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SERKLAND, LUNDBERG, ERICKSON, MARCIL & MCLEAN, LTD.

ATTORNEYS AND COUNSELORS AT LAW

10 ROBERTS STREET

P.O. BOX 6017

FARGO, NORTH DAKOTA 58108-6017

NORMAN G. TENNESON (1898-1982)

CHESTER J. SERKLAND - Retired

LOWELL W. LUNDBERG

ARMOND G. ERICKSON

JACK G. MARCIL*

RONALD H. MCLEAN*

ROGER J. MINCH*

PAUL F. RICHARD*

STEVEN K. AAKRE*

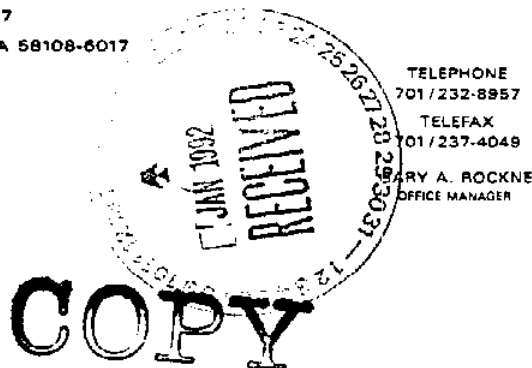
MAUREEN HOLMAN*

BRAD A. SINCLAIR*

LADONNE R. VIK*

JANE L. DYNES*

*ALSO LICENSED IN MINNESOTA



January 13, 1992

Tina M. Heinrich
Minot Regional CSEU
Asst. States Attorney
Courthouse, P.O. Box 2249
Minot, ND 58702-2249

Sheila Keller
Bismarck Regional CSEU
Asst. States Attorney
P.O. Box 307
Bismarck, ND 58502

Crystal Wosick
Fargo Regional CSEU
Asst. States Attorney
Courthouse, P.O. Box 2806
Fargo, ND 58108-2806

Diane Fabel Melbye
IV-D Contract Attorney
SW Regional CSEU
P.O. Box 1383
Dickinson, ND 58602-1383

Paulette Oberst
Bismarck Regional CSEU
Asst. States Attorney
Courthouse, P.O. Box 307
Bismarck, ND 58502

Adair Boening
Director Fargo RCSEU
Asst. States Attorney
Courthouse, P.O. Box 2806
Fargo, ND 58108-2806

Neil Gillund
Fargo Regional CSEU
Asst. States Attorney
P.O. Box 1547
Fargo, ND 58107

Janet Holter Zander
IV-D Contract Attorney
Williston Regional CSEU
P.O. Box 2536
Williston, ND 58802-2536

RE: Request for Opinion from Ethics Committee

The Ethics Committee of the State Bar Association of North Dakota has considered your request for opinion dated July 19, 1991. As you are aware, the questions you raised in your letter were complex and required extensive research prior to the Committee considering the request for opinion. The Committee utilized the services of Central Legal Research at the University of North Dakota School of Law which has prepared an excellent memo on the issues raised by your letter. Since you may be interested in the information

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contained in the Legal Research Memorandum, we have enclosed a copy in the letter to Tina Heinrich who in turn can get copies to all of you upon your request to her.

The Committee also considered and reviewed other information including the following: Informal Opinion 89-1528 of the American Bar Association Standing Committee on Ethics and Professional Responsibility; Formal Opinion E-86-11 of the Wisconsin Ethics Committee; Formal Ethics Opinions 90-F-123 and 83-F-55 of the Board of Professional Responsibility of the Supreme Court of Tennessee; Transcripts of testimony before the Senate Human Services and Veteran's Affairs Committee regarding Senate Bill 2203; and, the information and statute cited in your letter. We realize that this response has probably taken longer than you anticipated but we wanted to assure that all Committee members had a chance to review and consider the foregoing materials before issuing an opinion on your request.

The Committee understands your specific question to be whether the enactment or amendment of various North Dakota statutes [N.D. Cent. Code §§14-09-09.27, 14-09-09.28, 14-12.1-12, 14-12.1-18, and 14-12.1-38], negates any conflict of interest problem with IV-D Attorneys handling non-AFDC cases and at the same point handling a request for review initiated by the obligor whom the IV-D attorney either has actually prosecuted or may at any point prosecute?

The Committee would like to express its concern that while the statutes would appear to "on paper" clarify the question of who the IV-D Attorney represents in child support matters, it does not avoid the problems that may arise from the obligor's or obligee's perceptions as to whom the IV-D Attorney represents. The newly enacted or revised statutes do nothing with respect to guiding a IV-D Attorney on how to avoid a situation where the individual obligor/obligee perceives that the IV-D Attorney is representing his or her interests in the matter.

