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November 1, 2007

Opinion No. 07-149

Relationship between Child Support Enforcement Attorneys and Applicants for Child Support Enforcement Services

QUESTIONS

1. Does the Department of Human Services ("Department") or its contractors that provide child support enforcement services have an attorney-client relationship with the individuals who apply for or who receive such services?

2. What legal interests does Tennessee have in child support issues?

OPINIONS

1. No. Neither the Department nor its contractors that provide child support enforcement services have an attorney-client relationship with the individuals who apply for or who receive such services.

2. Tennessee possesses several significant interests in child support issues.

ANALYSIS

1.

Tennessee is a participant in the federally funded child and spousal support program created by Title IV-D of the Social Security Act ("Title IV-D"), 42 U.S.C. § 651 *et seq.* To receive federal funds under Title IV-D, Tennessee is required to implement a plan for "spousal and child support" that must meet numerous requirements, including the enactment of laws "to improve child support enforcement effectiveness." 42 U.S.C. § 654(20)(A). As part of this requirement under Title IV-D, Tennessee enacted a law that provides that individuals who apply for or who receive welfare benefits assign their rights to the State to receive child support:

> Each applicant or recipient who receives or authorizes payment of public or temporary assistance pursuant to Title IV-A or IV-E of the

> Social Security Act or any successor program providing temporary assistance or foster care or adoption assistance shall be deemed to have assigned to the state any rights to support from any other person such applicant or recipient may have:
>
> (A) In the applicant's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid; and
>
> (B) That have accrued at the time such assignment is executed.

Tenn. Code Ann. § 71-3-124(a)(1).

The same is true for children who enter State custody. Placing a child in the custody of the State constitutes an automatic application by the State for Title IV-D child support enforcement services:

> Notwithstanding the provisions of subsection (a), placement of a child in the custody of an agency of the state shall make the parents of that child liable for support from the effective date of the court's order. The court's placement of the child's custody with the state shall be deemed as an automatic application by the state, as custodian of the child, for child support services from the department of human services Title IV-D child support program.

Id. at § 37-1-151(b)(1). Even individuals who do not otherwise qualify for welfare benefits may apply for and receive Title IV-D services. *Id.* at § 71-3-124(c)(1).

Under Tennessee law, the Department may enter into contracts with private entities that will provide child support enforcement services for any applicants who request Title IV-D services, and these entities may file actions to create or enforce support obligations on the State's behalf:

> *The department or any entity, public or private, that contracts with the department to establish paternity or to establish, modify or enforce child or spousal support pursuant to the provisions of Title IV-D of the Social Security Act shall have authority and standing to file any legal actions to establish paternity or to establish, modify or enforce child or spousal support in any judicial or administrative proceeding on behalf of the department and the state for persons who have assigned rights of support to the department pursuant to this section, or who have otherwise applied for child or spousal support services pursuant to the provisions of subdivision (c)(1) or Title IV-D of the Social Security Act* . The department or its contractors may file such legal actions without the necessity of intervening in an existing action or naming the state as a party to the action. The department or

> its contractors shall not be required to provide proof that the obligor, the obligee or the child has applied for or is receiving Title IV-D child support services in order to meet the requirements for conducting Title IV-D child support judicial or administrative actions.

Id. at § 71-3-124(c)(2) (emphasis added).

There is not an attorney-client relationship between an attorney who provides child support enforcement services under Title IV-D and an individual who applies for or receives such services, and IV-D attorneys, in fact, possess an affirmative obligation to inform the individuals of that fact:

> *The provision of services under a child support enforcement program that includes services by an attorney or an attorney's representative employed by, under contract to, or representing the department shall not create an attorney-client relationship with any party other than the state*. Attorneys employed by or under contract to the department shall have an affirmative duty to notify individuals applying for child support services or temporary assistance for needy families (TANF) recipients or recipients of any successor program providing temporary assistance whose rights to support have been assigned, who contact or are contacted by the attorney or other child support enforcement program staff that any legal services provided by the child support enforcement program are solely on behalf of the state, and that no incidents of the lawyer-client relationship, including the confidentiality of lawyer-client communications, exist between the attorney and the applicant or recipient. No such duty shall exist when the applicant for services is another governmental agency acting on behalf of an individual and there is no direct contact between the child support enforcement program and the individual seeking support.

Tenn. Code Ann. § 71-3-124(d) (emphasis added).

