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Recommended Citation

Breaking the Cycle of Defeat for 'Deadbroke' Noncustodial Parents Through Advocacy on Child Support Issues, 37 Clearinghouse Rev. 5 (May-June 2003) (co-author)

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Breaking the Cycle of Defeat for “Deadbroke” Noncustodial Parents Through Advocacy on Child Support Issues

By *Daniel L. Hatcher and Hannah Lieberman*

The child support system, including its judicial arm, is not serving low-income families well. Custodial parents are not receiving the child support they need.¹ Aggressive enforcement of child support for low-income parents receiving Temporary Assistance for Needy Families primarily benefits the state because the state keeps support collected on behalf of custodial parents who receive welfare assistance.²

Low-income noncustodial parents also are struggling. Unrealistically high child support orders and large arrearages

take so much of their wages (up to 65 percent) that they cannot support themselves.³ They go to jail—often recurrently—because they cannot meet their obligations and thereby lose the opportunity to keep a job. Their driver’s licenses are suspended because they have not paid their support; they now lack transportation to the workplace. To evade this punitive cycle, they seek “below-ground” employment, avoiding garnishment, but increasing their own financial uncertainty and the potential for exploitation by unscrupu-

¹ Low-income custodial parents also desperately need legal assistance in navigating the child support system and in enforcing support obligations. For an excellent discussion of the need for legal aid programs to represent both custodial and noncustodial parents in child support matters, see Paula Roberts, *Child Support—an Important but Often Overlooked Issue for Low-Income Clients*, in *POVERTY LAW MANUAL FOR THE NEW LAWYER* 196 (2002). For an important discussion of the need for notice and hearing rights in child support distribution cases, see Paula Roberts, *If You Don’t Know There’s a Problem, How Can You Find a Solution?: The Need for Notice and Hearing Rights in Child Support Distribution Cases*, 36 *CLEARINGHOUSE REV.* 422 (Nov.–Dec. 2002).

² See 42 U.S.C.A. § 657(a)(1)–(2) (West, WESTLAW through Pub. L. No. 108-6, approved Feb. 13, 2003). Some states pass through a small amount of this assigned child support to families receiving Temporary Assistance for Needy Families and disregard the passed-through child support in calculating eligibility for other means-tested benefits. See *id.* § 657(a)(1) (providing authority to pass through the state share of the assigned support). Maryland does not pass through or disregard any child support. For a state-by-state chart on child support disregard policies, see State Policy Documentation Project, *Treatment of Current Child Support Payments* (Feb. 2000), at www.spdp.org/tanf/financial/childsupport.PDF.

³ See 15 U.S.C.A. § 1673 (West, WESTLAW through Pub. L. No. 108-6, approved Feb. 13, 2003).

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lous employers and providing even less support to their families.⁴ Fathers, mothers, and children thus are caught in a vicious cycle where the goal of providing for families and children is thwarted by child support policies and practices that boomerang when applied to low-income people.⁵

Three years ago in Baltimore the Maryland Legal Aid Bureau launched a project funded by the Abell Foundation to tackle barriers to employment and economic stability caused by unmanageable child support problems of noncustodial parents. The initial reaction to the idea of representing dads who were not paying child support was greeted with alarm.⁶ Tenacious advocates for custodial parents and children in our program feared that we were misdirecting our own scarce resources into advocacy against our traditional client base—custodial single mothers struggling against daunting odds to raise their children.

However, those fears have subsided as project advocates have developed successful strategies to address barriers to sustained employment and economic stability caused by child support problems or policies. The project has enabled clients who are otherwise among the truly aban-

doned poor to obtain or keep jobs, provide more support to their children, retain income for the benefit of children for whom they have become the de facto custodian, keep their shelter, stay out of jail, and have the opportunity to develop skills.⁷

In this article we highlight some of the recurrent problems that our clients encounter and our advocacy responses. We hope that our discussion demonstrates why representing "deadbroke" noncustodial parents is important antipoverty advocacy that benefits fathers, mothers, children, and their communities.

I. The Need: Why Represent Low-Income Noncustodial Parents

The demographics of Baltimore City reveal both the pervasiveness of the problems that low-income noncustodial parents face and the need for intervention. The city's high concentration of poverty also shapes the nature of court proceedings involving noncustodial parents and highlights the need for legal representation to keep those proceedings fair.

A. The Demographic Picture

A shockingly large percentage of Baltimore City's population falls within the population that the project is intend-

⁴ As another example of the punitive nature of child support policy when applied to low-income parents, Mississippi and Wisconsin have implemented the option to deny food stamps to low-income custodial parents who fail to cooperate in establishing child support orders and to noncustodial parents who accumulate child support arrearages. See 7 U.S.C.A. § 2015(m)(1), (n) (West, WESTLAW through Pub. L. No. 108-6, approved Feb. 13, 2003); 7 C.F.R. § 273.11(p), (q) (2003); Food & Nutrition Serv., U.S. Dep't of Agric., Food Stamp Program: State Options Report: Child Support-Related Disqualification (last modified Mar. 10, 2003), at www.fns.usda.gov/fsp/rules/Memo/Support/03/State_Options/child-support-dq.htm (listing states electing these options).

⁵ An important collaboration of advocates for custodial and noncustodial parents came together in the Common Ground project. For a discussion of the project's findings and recommendations, see NAT'L WOMEN'S LAW CTR. & CTR. ON FATHERS, FAMILIES, & PUB. POLICY, DOLLARS AND SENSE: IMPROVING THE DETERMINATION OF CHILD SUPPORT OBLIGATIONS FOR LOW-INCOME MOTHERS, FATHERS AND CHILDREN (2002), www.nwlc.org/pdf/CommonGroundDollarsandSense.pdf.

⁶ This project represents low-income noncustodial parents. Because most of the project's clients are fathers, we sometimes refer to noncustodial parents as men in this article. However, the issues apply to noncustodial fathers and mothers.

⁷ Because our funding source was interested in systemic change, we were encouraged to select cases that had the potential for broad-based impact, and the project was not "numbers-driven." From the outset, our time was intentionally divided among education of organizations that assisted our clients, individual representation, and systemic and policy work. Project lawyers were expected to, and did, engage in many types of advocacy, including outreach to and education of community-based organizations, targeted litigation and appeals, and negotiating with the child support enforcement agency to change objectionable systemwide practices.

ed to reach. Almost one-fourth of Baltimore's population and almost one-third of the city's children live in households whose income falls below the federal poverty guidelines.⁸ As of September 2002 Baltimore City's unemployment rate was 7.5 percent, almost twice the state average of 3.9 percent.⁹ African Americans comprise 64.3 percent of the city's population.¹⁰ The dropout rate is reported at 71 percent in Baltimore City's neighborhood high schools.¹¹

In addition to these sobering statistics, a study by the Brookings Institution gives a grim view of the employment rate for young, less educated African American males. According to the study, only 52 percent of black males between 16 and 24 with no more than a high school education are employed.¹² In the central cities, less than 47 percent of this population is employed.¹³

Most of Baltimore's noncustodial parent population consists primarily of young, poorly educated African American males with little work experience.¹⁴ In addition to contending with poor educational backgrounds, lack of marketable skills, and criminal histories, they may battle substance abuse, mental illness, or physical disabilities, all of which present obstacles to achieving economic and familial stability.¹⁵