While the Committee has concerns with respect to the relationships between the IV-D Attorney, obligor and obligee, the statutes are clear on their face. The statutes provide that the IV-D Attorney represents the State and is not the attorney for either the obligor or obligee. Unless the Legislature changes the statute or the Supreme Court promulgates rules which would alter the impact of the statutes, the Committee cannot see where a conflict of interest exists with a IV-D Attorney handling non-AFDC cases and at some point handling a request for review initiated by the obligor whom the IV-D Attorney either has actually prosecuted or may at any point prosecute.

As indicated, while the statute appears to have addressed the issue of who the IV-D Attorney represents, the statutes do not abrogate the responsibility of the IV-D Attorney to adhere to the Rules of

Professional Conduct when the attorney is dealing with unrepresented persons. The Committee assumes that in both AFDC and non-AFDC cases, the IV-D Attorney would be dealing with individuals who are generally not represented by their own attorney.

North Dakota Rules of Professional Conduct, Rule 4.3 provides as follows:

In dealing on behalf of a client [the State of North Dakota] with a person [obligor/obligee] who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

As you can see, Rule 4.3 clearly requires the IV-D Attorney to clearly state his or her role in the matter. The Committee could foresee that individuals dealing with the IV-D Attorney, particularly a custodial parent, could have the perception that the IV-D Attorney represents them in the effort to collect child support payments. Presumably, those individuals would not procure the services of their own attorney since the IV-D Attorney is essentially acting in their interest to collect child support payments. The same perception might arise in a situation where obligors ask the IV-D attorney to review a support order. The unrepresented obligor may have the perception, albeit incorrect under the statute, that their interests are being represented by the IV-D Attorney.

The Committee is of the opinion that in light of the problems that could arise in the dealing with unrepresented individuals, the IV-D Attorney has an obligation to fully disclose to the unrepresented individual the IV-D Attorney's role in the matter. While it is not the Committee's role to advise you as to the exact nature and content of any notice that should be given to the unrepresented individuals that you deal with, certainly, at a minimum, the notice should indicate that you represent the interests of the State of North Dakota and that your client is the State of North Dakota.

It should also clearly indicate to the individual that you do not represent them and that any statements or information given to you by the obligor/obligee may be used against them at some point in the future. In sum, enough information has to be given to the unrepresented individual in the front end of the case to make it clear to them that you do not represent them and to avoid any perception on their part that the IV-D Attorney is their attorney. It was the Committee's view that only with such advance and

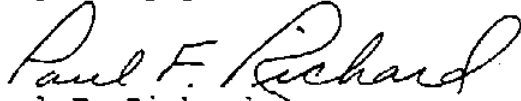
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complete disclosure of the role of the IV-D Attorney could you avoid the problems that might arise under Rule 4.3.

This letter opinion is issued to you for advisory purposes only and is not binding on you, the Courts of North Dakota, disciplinary board, grievance committees, or any other member of the Bar of the State of North Dakota.

Very truly yours,

A handwritten signature in cursive script that reads "Paul F. Richard". The signature is written in dark ink and is positioned above the typed name.

Paul F. Richard
Chairman
Ethics Committee State Bar Association
of ND

92-01

SERVING BOTTINEAU, BURKE, MCHEENY, MOUNTRAIL, PIERCE, RENVILLE & WARD COUNTIES

Regional Child Support Enforcement Unit

IN ASSOCIATION WITH
WARD COUNTY STATE'S ATTORNEY

P.O. Box 2249
Minot, North Dakota 58702-2249
(701) 852-3041

RECEIVED
JUL 22 1991

7-19-91

State of North Dakota
Department of Social Services

Paul F. Richard
P.O. Box 6017
Fargo, ND 58108-6017

RE: Request for opinion from Ethics Committee

Dear Mr. Richard:

A situation which requires an ethical opinion has been created by the implementation of automatic reviews of child support orders under Sections 14-09-08.4 -- 14-09-08.9 NDCC. The Regional Child Support Enforcement Unit (RCSEU) is designated to have the responsibility of conducting the reviews through to the final stage which may be filing a motion for modification and presenting the motion at a hearing. The statutes also specify that a review may be requested by either an obligee or obligor.

The RCSEU is a IV-D entity, that is, it was created and continues to operate according to Title IV-D of the Social Security Act and the accompanying federal regulations which begin at 45 CFR 302. North Dakota passed legislation in Chapter 50-09 NDCC which connects these regulations to this state.

Basically, the RCSEU obtains cases in two manners: 1.) By assignment under Section 50-09-06.1 or 50-09-06 which occurs when a custodial parent receives Aid to Families with Dependent Children from a county social service board for a minor child. In that event, the County Social Service Board and the State of

North Dakota become the assignee of any child support rights the custodial parent may have against the absent parent; or 2.) The custodial parent no longer receives or has never received AFDC: there is no assignment in effect for current child support rights. In this situation, there is either an automatic changeover to Non-AFDC cases or an application for services is completed. A copy of the application is enclosed. Basically, according to regulations and statutes and policy directives, the RCSEU must accept all applications from a parent having physical or legal custody of a child and must establish paternity, establish child support orders, enforce child support orders or locate absent parents. Those duties are generally what the RCSEU must do for Non-AFDC cases. The criteria may be found in the Code of Federal Regulations; to the extent possible some excerpts have been reproduced and enclosed.

