assists the parties in reaching a mutually acceptable agreement. The chances for successful mediation increase greatly when the parties have an ongoing relationship and want privacy in their case as well as control over the outcome. Mediation may not be appropriate in certain cases, such as where there is a history of violence.

Depending upon a jurisdiction's statutes or court rules, a tribunal may on its own motion order mediation, a party may file a motion requesting mediation, or the parties may file a joint motion agreeing to mediation. If the parties agree to mediation, the mediation agreement should address the cost of the mediator, with each party paying a specific percentage of the costs.

Mediation usually increases the involvement of noncustodial parents with their children, improves the relationship between the parents, and increases child support payments. For further information about mediation, see the website of the American Bar Association Section of Dispute Resolution.³⁷ This site has various publications and resources as well as an article on the role of attorneys in the mediation process.

Pretrial Conference with Tribunal

In many family law jurisdictions where both the agency and the respondent have counsel, and upon appropriate motion by one or both attorneys, the trial judge will schedule a pretrial conference with the attorneys to address difficult or unique legal issues and discuss the length of time that should be allocated to complete testimony in the case. These conferences are routinely scheduled for 30 to 45 minutes and provide the trial judge with a preview of the case and arguments of counsel. The child support attorney should fully prepare for this conference, bringing completed court forms and copies of case law relied upon in arguments to the court.

The tribunal may or may not require the parties to be present. The better practice for the child support attorney is to have the petitioning party available to answer any questions from the trial judge and, in the event a settlement is reached, to enter the custodial parent's agreement on the record. Even if a settlement is not achieved at the conclusion of the pretrial conference, both attorneys will benefit greatly from discussions with the trial court in their final preparations for trial.

HEARING

There will always be cases not appropriate for negotiation or mediation, where the parties are unable to reach an agreement, where one or both parties are not present, or where the parties prefer a court or an administrative hearing.

³⁷ See https://www.americanbar.org/groups/dispute_resolution/ (last visited Feb. 5, 2021).

In such cases, it is important that the child support attorney adequately prepare for the hearing.

Trial Preparation

The groundwork necessary for trial preparation begins with information gathering as discussed previously in this chapter. Evidence to be presented at trial is developed during the prehearing stage with interviews, responses to discovery requests, negotiation, and/or mediation. Proper pretrial discovery will simplify development of trial strategy and preparation of witnesses.

The attorney must know what burden of proof is required for the particular case and ensure there is sufficient admissible evidence to meet that burden. For example, in establishment cases, child support guideline calculations result in a rebuttable presumption that the amount of support is appropriate.³⁸ Therefore, the child support attorney must ensure there is admissible evidence of the parties' income and any other relevant factor for the guideline calculation. If income evidence is based on information from the noncustodial parent's employer and the employer is not testifying in person, the attorney needs to ensure there is a proper exception to the hearsay rule in order for the evidence to be admitted. In the case of income, often the business record exception to hearsay applies.³⁹ Another relevant exception to the hearsay rule in most jurisdictions applies to Public Records of Vital Statistics; a record of a birth, death, or marriage is not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness, if the record was reported to a public office in accordance with a legal duty.⁴⁰

Child support trial attorneys customarily maintain a "trial" notebook that contains lists of standard direct questions, typical cross-examination questions, and standard motions. The notebook is invaluable in preparing a case for trial. The strategy involved in the preparation of a trial brief, presentation of witnesses, and presentation of evidence depends on the type of case and the issues in dispute. For example, if one of the issues involves a requested deviation from the guideline amount due to the cost of raising the children, the child support attorney should complete a form detailing these expenses for submission to the trial court. See Exhibit 8-4. Similarly, if it is likely that the trial testimony will result in the tribunal wanting to consider several possible guideline scenarios, the attorney should prepare a separate set of guideline forms for each scenario.

The child support attorney should prepare all exhibits for introduction at trial as follows:

³⁸ Family Support Act of 1988, Pub. L. No. 100-485, §103, 102 Stat. 2343, 2346.