Given these barriers to sustained employment, that staggering numbers of low-

income noncustodial parents are unable to pay their child support obligations is not surprising. A study conducted by the Center for Budget and Policy Priorities in 2000 found that only 17.5 percent of child support cases with a current support order in Maryland were "fully paid"; that percentage declined for Baltimore City (15.6

When the obligors are living near or below poverty levels, the enforcement tools used to extract small payments to families simply punish the obligors for being poor.

percent) and for cases in which the custodial parent was a cash welfare recipient (12.4 percent).¹⁶ Those unpaid obligations continue to mount: in 2000, of the 129,000 Maryland cases in which current support was owed, 82 percent had arrearages.¹⁷ Baltimore City, with its large low-income population, outpaced the state with arrearages over \$10,000 in more than 31 percent of its cases compared to 21 percent on a statewide basis.¹⁸

B. A Day in Paternity Court

The volume of child support cases in Baltimore City is overwhelming. At 9:30 on a busy morning in paternity court in Baltimore City, the paternity and child support docket may reflect more than

⁸ U.S. CENSUS BUREAU, TABLE DP-3, PROFILE OF SELECTED ECONOMIC CHARACTERISTICS: 2000: BALTIMORE CITY, MARYLAND (2000), www.mdp.state.md.us/msdc/census/cen2000/sf3/sumyprof/DP1_4/05024510.pdf.

⁹ JOB OPPORTUNITIES TASK FORCE, BALTIMORE'S CHOICE: WORKERS AND JOBS FOR A THRIVING ECONOMY 14 (2003), *available at* www.jotf.org/baltimoreschoice.pdf.

¹⁰ U.S. Census Bureau, State and County QuickFacts, Baltimore City, Maryland (last modified Sept. 24, 2002), <http://quickfacts.census.gov/qfd/states/24/24510.html>.

¹¹ JOB OPPORTUNITIES TASK FORCE, *supra* note 9, at 45.

¹² PAUL OFFNER & HARRY HOLZER, LEFT BEHIND IN THE LABOR MARKET: RECENT EMPLOYMENT TRENDS AMONG YOUNG BLACK MEN 2-3 (2002), www.brook.edu/es/urban/publications/offnerexsum.htm.

¹³ *Id.* at 4-5.

¹⁴ WENDELL PRIMUS & KRISTINA DAUGIRDAS, IMPROVING CHILD WELL-BEING BY FOCUSING ON LOW-INCOME NONCUSTODIAL PARENTS IN MARYLAND 3, 23-25 (2000), *available at* www.abell.org/pubsitems/cd_improving_child_900.pdf.

¹⁵ *Id.* at 21-22.

¹⁶ *Id.* at 29.

¹⁷ *Id.* at 38.

¹⁸ *Id.* at 39.

forty cases.¹⁹ The room is packed. Mothers, often with their children, sit on the opposite side of the room from the fathers. The parents barely acknowledge each other. The children are despondent. Many parents are in their work clothes reflecting low-paying jobs. Some are in handcuffs. Most are minorities. No one appears to be well off.

The attorneys for the child support enforcement agency call names. There is no privacy. Everyone hears the discussion between the attorney and the parent about the parent's most intimate matters. Very few attorneys are in court to represent either parent.²⁰ The judge criticizes a custodial parent for being on public assistance and states that if she were not on welfare, no one would have to be present that day for a child support proceeding. A noncustodial parent explains that the Social Security Administration just found him disabled and that he should be getting a check for back-benefits. He says that he is "terminal" and has significant prescription drug expenses. He looks skeletal. The agency's attorney pushes him to assign the back-benefits to pay his child support arrearages and quizzes him about how sick he really is. Dying, he says.

Ms. W. is before the court now. The father of her two children is raising them because she has battled a drug problem. She tells the court that she cannot pay her current support obligation and arrears, as ordered the last time she was in court, because she only recently found work. Now, however, she is working two jobs—one as a part of a drug rehabilitation program and the other in food service at one of the sports arenas, where she makes \$6.50 an hour. The court is not satisfied. She was told last time to come in with

money or go to jail. She explains that her sister may wire the money, but the court does not want to hear it. She does not have the money, so she is handcuffed and led away crying. The sister does wire the money, and Ms. W. is released from incarceration about a week later. But her job at the arena is gone, and she now is threatened with termination from the rehabilitation program.

This court is not dealing with people who have money. Undoubtedly in many cases the threat of incarceration and the intrusive presence of the child support enforcement system succeed in wresting money from recalcitrant obligors for the custodial parent and the children. Generally, that money is desperately needed by young mothers who, even with child support, are struggling to make ends meet. However, when the obligors are living near or below poverty levels, the enforcement tools—including incarceration, license revocations, and large wage garnishments—used to extract small payments to families (or often the state) simply punish the obligors for being poor. They undermine chances for sustaining employment and prevent obligors from providing more meaningful support to children.

II. The Policy Problems and Advocacy Responses: Successes, Strategies, and Unanswered Questions

The problems that low-income noncustodial parents encounter with the child support system result from a combination of federal and state policies and local practices. Below we present a summary of some of these problems, describe advocacy strategies that we have developed, and give examples of issues that we are just beginning to address.

¹⁹ In Baltimore City child support cases for unmarried parents are considered "paternity cases" even after paternity is established. These child support paternity cases then are placed on a separate docket from other family law matters, including custody and visitation. The separation often creates confusion and difficulty for unmarried parents. E.g., a parent who desires a modification of a child support order and who seeks to obtain or restrict visitation would need to file two separate pleadings in two separate cases. Most of the cases that we handle involve child support paternity cases. Other jurisdictions in Maryland vary in the way that their courts handle cases.

²⁰ In Maryland the attorneys for the child support enforcement agency do not have attorney-client relationships with either parent. MD. CODE ANN. FAM. LAW § 10-115 (West, WESTLAW through 2002 session).

A. Federal Policies That Work Against Low-Income Families

The current child support system was not developed from a desire to help children. The federal government and the states created it to reduce the number of children needing public assistance and to recoup partially the costs of providing benefits to those who nonetheless needed benefits.²¹ In 1975 Congress added Part D to Title IV of the Social Security Act; Part D provided federal funding to states to help operate child support programs and imposed many federal requirements.²² A cornerstone of the federal scheme is that families who need welfare assistance must assign their rights to child support to the state and cooperate with the child support program in establishing paternity and enforcing support orders.²³ Because most of the support collected does not go to the children or custodial parent, it generally does not significantly improve the quality of life or economic stability of family members.²⁴ That fact has afforded significant opportunities for litigation and policy work because efforts to reduce obligations owed to the state do not take money from the custodial parent or children.

Problem: Federal Law Prohibits Retroactive Modifications. Enacted in 1986, the Bradley amendment to Title IV-D of

the Social Security Act prohibits retroactive modifications of child support orders.²⁵ Congress intended the amendment to prevent obligors from amassing huge child support debts and then obtaining judicial relief from the debt that the parent could, and should, pay.²⁶ The amendment may achieve its goal for obligors who have the ability to pay but has unintended consequences for obligors who are poor.