These services may very well require the IV-D attorney to have Order to Show Causes initiated and attend such hearings which always have the possibility of a recommendation of civil contempt and/or incarceration. The IV-D attorney becomes familiar with the obligor as any prosecutor does with recidivist defendants and opinions or knowledge of veracity etc. are as a consequence developed. IV-D attorneys are Assistant States Attorneys, Special Assistant States Attorneys, or Special Assistant Attorney Generals, or a combination of each.

Now suppose: after the application for Non-AFDC services is processed (and work may actually have been done for some time) the obligor presents him/herself at the RCSEU and requests a review of his/her child support obligation. The statute would require the RCSEU to conduct the review, the state child support agency will probably require the RCSEU to actually open a case file for the obligor. Problems begin with the income information received by the obligor. Perhaps, due to the prosecutorial role previously mentioned, the IV-D attorney has reservations about the information which cannot be resolved by a third party verification. Perhaps the Non-AFDC parent will not cooperate with the RCSEU in conducting the review and orders to compel or subpoenas must be served upon the Non-AFDC parent. Perhaps the parties won't agree to a modification of the child support order and the IV-D attorney must file a motion and set a hearing on the matter, at which hearing the IV-D attorney may have to advocate the obligor's position in direct opposition to the Non-AFDC parent's. What position, ethically, does the IV-D attorney take? Is there or is there not a conflict of interest?

In an effort to clarify the IV-D attorneys' role in this conflicting process, the ND State Legislature has recently passed a set of statutes which specified that the IV-D attorney represents the people of the State of North Dakota, not any one specific individual regardless of the opening of

individual cases and the mandatory duties of establishment and enforcement of support orders. Since the revised code will not be out until after the effective date of these statutes, the approved text from the bill is enclosed.

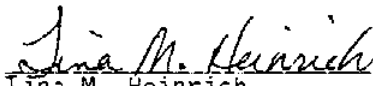
Our question is, in light of the new statutes is there still a conflict of interest problem with IV-D attorneys handling Non-AFDC cases and then at some point handling a request for review initiated by the obligor whom the IV-D attorney either has actually prosecuted or may at any point prosecute?

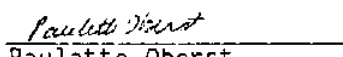
Please note: this issue has been hotly debated by attorneys and district court judges for over a year now, even in light of the new statutes. Some judges take position that the statute MAY not be sufficient, perhaps contracting out this service or creating an exception to the ethical rules is the proper way to resolve the question. Also, the statutes enacted were created and drafted by the Department of Human Services and are very close to Wisconsin statutes. If you desire more background on the issue, Blaine Nordwall at Human Services should be able to explain the origins of the legislation or contact any of the undersigned.

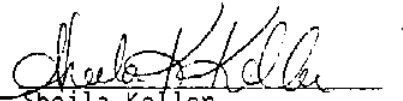
Finally, the federal government in the regulations requiring that review services be offered to either party does not recognize a possible conflict of interest problem. It is presumed that the states will have to do whatever is necessary to reconcile any such problem within the correct procedure of the

individual state such as the alternative methods described above.

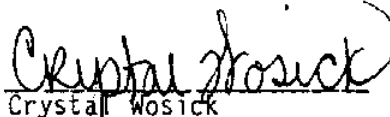
Since review and modification has begun, it is necessary as licensed attorneys for us to know from you whether the recently passed legislation regarding the IV-D attorney as representing the state and no one else is ethically sound.


Tina M. Heinrich
Minot Regional CSEU
Asst. States Attorney


Paulette Oberst
Bismarck Regional CSEU
Asst. States Attorney


Sheila Keller
Bismarck Regional CSEU
Assistant States Attorney


Adair Boening
Director Fargo ROSEU
Asst. States Attorney


Crystal Wosick
Fargo Regional CSEU
Asst. States Attorney


Neil Gillund
Fargo Regional CSEU
Asst. States Attorney


Diane Fabel Melbye
IV-D Contract Attorney
SW Regional CSEU


Janet Holter Zander
IV-D Contract Attorney
Williston Regional CSEU

PLEASE NOTE: THE REVISED CODE JUST ARRIVED. THE STATUTES WE ARE CONCERNED

ABOUT ARE: Sections 14-09-09.26; 14-09-09.27; 14-12.1-12; 14-12.1-18;
and 14-12.1-38

§ 302.80 Medical support enforcement.

(a) The State plan may provide that the IV-D agency will secure and enforce medical support obligations under a cooperative agreement between the IV-D agency and the State Medicaid agency. Cooperative agreements must comply with the requirements contained in Subpart A of Part 306 of this chapter.

