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EDITORIALS

NEW OPTIONS FOR CHILD SUPPORT PAYMENTS

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Non-custodial parents pay child support in a variety of ways. Divorced parents should be provided with all possible options for making these payments. Some new options have emerged both in the public and private sectors.

Perhaps the most common method in which non-custodial parents pay child support is through an income withholding or income deduction order, which is issued to the employer of the payor, and mandates payment of support directly to the recipient.¹ In most states, income deduction orders are mandatory unless (1) there is a written agreement between the parties specifying an alternative arrangement, or (2) there is a court order finding good cause against it and finding that the income deduction order is not in the child's best interest.²

However, income deduction orders can be problematic. If the payor is self-employed, periodically unemployed, or is paid only on commission,

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1. See U.S. DEP'T OF HEALTH & HUMAN SERVS., FY 2007 PRELIMINARY REPORT 9 (2008), http://www.acf.hhs.gov/programs/cse/pubs/2008/preliminary_report_FY2007/Prelim2007.pdf.

2. See U.S. DEP'T OF HEALTH & HUMAN SERVS., HANDBOOK ON CHILD SUPPORT ENFORCEMENT 9-21 (2008), http://www.acf.hhs.gov/programs/cse/pubs/2005/handbook_on_cse.pdf.

income deduction orders may have little effect.³ Moreover, many payors do not wish to disclose to their employer their private matters, and some employers refuse to comply without a court order.⁴ Further, recipients of support do not want the payor to know their bank account information, which would be necessary if the payor's employer is to follow the income deduction order.⁵

Most states have established agencies for the enforcement of child support orders.⁶ These agencies, however, have huge case overloads, and they therefore suffer intermittent backlogs of work, thereby delaying the transfer of payment to the recipient.⁷ Consequently, many custodial parents have to resort to private means of enforcement through contempt,⁸ garnishment of wages,⁹ and private child support enforcement companies.¹⁰ Problematically, many private child support enforcement companies charge astronomical fees for their services, deducting a large percentage—as high as fifty percent—of the child support collected, in addition to potential annual fees—some as high as five hundred dollars.¹¹

In reality, most divorce cases settle privately, and divorce lawyers draft settlement agreements providing for the required so-called alternative arrangement for child support payments.¹² The settlement agreements include the amount of monthly support due, the manner in which it shall be paid, how often, and the date payments will terminate.¹³ A paragraph should also be included in the settlement agreement providing for

3. *See id.* at 25.

4. *See id.* at 28.

5. *See* Maria Aspen, *Chase Visa Cards in Idaho Program*, AM. BANKER, Jan. 27, 2009, at 5.

6. *See, e.g.*, U.S. DEP'T OF HEALTH & HUMAN SERVS., DIRECTORY OF ALL STATE CHILD SUPPORT ENFORCEMENT OFFICES, <http://ocse.acf.hhs.gov/int/directories/index.cfm?Fuseaction=main.extIVPListAll> (last visited Feb. 25, 2009).

7. *See* Drew A. Swank, *The National Child Non-Support Epidemic*, 2003 MICH. ST. DCL L. REV. 357, 380 (2003); Jennifer Dixon, *Demand Outstrips Child Support Enforcement*, L.A. TIMES, Jan. 29, 1995, at A20; Lynne K. Varner & Beth Kaiman, *Stepping Up the Pace in Pursuit of Child Support*, WASH. POST, May 30, 1991, at M1; *When Parents Refuse to Support Their Children*, N.Y. TIMES, Dec. 20, 1992, § 13CN, at 1.

8. *See* *When Parents Refuse to Support Their Children*, *supra* note 7.

9. *See* Tamar Lewin, *New Tools for States Bolster Collection of Child Support*, N.Y. TIMES, June 15, 1991, § 1, at 1; *When Parents Refuse to Support Their Children*, *supra* note 7.

10. *See* Tamar Lewin, *Collecting Child Support*, N.Y. TIMES, May 21, 1994, § 1, at 1 [hereinafter Lewin, *Collecting Child Support*]; Nat'l Conference of State Legislatures, *Regulation of Private Child Support Collection Agencies*, <http://www.ncsl.org/programs/cyf/regulationcs.htm> (last visited Feb. 25, 2009).

11. Swank, *supra* note 7, at 380–81; *see* Lewin, *Collecting Child Support*, *supra* note 10; Nat'l Conference of State Legislatures, *supra* note 10.

12. *See* Linda D. Elrod & Milfred D. Dale, *Paradigm Shifts and Pendulum Swings in Child Custody: The Interests of Children in the Balance*, 42 FAM. L.Q. 381, 381–82 (2008).

13. Hester H. Honda, *SSI?MEDI-CAL? . . . HELP!* ORANGE COUNTY LAW., Nov. 2009, at 18, 24.

garnishment if payments fall behind more than thirty days.¹⁴

The most common manner of private payment is still by paper check. Of course, the worst delivery method is through the child, at the conclusion of the payor's visitation time. When mailed, payment by check sets up the classic problem of "the check is in the mail" and could lead to real or false accusations of late receipt.¹⁵

Both payors and recipients of support agree that they rarely use paper checks anymore. Payors do not want the inconvenience of mailing support checks when they pay most bills online. Similarly, recipients do not want to deal with waiting to get the check in the mail, driving to the bank, and waiting in line to deposit the check. Further, the deposit can be delayed even further if the recipient is out of town when the check arrives.

Another issue arising post-divorce centers on child support modification, particularly in the current climate when people are losing their jobs in epidemic numbers.¹⁶ When the payor no longer has the resources to fund the monthly support payments, the prospect of further litigation for modification or contempt charges is costly and often not economically feasible. If the recipient of support lacks funds to support the children, it is even more difficult to fund contempt litigation. A payor who does not have the money to pay support has no financial means to fund a modification action.

Many people do not want to use government agencies to transfer the support from payor to payee.¹⁷ The parties have already been involved in the court system during the divorce process. After the conclusion of the case they prefer to handle things privately, outside of government involvement. It is important for the legal community to provide alternative solutions both for payment and temporary reduction in payment in dire circumstances. One solution is including alternative provisions for payment in the settlement agreement. Another possibility is encouraging mediation post-divorce to avoid further costly litigation. An additional alternative in the discussion stages is establishing a child support court where parties could go in search of judicial remedies when the payor does not pay support on time or at all. Practitioners need to anticipate these issues and provide

14. See DEP'T OF HEALTH & HUMAN SERVS., NATIONAL CHILD SUPPORT ENFORCEMENT STRATEGIC PLAN 2 (2004), http://www.acf.hhs.gov/programs/cse/pubs/2004/strategic_plan_FY2005-2009.pdf [hereinafter DEP'T OF HEALTH & HUMAN SERVS., CHILD SUPPORT ENFORCEMENT].

15. Craig R. Goellner, *Delivering Child Support to "Un-Banked" Parents: Colorado's Prepaid Debit Card Pilot Project*, CHILD SUPPORT REP., June 2003, <http://www.acf.hhs.gov/programs/cse/pubs/2003/csr/csr0306.html>.

16. See Conrad De Aenlle, *Amid the Gloom, Some Signs of Life*, N.Y. TIMES, Apr. 12, 2009, at 19.

17. DEP'T OF HEALTH & HUMAN SERVS., CHILD SUPPORT ENFORCEMENT, *supra* note 14, at 3.

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proactive remedial measures in the settlement agreements drafted on behalf of clients to prevent a great deal of post-divorce conflict that too often happens.