Many low-income noncustodial parents accumulate large child support arrearages because they become unemployed, lack skills for well-paid and sustained work, are disabled, become incarcerated, or reunify with their children and incorrectly assume that their child support order has stopped.²⁷ They do not promptly seek modification of their support orders because they do not know that they have that opportunity or how to navigate the complex court and administrative procedures.²⁸ They certainly cannot afford an attorney. Disabled obligors, ex-offenders, and unemployed workers trying to reenter the job market thus may end up trapped by a crushing child support obligation that should have been readjusted. When the system does not present any workable options, many obligors choose to live outside of the system—working in the underground or criminal economy or not working at all and living on the streets and in homeless shelters.

²¹ PRIMUS & DAUGIRDAS, *supra* note 14, at 27.

²² Title IV-D, Social Security Act, Pub. L. No. 93-647, § 101, 88 Stat. 2351 (codified as amended at 42 U.S.C.A. §§ 651 *et seq.* (West, WESTLAW through Pub. L. No. 108-6, approved Feb. 13, 2003)).

²³ See 42 U.S.C.A. §§ 608(a)(3), 654(29) (West, WESTLAW through Pub. L. No. 108-6, approved Feb. 13, 2003).

²⁴ See *supra* note 2. After a family stops receiving welfare, current support and postassistance (and often preassistance) arrears go to the family. See 42 U.S.C.A. § 657 (West, WESTLAW through Pub. L. No. 108-6, approved Feb. 13, 2003). In some cases, being forced to begin an adversarial process also may further divide already fragile families. Custodial parents face a dilemma. To receive benefits, they must initiate adversarial administrative and court proceedings against the absent parent, who also may be poor, for child support that they may never see. Or they can pass up what may be their only hope for financial assistance.

²⁵ *Id.* § 666(a)(9).

²⁶ 54 Fed. Reg. 15757, 15758 (Apr. 19, 1989), 1989 WL 278499.

²⁷ PRIMUS & DAUGIRDAS, *supra* note 14, at 23–25; see ELAINE SORENSEN & CHAVA ZIBMAN, POOR DADS WHO DON'T PAY CHILD SUPPORT: DEADBEATS OR DISADVANTAGED? 1–2 (2001), http://newfederalism.urban.org/html/series_b/b30/b30.html.

²⁸ See NAT'L WOMEN'S LAW CTR. & CTR. ON FATHERS, FAMILIES, & PUB. POLICY, *supra* note 5, at 23.

Advocacy Response: Urging Court to Use Its Discretion to Forgive Arrearages. We have developed legal theories to relieve clients of state-owed debt without running afoul of the Bradley amendment. First, we argue that the "best interest of the child" standard governs child support matters and that courts have equitable powers to set aside or forgive state-owed arrearages by applying the "best interests" standard.²⁹ Second, we rely on a Maryland statute that specifically allows courts to set aside ancillary orders resulting from paternity decrees when in the child's best interest.³⁰

Forgiving unmanageable state-owed arrearages will assist the low-income obligor in giving more current assistance to his children. This has been a particularly important tool in a surprising number of cases in which the obligor now is caring for the children for whom he owed child support but is still being pursued for state-owed arrearages because the original custodial parent had received welfare assistance. In these "reunification cases," every

dollar taken to reimburse the state for welfare assistance previously paid to the other parent is a dollar taken away from the family with whom the children now reside. By relying on the court's discretion to "set aside," rather than seeking a modification of, a court order, we avoid application of the Bradley amendment.³¹

Advocacy Response: Urging Agency to Use Its Discretion to Forgive State-Owed Arrearages. Recognizing that reducing state-owed child support debt may stabilize low-income obligors, the federal Office of Child Support Enforcement encourages states to develop policies allowing forgiveness of state-owed child support arrears and explains that the Bradley amendment does not prohibit forgiveness of such arrearages.³² The Maryland Child Support Enforcement Administration long has had the statutory discretion to forgive state-owed child support arrearages when "in the best interests of this State."³³ Unfortunately the agency has not developed regulations, policies, procedures, or criteria to deter-

²⁹ MD. CODE ANN. FAM. LAW § 10-118 (West, WESTLAW through 2002 session); *Jessica G. v. Hector M.*, 653 A.2d 922, 929 (Md. 1995) (noting that MD. CODE ANN. FAM. LAW § 5-1002 creates a duty of the state "to improve the deprived social and economic status of children born out of wedlock" and states a purpose of paternity proceedings "to promote the general welfare and best interests of children born out of wedlock by securing for them, as nearly as practicable, the same rights to support, care, and education as children born in wedlock"); *Witt v. Ristaino*, 701 A.2d 1227, 1234 (Md. App. 1997) (citing *O'Connor v. O'Connor*, 323 A.2d 632, 635 (Md. App. 1974)) (recognizing that "the law in Maryland child support cases has always been what is in the best interests of the child").

³⁰ "Except for a declaration of paternity, the court may modify or set aside any order or part of an order under this subtitle as the court considers just and proper in light of the circumstances and in the best interests of the child." MD. CODE ANN. FAM. LAW § 5-1038(b) (West, WESTLAW through 2002 session).

³¹ Recent Maryland Court of Appeals decisions support the argument that courts have the discretion to forgive arrearages. *See, e.g.*, *Child Support Enforcement Admin. v. Shehan*, 813 A.2d 334, 340 (Md. App. 2002) (Clearinghouse No. 55,146) (in holding that obligor is entitled to presumption that he spent his child support obligation on the child during cohabitation period, the court noted that MD. CODE ANN. FAM. LAW § 5-1038(b) may address arrearages that accrued before a court filing); *Walter v. Gunter*, 788 A.2d 609, 613-14 (Md. 2002) (Clearinghouse No. 55,148) (recognizing the continuing jurisdiction provided through MD. CODE ANN. FAM. LAW § 5-1038(b) and noting a long list of orders auxiliary to paternity decrees subject to modification or set aside, including child support).

³² Office of Child Support Enforcement, U.S. Dep't of Health & Human Servs., Policy Interpretation Question (PIQ) 99-03 (Mar. 22, 1999) ("Compromise of Child Support Arrearages"), www.acf.dhhs.gov/programs/cse/pol/piq-9903.htm.

³³ MD. CODE ANN. FAM. LAW § 10-112 (West, WESTLAW through 2002 session). Arguably the state's interests must be driven by its obligation to pursue the best interests of the children. Custodial parents may agree to forgive arrears owed to them to the extent that they want to give the noncustodial parent a fresh start. Office of Child Support Enforcement, *supra* note 32. In Maryland the child support enforcement agency often will honor such agreements if there is no evidence of coercion or domestic violence and the agreement is not contrary to the best interests of the children.

mine when forgiving state-owed arrearages is in the “best interests of the state.”³⁴ The agency consistently ignores requests for forgiveness of state-owed arrearages on behalf of obligors who are reunified with their children. In cases brought for obligors seeking judicial forgiveness of arrearages, the Legal Aid Bureau also seeks a declaration that the agency’s refusal to consider arrearage forgiveness and its failure to develop criteria to govern its consideration of forgiveness requests constitute an abuse of discretion.

B. State Policies That Work Against Low-Income Families

State policies regarding child support order establishment and enforcement can negatively affect low-income families. Unrealistic order amounts, inappropriate imputation of income, lack of access to agency files, agency failure to modify orders, inappropriate driver’s license suspensions and credit reporting, contempt proceedings against obligors who do not have the ability to pay child support, and errors in paternity establishment can significantly harm fathers, mothers, and children.

