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MENDOCINO COUNTY DISTRICT ATTORNEY FAMILY SUPPORT DIVISION

The District Attorney Family Support Division (FSD) is responsible for collecting child support payments from absent parents. It has investigators, collection officers, legal secretaries, aides and other staff who are charged with collecting all payments due.

Reason for Investigation

The Grand Jury received a citizen's complaint.

Method of Investigation

The Grand Jury interviewed the complainant, two members of the FSD, and a member of the District Attorney's staff. Documents, including summons and a court order were examined. Site visits to the Offices of the FSD, Fort Bragg Ten Mile Court District Attorney and Clerk of the Ten Mile Court.

Relevant Law

California Family Code Section 5246 and Title 15 U.S. Code Section 1673(b) allow up to 65% of net wages for assignment to dependent(s). The size of a second family as well as other factors can influence this maximum. The California Code of Civil Procedure, Section 685.010 regulates interest on arrears at 10%. The Formula for Statewide Uniform Guideline for Determining Child Support, California Family Code Section 4055, and the Rebuttable Presumption that Amount Established by Formula is Correct Amount, California Family Code Section 4057, are the determining factors in setting financial responsibility.

Findings

1. The FSD must seek to collect reimbursement from absent parents for payments expended by the State for Temporary Assistance to Needy Families (TANF), which replaced Aid to Families With Dependent Children (AFDC), in the support of dependent children.

Response (District Attorney): Agree with the finding in part, but want to add that the Family Support Division collects child support for children regardless of the aid or non-aid status of the child, upon request of any party to the case.

Response (Board of Supervisors): The Board agrees with this finding.

2. Dependent children or their custodial parent may request the FSD to collect payment of court-ordered support from an absent parent.

Response (District Attorney): Agree with the finding in part, but feel compelled to add that child support collection by this department may be preceded by a court order, as in the case of a dissolution order which includes support, or it may be the consequence of one of the parties contacting this department for service.

Services may include the location of the non-custodial party, the establishment of paternity, and the establishment of an order for support by way of summons, complaint, stipulation, contested hearing or other means, and then the enforcement of the resulting order. A great many of our cases are direct referrals from the Department of Social Services, where the custodial party collecting welfare has little discretion not to co-operate with our office in the establishment and enforcement of a case. When the case comes in from that office, it is treated just the same as any other. We do not discriminate in the servicing of cases depending on where or how the case originated. We treat everyone equally under the law.

Response (Board of Supervisors): The Board agrees with this finding and the response provided by the District Attorney – Family Support Division.

3. The FSD is mandated to collect monetary reimbursements and other assets from absent parents.

Response (District Attorney): Agree with finding 3 in general, but the collection of money and interception of assets is just one of the thousands of mandated functions that we have.

Response (Board of Supervisors): The Board agrees with this finding.

4. With a lawful judgment against the absent parent, the FSD may:
- a. attach wages,
 - b. take federal and state income tax refunds,
 - c. take drivers license, and
 - d. initiate bad credit statements against the absent parent's name.

Response (District Attorney): Agree with the finding in part, but the finding lists just a fraction of the economic remedies we can use against a recalcitrant non-custodial party. The available remedies encompass any collection vehicle available in the Civil Code and within judgment debtor law. In addition, for those non-custodial parties who are resistant to the best practices we can employ in the civil arena, there is the possibility of criminal prosecution for non-support or child abandonment.

Response (Board of Supervisors): The Board agrees with this finding but notes that the District Attorney – Family Support Division has numerous other means to seek payments.

5. The FSD may collect funds from the absent parent of one child in a home and all biological children of the same mother living in that home.

Response (District Attorney): Disagree with this finding because the FSD must collect funds from the absent parent if legally possible. The amount collected mostly depends on the income of the absent parent, the income of the custodial parent and the percentage of custody of that child they share. The amount paid may be more in proportion to the pro-rata share of welfare for that particular non-custodial party's child who may be living in a welfare home with the custodial parent. To that extent, the non-custodial party may be contributing to welfare reimbursement for other biological children of the same mother who is the custodial parent. However, unless there is a biological connection between the non-custodial parent and the other children or unless there is a judicially recognized parental relationship between the non-custodial parent and the other children, there is no direct legal obligation for support.

Response (Board of Supervisors): The Board agrees with the response provided by the District Attorney – Family Support Division. They must collect funds from the absent parent if legally possible.

6. It has been reported to the Grand Jury that absent parents often appear in court without adequate knowledge of their rights, privileges and duties.

Response (District Attorney): Agree with this finding, for the reasons stated below under Recommendation.

Response (Board of Supervisors): Local government can always do more to educate our citizens in the processes we employ. The Board believes every effort is done within reason by District Attorney – Family Support to notify and educate the parties of their rights and procedures. The parties must make the effort to educate themselves given the resources available to them.

Recommendation

The FSD should develop a better procedure to keep absent parents informed about what is necessary to preserve their rights, privileges and duties, so that they may petition the court in a timely manner.

Response (District Attorney): Agree and disagree with this recommendation. Public offices can always do more to inform the public about their functions. The FSD has a Public Outreach mandated effort, whose purpose is to disseminate information to the general public about our mission. For example, we recently had a booth at the Redwood Empire Fair Exhibition Hall, where our literature was available for the taking. Unfortunately, it was not as popular as the balloons and other hand-outs we had available. The only limits on our being able to get the message out to everyone within our jurisdiction are human, technological and budgetary limitations. Within those limitations, we do a good job.