(b) The State plan must provide that the IV-D agency shall secure medical support information and establish and enforce medical support obligations in accordance with the requirements contained in Subpart B of Part 306 of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0420)

[50 FR 41894, Oct. 16, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.85 Computerized support enforcement systems eligible for 90 percent FFP.

The State plan may provide for the establishment of a computerized support enforcement system funded at 90 percent Federal financial participation that meets the requirements in § 307.10 of this chapter.

(Approved by the Office of Management and Budget under control numbers 0960-0344 and 0960-0253)

[49 FR 33263, Aug. 22, 1984, as amended at 51 FR 37731, Oct. 24, 1986]

PART 303—STANDARDS FOR PROGRAM OPERATIONS

Sec. 303.0 Scope and applicability of this part.

303.1 Definitions.

303.2 Maintenance of case records.

303.3 Location of absent parents.

303.4 Establishment of support obligation.

303.5 Establishment of paternity.

303.6 Enforcement of support obligations.

303.7 Cooperation with other States.

303.10 Procedures for case assessment and prioritization.

303.15 Agreements to use the Federal Parent Locator Service (PLS) in parental kidnapping and child custody cases.

303.20 Minimum organizational and staffing requirements.

303.21 Safeguarding information.

Sec.

303.52 Incentive payments to States and political subdivisions.

303.69 Requests by agents or attorneys of the United States for information from the Federal Parent Locator Service (PLS).

303.70 Requests by the State parent locator service for information from the Federal Parent Locator Service (PLS).

303.71 Requests for full collection services by the Secretary of the Treasury.

303.72 Requests for collection of past-due support by Federal tax refund offset.

303.73 Applications to use the courts of the United States to enforce court orders.

303.80 Recovery of direct payments.

303.100 Procedures for wage or income withholding.

303.101 Expedited processes.

303.102 Collection of overdue support by State income tax refund offset.

303.103 Procedures for the imposition of liens against real and personal property.

303.104 Procedures for posting security, bond or guarantee to secure payment of overdue support.

303.105 Procedures for making information available to consumer reporting agencies.

AUTHORITY: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(e), 1396b(p) and 1396(k).

SOURCE: 40 FR 27164, June 26, 1975, unless otherwise noted.

§ 303.0 Scope and applicability of this part.

This part prescribes:

(a) The minimum organizational and staffing requirements the State IV-D agency must meet in carrying out the IV-D program, effective July 1, 1975; and

(b) The standards for program operation which the IV-D agency must meet.

[41 FR 55348, Dec. 20, 1976]

§ 303.1 Definitions.

The definitions found in § 301.1 of this chapter also are applicable to this part.

§ 303.2 Maintenance of case records.

For all cases referred to the IV-D agency or applying under § 302.33 of this chapter, the IV-D agency must immediately establish a case record which will contain all information collected pertaining to the case. When applicable, such information will in-

clude, but not be limited to the following:

(a) The referral document or documents received from the IV-A agency or the application for IV-D services by any other individual;

(b) A record of any contacts with applicant or recipient of assistance under Title IV-A who is required to cooperate pursuant to § 232.11 of this title, the date and reason therefor, the results of such contact;

(c) A record of any contacts with individual who has applied for service under § 302.33, the date and reason therefor and the results of such contact;

(d) A record of any contacts with absent parent, the date and reason therefor and the results of such contact;

(e) A record of efforts to utilize locate resources and the dates and results of these efforts;

(f) A record of efforts to utilize locate resources and the dates and results of these efforts;

(g) A record identifying the court order or, if there is no court order, calculation of the amount of the obligation utilizing the formula prescribed in the State plan pursuant to § 302.33 of this chapter.

(h) A record of any actions taken under §§ 303.3 through 303.6, and dates and results thereof;

(i) A record of communication and from the State or local agency administering the State's title IV-A;

(j) A record of communication and from any other IV-D agencies;

(k) A record of communication and from the Regional Office and Federal PLS; and,

(l) A notation in the case record of the closing of the case, the date of, and the reason for taking action.

[40 FR 27164, June 26, 1975, as amended at 50 FR 19650, May 9, 1985]

§ 303.3 Location of absent parents.

For all cases referred to the agency or applying under § 302.33 of this chapter, the IV-D agency must attempt to locate all absent parents when their location is unknown.

than 36 months after the establishment of the order or the most recent review, unless the State determines it is not in the best interest of the child and neither parent requests review. In each IV-D case in which there is no such assignment, the State must publicize the availability of the service and must review on the same schedule, but only if a parent requests it. The State must establish procedures specifying the circumstances under which orders will be reviewed more recently than every 36 months. For instance, if information becomes available that an absent parent now has a higher paying job and less than 36 months have elapsed since the last review, the State would be required to use its procedures to determine whether a review should be conducted. As a result of these changes, States can expect both upward and downward modifications of ordered support amounts. This would be consistent with the increased emphasis being placed on the guidelines for support amounts in the provisions of the Family Support Act.

