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Civil Legal Aid, Indigent Defense and the Flexibility, Efficiency, and Modernization in Child Support Programs Final Regulation: What Practitioners Need to Know About the New Federal Child Support Regulation

JANUARY 13, 2017

Speakers

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- **Vicki Turetsky**
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Administration for Children and Families, U.S. Department of Health and
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- **Reginald Williamson**
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Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs: Final Rule



What Does the Rule Do?

- First comprehensive revision of child support rules since welfare reform.
- Reflects broad consensus in the field.
- Incorporates research evidence-based practices.
- Strengthens procedural fairness and legal evidentiary standards.
- Streamlines program operations and technology.

Opens up state guidelines review



Requires more transparency, public participation, and data when states conduct child support guidelines reviews.

45 C.F.R. §302.56 provides that within 1 year after next state quadrennial review, states must:

- Provide a meaningful opportunity for public input, including from low-income parents and their representatives.
- Obtain the views of the state child support agency.
- Consider economic data on cost of raising a child, labor market data for state and local job markets; impact on parents below 200% of poverty; and factors that influence employment and compliance.
- Analyze case data related to defaults, imputation, and low income adjustments.
- Make guidelines available to public.

Updates guidelines standards



Guidelines standard is that support orders must be based on ability to pay.

45 C.F.R. §302.56 provides that within 1 year after next state quadrennial review:

- Guidelines must provide that order is based on the noncustodial parent's "earnings, income and other evidence of ability to pay" and take basic subsistence needs into account when there is a limited ability to pay.
- If imputation is authorized, takes into consideration specific circumstances, such as residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, prevailing earnings level in the local community, and other relevant background factors in the case.

Requires orders based on evidence



Requires the child support agencies to increase investigative efforts to develop a factual basis for order.

45 C.F.R. §303.4 requires state child support agencies to:

- Take reasonable steps to develop a sufficient factual basis for the obligation.
- Gather information about noncustodial parent's income and specific circumstances.
- Base obligation on earnings and income. If evidence of income is unavailable or insufficient as a measure of ability to pay, base obligation on specific circumstances.
- Document factual basis in case record.

Prohibits treatment of incarceration as “voluntary unemployment”



States may not exclude incarceration as a “substantial change in circumstances” or treat it as “voluntary unemployment” in setting and modifying orders.

- 45 C.F.R. §302.56 requires state guidelines to provide that incarceration may not be treated as voluntary unemployment.
- 45 C.F.R. §303.8 requires that the state’s reasonable quantitative standard not exclude incarceration as a basis for review and adjustment.
- 45 C.F.R. §303.8 requires states to notify both parents of their right to request a review and adjustment within 15 days of when the child support agency learns that a noncustodial parent will be incarcerated for more than 180 calendar days. States may elect to initiate a review without the need for a specific request and upon notice to both parents.

Requires guidelines for civil contempt



- Requires states to develop guidelines for use of civil contempt.

45 C.F.R. §303.6 requires states to:

- Establish civil contempt guidelines that include requiring the child support agency to:
- Screen cases for ability to pay or otherwise comply with the order.
- Provide the court with information to assist the court in making a factual determination of ability to pay.
- Provide clear notice that ability to pay is the critical question in the action.

Requires direct payments to families



State child support agencies may not redirect collections to private collection agencies.

45 C.F.R. §302.38 provides that any payment required to be made to a family will be made directly to the:

- resident parent
- legal guardian
- caretaker relative
- judicially-appointed conservator with a fiduciary duty
- alternate caretaker designated in a record by the custodial parent

Case closure criteria



State child support agencies may only close cases based on specific criteria, including new criteria.