1. Problem: Initial Order Amounts Are Unrealistic for Low-Income Obligor

Children in low-income single-parent

families need as much child support as they can get. However, orders that are set beyond an obligor’s ability to pay quickly result in the accumulation of large arrears, wage garnishments that do not leave enough for food and rent, loss of driver’s licenses, below-ground employment, and incarceration.

The problem of unrealistic order amounts is especially acute in Maryland. Only three states require low-income obligors to pay a higher percentage of their income in child support orders.³⁵ The result is no surprise. More than 84 percent of child support cases in Baltimore have accumulated arrearages, with an average arrearage amount of more than \$9,000.³⁶

The problem of unrealistic order amounts is compounded by child support orders often beginning with a substantial arrearage. In the overburdened Baltimore City Circuit Court, delays of six months or more from the time of child support filings to the signing of child support orders is not uncommon. Because courts have discretion to make child support orders retroactive to the time of filing, many low-income noncustodial parents begin their child support obligations several thousand dollars in arrears—often leading to immediate multiple enforcement actions.³⁷

³⁴ The Maryland Child Support Enforcement Administration developed in Baltimore a pilot program that was designed to allow a limited number of low-income noncustodial parents to abate some of their state-owed arrearages if they participate in certain counseling and job skills programs and begin making current support payments. The pilot program is an important step toward recognizing the harm that unmanageable state-owed arrearages can cause to obligors and to children. However, the program is currently available to only a very small fraction of low-income Baltimore obligors, and participating organizations uniformly express frustration that the agency has failed to uphold its promises to forgive arrearages. The Legal Aid Bureau is working with community organizations to develop a strategy to address the Child Support Enforcement Administration’s failure to give the relief that pilot participants have earned but have not yet received.

³⁵ Steve Hill & Maryamm Muzikir, *A New Approach to Child Support: Improving Child Well-Being by Focusing on Noncustodial Parents*, MD. POL’Y REP. (Md. Budget and Tax Pol’y Inst.), Mar. 2002, at 1, www.marylandpolicy.org/mpr2-1.PDF.

³⁶ PRIMUS & DAUGIRDAS, *supra* note 14, at 38.

³⁷ MD. CODE ANN. FAM. LAW § 12-101(a) (West, WESTLAW through 2002 session) (“court shall award child support for a period from the filing of the pleading that requests child support” unless the result would be inequitable). E.g., Maryland regulations direct the child support enforcement agency to refer cases for license suspensions when arrears are “equal to or greater than support payments required in a 60-day period.” MD. CODE REGS. 07.07.15.03 (West, WESTLAW through Mar. 7, 2003). Because orders often begin with arrearages greater than what would be owed in a sixty-day period, license suspensions may be immediate.

Advocacy Response: Departing from the Guidelines. Application of the Maryland child support guidelines produces a presumptively correct allocation of financial responsibility between the parents. The presumption may be rebutted by establishing that a departure from the guidelines is in the children's best interests.³⁸ We seek a downward departure from the guidelines when the financial hardship of support payments is compromising the parent's ability to provide for his children.

For example, in a current case, our client has three children, one of whom is in foster care. The children were all living with their mother until they were brought into state custody because of her alleged abuse and neglect. Our client's two daughters were immediately placed with him. His son was almost killed by the abuse from the mother and her boyfriend and, as a result, continues to be wheelchair-bound and requires round-the-clock specialized treatment.

The Baltimore City Department of Social Services convinced our client that his son should stay in specialized foster care until his health improved and our client was better prepared to care for his special needs. Our client only later learned that he would owe child support for his son while he was in foster care to pay the state back for foster care costs.³⁹ In this case we are seeking a downward departure from the guidelines to a zero order;

we are contending that relief from reimbursing the state for foster care is in the child's best interests because it will allow dad to retain resources for his son's care when he comes home.⁴⁰

Another ground for departing from the guidelines in this case (and others like it) is that dad also has custody of the child's two sisters. Maryland's guidelines do not directly incorporate the costs of support required for other children living with an obligor in the initial child support calculations. The support of those children may be considered only as a ground for a departure and then only if there is an additional reason.⁴¹ A departure may not be granted "solely on the basis of evidence of the presence in the household of either parent of other children to whom that parent owes a duty of support and the expenses for whom that parent is directly contributing."⁴² We hope that this case will clarify the manner and extent to which support of other children in the household affects application of the child support guidelines when it strains the resources of a low-income parent.⁴³

2. Problem: Income Is Often Inappropriately Imputed to Low-Income Obligor

When a court sets child support orders, the question arises whether the obligor is meeting his full earning capacity. When an obligor is able to work but chooses not to in order to avoid child sup-

³⁸ MD. CODE ANN. FAM. LAW § 12-202 (West, WESTLAW through 2002 session).

³⁹ Some states do not pursue support for children in foster care if doing so could harm a parent's attempts at reunification. Resulting from efforts of the National Center for Youth Law, California passed such legislation in 2001. A.B. 1449, 2001 Leg., 2001-2001 Sess. (Cal. 2001); see Eve A. Stotland, *Resolving the Tension Between Child Support Enforcement and Family Reunification*, 35 CLEARINGHOUSE REV. 317, 328-29 (Sept.-Oct. 2001). Unfortunately Maryland does not have such a policy.

⁴⁰ See *In re Joshua W.*, 617 A.2d 1154, 1163 (Md. App. 1993) (recognizing that "a downward departure from the guidelines could be justified as in the best interests of a child in foster care if the court found, in the proper case, that such an adjustment was necessary for the parent to obtain the economic stability necessary to regain custody and care properly for the child").

⁴¹ MD. CODE ANN. FAM. LAW § 12-202 (West, WESTLAW through 2002 session).

⁴² *Id.*

⁴³ When confronted with a similar question, the Tennessee Supreme Court recently overturned a lower court's decision that found the state's guidelines statute to be unconstitutional on equal protection grounds because the guidelines did not allow for considering the financial obligation to the obligor's other children living with him. *Gallaher v. Elam*, No. E2000-02719-SC-R11-CV, 2003 WL 2010731 (Tenn. May 2, 2003) (Clearinghouse No. 55,247).

port, the courts may and should impute income to the obligor so that his child support obligation reflects his true ability to pay.⁴⁴

In Baltimore the Child Support Enforcement Administration and the court frequently impute income to poor noncustodial parents and ignore their ability to pay. Clients report that they are told that they must sign "consent" orders that include imputations of income. If the obligor does not agree to sign, a hearing is scheduled. The court often overlooks its obligation to consider specific factors and make findings of fact to support a conclusion that the obligor is voluntarily impoverished before adopting the agency's recommended support amount.⁴⁵ We have handled multiple cases in which the agency and the court have imputed additional income to an obligor whose only income is from disability benefits and whose disability is indisputably permanent.

Advocacy Response: Challenging Improper Imputation of Income. Our challenges to imputations of income that are not based on the requisite considerations or findings generally have been successful.⁴⁶ For example, we have been able to avoid imputations of income by presenting evidence that an obligor is disabled and unable to work or is unemployed despite reasonable efforts to find a job.

Despite successes in individual cases, we can represent only a very small fraction of low-income obligors needing assistance. For those who are unrepresented, improper imputations of income remain a likelihood. To address this recurrent problem, we are trying to develop a broader-based strategy, including participating in ongoing task-force meetings with advocates, service providers, and court and agency staff and conducting outreach and training in

the hope that obligors who cannot access legal representation will be better informed in representing themselves.