To bring regulations at 45 CFR 303.4 in line with these new requirements, we propose to amend paragraph (c) of this section to eliminate the requirement for State IV-D agencies to initiate a review when they become aware of changes in factors affecting the support award amount. This deletion does not preclude reviews performed more frequently than every three years. If, based on the State's procedures, circumstances warrant it. If, for example, a parent subject to an order brings to the State's attention a significant increase in the obligor's income which under the State's guidelines would likely lead to an increase in the support award amount, the State would be required to use its procedures to determine whether or not to proceed with a review regardless of the time elapsed since the last review or modification.

In the next few paragraphs, we discuss issues related to the implementation of review and modification of support orders, specifically, the requests of absent parents, interstate cases, and the question of *guardian ad litem*.

First, we believe States may have questions regarding the significant provision that they respond to requests by absent parents for review and modification of support orders. While the statute clearly requires the IV-D agency to respond to such requests, one concern may be the perception that there is a conflict of interests in providing "services" to both absent and custodial parents.

Our longstanding position has been that the IV-D agency does not provide legal services *per se*. Support rights are assigned to the State in AFDC cases, and even in non-AFDC cases the traditional attorney-client type of relationship does not exist. Custodial parents have no right, for instance, to dictate what enforcement actions are taken in the case. When arrearages for current and former AFDC recipients are recovered, the State may take its share of the recovery first and the custodial parent may be left with only the current support payment. Clearly the State does not always have interests which are identical to the custodial parent's. Where good cause for noncooperation is claimed, for example, the State may be enforcing the support obligation of the absent parent over the custodial parent's express objection.

As States move away from an adversarial method of establishing, reviewing and modifying orders, and toward an expeditious process based on application of objective guidelines, the less there should be an issue of apparent "conflict of interest." We encourage States to establish a simple *pro se* process for establishment and modification of orders whereby the parents may essentially represent themselves. Some States already have successfully implemented such a process.

There is an immediate need to educate and convince those involved in child support enforcement—courts, administrative agencies, IV-D agencies, and absent and custodial parents—that it is in all of their best interests, and especially in the interests of the children involved, that non-adversarial processes be put in place to equitably establish and modify orders. States must prepare to respond to absent parent requests which may result in downward modification of orders because Congress has required them to do so. How States respond to the challenge of developing a system to accomplish this requirement will determine its impact on children and the IV-D program.

Other questions may arise regarding the treatment of reviews in interstate cases. If a State is enforcing an order from another State and a review is requested by the absent parent or the enforcing State otherwise determines a review is warranted because of some change in the absent parent's circumstances, the responding State should contact the State with the order, provide pertinent information, and request that the State with the order conduct the review. The State with the order should conduct the review,

according to its guidelines for setting support award amounts, and modify the order, if appropriate. In addition, the State with the order in an interstate case should conduct reviews in accordance with the requirements of § 303.8 and its procedures for review and modification of orders in its intrastate cases. The State conducting the review is responsible for sending the required notices to the parents involved and for notifying the other State of the results of any review and modification.

We believe an additional concern may center on the recovery of costs incurred by the State under these regulations. Recovery of costs is permissible under 45 CFR 302.33(d) in non-AFDC cases, either from the custodial parent or the absent parent. If a State chooses to recover costs under the IV-D program, it would do so subject to the regulatory provisions cited above in the case of review and modification costs.

We are also aware that questions may be raised regarding whether we consider a *guardian ad litem* to be necessary to protect the interests of the child. For example, when an absent parent requests a review and a downward modification of a support order may be warranted. In our view, a *guardian ad litem* is unnecessary with the advent of support award guidelines in each State and the rebuttable presumption that the guidelines result in a correct and appropriate computation of the support award amount. Assuming income verification, we believe the IV-D agency is not in a position to second guess the amount of an award computed under its State guidelines for support and should view its role as ensuring that the maximum appropriate award is obtained. We stress, however, the need for income verification to determine that the information presented is accurate before any modification takes place.

4. Wage or Income Withholding*

Section 3 of the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378) added sections 454(20) and 466 of the Act to require all States to implement certain mandatory procedures which had been proven to noticeably increase the effectiveness of State programs, including procedures for wage withholding.

Section 466 required that States have in effect two distinct procedures for carrying out a program for wage withholding. The first, required under section 466 (a)(1) and (b) of the Act, pertained only to cases being enforced through the IV-D agency. Under this requirement, States must have and use a

modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available without the necessity of filing an application for services under § 302.33 of this part, in accordance with § 303.100 (i) and (j) of this chapter:

(10) Effective October 13, 1990 or October 13, 1993, as appropriate, procedures for the review and modification of child support orders, in accordance with the requirements of § 303.8 of this chapter.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

4. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

5. In § 303.4, paragraph (c) is revised and paragraph (d) is added to read as follows:

§ 303.4 Establishment of support obligations.