³⁹ See, e.g., Fed. R. Evid. 803(6).

⁴⁰ See Fed. R. Evid. 803(9). Many states have rules of evidence that are based on the Federal Rules of Evidence, or follow the Uniform Rules of Evidence Act, Unif. R. Evid. (2005), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=9a01270f-d139-7964-dd9f-79b065e52c78&forceDialog=0>.

- Prepare an exhibit sheet listing all exhibits.
- Pre-mark all exhibits and be sure to have sufficient copies for the court reporter, trial judge, opposing counsel, and the petitioning party.
- If relying on a specific case to support the agency's position or request for relief, make and pre-mark copies to hand out at trial.

In developing a standard set of questions, the child support attorney should also prepare a "checklist" of evidentiary testimony for each witness. This will ensure that the attorney does not omit any jurisdictional or statutory elements that must be established through testimony at trial.

Witness Preparation

Generally, child support program attorneys do not have the luxury of lengthy witness preparation. In fact, many times their initial consultation with a witness might occur minutes before a hearing. For this reason, it is important to develop a standard set of questions to be used to examine the parties and typical witnesses for each type of case a child support attorney handles. For those cases that present more of a challenge, or where opposing counsel is being difficult, the attorney might need to set aside time to meet with potential witnesses and prepare strategy before the hearing date. With the promulgation of child support guidelines, the passage of welfare reform, and the elimination of jury trials in paternity actions, fewer cases require trials. However, when more difficult cases arise, the attorney should be prepared to resolve them through a hearing or trial.

When meeting with a potential witness, remind the witness to dress appropriately for the hearing. For example, discourage the witness from wearing any type of shirt with a political message or advertisement because the message may inadvertently offend the decision-maker. Advise the witness to follow any court rules, such as removal of a hat prior to entering the courtroom. Stress to the witness the importance of not exhibiting any type of disagreement or displeasure with a ruling from the decision-maker or reacting negatively to a question from opposing counsel through "body language" or "facial gestures." If the witness is nervous about testifying in court, suggest visiting the courthouse and, if possible, attending a child support proceeding presided over by the decision-maker who is assigned to the case in which the witness will testify. Also advise the witness of any policies regarding the possession of a telephone or recording device in the hearing room or courthouse facility.

Custodial parent. Sometimes the custodial parent may expect the child support attorney to advocate for everything the parent wants, regardless of whether those demands are supported by law or facts. Part of trial preparation might require the attorney to remind the individual that the attorney does not represent the custodial parent. Rather, in the great majority of states, the client

of the IV-D attorney is the state or child support agency for establishing paternity, and establishing, enforcing, and modifying support orders.⁴¹

In some instances, the custodial parent might have unreasonable expectations about the outcome of the case, particularly a hearing to set a child support amount. It is important to be honest about the likely outcome. The attorney can share the guideline calculation based on the parties' available financial information. When the hearing is about the issue of nonpayment of support, the attorney might advise the custodial parent of the limitations of particular enforcement actions or the tribunal's position on incarceration for contempt.⁴²

Lay witnesses. Most child support and paternity actions will involve only the testimony of the custodial and noncustodial parents. However, from time to time, other lay witnesses may be called to give testimony about assets, income, or other matters. The child support attorney should instruct any potential witness on the purpose of the testimony and the relevance to the hearing. If the witness is relying on specific documents for their testimony, the child support attorney should carefully review the documents with the witness prior to trial. If the witness is bringing the documents to court, remind the witness to double check for these documents prior to leaving home. The safest practice for the child support attorney is to issue a subpoena *duces tecum* to the witness listing the documents that the witness must produce in court. If the child support attorney is concerned about a witness not appearing for court, the attorney should seek a subpoena requiring the presence of the witness.