In construing statutes, we must "ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). When the statute is unambiguous, legislative intent is determined from the statute's plain and ordinary meaning of the language used. *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). The statutory language must be "read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning." *National Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes that are related to the same subject matter are supposed to be read in *pari materia*. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). We must "construe the statute so that no part will be inoperative, superfluous, void or insignificant." *State v. Northcutt*, 568 S.W.2d 636, 637-38 (Tenn. 1978).

Applying the above principles of statutory interpretation, we conclude that, given the unambiguous provisions discussed above, neither the Department nor its contractors have an attorney-client relationship with the individuals who apply for or who receive child support enforcement services under Title IV-D. Tenn. Code Ann. § 71-3-124(d). Because individuals who apply for and receive Title IV-D services assign their rights to receive support to the State, the Department or its contractors do not represent the individuals but instead represent the State. Tenn. Code Ann. §§ 37-1-151(b)(1), 71-3-124(a)(1) and 71-3-124(c)(2). The Department or its contractors prosecute child support actions *solely* on behalf of the State, and the attorneys employed in this capacity have only the State as a client.

Further, it is not unethical for attorneys providing Title IV-D services to prosecute child support actions.[1] In a 1990 formal ethics opinion, the Board of Professional Responsibility ("Board") concluded that "all attorneys employed in programs administered by the [Department] pursuant to Title IV-D . . . are advocates of the state and never, at any time, have a client-attorney relationship with a recipient of funds, services and/or grants." Tenn. S. Ct. Bd. of Prof'l Responsibility Formal Op. 90-F-123, at 2 (1990). The Board found that the affirmative duty of attorneys employed by the Department or its contractors to inform applicants that the legal services provided are solely on behalf of the State gave sufficient disclosure to the applicants. *Id.* The Board also found that "there is no impropriety in the same attorney seeking support or modification of support for one parent after a change of custody and having previously participated in establishing support for the other parent; nor is there any impropriety in the same attorney seeking support for several individuals from the same person, i.e. support being sought from a father who has several children by different women." *Id.* at 3.

2.

Tennessee has several significant interests in child support issues. First, enacting laws that provide for the support and maintenance of children constitutes a preeminent exercise of the State's police powers. *Livesay v. Tennessee Bd. of Examiners in Watchmaking*, 322 S.W.2d 209, 211 (Tenn. 1959) (stating that the "police power of the State embraces all matters reasonably expedient for the safety, health, morals, comfort and general well-being of its people, as a unit"). Moreover, Title IV-D requires that participating states "establish guidelines for child support award amounts within the State." 42 U.S.C. § 667(a). Tennessee has a clear interest in complying with this requirement in order to maintain its receipt of federal funds under Title IV-D. The Child Support Guidelines ("Guidelines") must be employed "in every judicial or administrative action to establish, modify, or enforce child support." Tenn. Comp. R. & Regs. 1240-2-4-.01(2)(a). The Guidelines explain that the "major goals" in developing and applying them to child support cases are to:

> (a) Decrease the number of impoverished children living in single parent families;

[1]At the same time, however, we note that the Board's ethics opinions are not legally binding. *State v. Jones*, 726 S.W.2d 515, 519 (Tenn. 1987). As such, Tenn. Code Ann. § 71-3-124(d) controls.

> (b) Make child support awards more equitable by ensuring more consistent treatment of persons in similar circumstances while ensuring that the best interests of the child in the case before the tribunal are taken into consideration;
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> (c) Improve the efficiency of the tribunal process by promoting settlements and by giving tribunals and parties guidance in establishing appropriate levels of support awards;
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> (d) Encourage parents paying support to maintain contact with their child;
>
> (e) Ensure that, when parents live separately, the economic impact on the child is minimized, and, to the extent that either parent enjoys a higher standard of living, the child shares in that higher standard;
>
> (f) Ensure that a minimum amount of child support is set for parents with a low income in order to maintain a bond between the parent and the child, to establish patterns of regular payment, and to enable the child support enforcement agency and party receiving support to maintain contact with the parent paying support; and
>
> (g) Allocate a parent's financial child support responsibility from the parent's income among all of the parent's children for whom the parent is legally responsible in a manner that gives equitable consideration, as defined by the Department's Guidelines, to children for whom support is being set in the case before the tribunal and to other children for whom the parent is legally responsible and supporting.

Tenn. Comp. R. & Regs. 1240-2-4-.01(3).

As the Supreme Court has noted, the Guidelines "have the force and effect of a legislative mandate." *Gallaher v. Elam*, 104 S.W.3d 455, 459 (Tenn. 2003). In our view, the Guidelines and their goals are proper exercises of the State's police powers to insure the "safety, health, morals, comfort and general well-being of its people." *Livesay*, 322 S.W.2d at 211.

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