(c) Periodically review and modify the support obligation, as appropriate, in accordance with § 302.70(a)(10) of this chapter and § 303.8 of this part.

(d) Within 90 calendar days of locating an absent parent or of establishing paternity, establish or modify an order for support, or complete service of process necessary to commence proceedings to establish or modify a support order (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)).

6. A new § 303.8 is added to read as follows:

§ 303.8 Review and modification of child support obligations.

(a)(1) The State must implement procedures for the periodic review and modification of child support orders being enforced under this chapter.

(2) For purposes of this section, "modification" applies only to support provisions of the order.

(3) For purposes of this section, "parent" includes any custodial beneficiary of the support order.

(b) Effective on October 13, 1990: (1) The State must determine whether an order being enforced under this chapter should be reviewed pursuant to a written and publicly available State plan for the periodic review and modification of orders. The plan must

target for review, and modification, if appropriate, orders in IV-D cases in which there is an assignment of support rights to the State and show the commitment of resources necessary to review orders in all IV-D cases upon the request of either parent subject to the order or of a State child support enforcement agency;

(2) The State must initiate a review, in accordance with its plan, at the request of either parent subject to the order or of a IV-D agency; and

(3) The review, and modification if appropriate, must be accomplished in accordance with the State's guidelines for support described in § 302.56 of this chapter.

(c) Effective on October 13, 1993 or an earlier date the State may select: (1) Except as specified in paragraph (c)(4) of this section, in IV-D cases in which there is an assignment of support rights to the State, a review of each order must take place no less frequently than 36 months after the establishment of the order or the most recent review. In IV-D cases in which there is no such assignment of support rights to the State, a review of the order must take place no less frequently than 36 months after the establishment of the order or the most recent review at the request of either parent. The State must establish procedures specifying circumstances under which orders will be reviewed more frequently than every 36 months. In all IV-D cases, orders must be modified, if appropriate, in accordance with the State's guidelines for support and within the timeframe specified in § 303.4(d) of this part.

(2) "Review" means an objective evaluation of complete, accurate, up-to-date information necessary for application of the State's guidelines for support. The State must require a parent to provide any necessary information otherwise unavailable to the State.

(3) Inconsistency with the State's guidelines for support must be adequate grounds for petitioning for modification of an order regardless of whether the order was established under the guidelines, unless the inconsistency is considered negligible under the State's procedures. A State's procedures must treat the availability of reasonably-priced health insurance coverage, as defined in § 306.51(a), as adequate grounds for petitioning for modification of the order.

(4) Exception. In a IV-D case in which there is an assignment of support rights to the State, the State need not conduct a review if neither parent has requested a review and the State has determined that a review would not be in the best interests of the child. In these cases, an

increase in support or the availability of health insurance must be considered to be in the best interests of the child, unless either parent demonstrates it would not be in the child's interests after a hearing in accordance with paragraph (d) of this section.

(d) The State must notify each parent subject to a child support order in the State that is being enforced under this chapter:

(1) Of the right to request a review of the order;

(2) Of any review of the order at least 30 calendar days before commencement of the review;

(3) Of a proposed modification (or determination that there should be no change) in the order, and of their right to initiate proceedings to challenge the modification or determination within 30 calendar days after notification.

(e) The State may meet the requirements of paragraph (d)(1) of this section, by sending a one-time notice to each parent or requesting that the court or administrative authority provide a similar one-time notice in the order. The State must also periodically publicize the right to request a review as part of its support enforcement services as required under § 302.30 of this chapter.

7. Section 303.100 is revised to read as follows:

§ 303.100 Procedures for wage or income withholding.

(a) *General withholding requirements.*

(1) The State must ensure that in the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her wages must be withheld, in accordance with this section, as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.

(3) The total amount to be withheld under paragraphs (a)(1), (a)(2) and, if applicable, (f)(1)(iii) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any other action by the court or entity that issued it.

(5) If there is more than one notice for withholding against a single absent parent, the State must allocate amounts

ained support payments as meet need, the IV-D agency er the retained support pay- is recovery by the IV-D all be carried out in accord- the standards for program provided in § 303.80 of this

receiving notice from the E agency that there has aim of good cause under this title, the IV-D agency d all activities to establish r secure support until noti- final determination by the E agency.