3. Problem: Agency Refuses Access to Files

Clients often report that they do not understand how their support obligations are calculated and complain that the agency has not credited them with payments made. When we investigate, we often find their complaints justified. Agency staff often ignore obligors' questions and often deny obligors access to their own child support records. Without access to their files, obligors cannot be fully informed of their case status and whether a modification is warranted.

Advocacy Response: Increasing Access to Agency Files. We responded by threatening litigation under Maryland's Public Information Act.⁴⁷ The attorney general's office and the Child Support Enforcement Administration now acknowledge that noncustodial parents must be given access to their child support files maintained by child support enforcement offices. We are continuing to work with the agency to develop user-friendly forms for making file requests.

4. Problem: Agency Fails to Modify Orders

Clients who seek modification of their support obligations from the Child Support Enforcement Administration when their circumstances change (e.g., because of onset of a disabling condition, loss of employment, or reunification with the child) encounter many obstacles.⁴⁸ We handle a constant stream of cases in which the agency either informed the noncustodial parent that the agency could do nothing or indicated that it would ini-

⁴⁴ See MD. CODE ANN. FAM. LAW § 12-201 (West, WESTLAW through 2002 session).

⁴⁵ See *Wills v. Jones*, 667 A.2d 331, 338 (Md. 1995) (explaining intent necessary in determining whether parent is voluntarily impoverished); *Dunlap v. Fiorenza*, 738 A.2d 312, 316 (Md. App. 1999) (describing required factors to be considered).

⁴⁶ See *Wills*, 667 A.2d at 338 (explaining intent necessary in determining whether parent is voluntarily impoverished); *Dunlap*, 738 A.2d at 316 (describing required factors to be considered).

⁴⁷ Public Information Act, MD. CODE ANN. STATE GOV'T § 10-611 (West, WESTLAW through 2002 session).

⁴⁸ See MD. CODE ANN. FAM. LAW § 12-104 (West, WESTLAW through 2002 session).

tiate a modification but then failed to do so. In case after case, agency records show that the noncustodial parent informed the agency of the change in circumstances years ago but the agency never initiated a modification. The noncustodial parents also were not informed that they could file for modifications in court themselves. Thus their obligations continued without the modification that they believed they had properly initiated and to which they were legally entitled.

Such agency inaction is particularly troublesome because federal law requires child support enforcement offices to give notice to custodial and noncustodial parents at least once every three years of their right to request a review of their child support order and how to make the request.⁴⁹ After receiving such a request, enforcement offices must review the child support order within 180 days of the request and either initiate a modification or determine that a modification is not warranted.⁵⁰ Even if the local enforcement office is following the federal requirements, a low-income obligor may have to wait up to six months before the agency acts on a request for modification. In many Baltimore cases, years go by after requests for modifications with no agency action.

Advocacy Response: Backdating Modifications to the Time of Request.

In cases in which a court filing was delayed due to the child support enforcement agency's failure to act on an obligor's request for modification, we request that the modification be considered effective from the date of the initial request. We avoid application of the Bradley amendment in these circumstances by asking the court to exercise its equitable powers to backdate the court filing to the date of the initial request. Thus far this strategy has been successful. Backdating the date of "filing" to the date of the obligor's request is appealing to judges because

of the obvious inequities arising from the client's reliance on misleading agency information or the agency's own delay in processing the modification request. Without the misinformation, inaction, or delays, some of our clients would not have accumulated significant arrearages, and attendant harms, at all.

5. Problem: Driver's License Suspensions Pose a Barrier to Getting to a Job or Services

In Maryland child support enforcement offices must suspend an obligor's driver's license as soon as the obligor has arrears equal to or greater than support payments required in a sixty-day period.⁵¹ Thus the license suspensions may occur immediately after the child support orders begin because many orders start out with a substantial arrearage amount. The suspension of a driver's license obviously can block an obligor's ability to work if the obligor needs to drive to work or if driving is required as part of the obligor's job. The catch-22 is obvious: if an obligor cannot work because he lost his driver's license, he cannot pay off the arrearage in order to get his license reinstated. A 1999 article by Ronald K. Henry, highlighting the problem, explains that "when Maryland decided to get tough with 'deadbeat dads' by suspending 9,000 driver's licenses, only about 800 were able to make sufficient progress on their arrearages to get their licenses restored."⁵² The figures underscore how this "get tough" approach to child support enforcement can backfire when applied to low-income obligors.

Enforcement offices may supply work-restricted licenses for obligors who supply proof of employment.⁵³ However, many of our clients do not know that work-restricted licenses are available or have been told incorrectly by enforcement workers that they may not get a work-restricted license until arrears are

⁴⁹ 45 C.F.R. § 303.8 (2001). We have yet to see an example of such a notice.

⁵⁰ *Id.*

⁵¹ MD. CODE ANN. FAM. LAW § 10-119 (West, WESTLAW through 2002 session); MD. CODE REGS. 07.07.15.03 (West, WESTLAW through Mar. 7, 2003).

⁵² Ronald K. Henry, *Child Support at a Crossroads: When the Real World Intrudes upon Academics and Advocates*, 33 FAM. L.Q. 235, 237 (1999).

⁵³ MD. CODE REGS. 11.11.08.04 (West, WESTLAW through Mar. 7, 2003).

fully paid. Moreover, work-restricted licenses do not allow an obligor to drive his children to school, drive himself to an education or training program, drive to the grocery store, or drive a sick relative to the doctor's office. In Maryland no clear regulations or policies are made available to the public to explain how to obtain a work-restricted license, what notice should be given to obligors, or what proof of employment is required.⁵⁴

Advocacy Response: Correcting Agency Error. Child support caseworkers in Baltimore are inadequately trained, underpaid, and have enormous caseloads. They often make mistakes and sometimes ignore established policy. We regularly see cases in which a driver's license should not have been suspended or a suspended license should have been reinstated pursuant to regulations. Often a simple telephone call and letter can fix the problem.

For example, we represented a dad with two child support cases, one in Baltimore and the other in Annapolis. He was current on his court-ordered payments, but the agency was not properly dividing the payments between the two cases, and his driver's license had been suspended. He spent almost a year repeatedly contacting both enforcement offices to get his license back. His requests were largely ignored. With a telephone call and letter to both enforcement offices, we were able to get his license reinstated in just a few days.

In another case, an obligor whose license was suspended went to the agency

to request a work-restricted license. He presented the required proof of employment, but the agency worker incorrectly told him that he could get the restricted license only if he settled all his arrearages first.⁵⁵ The obligor was a truck driver, and he lost his job the next day. We were able to help him quickly obtain the work-restricted license. However, the loss of his job may be damage that we cannot redress.

Advocacy Response: Ensuring Adequate Due Process Rights. Before a driver's license may be suspended due to unpaid child support, Maryland regulations require notice to the obligor; the notice must, among other requirements, explain the obligor's right to contest the suspension and opportunity for administrative review.⁵⁶ The child support enforcement office is not supposed to refer a case to the Motor Vehicles Administration for license suspension until the notice and appeals process is completed.⁵⁷ Unfortunately the child support enforcement offices often ignore the regulations. Obligor's frequently report to us that they do not receive notice until after the license suspension.⁵⁸ When obligors do receive notice and contest the suspension, the child support enforcement office often initiates the suspension without notifying the obligor of the results of the required investigation or the right of the obligor to request an administrative appeal. Insistence on adherence to basic due process thus has been a significant part of our work for clients who otherwise would be wrongfully denied access to critically needed transportation.