For example, when we initiate a case, before the summons and complaint go out, we send the Non-Custodial Party a case opening letter. The summons and complaint then follow, which contain detailed explanations about how the Non-Custodial Party should respond. There is a Notice to Other Parent and there is a Notice to Both Parents on page four. On page five there is a detailed Statement of Rights and Responsibilities and a Notice to Parent Asked to Pay Support (Obligor) which gives that person information about how to respond and what his or her rights are with respect to paternity and support. In this same packet of forms is a Notice of Rights and Responsibilities--Health Care Costs and Reimbursement Procedures which explains the responsibilities of the person to reimburse health care costs not covered by insurance. Also as part of the packet, there is an information sheet on changing a child support order, which gives step-by-step procedures to accomplish this.

As part of the summons and complaint packet, there is also a letter given to the Non-Custodial Party explaining how to respond to the Summons and Complaint, including Procedure to file an Answer and Have a Court Hearing, Procedure to Settle Out of Court, and the advice section of the letter entitled If you fail to do one of the two procedures listed above, this will happen. This is called a Dear Defendant Letter.

An answer is provided in the packet as is the required Income and Expense Declaration. Finally, a thirty four page Handbook produced by the State of California is also served on the Non-Custodial Party, explaining in excruciating detail what the child support system is all about. This includes Chapters on The Child Support Process, How the Family Support Division Can Help You, Opening a Child Support Case, Non-Custodial Parents and the Child Support Process, Locating the Non-custodial Parent, Establishing Paternity, Establishing a Support Order, How Child Support is Enforced, Collecting Support from Out-of-State Parents, and a Glossary of Child Support Terms.

All of the above materials are personally served on the non-custodial party before they are required to respond to the lawsuit for support. About 30% of the non-custodial parents respond and become involved with the system by taking an active part. The Department would venture to say that none of them read all of the material. A safe estimate would be about 50% don't get past the summons and complaint, because an inordinate amount of those who do respond fail to file and serve their papers correctly, something which is explained in detail in the Dear Defendant Letter.

About 70 % of the non-custodial parents do not respond at all and we take a default against them. A safe assumption is that none of them read the material presented to them. They are resistant to working within the system, and it is very difficult to educate them, much less change their orientation toward their children.

For the past few years the Office of the Family Law Facilitator has been in operation in Mendocino County. This office is occupied by Deborah DeMarchi, a very capable Family Law attorney. Her job is to assist unrepresented parties in support cases to navigate the maze of forms required to get their cases heard. She represents neither, but gives procedural advice to both. Her office supplements our efforts to give the parties as much information as they can digest regarding their rights and privileges, as well as their legal duties to their children.

The bottom line is that there is a lot of information and assistance available, but many of the Non-Custodial Parties do not take advantage of it or even read the material provided. It has been suggested in a meeting with the Facilitator and the Commissioner that videotapes be provided to explain the same information. This might present it in a little bit more familiar form for the average legal consumer, but of course no statutory guidelines or budgets have been approved for this to happen.

In the particular case which became the subject matter of the complaint to the Grand Jury, the order for support originated in Oregon and the Non-Custodial Party moved to Mendocino County at a time when he was owing current support and carrying a \$ 12,000.00 balance for arrears. We have no knowledge of the information which was made available to him by Oregon at the time his order originated, and of course we would have no control over their program in any event.

However, the reason our office got involved was because we are mandated to collect on what is called a Foreign Order. We sent out a packet to the Non-Custodial Party regarding the registration of this Foreign Order, and this includes two pages of information pertaining to requesting a hearing regarding registration of a California Support

Order. No contest of the registration was requested, and as soon as we registered the order and located his current employer, we sent out an Order/Notice to Withhold Income For Child Support. This form contains Remittance Information, concerning the maximum amount our agency can withhold, along with a separate Information Sheet for Request for Hearing regarding Wage and Earnings Assignment. Effectively, instead of complaining to the Grand Jury about the amount of the wage assignment, the Non-Custodial Party's better move would have been to request a hearing on the wage assignment. This was never done, but all the information concerning this hearing process was served upon him with the wage assignment. Educating people about child support is a little bit like educating them about birth control. With all the information available about the latter topic, and all the free services concerning family planning, why are there any unintended pregnancies? There are many reasons, but the main one is that many people are just not paying attention to the message. I don't think there is anything this office or the Grand Jury can do about this situation, except to keep delivering the message and hope for the best.

Response (Board of Supervisors): The Board agrees with the response provided by the District Attorney – Family Support Division. The Board maintains we can always do more to educate our citizens and the District Attorney – Family Support Division will continue to examine other avenues to keep parents informed of their rights and duties in the Family Support system.

Time Frame for Implementation: With mandated outreach efforts and working in conjunction with the Family Law Facilitator, the Department has in effect implemented this recommendation.

Finding

7. The FSD is in the process of becoming a separate department of Mendocino County government. The Family Support Unit will be under the direct authority of the Board of Supervisors. It will no longer be a division of the District Attorney.

Response (Board of Supervisors): The Board agrees with this finding.

Response Required

Mendocino County Board of Supervisors
Mendocino County District Attorney

Response Requested

Mendocino County Family Support Unit