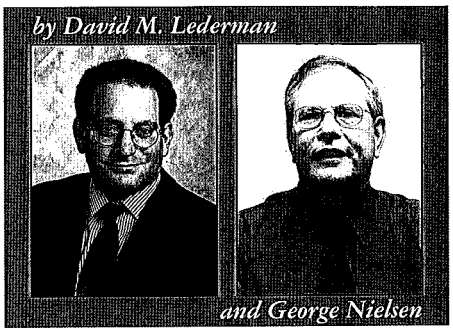
DCSS Liaison Report

An Overview of the New Automated Child Support System for Family Law Practitioners



THE STATE OF CALIFORNIA IS in the process of implementing a new statewide automated Child Support Enforcement (ESC) system. This system, which we will describe, significantly impacts the manner in which we as attorneys interact with the Department of Child Support Services (DCSS), and how child support is established, modified and collected. As explained below, the biggest impact for private attorneys is the manner in which child support is collected, and for those who practice before the child support commissioner, the new vehicle for calculating support.

Before we discuss the components of the new system, it is important to understand how these changes came about. The first section of this article provides a short history of the statewide child support system. The second section will explain the changes, and the final section will discuss its possible impact on the private bar.

HISTORY

The 1988 Family Support Act (FSA) amended the Social Security Act to mandate that each state establish a single statewide uniform CSE system by October 1, 1995. This deadline was later extended to October 1, 1997.[1]

The functional requirements for the computerized enforcement system are described in 45 CFR 307.10 et. seq. These requirements include opening cases, finding obligor parents, tracking arrearages, centralized support collection and disbursement system, automatic use of enforcement procedures, and the calculation of child support.[2]

To compel the states to comply with this new mandate, the federal government provided grants to pay for the creation and maintenance of the system. The federal government levied significant fines against states that failed to timely create and implement a compliant system.

California's First Attempt. In 1992, the State of California entered into a contract with Lockheed Martin to develop and implement a Statewide Automated Child Support System (SACSS). This first attempt was a disaster, costing California (after five years of design) in excess of $157 million, plus penalties and fines exceeding $1 billion.

According to the California state auditor, the failure of the Lockheed Martin project was the result of a "cascade of events" from three sources: the federal government, Lockheed Martin, and the State of California.[3]

Although FSA was enacted in 1988, the federal government did not issue the final system requirements until June of 1993, leaving a little more than one year for the states to develop and implement a compliant program by the original deadline of October 1, 1995. Even with the extended deadline of October 1, 1997, none of the 10 largest states were able to develop and implement a program meeting the federal system requirements.

According to a California state auditor's report, Lockheed Martin "underperformed" on the project. Only 10 of the 87 staff members specifically named as working on the SACSS project actually did any work on the project. Lockheed Martin had high staff turnover, developed a "flawed system" and failed to test it adequately.[4] Even though the State of California paid $3 million to a quality assurance contractor, it failed to heed the contractor's warnings of the deficiencies with Lockheed Martin.[5] On November 20, 1997, after lengthy negotiations with Lockheed Martin and consultations with the federal government, the independent verification and validation vendor, the counties, the legislature, and others, the state terminated the project entirely. The ensuing litigation between the state and Lockheed commenced in June 1998 and ended with a judgment in June of 2000 in favor of Lockheed against the state for an additional $46.4 million, on top of the initial contact price of $111 million, bringing the total price paid to Lockheed Martin for SACSS to $157 million.[6]

California's Second Attempt. In 1998, the state attempted to implement a statewide child support system, based on a consortium method under which each county would select one of four systems that already existed in the Kern, Los Angeles, Riverside and San Francisco Counties. The intention was to link these systems together to form a statewide system. However, by early 1999, the federal Department of Health and Human Services rejected the consortium approach and required a single statewide automated child support system.[7]

Fines and Penalties. In 1990, the federal government reimbursed the states for 90% of the cost of planning, developing and implementing an automated child support system. Because of California's noncompliance, the Office of Child Sup-