Keep in mind that some witnesses might be hostile or have issues that are not relevant to the hearing. An interview with the witness prior to the hearing or trial should uncover any problems. The attorney, however, should be prepared for an outburst or irrelevant testimony and be prepared to object if necessary.

Expert witnesses. Depending on the issues, there may be a need for expert testimony at trial. Genetic testing and legislation allowing admission of test results establishing a probability of paternity generally have eliminated the need for scientific testimony. However, the attorney may wish to call other expert witnesses. For example, a certified public accountant may provide testimony about a party's potential income in cases involving a business, self-employment, or voluntary underemployment. An accountant's economic analysis as to a party's income, business depreciation, capital gains and losses, and asset evaluation may also be valuable.

The child support attorney should consult with the expert well in advance of trial to ensure that the expected testimony is based on evidence to be

⁴¹ For more information on attorney-client relationship, see Chapter Four: Ethical and Regulatory Requirements Governing Attorneys in the Child Support Program.

⁴² For more information on contempt, see Chapter Eleven: Enforcement of Support Obligations.

presented at trial and that the expert's testimony is relevant to the issues before the tribunal.

Proffered Testimony and Stipulations

Generally, guideline calculations that operate as rebuttable presumptions of the correct support amount, presumptions based on genetic testing results, and administrative enforcement have eliminated much of the need for extensive litigation. The child support attorney should consider proffered testimony to the tribunal or stipulations as to certain facts and calculations in order to allow the tribunal to focus on the issues in dispute.

Prior to the presentation of evidence at trial, the child support attorney should review any proffered testimony or stipulations with the parties and any opposing counsel before presenting it to the tribunal. Upon an agreement regarding the proffered testimony or stipulations, the child support attorney should recite the agreement for the record and request that all parties and opposing counsel acknowledge their understanding and agreement.

Introduction of Evidence

Rules of evidence govern whether certain information may be placed before a trier of fact for consideration. The rules of evidence for judicial proceedings are stricter than those for administrative hearings. As an example, an attorney can object to the admission of hearsay evidence in a judicial proceeding. However, the Revised Model State Administrative Procedure Act provides that in administrative hearings, all relevant evidence, including hearsay evidence, is admissible, subject to certain exceptions.⁴³ Because many sources of income and asset information are hearsay, the attorney must be familiar with the evidentiary rules that apply to the particular hearing, and whether the evidence can be admitted using an exception to the hearsay rule.⁴⁴

Such evidence must be relevant, probative, and introduced after a proper evidentiary foundation has been laid. The child support attorney, however, should be aware of the relaxed rules of evidence that UIFSA and the Personal

⁴³ Pursuant to the Revised Model State Administrative Procedure Act, if there is a proper objection, the presiding officer must exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds. The presiding officer may exclude objectionable evidence in the absence of a proper objection. Revised Model State Administrative Procedure Act, § 404 (2010), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=3ab796d4-9636-d856-48e5-b638021eb54d&forceDialog=0>.

⁴⁴ For example, under the Federal Rules of Evidence, certain public records, although hearsay, may be admitted into evidence. Fed. R. Evid. 803. Many states have rules of evidence that are based on the Federal Rules of Evidence, or follow the Uniform Rules of Evidence Act, Unif. Rules of Evidence (2005), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=9a01270f-d139-7964-dd9f-79b065e52c78&forceDialog=0>. See also Chapter Six: Expedited Judicial and Administrative Processes.

Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) provide. Pursuant to Section 316 of UIFSA, a copy of the payment record certified as a true copy of the original by the custodian of the record may be forwarded to the responding tribunal in an interstate case and is admissible to show whether payments were made. Additionally, copies of bills for genetic testing and for prenatal and postnatal health care, furnished to the opposing party at least a certain number of days before trial, are admissible in evidence to prove the amount of the charges and that the charges were reasonable, necessary, and customary.⁴⁵ Pursuant to PRWORA, states must have laws providing that genetic test results are admissible as evidence of paternity without the need for foundation testimony or other proof of their authenticity or accuracy, unless the opposing party makes an objection.⁴⁶

Submission of Proposed Order

The child support attorney should consider drafting a proposed order for the tribunal's signature that addresses all issues and reflects the tribunal's rulings. The attorney would submit the proposed order to the tribunal following the conclusion of all testimony and arguments of counsel, with a copy furnished to opposing counsel or an unrepresented party.