V-D agency will not under- ablish paternity or secure any case for which it has ice from the IV-A or IV-E e there has been a finding e pursuant to §§ 232.40 e 249 of this title unless een a determination by the cal IV-A or IV-E agency t enforcement may pro- t the participation of the r other relative. If there uch a determination, the y undertake to estab- t secure support but o. the caretaker or other ch undertaking.

the Office of Management under control number 0960-

May 9, 1985, as amended at 51 y 15, 1986; 51 FR 37731, Oct.

ort payments to the IV-D

plan shall provide that:

case in which support e collected for a recipient the State's title IV-A plan to whom an assignment l is effective, such pay- be made to the IV-D hall not be paid directly

as possible but not later after the end of a month, gency will inform the istering the State's title e amount of the collec- presents payment on the ort obligation for that

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month as determined in § 302.51(a). Upon being informed of this amount, the IV-A agency will determine if such amount is sufficient to make the family ineligible for an assistance payment pursuant to the State's IV-A plan (See § 232.20 of Chapter II of this title). If such amount is sufficient to make the family ineligible for an assistance payment, the IV-A agency will notify the IV-D agency and the IV-D agency will distribute the amount collected pursuant to § 302.51 of this part. The IV-D agency will notify the family that it will continue to provide services pursuant to § 302.51(e)(1) of this part.

(c) If the IV-A agency determines that the amount of the collection which represents payment on the required support obligation for the month does not make the family ineligible for an assistance payment, or if a hearing is requested pursuant to § 205.10 of this title, the IV-A agency will notify the IV-D agency of such fact and the IV-D agency will distribute such amount pursuant to § 302.51 of this part.

(d) To the extent any amount collected in a month includes payment on required support obligations for past months, that portion of such amount will be distributed by the IV-D agency pursuant to § 302.51(b) (4) and (5) of this part.

(e) Support collected in a month after any month in which the support collected makes the family ineligible for an assistance payment (pursuant to § 232.20 of this title) but prior to or in the month in which the family receives its last assistance payment, shall be used to reimburse the State for any assistance paid in such months with any excess being paid to the family. This provision will not apply when a hearing is requested pursuant to § 205.10 of this title. In these cases, when the hearing results in a determination that the family was ineligible for an assistance payment, the IV-D agency will determine the amount by which the entire support collection for a month that the family would have received pursuant to paragraph (b) of this section exceeds the amount the family actually received for a month as an assistance payment and pursu-

ant to § 302.51. Such excess shall be paid to the family. If the family is determined to be eligible, distribution will continue to be made pursuant to § 302.51.

(Approved by the Office of Management and Budget under control number 0960-0385)

[40 FR 27159, June 26, 1975, as amended at 47 FR 57281, Dec. 23, 1982; 49 FR 22289, May 29, 1984; 50 FR 19648, May 9, 1985; 51 FR 37731, Oct. 24, 1986]

§ 302.33 Individuals not otherwise eligible for paternity and support services.

(a) *Availability of services.* The State plan must provide that the support collection or paternity determination services established under the plan shall be made available to any individual not receiving assistance under the Aid to Families with Dependent Children (AFDC) program who files an application for the services with the IV-D agency. In an interstate case, only the initiating State may require an application under this section.

(b) *Definitions.* For purposes of this section:

"Applicant's income" means the disposable income available for the applicant's use under State law.

(c) *Application fee.* (1) Until October 1, 1985, the State plan may provide for an application fee to be charged each individual who applies for services under this section. If the State elects to charge a fee, the State plan shall specify either:

(i) A flat dollar amount not to exceed \$25 to be charged each applicant; or

(ii) A fee schedule to be used to determine the fee to be charged each applicant. Such fee schedule will be based on each applicant's income and will be designed so as not to discourage the application for such services by those most in need of them.

(2) Beginning October 1, 1985, the State plan must provide that an application fee will be charged for each individual who applies for services under this section. Under this paragraph:

(i) The State shall collect the application fee from the individual applying for IV-D services or pay the application fee out of State funds.

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(ii) The State may recover the application fee from the absent parent who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services and repay it to the applicant or itself.

(iii) State funds used to pay an application fee are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(iv) Any application fee charged must be uniformly applied on a statewide basis and must be:

(A) A flat dollar amount not to exceed \$25 (or such higher or lower amount as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs); or

(B) An amount based on a fee schedule not to exceed the flat dollar amount specified in paragraph (c)(2)(iv)(A) of this section. The fee schedule must be based on the applicant's income.

(v) The State may allow the jurisdiction that collects support for the State under this part to retain any application fee collected under this section.

(3) In an interstate case, the application fee is charged by the State where the individual applies for services under this section.

(d) *Recovery of costs.* (1) The State may elect in its State plan to recover any costs incurred in excess of any fees collected to cover administrative costs under the IV-D State plan. A State which elects to recover costs shall collect on a case by case basis either excess actual or standardized costs:

(i) From the individual who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services under this section; or

(ii) From the individual who has filed an application for IV-D services under this section, either directly or from the support collected on behalf of the individual, but only if the State has in effect a procedure for informing all individuals authorized within the State to establish an obligation for support that the State will recover costs from the individual receiving IV-D services under this section.

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(2) A State that recovers standardized costs under paragraph (d)(1) of this section shall develop a written methodology to determine standardized costs which are as close to actual costs as is possible. This methodology must be made available to any individual upon request.

