

CHAPTER SEVEN

ADVOCACY SKILLS FOR CHILD SUPPORT ENFORCEMENT ATTORNEYS

INTRODUCTION

Attorneys who work in the Child Support Enforcement (CSE) program can perform their jobs most efficiently when they share the responsibility for information gathering and case preparation with other program personnel. The relatively routine nature of information gathering and case preparation allows nonlegal staff to perform many investigative functions, and even some of the decision-making functions. Nevertheless, some evidence gathering involves legal mechanisms that require an attorney. In complicated cases the attorney must interview the custodial relative and other potential witnesses, and interact with the noncustodial or alleged parent, or his or her attorney. This chapter discusses these activities within the context of the program.

PREHEARING FUNCTIONS

The initial task in any child support case is to determine what action needs to be taken. This is usually done by interviewing the applicant for services and reviewing previously submitted paperwork. Information gathered during this interview will determine whether genetic testing is needed, if an order needs to be established, or if there is an existing order that needs enforcement. The interview process can be conducted by the attorney or other staff member, depending on agency practice.

As collection of child support has evolved into a more administrative process, the role of the attorney becomes less centered on litigation. Often both the custodial parent and noncustodial parent will meet with a caseworker or attorney to work out an agreement and settlement of a child support case. With the adoption of mandatory child support guidelines that take into consideration the income and financial responsibilities of both parties in some way, there are fewer bases for disputes between the parties. Consequently litigation is less likely and agreements more frequent.

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 and local programs, and procedural alternatives afforded by State 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, no communication occurs between the attorney and the custodial parent in such a case.¹

In cases that require hearings before a tribunal, it is common practice for the attorney and the custodial parent to consult briefly, often immediately preceding the hearing, simply to review the information gathered by the child support worker and to prepare the custodial witness to testify. Again, the attorney relies on the background work and case preparation of the caseworker, which usually includes preparing an affidavit or other documentation based on the payment record.²

The attorney is much more likely to do a significant amount of interviewing in contested cases that require a hearing before a tribunal for establishment of paternity, the entry of a support order, or enforcement of an order. In these cases, the attorney typically must depend on live testimony to establish the identity of the alleged father and the ability to pay support.

Preparing for the Interview

During the interview, the attorney must evaluate the knowledge and verbal skills of potential witnesses. The most successful interviews occur when both the interviewer and the subject are relaxed. Unfortunately, child support interviews often take place in an inherently stressful atmosphere. This section discusses skills and techniques that can make interviews more comfortable and improve the likelihood that they will produce valuable information for the attorney.

Because of the volume of work and limited staff in most CSE offices, advanced planning for interviews is a luxury most CSE attorneys cannot afford. This is unfortunate, because a well-planned interview can be more successful and less time-consuming than one that has not been planned. The attorney should attempt to accomplish the following prior to the interview.

Reviewing case information. The attorney should review case information to determine who should be interviewed, to formulate interview objectives, and to identify information that should be gathered and legal documents that should be prepared before the interview.

Most CSE offices use some method of recording case activity either in hard copy or online. This provides a chronological narrative of all actions, correspondence, and communication pertaining to a case and is an excellent

¹ The term “custodial parent” is used here to refer to any legal custodial relative. Although the recipient of IV-D services can be the custodial parent or the noncustodial parent, for ease of reading, this chapter refers to the custodial parent.

² Portions of this section on interviewing are based on Laurene T. McKillop, Ph.D. *et al.*, Interviewing Techniques for Child Support Workers (Nat’l Institute for Child Support Enforcement, 1981).

starting point for the review as it chronicles the history of the case and often provides insight into the issues that the noncustodial parent will raise in defense.

The attorney should review the case file far enough in advance of interviewing the custodial parent or other witnesses so witnesses can be contacted before the interview and asked to bring in any missing documents relevant to the impending administrative or court hearing. This simple task can prevent hostility from the witness who has to return to the office with necessary documents or information that could have been requested before the interview.

Identifying interview objectives. After a review of the case information, the attorney should formulate interview objectives. Clear objectives help identify subject areas that need to be explored and the proper tone for the interview.