Settlement during Trial

During the entry of testimony, the parties may decide to reach a settlement of all issues. The child support attorney and opposing counsel should inform the tribunal and request a short hearing to enter the agreement on the record. While on the record, the parties and trial counsel should identify themselves and recite the settlement terms for approval by the tribunal. After the terms are recited the tribunal should ask both parties on the record if this is their agreement and if they want the tribunal to ratify and confirm their agreement in the tribunal's order. Most state child support agencies now use standardized court forms, and many can print documents necessary to finalize the agreement in the courtroom. The child support attorney should monitor and assist in the preparation of any final agreement or order, and ensure accurate documents are printed to present to the tribunal. If possible, copies should be furnished to both parties and opposing counsel prior to their leaving the room.

POST-HEARING FUNCTIONS

After completion of the hearing, the attorney still has responsibilities regarding the order, although they can delegate some or all of them to nonlegal staff. Nonetheless, the attorney should be aware of these steps to ensure that the order is carried out appropriately.

⁴⁵ Unif. Interstate Family Support Act §§ 316(c), (d) (2008).

⁴⁶ 42 U.S.C. § 666(a)(5)(F)(iii) (2018).

Entry of the Order

After the hearing is completed and the tribunal has rendered its decision, the tribunal may request the child support attorney to prepare an order for signature. The tribunal or clerical staff in many jurisdictions can complete this task, especially if standardized forms for child support orders are routinely used. The child support attorney must ensure that the order contains the required statutory language for immediate income withholding⁴⁷ and medical support.⁴⁸ The attorney should check that the correct form is properly completed and signed.

The child support attorney or caseworker must also ensure that the following data elements are recorded in the child support automated system for transmission to the Federal Case Registry:⁴⁹

- Names (first, middle, and last) of the parties, including the child(ren), and any necessary alternative names.
- Social Security Numbers of the parties, including the child(ren), and other uniform identification numbers.
- Date of birth of the parties, including the child(ren).

Some of these data elements, such as the names of the parties, and names and date of birth of the children, may also appear in the order. If the case involves domestic violence issues, the attorney should ensure there is compliance with court and agency rules and procedures regarding protection of personally identifiable information.

Advising the Parties of Their Respective Duties

It is important that the attorney or the appropriate designated individual advise the parties of their rights and responsibilities under the terms of the order. With all parties present, the tribunal should ask the parties on the record if they understand their rights and responsibilities. In addition, the child support attorney or appropriate individual should state for the record that the paperwork will be directed to the appropriate entity to establish the IV-D case. The tribunal should inform the noncustodial parent about initiating income withholding and identify who is responsible for submission of the Income Withholding Order to the parent's employer or other income source. The tribunal should ensure that the noncustodial parent is aware of their responsibility to make regular, timely support payments; if withholding is not occurring from the parent's wages, the

⁴⁷ See 42 U.S.C. § 666(b) (2018). OCSE disseminated the current standardized income withholding for support form in [OCSE-AT-20-13: 2020 Revisions to the IWO Form and Instructions](#) (Oct. 1, 2020). It must be used in interstate, intrastate, and tribal cases.

⁴⁸ See 42 U.S.C. § 666(a)(19) (2018).

⁴⁹ See 42 U.S.C. § 654a(e)(3) (2018) and 45 C.F.R. §§ 307.11(e)(3), (f)(1) (2019).

parent is personally responsible for making payment through the State Disbursement Unit. Finally, the tribunal or child support attorney should ensure the parties are aware that it is their responsibility to inform the agency or tribunal of any changed circumstances and that the noncustodial parent must make payment according to the order's terms, until such time as the order is modified.