45 C.F.R. §303.11. The agency may close cases when:

- There is no longer a current support order and all arrearages are owed to the state;
- There is no longer a current order, the children have reached majority, the noncustodial parent is entering long-term care, and has subsistence-level income.
- The parent is living with the minor child and services are not appropriate.
- The parent cannot pay support and shows no evidence of support potential during the child's minority because a parent is institutionalized, incarcerated, or totally and permanently disabled.
- The parent's sole income is from SSI or concurrent SSI and SSDI.
- A parent has requested limited paternity-only service.
- Another assistance program has inappropriately referred the case to the child support agency.
- The agency has transferred a case to a tribal child support agency.

Case closure criteria



State child support agencies may only close cases based on specific criteria, including new criteria.

45 C.F.R. §303.11. The agency must close cases when:

- The child is eligible for health care services from the Indian Health Service and the case was opened because of a Medicaid referral based solely upon health care services, including the Purchased/Referred Care program.

SSI benefits excluded from garnishment



States may not garnish SSI or concurrent SSI and SSDI benefits.

45 C.F.R. §307.11 requires a state child support agency to:

- Program the statewide computer to identify cases where the noncustodial parent receives SSI payments or concurrent SSI payments and SSDI benefits to prevent garnishment of these funds.
- Refund monies within 5 days after IV-D determines the account has been incorrectly garnished.

Availability of IV-D federal matching funds



Federal Financial Participation (FFP) is available for necessary and reasonable costs attributable to the child support program.

45 C.F.R. §304.20 lists additional allowable costs:

- Services to increase pro se access to adjudicative and alternative dispute resolution processes related to child support.
- Bus fare or other minor transportation expenses to allow parents to participate in child support proceedings.
- Educational and outreach activities.

Effective and compliance dates



- Effective date is 30 days after the date of publication of the final rule.
- Compliance dates, or the dates that states must comply with the final rule, varies for the various sections.
- Generally, compliance date will be 60 days after the final rule is published but certain provisions have longer compliance dates.
- Revisions to state guidelines must be made during the regular quadrennial guidelines review cycle.

Contact information



For questions, please contact the OCSE Policy and Training Division at OCSE.DPT@acf.hhs.gov

Reginald Williamson
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D.C. Public Defender Service



HOME > ABOUT US > LEGAL SERVICES > COMMUNITY DEFENDER DIVISION

Community Defender Division

Defending fairness for all by supporting successful reentry.

When our clients' lives intersect with the criminal and juvenile justice system, they face challenging obstacles. The Community Defender Division (CDD) works to help our clients in the District—both adults and children—face their legal difficulties that stem from prior arrests, convictions, and incarceration.

- Applicable law in the District of Columbia regarding modification of child support orders due to incarceration in the District of Columbia

D.C. Public Defender Service

- How judgment orders are transferred in a criminal case to the IV-D(Child Support)agency.
- How do clients find out about these legal services provided by the Community Defender Division-Prisoner and Reentry Legal Services?

D.C. Public Defender Service

- Issue of complete suspension/modification of the child support order due to incarceration
- Fathering Court in D.C. (Article by the Honorable Milton C. Lee: Fatherhood In The Child Support System: An Innovative Problem-solving Approach To An Old Problem, *Family Court Review*)

Kirby Mitchell
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Turner v. Rogers and the Role of the Family Court Judge