In addition to establishing rapport and gathering information, other possible interview objectives include testing the subject's credibility as a witness and ability to withstand a rigorous cross-examination; exploring the possibility of fraud; identifying potential defenses; preparing the witness to testify in court; and identifying and locating other potential witnesses. In addition, the interview can present an opportunity to prepare the witness for the realities of the child support litigation, which could result in a decision that does not meet the expectations of the parent and in fact might be adverse to the parent's position.

Setting the stage. Prehearing interviews can create a high degree of discomfort for custodial parents and other witnesses because of the sensitive and personal nature of the subjects that must be discussed. The interview's physical setting can increase or decrease anxiety. The attorney should try to set aside a time and place that will allow him or her to focus on the interview and ensure adequate privacy.

Conducting the Interview

Each interview conducted by an attorney will necessarily be different, based on the status of the case, the nature of the witness, his or her relationship to the case, etc. The following basic steps, however, are common to all interviews.

Opening the interview. It is particularly important to establish rapport with the custodial parent. There are several ways to do this:

- The attorney should avoid making the custodial parent wait for the interview to begin and should not allow interruptions or telephone calls to interfere with the interview.
- It is important that the attorney use normal "ice-breaking techniques" such as spending a minute or two on pleasantries.

- As a transition between the pleasantries and the interview, the attorney could spend some time early in the interview, asking the custodial parent positive questions about his or her background; this increases the parent's self-esteem and personalizes the interview.
- The custodial parent should be apprised of the status of the case and the attorney's role in the matter. This is an excellent opportunity to advise the individual that the attorney does not represent his or her interest, that no attorney/client relationship exists, and that the individual might want to seek private counsel to represent his or her interests.
- The attorney should try to project empathy for the custodial parent's situation, within his or her role as professional legal representative of the IV-D agency.
- The attorney should neither expect nor demand the immediate confidence of the custodial parent, but rather acknowledge his or her anxiety to discuss intimate details and attempt to alleviate it by stressing the goals that the attorney and custodial parent are trying to reach together.³

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

To minimize these problems, the attorney should:

- allow the witness to relate "the whole story" unimpeded, directing him or her only with questions that call for open-ended, narrative responses;
- lead the witness 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;
- maintain as much eye contact as possible;
- refer to the notes and politely cross-examine the witness, testing memory and credibility, and following up on leads; and

³ 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.

- convert the notes and perceptions into either hard copy or online notes for future review immediately after the interview.

Taking notes. Note taking is a necessary part of the interviewing process, but it also can undermine effective communication. First, the interviewer must break eye contact with the witness. Second, the mere act of noting a fact could create an impression that this fact is more important than facts not noted. As a result, the witness might react by concentrating on areas that he or she perceives to be legally relevant, instead of allowing the attorney to control the interview.

Closing the interview. When the attorney has completed the interview, it is helpful for him or her to summarize briefly what has been accomplished and what will happen next. The summary provides a smooth transition to departure, facilitates understanding, and increases rapport by demonstrating that the attorney cares about the perception the witness has of the case. This can be underscored further by asking the witness if he or she has any questions. If the witness needs to execute legal documents or provide additional information, the attorney should provide specific instructions.

If it is office policy to provide copies of correspondence and legal documents to custodial parents, the attorney should make such a pledge at the interview's close. Additionally, the attorney needs to encourage the custodial parent to supply additional information pertaining to the case and set out a specific procedure for providing such information.

Pleadings

In many CSE agencies, preparation of pleadings is the responsibility of the caseworker after consultation with the custodial parent. The attorney can then review the pleadings or might be called on to resolve questionable information. An attorney is more likely to prepare pleadings that are difficult or atypical. These can include pleadings in a case where a child has special needs or where the parties are disputing support for an adult child who is incapable of self-support.

In most instances, the custodial parent verifies the allegations of the initial pleadings or prepares supporting affidavits. The attorney should review the pleadings for form and accuracy based on information in the case file. The attorney might determine that additional pleadings or documents are necessary and contact the caseworker or the party to arrange for their preparation and execution.

Historically, obtaining information necessary to complete pleadings in assistance cases presented unique problems and concerns such as the unwillingness of the party to reveal the whereabouts of the noncustodial parent or other pertinent information. With the passage of welfare reform and the

subsequent changes to the distribution of child support payments, the relationship between the recipient of benefits and the IV-D agency has become less adversarial. The move toward “family first policies” has alleviated much of the distrust and animosity between the recipient of benefits and the IV-D agency seeking support and reimbursement. In addition, families receiving assistance may also now participate in programs to reunite fathers with their families.