Appeals

Whether the process used to obtain the child support order is administrative or judicial, parties have the right to seek a review of the decision based on the law of the jurisdiction where the order was issued. Either individual party or the child support agency may appeal a decision. However, the interests of the agency and those of the parents for purposes of appeal are often very different. For example, a child support agency may consider appealing a decision where a possible mistake of law has occurred, but a parent may wish to appeal because the support amount is not what the parent desired.

If a parent wishes to appeal a decision because of a possible mistake of law, the child support agency may agree. In that situation, the child support attorney may file a companion appeal on behalf of the child support agency. If the parent wishes to appeal a decision simply because the parent wants to pay less or receive more support, the agency will typically not agree that an appeal is warranted. If the agency does not agree that an appeal is warranted, the child support attorney should advise the parent of their right to proceed with the appeal separately. In either situation, it is especially important to make clear to the parent that a IV-D attorney does not represent parents. Regardless of whether the agency concurs with the decision to appeal, the child support attorney should advise the parent of the parent's right to obtain separate legal counsel to prepare the appeal on the parent's behalf.⁵⁰

In some cases, such as those involving a possible mistake of law or matter of policy interpretation, the child support agency itself will decide that an appeal of a decision is necessary. When that occurs, the agency may ask the child support attorney to prepare the case for appeal, or to file and argue the case in the appropriate appeal venue.⁵¹

In all cases, the child support attorney must be familiar with the appeal process for administrative or judicial decisions in the jurisdiction where the attorney practices. If the initial pleadings were filed by the child support agency,

⁵⁰ Child support agencies often include information about the right to appeal in the initial document given to parents acknowledging that there is no attorney-client relationship between the parents and the IV-D attorney. For more information on this relationship, see Chapter Four: Ethical and Regulatory Requirements Governing Attorneys in the Child Support Program.

⁵¹ In some states, appeals are handled, not by an attorney with the local child support agency, but by the office of the Attorney General or other office at the state or county level. In such a case, the role of the local child support attorney is to provide background information and work with the office that actually argues the appeal.

appellate rules may require an attorney for the agency to appear at the appellate hearing even if the agency does not support the parent's appeal.

CONCLUSION

While the typical child support attorney's court calendar no longer involves lengthy paternity trials or pre-guideline child support hearings, the child support attorney must still be prepared for trials in those cases that involve unique or difficult legal issues. Because of heavy caseloads, the child support attorney should use the child support caseworker assigned to the case for assistance in preparing for trial, including identifying witnesses and securing the evidence needed at trial. With the array of discovery tools available to narrow the issues and develop relevant evidence for trial, the child support attorney should be well prepared for both the expected and unexpected at trial.

CHAPTER EIGHT

TABLE OF STATUTES AND AUTHORITIES

Statutes and Regulations	Page
42 U.S.C. § 654a(e)(3) (2018)	22
42 U.S.C. § 666(a)(5)(E) (2018)	8
42 U.S.C. § 666(a)(5)(F)(iii) (2018)	21
42 U.S.C. § 666(a)(10) (2018)	10
42 U.S.C. § 666(a)(19) (2018)	22
42 U.S.C. § 666(b) (2018)	22
42 U.S.C. § 666(c)(1)(A) (2018)	9
42 U.S.C. § 666(c)(1)(B) (2018)	13
42 U.S.C. § 666(c)(1)(C) (2018)	13
42 U.S.C. § 666(c)(1)(D) (2018)	13
Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 7302, 120 Stat. 4, 145	10
Family Support Act of 1988, Pub. L. No. 100-485, §103, 102 Stat. 2343, 2346	17
Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105	21
Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 303, 128 Stat. 1919, 1946 (2014)	8
45 C.F.R. § 307.11(e)(3) (2019)	22
45 C.F.R. § 307.11(f)(1) (2019)	22