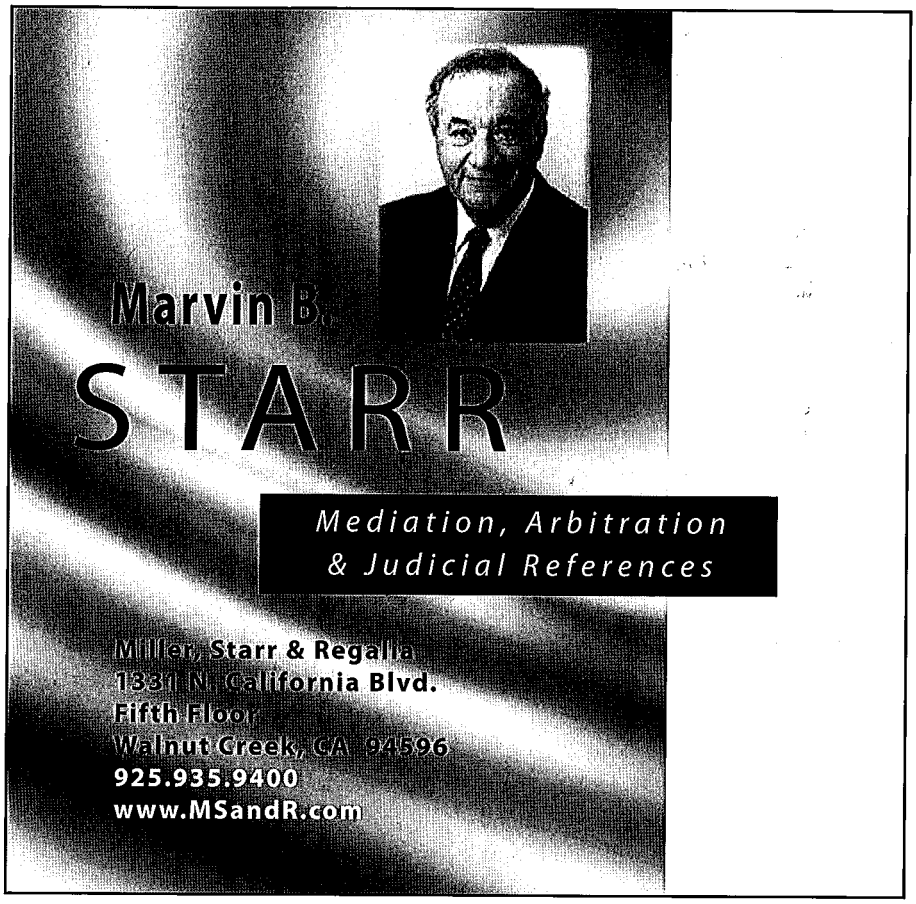
port Enforcement (OCSE) reduced its funding to California to the statutory base amount of 66% under 42 USC 655 (a).[8] Note the 90% funding level for states with compliant programs ended in 1998. Additional grants above and beyond the base 66% were available pursuant to 42 USC 655 (a) to states that had a certified automated system through the 2001 fiscal year ending in 2002.[9]

The cut in funding was only the start. Since California failed to meet the revised federal deadline of October 1, 1997 to develop an approved child support system, California started paying penalties to the federal government in 1998. According to 42 USC 655, the penalties increased in severity over the course of five years. During the first year, the penalty was 4% of the amount of the reimbursement grant described above and increased to 8% in the second year, 16% for the third year, 25% for the fourth year and 30% for the fifth and any subsequent years. In dollars, this meant that for California, the penalties started at $11.9 million for fiscal year 1998–1999, and grew to $157 million by fiscal year 2001–2002.[10] For fiscal year 2005–2006, the penalty has reached $223 million, for a cumulative total of almost $1.2 billion.[11] By June of last year, only South Carolina and California did not have a certified automated child support system.[12]

THE CALIFORNIA CHILD SUPPORT AUTOMATION SYSTEM

In 1999, AB 150 set out the approach currently being implemented. It began with Version 1 under which each county converted to one of two systems that are now linked together. The federal government approved this approach and is evaluating the state's application for actual certification. Version 2 will bring all the counties from the two existing systems onto the CSE statewide system, discussed below.