Cases where the parties are not receiving public assistance also present unique issues. These cases frequently originate from pleadings in divorce cases and might have custody and visitation issues. The IV-D attorney must remain cautious in drafting subsequent pleadings to include only those issues relating to child support. The parties and their counsel should address issues such as custody and visitation in separate pleadings.

Establishment actions. When filing a Motion for Support or similar pleading, a financial statement or other document containing financial information necessary to compute the child support obligation according to the guidelines is essential. Experience has shown that relying on a party’s completion of these forms or caseworker assistance in preparation of financial forms might not yield the best result. This is an area where the attorney should consider intervening or providing guidance or training to staff on proper completion of these documents. The attorney might consider obtaining a subpoena for the necessary financial information. Additionally, if the subpoena is unsuccessful, the attorney can file a motion to compel. This might result in an order from the court or tribunal requiring completion of the financial statements by the parties.⁴

The pleadings in paternity cases have evolved over the past 10 years. For example, originally paternity was somewhat criminal in nature. Currently the trend in paternity is to establish a familial relationship between parents and their children. To that end, the CSE program has been creative in developing programs that encourage voluntary acknowledgment of paternity and execution of supporting documents. These documents can accompany any motions or complaints for paternity and can serve as evidence to facilitate a binding determination of paternity. Specific paternity pleadings are individual to each State. The attorney should consult State law and regulation for specificity on pleadings.

Yet another change in paternity establishment is the authority of the IV-D agency to require the parties to submit to genetic testing without a court order. This alleviates the requirement of including a request for genetic testing in paternity pleadings. It also expedites the processing of paternity cases by eliminating the need for a hearing and judicial order on a preliminary matter.

⁴ For additional information, see Chapter Nine: Establishment of Child Support Obligations.

Some States, however, might still permit a motion for genetic testing to be included in the initial paternity filings.⁵

Enforcement actions. Most enforcement cases require at least some type of compilation of payment records or an affidavit of arrears. These pleadings can be prepared by staff who are familiar with the business records of the payment office. However, where payments have been received directly, or prior to the involvement of the IV-D agency, the party who received payments directly must provide an accurate accounting of their receipt. The party might, however, require help compiling an accurate accounting and arrearage affidavit. Many of the enforcement options available to the IV-D agency are administrative and automatic, and therefore require no pleadings. The documentation required is minimal and little or no attorney involvement is necessary.⁶

Interstate actions. With adoption of the Uniform Interstate Family Support Act (UIFSA), and the promulgation of mandatory interstate forms by the Federal Office of Child Support Enforcement (OCSE), drafting case-specific pleadings is not necessary in interstate cases. Attorneys or staff can complete these forms and testimony by following the instructions provided. In addition, verification of the pleadings is not required by the initiating State.⁷

Modification actions. Most jurisdictions require some criteria as a basis for modifying an existing child support order, such as a change in circumstances. Pleadings requesting modification must set forth the basis for requesting a modification, either statutory or based in fact. This is true whether the modification is done under the requirement for review and adjustment or at the request of an interested party. Appropriate supporting documents, such as a guidelines calculation, should accompany the pleadings.⁸

Discovery

Nonattorney personnel conduct much of the preliminary investigation in CSE cases. After an attorney has filed an action, however, he or she can employ more formal discovery devices. Federal Rule of Civil Procedure 26, after which a majority of State discovery rules are patterned, defines the permissible scope of discovery. In general, parties can obtain, through the use of one of the discovery devices discussed below, any nonprivileged matter that is relevant to the subject matter of a pending action.

⁵ For additional information, see Chapter Eight: Paternity Establishment, and consult State law and regulations.

⁶ Greater detail on enforcing support obligations is contained in Chapter Ten: Enforcement of Support Obligations.

⁷ For further discussions on interstate child support matters, see Chapter Twelve: Interstate Child Support Remedies.

⁸ Chapter Eleven: Modification of Child Support Obligations contains greater detail about the process.

