

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064



March 28, 2001

CSS LETTER NO. 01-09

TO: ALL IV-D DIRECTORS
 ALL DISTRICT ATTORNEYS
 ALL COUNTY ADMINISTRATIVE OFFICERS

Reason for this Transmittal

- State Law or Regulation Change
 Federal Law or Regulation Change
 Court Order or Settlement Change
 Clarification requested by One or More Counties
 Initiated by DCSS

SUBJECT: ONE-YEAR RETROACTIVE SUPPORT PROVISION IN FAMILY CODE
 (FC) SECTION 17402 (a)(2)

REFERENCE: FAMILY SUPPORT DIVISION (FSD) Letter Number (No.) 00-07

This letter rescinds FSD Letter No. 00-07 distributed to counties on April 24, 2000, by the Department of Child Support Services (DCSS) and provides new policy regarding retroactive support.

FSD Letter No. 00-07 established a one year retroactive support provision for aided cases, stating that “any pleading brought to judgment after January 1, 2000, regardless of when the pleading was filed, is subject to the new law (i.e., one year retroactivity) not the old law (i.e., 3 years retroactivity).” This policy was based on an amendment to FC Section 17402 (a)(2) which changed the retroactive support provision from three years from the date of filing the action to one year from that date, and the requirements of FC Section 4 regarding application of new law.

Subsequent to issuance of FSD Letter No. 00-07, Assembly Bill (AB) 1358 (Chapter 808, Statutes of 2000) amended FC Section 17402 (a)(2) to clarify that the one year retroactive support provision applies to “all cases filed on or after January 1, 2000.” Therefore, the three year retroactive support provision applies to those cases filed prior to January 1, 2000, regardless of when the judgment was obtained, and the one year retroactive support provision applies to all cases filed on or after January 1, 2000.

Determining the appropriate period of retroactive support has been further complicated because the amended language in FC Section 17402 (a)(2) which established the one year retroactive support provision for all cases filed on or after January 1, 2000, did not become effective until September 28, 2000.



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MTS: DCSS-DR-2000-EXC-0021

In retrospect, while it is clear that the Legislature's intent was to implement a retroactive support provision of one year effective January 1, 2000, the DCSS has determined that it is not necessary for local child support agencies to re-evaluate the cases which were processed in accordance with the retroactive support provisions of FSD Letter No. 00-07. Therefore, those cases filed or for which judgment was obtained between January 1, 2000 and September 28, 2000 which provided for retroactive support pursuant to the instructions in FSD Letter No. 00-07 need not be reviewed or modified. However, all cases filed on or after September 28, 2000, are subject to the one year retroactive support provision.

Note that FC Section 17402 (a)(2) specifically limits the period of retroactive child support for past aid paid to as much as one-year prior to the date the action to establish a support order was filed. However, the period of retroactive support owed can include the time it took the county to establish the order from the date that service of process was effectuated; the time it took to effectuate service of process from the date the action to establish the support order was filed (three-years maximum); plus, up to one year prior to the date the action was filed when the children in question received welfare during that year. Therefore, a support judgment may include more than one year of retroactive support.

Please note that if the court determines that a non-custodial parent in a child support action was not intentionally evading service of process, the court may limit the retroactivity to the date of service. Specifically, FC Section 4009, states, "If the parent ordered to pay support was not served with the petition, complaint, or other initial pleading within 90 days after filing and the court finds that the parent was not intentionally evading service, the child support order shall be effective no earlier than the date of service."

Should you have any questions regarding the information in this letter, please call Silvia Rodriguez at (916) 464-5237 or e-mail her at silvia.rodriguez@dcss.ca.gov.

Sincerely,

CURTIS HOWARD
Assistant Deputy Director
Child Support Services Division