California started to develop the new plan, known as the California Child Support Automation System (CCSAS) in 2000. CCSAS has two components: 1) The Child Support Enforcement system, which is being developed by a team of vendors led by IBM. IBM was awarded the CSE con- ▶



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tract in July of 2003 for $801 million; 2) The State Disbursement Unit (SDU), which is a service contract that was awarded to Bank of America in December of 2004. The initial contract is for seven years and costs the state $186 million.

On September 20, 2006, the State of California requested federal certification for CCSAS. DCSS anticipates that it will take a year or more for the federal OCSE to make a decision. Regardless, additional penalties will be suspended for the certification period.[13]

CHILD SUPPORT ENFORCEMENT

The CSE will be linked to SDU and will, among other functions, provide services related to the establishment of paternity, and setting, modifying and enforcing child support orders.[14] Elements of the CSE will include a new child support guideline calculator.

The CSE guideline calculator was developed, certified by the Judicial Council, and rolled out to all counties by the State Department of Child Support Services as a part of CCSAS, Version 1. DCSS attorneys will start bringing printouts from this system. However, calculations from a commercial system can still be produced in court at this time. Pilot counties will come up on CCSAS Version 2 (the version to be implemented) this month. Contra Costa is scheduled to convert in August of 2007. Final implementation of Version 2 statewide is scheduled to be completed by the end of 2008. Once completed, it is anticipated that the child support guideline calculator program, in some form, will be available on the internet for free use.

(Note: The CSE child support guideline calculator does not calculate spousal support or family support. However, the state is in the process of analyzing the feasibility of adding a spousal support calculation feature to the system. Apparently, even if a spousal support component were added to the system, it would not include family support and would be limited to only one of the county guideline calculations.)

In addition, another mandate of the CSE system is that it be entirely electronic, self contained and automated. All documents generated by the DCSS must be on forms that can be automated as well. No production of child support case-related documents will be able to be done outside the system. All DCSS activities, including those done by attorneys, must be done on the system. For example, a summons and complaint will be generated using the system, and all processes from that point on to obtain a judgment will either be done or tracked by the system. Other examples include locating parents, logging phone calls, answering correspondence, etc. In addition, each county will have access to the case data in all other counties. Because of the federal requirement to have a single statewide system, support establishment and enforcement practices (including legal processing) in all the counties must become much more uniform than at present. As a result, attorneys and litigants dealing with the department will notice some significant changes from the way things are done now.

STATE DISBURSEMENT UNIT

The second component of CCSAS is the SDU. The SDU is the central collections agency for both state and private child support collections and distribution.

The SDU is already in full implementation for existing DCSS cases, in that all payments that used to come to a local DCSS are being sent to the SDU. But for Non-IV-D cases, the main method of implementation of this system will be through the employers. The state is in the process of sending notices to employers instructing them to send payments directly to the SDU as opposed to whoever the recipient is on the wage assignment. This may take some time to process and may cause some delays as the employers change the recipients. However, for new wage assignments, this may also ultimately reduce delays because the employer will not have to transition to the SDU at a later date.

It is now necessary to submit the Child Support Registry form, FL-191. When the SDU receives the form on a new case, they assign an SDU identifier and then input the identifying information about the parties and court order. This information is used to account for and process payments received from employers on Non-IV-D cases; however, the SDU does not maintain arrearage balances on Non-IV-D cases. When they get a form on an existing case, they will update that case with the new information.

Practitioners should also note that under the SDU system, payments will be credited to the payor's account in the month that the payment is *received* and *processed* by the SDU, as long as the payment is received and processed by the last day of the month (as opposed to the old system of the credit being on the date of the withholding). So, for example, if the employer withholds a January payment from an employee's wages on January 20 and the payment is sent to the SDU on the same day, but is received by the SDU on the February 1, that payment will be credited to the payor's account for the month of February — creating an automatic arrearage.