The array of discovery mechanisms afforded a litigant by State law might include the following:

- depositions – a discovery device that can be used to elicit information from a party or other person that permits face-to-face examination and cross-examination by counsel, under oath but not during the course of a hearing. In addition to oral depositions, most court rules allow depositions after submission of written questions where oral deposition is impossible or the costs are prohibitive;
- written interrogatories – a discovery vehicle through which a party can require that another party give written answers under oath to written questions concerning relevant subject matters;
- production of documents – the process through which a request is made for documents for review by the requesting party. See Exhibit 7-1;
- 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;
- physical examinations – in the context of child support enforcement, examinations that mainly address genetic testing for purposes of establishing parentage; and
- requests for admission – a written request that a party admit the truth of any matter set forth in the request or the genuineness of any relevant document described in the request.

In addition to these traditional discovery methods, welfare reform mandated that States have certain administrative powers. Among these mandates was a requirement that States grant authority to the IV-D agency to subpoena information “without the necessity of obtaining an order from any other judicial or administrative tribunal.”⁹ This allows the IV-D agency and the attorney to proceed without filing requests with the tribunal and awaiting issuance of a subpoena, thus expediting the discovery process.

Although the administrative subpoena is useful to uncover information, interrogatories and requests for admissions are still appropriate ways to solicit information from the parties. Most parents are willing to complete a financial statement voluntarily. In fact, many States require the submission of a financial statement with the pleadings. Often, agency workers obtain financial affidavits before they refer a case for legal action. It is, however, advisable to serve a set of

⁹ 42 U.S.C. § 666(c)(1)(B) (Supp. V 1999).

financial interrogatories on any party whose information seems incomplete or implausible.

Requests for admissions. Requests for admissions are an excellent means to avoid litigating matters that are not contested. They serve to expedite the trial and relieve the parties of the cost and burden of gathering evidence to prove facts that will not be contested. After the request for admissions is made, the responding party has several options. The party can admit or deny each request, file objections to the request, or state reasons why the request cannot be truthfully admitted or denied. If the party fails to respond within the statutory answer period, some States deem the matters set forth in the request to be true, and dispute at a hearing will not be permitted. In the event the party refuses to admit and the requesting party successfully proves the matter at trial, the tribunal has the discretion to order a party to pay the reasonable expenses incurred in proving the matter. Requests for admissions can address both peripheral facts and hotly contested issues.

Matters appropriate for inclusion in a request for admissions include:

- jurisdictional facts such as residence of the parties and lack of previous legal action to determine paternity or custody of the child;
- in States where support can be set for the period between separation and the filing of a complaint for support, facts that would establish such a duty to support for that period;
- a prior written acknowledgment of paternity by the alleged father of the child, covering both the authentication of the document and the alleged father's state of mind at the time he affixed his signature;
- oral acknowledgments of paternity by the alleged father;
- acts by the alleged father that are circumstantial evidence of his belief that the child is his;
- authenticity and admissibility of the birth certificate;
- date of the child's birth;
- facts surrounding the child's birth;
- human gestation period of 280 days;
- evidence that the child was born after the normal gestation period, if applicable;

- probable period of conception of the child;
- occurrence of sexual intercourse between the mother and alleged father within the probable period of conception;
- financial information regarding the alleged father's ability to pay, including sources of income, asset location, and other relevant financial information;
- authenticity of hospital and doctor bills that will form the basis of the claim for pregnancy and birth expenses;
- authenticity and admissibility of records of assistance provided to the family;
- identification of other dependents and other support obligations; and
- the existence of any other order of support pertaining to this child or children.

After the party makes an admission in response to the request, the matter is established conclusively unless the court or tribunal on motion permits the party to withdraw or amend the admission.

Interrogatories. Like requests for admissions, interrogatories can be served on any party at any time after service of process without leave of the court. In many jurisdictions, a set of interrogatories can be served with the initial pleading. Time limits for filing answers vary among the jurisdictions.

There are both advantages and disadvantages inherent in the use of interrogatories in child support cases. The principal advantage is that they are inexpensive and do not take an inordinate amount of time to prepare. A set of standard questions can be drafted for potential use in any child support case and then carefully tailored to each individual case. See Exhibit 7-2. Interrogatories are most useful in obtaining facts, as opposed to opinions. If interrogatories are served on the party who has applied for IV-D services, it might be necessary for the CSE attorney to provide assistance in responding to them or to advise the party to seek private counsel to do so.

Interrogatories can be used to narrow essentially uncontested issues in a fashion similar to requests for admissions. More importantly, they can provide information regarding the financial situation of the parties that will be helpful in setting the amount of the child support obligation and in enforcement attempts. Interrogatories are a good method of determining defenses that could be used at trial and to identify potential witnesses and their probable testimony. In addition

to providing useful information, the early use of interrogatories speeds up the progression of the case.