Rules	Page
Fed. R. Civ. P. 26	10
Fed. R. Civ. P. 30	11
Fed. R. Civ. P. 33	11
Fed. R. Civ. P. 34	11,12
Fed. R. Civ. P. 35	12
Fed. R. Civ. P. 36	12
Fed. R. Evid. 803	21
Fed. R. Evid. 803(6)	17
Fed. R. Evid. 803(9)	17

Case Law	Page
<i>Dep't of Revenue v. Cummings et al</i> , 930 So. 2d 604 (Fla. 2006)	8
<i>Hardy v. Colvin</i> , 930 F. Supp. 2d 1196 (C.D. Cal. 2013)	9
<i>State Dep't of Revenue ex rel. Reyes v. Kathcart</i> , 67 So. 3d 442 (Fla. Dist. Ct. App. 2011)	8

Model Codes	Page
Revised Model State Administrative Procedure Act § 404 (2010)	21
Unif. Interstate Family Support Act § 201 (2008)	1
Unif. Interstate Family Support Act § 311 (2008)	10
Unif. Interstate Family Support Act § 316 (2008)	15, 21
Unif. Interstate Family Support Act § 316(c) (2008)	21
Unif. Interstate Family Support Act § 316(d) (2008)	21
Unif. Interstate Family Support Act § 316(f) (2008)	15
Unif. R. Evidence (2005)	18, 21

Exhibit 8-1: Notice of Taking Deposition

NOTICE OF TAKING DEPOSITION

TO:

Please take notice that the undersigned will take the deposition of the person named below, upon oral examination, at the time and place designated below, pursuant to the rules of discovery and the taking of depositions as provided in Rule ____ of the _____ Rules of Civil Procedure, before a court reporter or some other person authorized by law to take depositions:

DEPOSITION OF:

PLACE:

DATE:

TIME:

The oral examination will continue from day to day until completed. This is your notice to attend and cross-examine.

Attorney for _____

Address:

Telephone Number:

Email:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on opposing counsel this the _____ day of _____, _____.

[page left blank intentionally]

Exhibit 8-2: Interrogatories

1. State your full name and any other name by which you have been known.
2. State your present residential address, employment address, and telephone numbers (land line and cell).
3. State your Social Security number and birth date.
4. List any and all business, commercial, and professional licenses that you now hold or have held in the last three years.
5. List all of your education following high school, including but not limited to, vocational school, specialized training, college, and graduate school.
6. If you have served in the United States military, state the branch of service, highest rank you obtained, the number of years of service, and the type of discharge you received.
7. For each place of your employment or self-employment during the last three years, state the following information:
 - a. Name, address, and telephone number of your employer.
 - b. Dates of employment and why you left the position.
 - c. Job title and description of job duties.
 - d. Starting and ending salaries.
 - e. Name of direct supervisor.
 - f. All benefits received, including health, life, and disability insurance; expense account; use of automobile or automobile expenses; reimbursement for travel, food, or lodging; payment of dues in any clubs or associations; pensions; and profit-sharing plans.
 - g. Your average monthly amount of overtime, if you are required to put in overtime or it is available to you.
8. If you have been unemployed at any time during the last three years, list the dates of unemployment, reasons for unemployment, and all efforts made to secure alternate employment.
9. State whether you have any disability that at any time renders you unable to perform work or in any way limits your ability to work or otherwise earn a living.
10. For each of the last three years, list all sources of income, along with the amount of income received from each source, including but not limited to: gross income from employment; tips; commissions; bonuses; profit sharing;

deferred compensation; severance pay; costs-of-living allowances; overtime; second jobs; part-time jobs; contract income; investments; interest and dividends; pensions; trust and estate income; royalties; annuities; structured settlements; capital gains; Social Security benefits; veterans' benefits; military personnel fringe benefits; national guard and reserve drill pay; workers' compensation; unemployment insurance; strike pay; disability insurance; retirement benefits; gifts; prizes, lottery winnings; education grants; income of new spouse or live-in companion; alimony received; business income from sources such as self-employment, partnership, close corporations, independent contracts; rental income; employment perquisites, including use of car, housing, reimbursed expenses; forgiveness of debt; and use of property at less than customary charge.