(Note: If a payor has multiple obligations for support around the state, the SDU will distribute the payments between recipients on a pro rata basis.)

Child support recipients will have three payment options: check, electronic funds transfer to a bank, and electronic pay cards. The electronic pay cards function like a store debit card and can be used anywhere Visa is accepted.

The address that employers should be advised to send payments is:

State Disbursement Unit
P.O. Box 989067
West Sacramento, CA 95798

Additional information is available at the SDU website, www.casdu.com/CAS_SDU/, along with information on how to transfer funds electronically.

Attorneys will not need to reissue old wage assignments. The SDU system emphasizes employer compliance. Employers should expect to receive notices from the California Department of Child Support Services (see attached "Appendix A") that will provide instructions on how to handle wage assignments through the SDU. ▶

In addition, the SDU cannot collect child support add-ons unless it is part of a single monthly payment.

CONCLUSION

As Bob Dylan would say — the times they are a changing. The two changes that affect private attorneys and their clients most are the establishment of the SDU and the implementation of a new child support program.

The SDU is currently in place. All wage assignments will be collected through the SDU. Since the SDU will function as the central clearinghouse for all wage assignments, it will become quite effective at processing wage assignments. It cannot, however, process private arrearages collections, or medical or health care reimbursements. If an attorney has an order that is for anything that requires monitoring, private counsel may want to consider not filing a wage assignment, unless there is non-compliance with the support order. It may be more convenient for counsel to instruct the payor clients to pay by electronic funds transfer or bill pay. Should the payor fail to make a timely payment, the support recipient could still request a wage assignment in the future.

Note as well that the SDU is for processing child support, not spousal support. If your client is receiving spousal support, you may continue to use the Earnings Assignment Order to Spousal or Partner Support, FL-435 and have the employer pay the recipient directly, avoiding the SDU.

As it stands, the private vendors of support programs have little to fear from the state's child support calculator. Its use, at least for the foreseeable short term, will not be mandatory in any department except for the child support commissioner in Department 52. It does not have the flexibility that the private programs have to determine family support, and even if the state support calculator does include a spousal support component, it does not appear that it will have enough flexibility for the counties to use in applying their individual guidelines. The state free program may evolve, but for now, maintain your subscription with your private support calculator vendor. ◆

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[1]See *Child Support Automation System: Project Charter,* Rev. August 1, 2002. California Government Document DCN: PROJ-00160-2.0-080102, document is available at www.ftb.ca.gov; see also 45 CFR 302.85. PL 100-485 (HR 1720). The automation deadline was extended pursuant to PL 104-35 (HR 2288).

[2]See 45 CFR 307.10 et. seq.

[3]See *Health and Welfare Agency: Lockheed Martin Information Management Systems Failed to Deliver and the State Poorly Managed the Statewide Automation Child Support System,* California State Auditor Report 97116, March 1998.

[4]*Ibid.*

[5]*Ibid.*

[6]The Capitol Connection, Vol. 4, Issue 9, October 2002, http://courtinfo.ca.gov/courtadmin/aoc/documents/capcon1002.pdf.

[7]See *Child Support Enforcement Program: The Procurement of a Single, Statewide Automated Child Support System is Taking Longer Than Initially Estimated, With Several Challenges Remaining,* California State Auditor Report 99028.1, December 2002.

[8]*Ibid.* at page 10.

[9]42 USC 655 (a)(2).

[10]*Child Support Enforcement Program: The Procurement of a Single, Statewide Automated Child Support System is Taking Longer Than Initially Estimated, With Several Challenges Remaining,* California State Auditor Report 99028.1, December 2002 at page 10.

[11]*The Child Support Program in California: Current Challenges, Future Objectives,* paper prepared by Leora Gershenzon, Counsel, the Assembly Judiciary Committee, March 2005.

[12]Administration for Children & Family Services website, see www.acf.dhhs.gov/programs/cse/stsys.

[13]*State's Child Support Computer System Ready for Federal Approval,* California Health & Human Services Agency, Press Release dated September 20, 2006.

[14]42 USC 654 (4); 42 USC 654A.

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