The major disadvantage of interrogatories is that the opposing party has an opportunity to peruse the entire set of questions before answering any of them individually and the advantage of carefully thinking through each answer. The proponent has no opportunity to challenge evasive answers with additional questions without filing supplemental interrogatories.

A CSE attorney should consider that a party is under a duty to supplement an interrogatory response at any time after the answers are filed and before trial. If a party fails to comply with the duty to supplement, the tribunal can refuse to allow an unnamed witness to testify, grant a continuance or new trial, or grant other relief that it deems just.

Depositions. Depositions are a powerful and important discovery tool. They are expensive, however, and might not elicit any more information than interrogatories or other discovery tools. The deposition gives the attorney an opportunity to pose a question, have it answered, and then have an opportunity to prepare for trial using the information. The benefit of a deposition is that the scope of the questioning is broader than testimony during a trial or hearing and there is no judge on hand to rule on objections. The reporter notes objections on the record; the tribunal will later rule on the objection when the question and answer are offered as evidence at trial. With few exceptions, the witness must answer the question during the deposition after the objection is noted. An attorney should never depose his or her own witness unless it is absolutely necessary to preserve the testimony for use at trial. Likewise, an attorney should rarely ask his or her witness questions when the witness is being deposed by the other party, except to clarify their responses.

In the IV-D community, depositions are rare. Because of time constraints, the costs associated with conducting a deposition, and the ability of the CSE attorney to obtain the information through other mechanisms, depositions are typically requested by counsel representing the opposing party and not the IV-D agency attorney. In the past, depositions were most commonly used in interstate cases where the custodial parent was deposed by counsel in the initiating State and the testimony then submitted in the responding State. The Uniform Interstate Family Support Act (UIFSA), however, authorizes the use of telephonic testimony in interstate hearings¹⁰; thus the need for depositions is diminished.

Requests for production of documents and subpoenas. The most important information needed in a child support case is financial information. While interrogatories can solicit information about income, the best evidence of income and assets might be obtained from documents in the party's possession,

¹⁰ Unif. Interstate Family Support Act (1996) § 316(f) (amended 2001), 9 Pt. 1B U.L.A. 327 – 328 (1999).

including pay stubs, tax returns, bank statements, and titles to property. In addition, answers to interrogatories can include statements that the attorney wants substantiated. These documents and physical evidence can be obtained through a request for production of documents or by obtaining a subpoena *duces tecum*. See Exhibit 7-1. Both of these methods require the respondent to provide the requested information; the subpoena *duces tecum*, however, requires the respondent to appear with the requested information.

Negotiation

Most contacts with the noncustodial parent or his or her attorney are aimed at reaching resolution without a lengthy hearing. In many cases, this can be accomplished through written stipulations and consent agreements that are submitted for ratification by the tribunal. Entry of an order by a tribunal often occurs without a formal hearing. This alternative is often preferable to litigated resolutions, especially in areas of the law such as child support enforcement where the expenses of litigation in a case can significantly exceed any expected monetary recovery.

Perhaps more important than the short-term cost is the long-term effect of contested resolutions. Common sense suggests that parents more often comply voluntarily with consent orders than with orders imposed after contested hearings. Efforts to reach an agreement that a tribunal can approve without an adversarial hearing are conducive to maintaining a peaceful relationship between parents. This is important to the continued growth and development of the child. Agreements also advance the goals of expedited processing and efficient disposition of cases.

In an attempt to resolve the amount of support to be paid, and prior to involvement of the IV-D attorney, a IV-D agency can require or encourage the parties to meet with a caseworker and submit information needed for a guidelines calculation. In many cases, the matter can be resolved and a consent order prepared based on these discussions. In many cases, however, further negotiations might be necessary to enable the parties to come to an agreement. Then the IV-D attorney can become involved in the negotiation.

Gathering information that can lead to an agreed resolution or compliance with an existing order is an ancillary goal of each interaction with the noncustodial parent or alleged father. It pays for the attorney to prepare for a session with the noncustodial parent or alleged father as he or she might prepare for any other interview. Discussions with the parties and their counsel can be effective in obtaining an acknowledgment of paternity, establishing an adequate support amount, and avoiding using valuable court time. In addition, these negotiations can remove the stigma of being ordered to pay child support and foster a beneficial relationship between parent and child.