(3) The IV-D agency shall not treat any amount collected from the individual as a recovery of costs under paragraph (d)(1)(i) of this section except amounts which exceed the current support owed by the individual under the obligation.

(4) If a State elects to recover costs under paragraph (d)(1)(ii) of this section, the IV-D agency may attempt to seek reimbursement from the individual who owes a support obligation for any costs paid by the individual who is receiving IV-D services and pay all amounts reimbursed to the individual who is receiving IV-D services.

(5) If a State elects to recover costs under this section, the IV-D agency must notify, consistent with the option selected, either the individual who has filed an application for IV-D services or the individual who owes a support obligation that such recovery will be made. In an interstate case, the IV-D agency where the case originated must notify the applicant of the States that recover costs.

(6) The IV-D agency must notify the IV-D agencies in all other States if it recovers costs from the individual receiving IV-D services.

(e) *Assignment.* (1) The IV-D agency may take an assignment of support rights from an individual who applies for services under this section. However, as assignment by an individual under this section does not constitute an assignment under § 232.11 of this title and may not be a condition of eligibility for services under this section.

(2) Before the applicant for IV-D services under this section makes an assignment of support rights, the IV-D agency shall inform the individual that the assignment is not a condition of eligibility for services under this section and may have the effect of making the support debt dischargeable in bankruptcy.

Office of Child Supp

(Approved by the Off and Budget under co. 0253, 0960-0383, and 09 [49 FR 36772, Sept. 19, 50 FR 19648, May 9, 19, 24, 1986])

§ 302.34 Cooperative a

The State plan s the State will enter ments for cooperat with appropriate o enforcement officials. may be entered into cial covering more t ficial, or agency, if s has the legal autho agreements on beha officials, or agencies shall contain provis courts and law-enf with pertinent info locating absent paternity and sec cluding the immedi information obtaine this title to the cot ment official, to the information is releva be performed pursu ment. They shall a sistance to the IV-l ing out the progral to any other matte cern. Under this agreements may inc (a) For the inves ecution of fraud dir ternity and child a (b) To reimburse forcement officials ance.

[40 FR 27159, June 26 47 FR 57281, Dec. 23, .

§ 302.35 State parent

The State plan s lows:

(a) The IV-D agi a State PLS using:

(1) All relevant tion and records av and in other Sta and

(2) The Federal ment of Health and

(b)(1) The IV-D lish a central Sta may also designate

FOUNDED IN 1888

SERKLAND, LUNDBERG, ERICKSON, MARCIL & MCLEAN, LTD.

ATTORNEYS AND COUNSELORS AT LAW

10 ROBERTS STREET

P.O. BOX 6017

FARGO, NORTH DAKOTA 58108-6017

NORMAN G. TENNESON (1898-1982)

CHESTER J. SERKLAND - Retired

LOWELL W. LUNDBERG

ARMOND G. ERICKSON

JACK G. MARCIL*

RONALD M. MCLEAN*

ROGER J. MINCH*

PAUL F. RICHARD*

STEVEN K. AAKRE*

MAUREEN HOLMAN*

BRAD A. SINCLAIR*

LADONNE R. VIK*

JANE L. DYNES*

TELEPHONE

701/232-8957

TELEFAX

701/237-4049

GARY A. ROCKNE

OFFICE MANAGER

*ALSO LICENSED IN MINNESOTA

December 27, 1991

Mr. Albert Wolf
Attorney at Law
P.O. Box 2056
Bismarck, ND 58502-2056

Mr. Michael Maus
Attorney at Law
P.O. Box 370
Dickinson, ND 58602-0370

Mr. Robert LaBine
Attorney at Law
P.O. Box 320
Grand Forks, ND 58206-0320

Murray Sagsveen
Attorney at Law
P.O. Box 1695
Bismarck, ND 58502-1695

Alice Senechal
Attorney at Law
P.O. Box 1376
Grand Forks, ND 58206-1376

Patricia Ellingson
Attorney at Law
P.O. Box 2626
Fargo, ND 58108

Lori Beck
Attorney at Law
P.O. Box 1389
Fargo, ND 58107

Ladies and Gentlemen:

Enclosed please find a draft of the letter that is to go to the Child Support Enforcement Attorneys. Please review this and get any comments back to me no later than January 6, 1992.

I apologize for the delay in getting this out to you but I ended up in the hospital for a few days with back problems and I am just getting caught up at this point. If I don't hear from you by January 6, 1992, with comments I will assume that you agree with the form and contents of the letter. If the comments are significant or change the substance of the letter I will put this on the agenda for our next meeting in January.

I look forward to hearing from you, or not hearing from you,
whichever the case may be. Best wishes for the new year.

Very truly yours,

SERKLAND, LUNDBERG, ERICKSON,
MARCIL & MCLEAN, LTD.

A handwritten signature in cursive script, reading "Paul F. Richard". The signature is written in dark ink and is positioned above the typed name.

Paul F. Richard

PFR/tmr