By: Kirby Mitchell

South Carolina Legal Services
and

Timothy Mose

DSS Integrated Child Support
Services Division

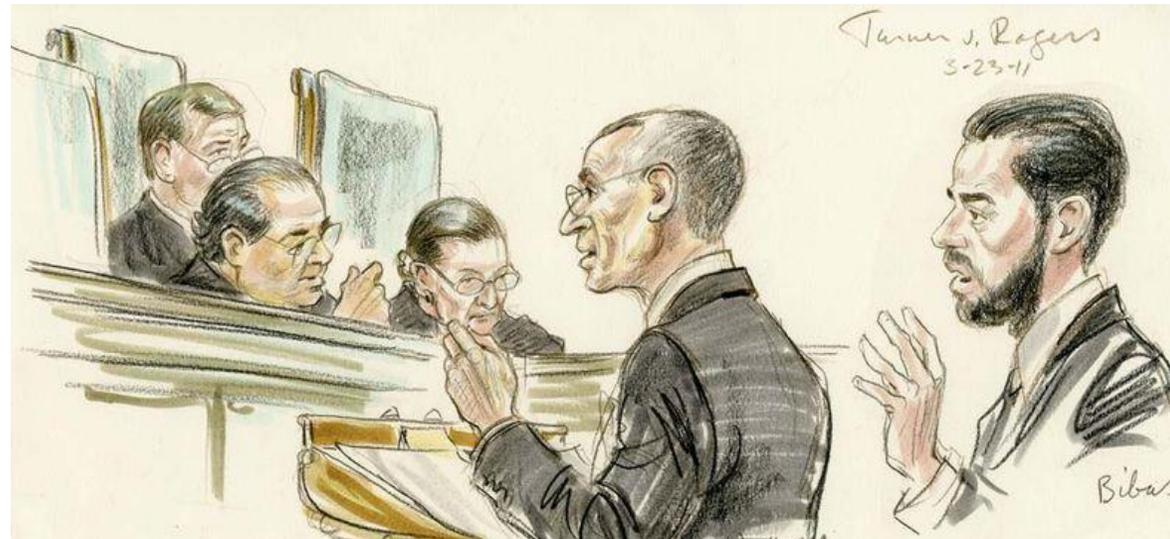
(ICSSD)

2013 Annual Judicial Conference

August 22, 2013

Turner v. Rogers (2011)

- U.S. Supreme Court issued its opinion in *Turner v. Rogers*, 131 S. Ct. 2507 (U.S. Supreme Court 2011) on June 20, 2011.
- Case originated in the Family Court in Oconee County, South Carolina.
- South Carolina Family Court Judge: Timothy Cain (now a U.S. District Court Judge).
- Michael Turner's South Carolina attorney: Derek Enderlin.



So, what's the 'take home' message from *Turner v. Rogers* for South Carolina judges?

- In South Carolina today, no federal or state constitutional requirement that you appoint child support contempt defendants an attorney.
- *Turner* court says you need to be sure **procedural safeguards** are in place in child support contempt hearings.
- In addition to the procedural safeguards required, *Turner* does not prevent family court judges from appointing counsel in certain civil contempt situations where the court concludes it is necessary.

So, what could a legal aid lawyer consider doing now after the new (Jan. 2017) OCSE regulation?

- (1) Make sure everyone (e.g., judges, child support enforcement attorneys, family law bar, etc.) **knows** about it...
- (2) ... starting with your state's child support enforcement director!
- (3) Continue to stress (to anyone who will listen) the important role that counsel plays in ensuring the new rules are followed;
- (4) Take a case; and
- (5) Support courtroom observation / accountability efforts (to my surprise, this kind of helped in Greenville, SC!)

Q & A Session



Resources

- New rule: Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs:

www.federalregister.gov/documents/2016/12/20/2016-29598/flexibility-efficiency-and-modernization-in-child-support-enforcement-programs

- Summary of the new rule's major provisions:

www.acf.hhs.gov/sites/default/files/programs/css/overview_child_support_final_rule.pdf

- FATHERHOOD IN THE CHILD SUPPORT SYSTEM: AN INNOVATIVE PROBLEM-SOLVING APPROACH TO AN OLD PROBLEM

<http://www.dccourts.gov/internet/documents/2012-01-01Fathering-Court-Article-Published.pdf>

- Contact for OCSE Policy and Training Division:

OCSE.DPT@acf.hhs.gov

- Copy and recording of this presentation (beginning week of 1/30/17:

www.nlada.org/child-support-regulation



Presenter Bios & Contacts





Karen Lash

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Karen A. Lash is a Deputy Director for the Office for Access to Justice at the US Department of Justice, and the Executive Director of the White House Legal Aid Interagency Roundtable. In 2014, she received the John Marshall Award for Outstanding Legal Achievement for Participation in Litigation. Before joining the Department, she was a consultant for law schools and nonprofits, including the Mississippi Center for Justice, American Constitution Society, National Legal Aid and Defender Association, and the law schools at UC Irvine and UC Berkeley. She has served as Equal Justice Works VP of Programs, University of Southern California Law School Associate Dean, Public Counsel's Child Care Law Project Director, Tuttle & Taylor associate, and clerk to US Ninth Circuit court of Appeals Judge Warren J. Ferguson. Lash co-chaired the California Access to Justice Commission, and has helped establish legal clinics in Moldova, Ukraine, Slovakia, Cambodia, Kyrgyzstan, Serbia and Macedonia. Lash has a B.A. from UCLA and a J.D. from USC Law School.



Vicki Turetsky

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In 2009, Vicki Turetsky was appointed Commissioner for the federal Office of Child Support. As Commissioner, her priorities include implementing family-centered strategies to support parental employment and involvement, modernizing federal and state technology to increase program efficiency, expanding the tribal child support program, and preparing for generational change.

Ms. Turetsky brings more than 30 years of experience as a public administrator and advocate for low-income families. She is a nationally recognized expert in family policy, and is instrumental in efforts to boost child support payments to families and establish realistic child support policies that encourage fathers to work and play an active parenting role. Prior to her appointment, she served as the Director of Family Policy at the Center for Law and Social Policy, and was a visiting lecturer at the Woodrow Wilson School of Public and International Affairs at Princeton University.

She also has held positions at the U.S. Corporation for National and Community Service, MDRC, Union County Legal Services in New Jersey, the Minnesota Attorney General's Office, and the Minnesota Department of Human Services. She received her B.A. from the University of Minnesota and her J.D. from the University of Chicago Law School.

She has received a number of honors, including the 2014 Burton Award for Government Service, 2006 NCSEA "Champion of Children" Award, and the 2000 OCSE "Lifelong Achievement" Award. In 2013, she was named by Newsweek as one of "30 Leaders in the Fight for Black Men." She also received one of first Minnesota "STEP" Awards in 1987 cited by Osborne and Gaebler, Reinventing Government.



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Reginald Williamson has been a Staff Attorney at the D.C. Public Defender Service (PDS) in the Community Defender Division, Prisoner & Reentry Legal Services for the past six years, where he handles cases including parole hearings, record sealing/expungement, prison conditions, modification of child support orders due to incarceration, and housing, employment, and public benefits where the client's criminal record acts as a barrier. He joined PDS in 2001 and has tried cases in both the Juvenile Division and the Trial Division.



Kirby Mitchell

Senior Litigation Attorney, South Carolina Legal Services

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Kirby Mitchell is a senior litigation attorney at South Carolina Legal Services. A graduate of Furman University and University of Georgia School of Law, he is a member of the South Carolina Bar in which he serves in the House of Delegates, State Bar of Georgia, and is admitted to practice in the U.S. District Court and U.S. Tax Court. Representing low-income clients in a wide variety of civil cases, Kirby appears in federal and state courts—including family, probate, circuit, magistrate and appellate courts. He teaches a popular “Poverty and the Law” class at Furman (2011-2016), most recently focusing the class on medical-legal partnerships (MLP), and he has presented and co-presented to lawyers and Bar members -- in South Carolina as well as nationally – many times, including at The Riley Institute, the National Legal Aid and Defender Association (“Representing Individuals and Families Struggling with Autism Spectral Disorders”) and the South Carolina Judiciary (“Turner v. Rogers and the Role of the Family Court Judge”).

Kirby has received the Furman Heritage Alumni Award (2009), the S.C. Bar and Access to Justice Commission’s Legal Services Lawyer of the Year Award (2013), and in 2016, he was selected as the only “legal aid” lawyer in the United States to be invited to the 44th Annual Trial Academy of the International Association of Defense Counsel (IADC) at Stanford Law School in Palo Alto, CA.

Q & A Session



Thank you!