In pursuing efficient case dispositions, IV-D attorneys must be mindful of the procedural due process rights of the parties with whom they interact. In some States, the noncustodial parent is entitled to counsel in certain proceedings, such as contempt. Support establishment and enforcement proceedings should provide the parties with notice of their rights in the proceedings and an opportunity to be heard. A consent agreement requires the consent of both parties to the terms.

Even though the noncustodial parent might want to waive service of process by the sheriff, or waive a court appearance, and is agreeable to the terms for resolving the case, the noncustodial parent must be informed of the entitlement to exercise these rights in order to satisfy due process. In addition, the custodial parent should be advised of the right to obtain counsel and to consult with counsel at any point in the proceedings. Curtailing these rights for the sake of a quick case resolution can have later ramifications such as motions to vacate the judgment for want of jurisdiction or fraud in the inducement, and can discredit the integrity of the IV-D program. Even where a consent agreement cannot be reached, the attorney might be able to obtain a waiver of service of process from the noncustodial parent, who generally wants to avoid a visit from the sheriff.

Building a positive relationship with the parties is important. The parties should feel that justice has been served and that the established obligation is a fair one. Any other result provides a rationale for noncompliance, greatly diminishes the likelihood of voluntary payment, and compromises the IV-D agency's role in looking out for the best interests of the child and the family.

HEARING

Even with the best efforts in negotiation, there are times when the parties cannot reach an agreement or insist on having a hearing. To prepare for hearings in the child support context, the attorney needs to consider several stages.

Trial Preparation

The groundwork necessary for trial preparation begins with information gathering, discussed above. Most of the legwork is done during the prehearing stage with interview, discovery, and negotiations. Comprehensive information gathering will simplify development of trial strategy and preparation of witnesses.

Many CSE attorneys develop a "trial" notebook that enables them to collect lists of commonly asked questions, standard motions, and potential testimony to assist in trial and witness preparation. The strategy for a child support case depends largely on the type of case and the parties involved.

Whether the case is heavily contested or there are merely simple issues in dispute will govern how extensive the attorney trial preparation needs to be.

Witness Preparation

Generally, IV-D attorneys do not have the luxury of lengthy witness preparation. In fact, many times their initial consultation with a witness might be conducted 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 in each of the types of cases a IV-D attorney handles. For those cases that present more of a challenge, or where opposing counsel is being difficult, however, 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 will require trials. However, when more difficult cases arise, the attorney should be prepared to resolve them through a hearing.

Custodial parent. Many times, the custodial parent can present problems and issues for the IV-D attorney as well. Part of trial preparation might require the IV-D attorney to remind the individual that he or she does not represent the custodial parent. For this reason, the attorney might have little or no control over testimony given by the custodial parent. One suggestion is to remind the custodial parent that the interest of the State and the custodial parent are overlapping in most instances. By having this discussion, the attorney can diffuse any hostility or animosity that exists and facilitate the custodial parent's cooperation.

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. If a guidelines calculation has not previously been prepared, the attorney might want to prepare one or more calculations based on the available financial information or possible findings by the tribunal, e.g., when there is voluntary impoverishment, second families, or self-employment. When the hearing is on the issue of nonpayment of support, the attorney might want to advise the custodial parent of the limitations of particular enforcement actions and this particular tribunal's position on incarceration.

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 on to give testimony on assets, income, or other matters. The CSE attorney should instruct any potential witness on the purpose of the testimony and the relevance to the hearing. Keep in mind that witnesses, particularly those called by the noncustodial parent, might be hostile or have issues that are not relevant to the hearing. An interview with these

potential witnesses should uncover any problems. The attorney, however, should be prepared for outburst or irrelevant testimony and be prepared to object, if necessary.

Expert witnesses. There also might be a need for expert testimony in some cases. Genetic testing and the legislation allowing admission of the results generally diminish the need for scientific testimony. Economic analysis of the parties' potential income, however, might be necessary in cases involving a business, self-employment, or voluntary impoverishment. The CSE attorney should consult with the expert well in advance to ensure that the expected testimony is based on facts in evidence and is relevant to the issue at hand.