⁵⁴ The Code of Maryland Regulations explains that the Maryland Department of Motor Vehicles should provide the work-restricted license after the child support enforcement office certifies that the obligor is gainfully employed. *Id.* No further clarification is provided.

⁵⁵ *See id.* The only requirement is certification of gainful employment.

⁵⁶ MD. CODE REGS. 07.07.15.03 (West, WESTLAW through Mar. 7, 2003) (requiring notice to the obligor, including an explanation of the obligor's right to contest the suspension); *id.* 07.07.15.05 (requiring opportunity for administrative review).

⁵⁷ *Id.* 07.07.15.03 (requiring notice to the obligor, including an explanation of the obligor's right to contest the suspension); *id.* 07.07.15.05 (requiring opportunity for administrative review).

⁵⁸ In addition to clients reporting that they did not receive notice until after their license had been suspended, that only 27 appeals from driver's license suspensions were filed in 2001 (out of 8,607 total suspensions) is further evidence that obligors are not adequately informed of their due process rights. *See* Letter from Teresa Kaiser, Executive Director, Maryland Child Support Enforcement Administration, to Robert C. Embry, President, Abell Foundation (Mar. 7, 2002) (on file with Daniel L. Hatcher).

Even with the right to notice and appeal, whether obligors in Maryland are afforded sufficient due process protections is unclear.⁵⁹ Maryland regulations limit the grounds for contesting and appealing a suspension only to claims that the support obligation does not exist or that the amount of arrearages specified in the notice is incorrect.⁶⁰ A noncustodial parent who uses his car to drive the children to school and to medical appointments may not, under current Maryland statute and regulations, contest a license suspension on the ground that the suspension is not in the children's best interests. Nor may he raise special needs related to disabling conditions.

For example, a child support obligor may be disabled and unable to work. Although his current support obligation is stopped because of the disability, he still owes substantial arrears. If he receives notice that his license is being suspended because of the arrearages, Maryland law does not allow him to contest the suspension on the ground that his customized van (to accommodate his wheelchair) is critical to his mobility and allows him to attend physical therapy sessions. In pending administrative appeals, we are challenging the constitutionality of the limitations on defenses and insisting on reinstatement of the license as a reasonable accommodation under the Americans with Disabilities Act.⁶¹

Advocacy Response: Seeking Court Intervention. Even where a driver's license suspension is procedurally and legally correct, we have convinced the court to order reinstatement of the license based on the best interests of the children. For example, one of our clients was a young, unemployed father who received financial assistance through a "one-stop"

employment center to attend truck-driving school at a local community college. However, shortly before he was to begin the class, his driver's license was suspended due to unpaid child support, and he could not participate in the class without a valid license. We tried to convince the child support enforcement office of the obvious: that the obligor could pay much more support if he were allowed to complete the training. The agency refused and insisted on a lump-sum payment of at least one-half of the total arrearages—an impossible option for someone out of work and with no financial resources.

We filed a motion seeking immediate reinstatement, obtained an expedited hearing, and convinced the judge that reinstating the driver's license was in the children's best interests. The court scheduled a review hearing upon completion of the truck-driving school. The obligor completed the course, received his commercial driver's license, found a truck-driving job within weeks of graduation, agreed to increased child support payments, and cooperated with establishing a wage garnishment. Parents, children, and the Child Support Enforcement Administration all ultimately benefited from our intervention.

6. Problem: Reporting Child Support Obligations to Credit Reporting Bureaus Can Harm Low-Income Obligor's Economic Stability

As they must with driver's license suspensions, Maryland child support enforcement offices must report obligors' child support debts to consumer reporting agencies as soon as arrearages are equal to or greater than support payments required in a sixty-day period.⁶² Because some employers require credit checks as a part of

⁵⁹ For an excellent discussion about how license-suspension statutes vary considerably from state to state and a discussion of the differing procedural protections and possible due process challenges, see Naomi R. Cahn & Jane C. Murphy, *Collecting Child Support: A History of Federal and State Initiatives*, 34 CLEARINGHOUSE REV. 165, 177-80 (July-Aug. 2000).

⁶⁰ MD. CODE REGS. 07.07.15.05 (West, WESTLAW through Mar. 7, 2003).

⁶¹ See 42 U.S.C.A. § 12132 (West, WESTLAW through Pub. L. No. 108-6, approved Feb. 13, 2003); 28 C.F.R. § 35.130(a) (2002). The extent to which the Americans with Disabilities Act applies to the Maryland Child Support Enforcement Administration and whether obligors are entitled to reasonable accommodations are unresolved questions in Maryland.

⁶² MD. CODE REGS. 07.07.12.02 (West, WESTLAW through Mar. 7, 2003).

the application process, such credit reporting can block low-income noncustodial parents' ability to get a job. If the obligor hopes to go into business for himself, the credit reporting can harm his chances of obtaining financing for the new business. Credit reporting also can block noncustodial parents' attempts to find housing because landlords may require credit checks before signing a lease.

Federal law does not require states to report child support arrearages to credit bureaus if certain factors would make the reporting inappropriate.⁶³ Thus states have significant discretion to develop standards and procedures to ensure that credit reporting and other enforcement practices do not pose an undue hardship on low-income obligors and are not contrary to the children's best interests. Maryland has not exercised this discretion.

Advocacy Response: Requesting Reasonable Accommodation for Disabled Obligor. A permanently disabled client who was released from prison and seeking admission into disability housing was denied only because he had a bad credit report due to his child support arrearages, which accumulated primarily while he was incarcerated. We requested that the credit reporting be stopped as a reasonable accommodation under the Americans with Disabilities Act, and the Child Support Enforcement Administration agreed.⁶⁴ The client was able to reduce a substantial part of his arrearages through an agreement with his relative to whom he owed the support, and the agency agreed to cease all enforcement actions,

including credit reporting, on any remaining arrearages.

7. Problem: Alleged Civil Contemnors Are Denied Due Process Protections

For low-income obligors who struggle to remain employed despite the many barriers described above, incarceration remains a threat.⁶⁵ In Maryland, when a low-income obligor is charged with civil contempt for failure to pay child support,

- the petitioner must prove the contempt by clear and convincing evidence,⁶⁶
- an attorney must be provided to the obligor,⁶⁷
- a purge amount that the court sets must reflect the obligor's ability to pay,⁶⁸ and
- an obligor may not be forced to borrow money to pay a purge amount.⁶⁹

Although the obligor remains responsible for child support arrearages that have accrued since the entry of the child support order, a contempt proceeding (and therefore the accompanying purge amount) may be based only on arrearages accrued within three years of the contempt action.⁷⁰

In too many cases these protections are short-circuited. In the Baltimore City courts, obligors often are not adequately informed of their right to counsel and are frequently unable to obtain counsel from the overburdened public defender's office. Attorneys for the child support enforcement agency give legal advice to and conduct interviews with both unrepresented

⁶³ "Notwithstanding section 654(20)(B) of this title, the procedures which are required under paragraphs (3), (4), (6), (7), and (15) need not be used or applied in cases where the State determines . . . that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances." 42 U.S.C.A. § 666(a) (West, WESTLAW through Pub. L. No. 108-6, approved Feb. 13, 2003).