11. For each of your present employment, self-employment, business, commercial, or professional activities, state the following:
 - a. How often and on what days you are paid.
 - b. An itemization of your gross salary, wages, and income, and all deductions from that gross salary, wages, and income.
 - c. Any additional compensation or expense reimbursement, including but not limited to overtime, bonuses, profit sharing, insurance, expense account, automobile, or automobile allowance.
12. List all accounts, including checking, money market, brokerage, or any investments that you have had any legal or equitable interest in within the last three years.
13. List all other assets that you own, have an interest in, or have the use or benefit of, not listed above, including but not limited to all real and personal property.
14. For the last three calendar years, list any inheritances you have received. Further list any inheritances you expect to receive in the next three years.
15. List any right, interest, prospect, or pecuniary advantage you have under any contract or interest in any suit in the courts of this state or any other state or federal court.
16. List any direct or indirect interest in any property or thing of value whatsoever, including but not limited to royalties, copyrights, trademarks, or awards.
17. If you are currently enrolled in a health insurance plan, state the following:
 - a. Whether it is through your current employer, your spouse's employer, or a private carrier.

- b. Whether it is individual, self plus one dependent, or family coverage.
18. List the current health insurance coverage options (medical, dental, vision, prescription drug, mental health, other) available to you, and for each option state the following:
 - a. The cost of coverage for the individual.
 - b. The cost of coverage for self plus one dependent.
 - c. The cost of coverage for the family plan.
 - d. The availability of services in the geographical area where the children reside.
 - e. A brief description of the coverage available.
 19. State the names and addresses of all persons who have, or may have knowledge of the relevant facts related to this case.
 20. List any individual you expect to call as a witness at trial and for each one state the subject matter on which the witness is expected to testify, the substance of the facts and opinions relating to the testimony, and a summary of the grounds for each opinion.
 21. If any proposed expert witness has rendered a written report with respect to any matter relevant to this case, state the substance of this report and the date on which it was made.
 22. Set forth in detail the factual contentions supporting each defense you have asserted or plan to assert in this action.
 23. If you presently live with another adult person, detail the extent to which such person contributes to your living expenses.
 24. Detail the extent to which you contribute to the support of any other adult person.
 25. Detail the extent to which you voluntarily contribute to the support of any other child not at issue in this action.
 26. State the names and ages of any children, age 18 and under, residing in your household and for whom you provide support.
 27. If you are required to pay child support to any other children pursuant to an administrative or judicial order, provide the following;
 - a. The name and state of the court or administrative agency that issued the order.

- b. The amount of support you are required to pay and the name of the child(ren) subject to said order.

(IF APPLICABLE UNDER YOUR STATE'S RULES)

Pursuant to Rule _____ you are required to timely supplement your answers and responses to the foregoing interrogatories.

Exhibit 8-3: Request for Production of Documents

The Petitioner, by and through [his] [her] attorney, hereby files this request for production of the following documents:

1. Copies of your federal and state income tax returns and any communications regarding your tax returns from the Internal Revenue
2. Service or state tax department for the three most recent tax years, including all supporting schedules, along with forms W-2 and W-4 for corresponding years.
3. Copies of the federal income tax returns of any corporation or partnership in which you have a financial interest exceeding 10% for the three most recent tax years.
4. Copies of any gift and sales tax returns filed by you or any corporation or partnership in which you have a financial interest exceeding 10% for the three most recent tax years.
5. Copies of any patents and copyrights held by you or held by a corporation or partnership in which you have a financial interest exceeding 10%.
6. Copies of the balance sheets and profit and loss statements of any corporation in which you have more than a 10% financial interest for the three most recent fiscal years.
7. Copies of corporate tax returns, corporate credit card statements, travel and entertainment records and receipts, records of reimbursements of medical expenses, and records of existence of trade cards or bartering of services for closely held businesses and professional practices in which you have an interest.
8. Copies of all savings bank books, certificates of deposit, and statements concerning savings accounts held in your name, singly or jointly, for the three most recent calendar years and the present calendar year to date.
9. Copies of all canceled checks and statements concerning checking accounts held in your name, singly or jointly, for the three most recent calendar years and the present calendar year to date.
10. Prepare and produce a copy of a sworn financial affidavit in accordance with the court rules or statutes of this state.
11. Copies of all books, records, accounts, monthly statements, statements of transactions, and other papers or memoranda of stockbrokers for accounts held in your name, singly or jointly, for the three most recent calendar years and the present calendar year to date.

12. Copies of all contracts for the rental and/or lease of safe deposit boxes or vaults for the three most recent calendar years and the present calendar year to date.
13. Copies of all deeds or conveyances of real property in your name individually or in conjunction with any other person in which you have a legal, beneficial, or equitable interest for the three most recent calendar years and the present calendar year to date.
14. Copies of all records, documents, papers, and memoranda of the three most recent calendar years and the present calendar year to date pertaining to monies received and being received by you from all sources, including but not limited to: gross income from employment; tips; commissions; bonuses; profit sharing; deferred compensation; severance pay; cost-of-living allowances; overtime; second jobs; part-time jobs; contract income; investments; interest and dividends; pensions; trust and estate income; royalties; annuities; structured settlements; capital gains; Social Security benefits; veterans' benefits; military personnel fringe benefits; national guard and reserve drill pay; workers' compensation; unemployment insurance; strike pay; disability insurance; retirement/pensions; gifts; prizes; lottery winnings; educational grants; income of new spouse or live-in companion; alimony received; business income from sources such as self-employment, partnership, close corporations, independent contracts; type of business expenses claimed to arrive at net business income; rental income; employment perquisites, including use of car, housing, reimbursed expenses; forgiveness of debt; and use of property at less than customary charge.
15. Copies of all records of membership or contributions to any charity, or any other organization or association, including private and professional clubs or associations, and the amount of dues or contributions to such organizations for the three most recent calendar years and the present calendar year to date.
16. Copies of all loan applications or financial statements filed with or provided to any person, corporation, business, financial institution, or government agency for the three most recent calendar years and the present calendar year to date.
17. Copies of any written employment contracts into which you have entered for the three most recent calendar years and the present calendar year to date.
18. Copies of all trust instruments of which you are settlor, trustee, or beneficiary.
19. Copies of all your credit card or charge account statements for the three most recent calendar years and the present calendar year to date.

20. Copies of any reports, memoranda, or other documents prepared by experts who may testify at trial.
21. Records of educational expenses for the children of the parties, including tuition, room, board, books, contracts, and loans.
22. Travel records, including itineraries, tickets, bills, and receipts for the last three years and the present calendar year to date.
23. Any written agreements entered into between you and Petitioner.
24. Any written agreements entered into between you and another person requiring you to pay support for another child.
25. Proof of payments made pursuant to any written child support agreement.

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Exhibit 8-4: Living Expenses of Children

<i>Transportation Expenses:</i>	
Automobile - Gas	
Automobile – Repair/Upkeep	

<i>School Related Expenses:</i>	
School Tuition	
School Supplies	
Before-School Expenses	
After-School Expenses	
Lunch Money	
Allowance	
Babysitter	

<i>Religious Contributions or Expenses:</i>	
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<i>Clothing Expenses:</i>	
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<i>Laundry and Dry Cleaning:</i>	
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<i>Entertainment:</i>	
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<i>Food:</i>	
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<i>Health Related Expenses:</i>	
Dentist	
Doctor	
Optometrist	
Orthodontist	
Prescription Drugs	

<i>Haircuts/Stylists:</i>	
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