Proffered Testimony and Stipulations

Generally, expedited processes, such as guidelines calculations, conclusive presumptions based on genetic testing, and administrative enforcement, eliminate the need for extensive litigation. Subsequently, it might behoove counsel to proffer testimony to the tribunal in the interest of saving time or stipulate as to certain facts and calculations, to allow the tribunal to address only the disputed issues. To maintain credibility, the CSE attorney should review any proffered testimony or stipulation with the parties and any counsel before presenting it to the tribunal. To err on the side of caution and to protect the relationship of the agency with the tribunal, it might be judicious to reduce proffered testimony or stipulations to writing for review by the parties and for their signatures.

Introduction of Evidence

The rules of evidence apply to the submission of any information at the hearing. Such information must be relevant, probative, and introduced after the laying of a proper evidentiary foundation. The attorney, however, should be aware of the relaxed rules in submitting child support payment records, business records, and genetic testing results.¹¹ Changes made pursuant to welfare reform legislation provide that child support payment records are admissible as business records and are not excluded as hearsay. Additionally, genetic test results are admissible without the necessity of laying an evidentiary foundation for their admission unless there is an objection made by the opposing party.

POST-HEARING FUNCTIONS

After completion of the hearing, the attorney still has responsibilities regarding the order, although he or she 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.

¹¹ See 42 U.S.C. § 666(a)(5)(F)(iii) (Supp. V 1999).

Entry of the Order

Once the hearing is completed and the tribunal has rendered its decision, the CSE attorney might be called on to prepare an order for signature. The tribunal or the clerical staff in many jurisdictions can complete this task. The attorney must ensure that the order contains statutory language for automatic income withholding¹² and includes the necessary data elements for submission to the Federal Case Registry¹³. The data elements that must be in the order include:

- names of the parties [including the child(ren)], including first, middle, last, and any necessary alternative, names;
- Social Security Numbers of all of the parties, including the child(ren), and other uniform identification numbers; and
- dates of birth of the parties, including the child(ren).

Advising the Parties of Their Respective Duties

It is also important that the attorney or the appropriate designated individual advise the parties of their rights and responsibilities under the terms of the order if this has not already been done. In addition, the attorney should direct the paperwork to the appropriate entity to set up a IV-D case if necessary and facilitate payment and disbursement of child support.

CONCLUSION

Gone from the child support enforcement arena are the lengthy paternity jury trials and volatile support hearings from the pre-guidelines era. Because child support cases deal with two areas that are sensitive to parties, their children and their money, however, the child support attorney must be prepared for hostility, animosity, and reluctance to settle cases in at least a portion of cases. As we move towards expedited process and administrative enforcement, trials become the exception rather than the rule. It is unlikely, however, that they will be eliminated altogether. Preparation for the unexpected is the CSE attorney's best tool.

¹² 42 U.S.C. § 666(b) (1994, Supp. IV 1998, & Supp. V 1999).

¹³ 42 U.S.C. § 654a(e)(3) (Supp. V 1999).

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Exhibit 7-1, Request for Production of Documents

The Petitioner, by and through his or 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 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.
2. 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.
3. 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.
4. 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%.
5. 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.
6. For closely held businesses and professional practices in which you have an interest, corporate tax returns, corporate credit card statements, travel and entertainment records and receipts, records of reimbursements of medical expenses, records of existence of trade cards or bartering of services.
7. Copies of all savings bank books and 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.
8. 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.
9. Prepare and produce a copy of a sworn financial affidavit in accordance with the court rules or statutes of this State.
10. Copies of all books, records, accounts, monthly statements, statements of transactions, and other papers or memoranda of stock brokers for accounts

held in your name, singly or jointly, for the three most recent calendar years and the present calendar year to date.

11. 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.
12. Copies of all deed 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. Copies of all trust instruments of which you are settlor, trustee, or beneficiary.

18. Copies of all your credit card or charge account statements for the three most recent calendar years and the present calendar year to date.
19. Copies of any reports, memoranda, or other documents prepared by experts who may testify at trial.
20. Records of educational expenses for the children of the parties, including tuition, room, board, books, contracts, and loans.
21. Travel records, including itineraries, tickets, bills, and receipts for the last three years and the present calendar year to date.
22. Any written agreements entered into between you and Petitioner.