⁶⁴ See *id.* § 12132; 28 C.F.R. § 35.130(a) (2002).

⁶⁵ See MD. RULES OF COURT, RULE 15-206 (West, WESTLAW through Dec. 1, 2002); MD. CODE ANN. FAM. LAW § 10-203 (West, WESTLAW through 2002 session).

⁶⁶ MD. RULES OF COURT, RULE 15-207(e)(2) (West, WESTLAW through Dec. 1, 2002).

⁶⁷ *Id.* RULE 15-206(c)(2)(c).

⁶⁸ *Id.* RULE 15-207(e)(3); *Wilson v. Holliday*, 774 A.2d 1123, 1129-32 (Md. 2001); *Rawlings v. Rawlings*, 766 A.2d 98, 103-106 (Md. 2001); *Thrower v. Maryland ex rel. Bureau of Support Enforcement*, 747 A.2d 634, 642 (Md. 2000).

⁶⁹ *Rivera v. Zysk*, 766 A.2d 1049, 1053 (Md. App. 2001).

⁷⁰ MD. RULES OF COURT, RULE 15-207(e)(3) (West, WESTLAW through Dec. 1, 2002); MD. CODE ANN. FAM. LAW § 10-102 (West, WESTLAW through 2002 session).



Advocacy Response: Ensuring That Due Process Protections Are Afforded.

Our client, Mr. Blackston, illustrates how these shortcuts cause serious harm. He had fallen behind in his child support payments after he lost a job because of a work-related accident. At the hearing setting a purge amount, Mr. Blackston requested a lawyer. The judge ignored his plea and admonished that if he did not produce a purge amount (which far exceeded his current ability to pay) and appeared without a lawyer, he would be deemed to have waived his right to counsel.⁷²

At his next hearing, Mr. Blackston explained to the court that he had tried to obtain counsel but had been rejected by the public defender because of his prior year's income and that he currently could not afford a private attorney.⁷³ The court declared that he had waived his right to counsel and forced him to proceed unrepresented.⁷⁴ Despite his efforts to challenge everything in his case from the amount owed to his current ability to pay, the court obtained an admission of contempt from Mr. Blackston and indicated that it would have him incarcerated.⁷⁵

With our representation, Mr. Blackston appealed the contempt order entered against him. Maryland's intermediate appellate court ruled, in a published decision, that the same standards for waiver of counsel applied in civil contempt proceedings as in criminal cases and found that Mr. Blackston had not waived his right.⁷⁶ On remand, we were able to correct the child support enforcement agency's multiple mistakes—including the initiation of duplicative earnings withholding orders—and the agency withdrew the contempt petition.

custodial and noncustodial parents (although they represent neither party).⁷¹ Courts find obligors in contempt based on meager and conclusory facts that the state proffers. Courts set purge amounts without considering the obligor's ability to pay, and obligors are forced to borrow money from relatives to pay purge amounts.

⁷¹ MD. CODE ANN. FAM. LAW § 10-115 (West, WESTLAW through 2002 session).

⁷² *Blackston v. Blackston*, 802 A.2d 1124, 1125 (Md. App. 2002) (Clearinghouse No. 55,221; see the Case Reports section in this issue).

⁷³ *Id.* at 1125–26.

⁷⁴ *Id.* at 1126.

⁷⁵ *Id.* at 1126–27. Mr. Blackston avoided incarceration by borrowing money to pay an incorrect amount allegedly owed—a fact that was clear to the Court—despite Maryland case law that prohibits the court from forcing an obligor to borrow to pay support. *Id.* at 1127, see *Rivera*, 766 A.2d at 1053.

⁷⁶ *Blackston*, 802 A.2d. at 1130.

We also are beginning to address in our cases similar, recurrent issues, such as the failure to appoint attorneys for obligors in contempt hearings before judicial masters, the pursuit of contempt against obligors who have reunited with their children and have state-owed arrearages only, the court's failure to appoint private counsel for indigent obligors when the public defender's office cannot represent them, and the attorney for the child support enforcement agency filing criminal nonsupport charges immediately after a civil contempt hearing establishing that the obligor lacks the ability to pay a purge amount.⁷⁷ Appellate review of such cases will guide trial courts statewide and avoid illegal incarcerations of poor parents, whose jail terms serve only to create more barriers to economic stability.

8. Problem: Who Is the Dad?

In Maryland the staff in the Baltimore City child support enforcement office try to convince putative fathers to sign consent agreements acknowledging paternity. If truly voluntary and understood, the consent agreements can be useful tools to expedite paternity establishment. However, several clients have stated that they signed consent paternity agreements because agency staff told them that they had no choice. Clients report that they were not aware that they were entitled to request paternity testing and that the fee could be waived if they could not pay for it.⁷⁸ The recent increase in the use of DNA testing to challenge paternity after a consent agreement has been signed gives a putative father the opportunity to determine whether he is the biological father.

In 2002 the Maryland Court of Appeals determined that a child support order and accrued arrearage must be vacated upon a showing that the obligor was not the biological father.⁷⁹

Advocacy Response: Waiving Fees for Paternity Testing. We are just starting to see cases that raise the many issues related to paternity consent agreements. In one new case, we are addressing the issue of when a low-income obligor is entitled to waive the fee for a paternity test.⁸⁰ The U.S. Supreme Court held that due process required that alleged parents in paternity actions had the right to dispute paternity and have testing fees waived if the parent did not have the means to pay.⁸¹ However, the Court's ruling apparently is not always followed. We are appealing a case for a client whose motion to waive the fees for paternity testing was denied without a hearing and with no findings of fact. These are issues that should not have to be litigated. In addition to clear Supreme Court precedent, federal law requires that acknowledgments of paternity be truly voluntary and that parents be given oral and written materials about their rights and responsibilities.⁸² Advocates have powerful tools to rein in overzealous or ill-informed child support enforcement offices or state courts that ignore those basic requirements.

C. Questionable Agency Practices

In addition to the numerous problems discussed above, new questions and concerns about agency practices arise on an almost daily basis. We summarize below some recent issues that we are beginning to address.

⁷⁷ The Maryland attorney general addressed the issue of the failure to appoint attorneys for obligors in contempt hearings before judicial masters in Op. Att'y Gen. No. 98-023 (1998), 1998 WL 869958 (concluding that appointment of counsel is required if incarceration is sought but not if the respondent is informed at the outset of a proceeding before a master that he does not face incarceration in that proceeding and if any later referral to the circuit court does not rely on the proceedings before the master).

⁷⁸ See MD. CODE ANN. FAM. LAW § 5-1029 (West, WESTLAW through 2002 session).

⁷⁹ *Walter*, 788 A.2d 609.

⁸⁰ See MD. CODE ANN. FAM. LAW § 5-1029 (West, WESTLAW through 2002 session).

⁸¹ *Little v. Streater*, 452 U.S. 1, 16-17 (1981).

⁸² 42 U.S.C.A. § 666(a)(5)(C) (West, WESTLAW through Pub. L. No. 108-6, approved Feb. 13, 2003).