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Exhibit 7-2, Interrogatories

1. State your full name and any other name by which you have been known.
2. State your present residence and employment or business addresses and telephone numbers.
3. State your Social Security Number.
4. State your birthdate.
5. List all business, commercial, and professional licenses that you now hold or that you have held in the last three years.
6. List all of your education after high school, including but not limited to, vocational school, specialized training, college, and graduate school.
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.
 - 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 expense reimbursement; reimbursement for travel, food, or lodging; and payment of dues in any clubs or associations, pensions, and profit-sharing plans.
 - g. Whether you are required to put in overtime and the average amount of such overtime, if any.
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. If you have become engaged in or associated with any business, commercial, or professional activity within the last three years not detailed above, state the following information for each activity:
 - a. Name, address, and telephone number of each activity.
 - b. Dates you were connected with such activity.
 - c. Position title and brief description of activities.
 - d. Starting and ending salaries.
 - e. Name of your direct supervisor.
 - f. All benefits received, including health, life, and disability insurance; expense account; use of automobile or automobile expense reimbursement; reimbursement for travel, food, or lodging; and payment of dues in any clubs or associations; pensions; and profit-sharing plans.
11. 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; use of property at less than customary charge.
12. 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.
13. If you are the owner, participant, or alternate payee in any pension, profit sharing, deferred compensation, or retirement plan, state the following:
 - a. The name of the plan, along with the name and address of the plan administrator or trustee.
 - b. A description of the plan.
 - c. The account balance of any money held for your benefit.
 - d. The location and last valuation date of said asset.
14. List all accounts, including checking, money market, brokerage, or any other investments that you have had any legal or equitable interest in within the last three years.
15. State the location of all safes, vaults, or other similar depositories in which you maintained property at any time during the last three years.
16. 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.
17. 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.
18. List any debts you owe to any person, corporation, or partnership that exceed \$1,000.
19. 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.
20. List any direct or indirect interest in any property or thing of value whatsoever, including but not limited to royalties, copyrights, trademarks, expectations, or awards.
21. List any gifts or funds, monies, property, or property rights in excess of \$100 you have made to any person other than your children in the last three years.

22. If you are currently enrolled in a health insurance plan, state whether it is through your current employment, and whether it is individual or family coverage.
23. List the current options (medical, dental, vision, prescription drug, mental health, other) available to you for health insurance coverage, and for each option state the following:
 - a. The cost of coverage for an individual.
 - b. The cost of coverage for a family plan.
 - c. The availability of the services in the geographical area where the children reside.
 - d. A brief description of the coverage available.
24. State what measures are necessary to enroll your children in your current health insurance plan.
25. Describe your current state of health and provide the name, address, and telephone number of each physician, medical clinic, or nurse practitioner you have consulted during the last year. State the date of each consultation, its purpose, the diagnosis, and any treatment prescribed.
26. State the names and addresses of all persons who have, or may have, knowledge of the relevant facts related to this case.
27. Complete the Child Support Guideline Worksheet and state what you believe to be the appropriate amount of child support.
28. Provide the date and support amount of any existing child support order, including an order to provide health insurance coverage.
29. List any individual you expect to call as a witness at trial and for each one state the subject matter on which he or she is expected to testify, the substance of the facts and opinions relating to the testimony, and a summary of the grounds for each opinion.
30. 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.
31. List all tangible evidence you intend to offer into evidence at trial, and describe and identify the subject matter contained therein.

32. Set forth in detail the factual contentions supporting each defense you have asserted in this action.
33. If you presently live with another adult person, detail the extent to which, such person contributes to your living expenses.
34. Detail the extent to which you contribute to the support of any other adult person.
35. Detail the extent to which you contribute to the support of any other child not at issue in the present action.

[The following questions may be included when information is sought from the custodial parent.]

36. Describe the children's current and projected education needs. Specify whether the children have any particular educational and/or vocational needs that cannot be satisfied by public school education.
37. Describe the children's current and projected extracurricular activities.
38. Describe the children's current and projected health needs, specifying whether any child has extraordinary or unusual physical, psychological, or other needs related to health and well-being.
39. List any interest any of your children may have in any monies, assets, stocks, bonds, savings accounts, checking accounts, certificates of deposit, brokerage accounts, real estates, deeds, mortgages, corporations, partnerships, business entities, joint ventures, patents or copyrights, and/or any income therefrom.
40. List any State that has provided public assistance for your children.

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