1. Involuntary Settlement Conferences

Settlement conferences can be a useful vehicle for reaching voluntary resolutions of legal disputes. However, Maryland’s child support enforcement agency appears to be misusing the tool. For example, one client received a notice regarding a settlement meeting from the Baltimore City child support enforcement office. Rather than simply requesting attendance in order to attempt settlement, the notice first explains that the obligor is “subject to prosecution” for his failure to make child support payments, then explains that “[t]his is your opportunity to avoid a mandatory Court appearance and potential incarceration” It directs that “[y]ou must settle this matter in person, at our office”

Whether the agency has the authority to order attendance is doubtful, not to mention the obvious coercive element. Also, because the statute of limitations for contempt has passed in this case, the threats of incarceration were improper.⁸³

2. Unauthorized Practice of Law

Clients report that, when they attend settlement conferences at the child support enforcement office, caseworkers who are not admitted to practice law in Maryland advise them about the legal significance of agreements and advise them that they have no legal choice but to sign them. These caseworkers do not adequately advise our clients that they should seek legal counsel before signing or that the enforcement office represents the state and not them. The child support enforcement agency regularly files court documents initiating contempt actions without an attorney’s signature; child support caseworkers typically sign these documents. Further, at least in Baltimore, the agency regularly

sends caseworkers who are not admitted to practice law to judicial master’s hearings to argue for or against modifications or to seek contempt findings. Often, no attorneys for the agency are present at the hearings, and the custodial parents are frequently not present either.⁸⁴

3. Potential Conflicts of Interest

Serious questions remain regarding potential conflicts of interest.⁸⁵ A Maryland statute explains that the attorneys for the child support enforcement agency represent only the state’s interests and do not have an attorney-client relationship with any other party.⁸⁶ If the agency and its attorneys do not represent either parent, their obligation in modification proceedings should be limited to ensuring that the child support amount is correct under the guidelines. However, the agency regularly opposes modification requests by noncustodial parents, even when the agency has indisputable evidence of the obligor’s change in circumstances and has no updated information from the custodial parent.

Also, circumstances frequently are such that all of the child support is owed to the state due to the custodial parent having received welfare benefits. Yet, upon request from an obligor, the state agency is directed to investigate and possibly initiate a downward modification of that state-owed child support on behalf of the noncustodial parent.⁸⁷ The state’s interest in recouping the child support to pay itself back for welfare costs conflicts with its duty to investigate and decide whether filing a downward modification is appropriate. This conflict of interest is heightened in Baltimore because the child support enforcement office is operated by a private company, Maximus, which is paid in significant part based on the

⁸³ See MD. CODE ANN. FAM. LAW § 10-102 (West, WESTLAW through 2002 session).

⁸⁴ Unauthorized practice of law is prohibited under MD. CODE ANN. BUS. OCC. & PROF. § 10-601 (West, WESTLAW through 2002 session).

⁸⁵ For a detailed discussion of issues regarding representation and possible conflicts of interest in child support enforcement programs, see Paula Roberts, *Child-Support Issues for Parents Who Receive Means-Tested Public Assistance*, 34 CLEARINGHOUSE REV. 182, 187 (July–Aug. 2000).

⁸⁶ MD. CODE ANN. FAM. LAW § 10-115 (West, WESTLAW through 2002 session).

⁸⁷ 45 C.F.R. § 303.8 (2001).

amount of child support it collects—clearly a disincentive to seek a reduction of a child support order.

4. Standing

Whether the Maryland child support enforcement agency is considered a party in child support proceedings is not at all clear.⁸⁸ If the agency and its attorneys do not represent either parent or the children, and if the agency is not a party, then whether the agency has standing to participate at all in the court proceedings is questionable. However, as noted above, agency staff regularly appear at court hearings and argue on behalf of custodial parents even when the custodial parent is not present and the agency has had no recent contact with the custodial parent.

Advocacy Response: Outreach, Training, and Task-Force Work. We have been largely successful in obtaining much-needed relief for our clients. However, we can represent only a very small fraction of the low-income noncustodial parents who need help in overcoming barriers to employment and economic stability. Thus we explicitly designed the project to include community education and policy components. We conduct step-by-step training for community organizations that work with underemployed and unemployed individuals and their clients regarding child support laws and practices and address the barriers to employment discussed in this article. We offer simple steps that individuals can take to overcome the barriers and resolve their child support issues.⁸⁹ We have developed simple pamphlets that these organizations make available to their clientele.⁹⁰

Our visibility has increasingly brought us (and other advocates) to policy-making arenas, within Legal Services Corporation restrictions. We have been invited to testify on child support and other barriers to employment for low-income parents. At the request of the secretary of Maryland’s Department of Human Resources, we convened and continue to lead a task force to address the many problems that low-income noncustodial parents face as a result of unmanageable child support arrearages. We brought together a broad coalition of leaders from advocacy groups, service organizations, law schools, and government agencies to form a diverse task force, which has generated action items and broad recommendations for reform to the department secretary and department program agencies.⁹¹

III. Conclusion

Low-income noncustodial parents who owe child support, and many of whom are ex-offenders, are not a politically popular group. They often are branded as “deadbeats,” who deserve the serious consequences of failing to support their children. However, by focusing on the “deadbroke” and not the “deadbeat,” we address the needs of those who are at the very margin of society and who remain impoverished at least in part because of child support policies and practices.

Our work follows an established legal aid tradition: representation of persons who have legitimate legal claims and have been deprived of the tools to succeed in our economy—persons for whom there is little social safety net and for whom the justice system simply does not work fairly. To do otherwise and ignore the serious

⁸⁸ In a child support case consolidated on appeal, the Baltimore City Office of Child Support Enforcement moved to intervene, “arguing no party was adequately representing the interests of the Department of Social Services of Baltimore City.” *Tandra S. v. Tyrone W.*, 648 A.2d 439, 442 (Md. 1994). The court granted the motion to intervene, and the attorney general’s office represented the Baltimore City Office of Child Support Enforcement on appeal.

⁸⁹ Examples include how to obtain work-restricted licenses, how to request modifications, and how to contest enforcement actions.

⁹⁰ LEGAL AID BUREAU, WHAT YOU NEED TO KNOW ABOUT CHILD SUPPORT (2000), www.mdlab.org/child%20support.html.

⁹¹ The action items and recommendations are available on the Maryland Department of Human Resources Web site, www.dhr.state.md.us/stakeholders/pdf/csea0203.pdf.

legal needs of an entire subset of our poor communities means that we are consigning many to continued, entrenched poverty. We believe that, if the mission of legal aid programs is both to address unmet legal needs of poor people and to try to remedy obstacles to escaping poverty, we must pay more attention to the legal needs of low-income noncustodial parents, as well as to their custodial counterparts.⁹²

Authors' Acknowledgments

We thank the Abell Foundation for its continued financial support for this project and Paula Roberts, senior staff attorney at the Center for Law and Social Policy, and Jane Murphy, professor and director of clinical education at the University of Baltimore School of Law, for their helpful suggestions for this article. We also wish to recognize the excellent work of current project attorneys Toni St. John and Kena Njoya and past project staff Hallie Greenlee and James Whitfield.

⁹² The practice also has afforded great professional challenges and opportunities. Acting within the Legal Services Corporation restrictions, we have been able to participate in policy-making that should shape child support policies in Maryland. The practice has enabled young lawyers to have early appellate advocacy experience and pursue novel legal theories on behalf of clients. These challenges yield professional growth opportunities that are exciting to new and more experienced lawyers alike and keep the enthusiasm for a legal aid practice high.