

# NEWSLETTER

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**Special points of interest:**

- Deferral, waiver, or reduction of child support may be granted in a child's best interest
- There's still time to register for the Annual Parental Defense Conference
- Register for the Parental Defense Conference online at:

[www.parentaldefense.org](http://www.parentaldefense.org)

## CHILD IN CARE (CIC) GOOD CAUSE WAIVER OR DEFERRAL OF SUPPORT PAYMENTS

The Office of Recovery Services has the responsibility of establishing, collecting and enforcing child support for CIC or in the custody of the State. Children may be in foster homes, residential treatment facilities, the State hospital, nursing homes or corrections facilities.

Caseworkers working directly with families have the obligation to actively assist them to complete their family plans. There may be times when the support obligations create an undue hardship on the family and threaten reunification efforts. In those cases, the caseworker should take the initiative to discuss with the family the possibility to apply for a waiver or deferral of the support payment. When the caseworker fails to do so, however, parents counsel must be prepared to advocate for application on the part of their client.

UAR 495-879-5, provides "If collections (of support payments) interferes with family reunification, a division may, using the Good Cause-Deferral/Waiver (form 602), request a deferral or waiver of arrears payments. The request may be applied to current support when

*an undue hardship is created by an unpreventable loss of income to the present family. A loss of income may include nonpayment of child support from the other parent for the children at home, loss of employment, or loss of monthly pension or annuity payments."*

The Good Cause Deferral and Waiver may be denied or approved at any stage of the process. UAR 495-879-5.



If waiver or deferral of the child support obligation is not appropriate, it may be possible for ORS to deviate from the child support guidelines and collect less than the guidelines require if it is in the child's best interests. UAR 495-879-3.

The ORS Waiver/Deferral process exists to respond to individual family circumstances and can be used to request a reduction or postponement of child support

Continued page 3...

## ANNUAL PARENTAL DEFENSE CONFERENCE— THERE'S STILL TIME TO REGISTER

The juvenile court judges will be in conference...the AAG's and GAL's will be in conference...so your calendars should be pretty clear on April 16 and 17. Meet (commiserate?) with other parental defense attorneys from across the State, enjoy the comfortable surroundings at the Zermatt (they have valet park-

ing!), and hear another presentation on— yes—you knew it as coming—reasonable efforts and the practice guidelines. In addition, we expect some helpful information from a retired DCFS person on bonding , interesting and very useful tools to help our clients through motivational interviewing, get updated on

child welfare changes (and there are some big ones, particularly in kinship) after this legislative session, more on appeals, and ethics.

Register online at [www.parentaldefense.org](http://www.parentaldefense.org).

GOOD CAUSE DEFERRAL/WAIVER

1. This form must be completed by the worker and submitted to the Region Director and Division Director for any case where the case-worker is requesting ORS to postpone or waive collection of current or past-due child support. If the Region Director or Division Director does not agree with the waiver request, it will be returned directly to the caseworker as denied. If the Region Director or Division Director approves the request, it will be forwarded to the Division Director or Superintendent of the Institution. The Division Director or Superintendent will forward it to ORS if he or she agrees with the request.
2. The ORS/CIC Regional Director (or designee) will review the waiver request to verify compliance with state and federal law and with established waiver criteria, and to verify any financial information used in the request. The ORS/CIC Regional Director (or designee) will forward the request to the Division Director/Superintendent (or designee) designating either agreement or disagreement. If the Division Director/Superintendent (or designee) and the ORS/CIC Regional Director disagree about the waiver, it will be sent with comments to the Executive Director of the Department (or designee) for a decision. The Executive Director or designee will inform both the ORS/CIC Regional Director and the Division Director/Superintendent of the decision.
3. The caseworker must be very specific in the justification for the request and give enough detail for the Director/Superintendent of the referring agency to make a determination. **A request for a waiver or postponement of support payments should be based on facts, explaining that the present family has been encumbered by an unpreventable loss of income or extraordinary and necessary expenses not considered at the time the order was established.**

The Agency hereby requests the Office of Recovery Services to suspend the collection of child support in the following case(s):


**SPECIFIC REASON FOR THE REQUEST:** [Describe in detail how the collection of a support amount would be unjust, inappropriate, or not in the best interest of the child(ren) in this particular case. Use back of form or additional paper if needed. Submit documentation that substantiates the request.] Please refer to established waiver criteria.

I have attached documentation to substantiate the request. Circle one:    yes            no

\_\_\_\_\_

-

\_\_\_\_\_

-

\_\_\_\_\_

-

PARENTS' CURRENT PAYMENT ARRANGEMENT WITH ORS: (Describe)

\_\_\_\_\_

-

\_\_\_\_\_

-

THIS REQUEST APPLIES TO THE FOLLOWING: <input type="checkbox"/> Postponement or <input type="checkbox"/> Waiver of <input type="checkbox"/> Current or <input type="checkbox"/> Past-Due Child Support		
<b>*Worker:</b>	Phone:	Date

<b>*Worker:</b>	Phone: _____	Date _____
<b>*Supervisor:</b>	Phone: _____	Date _____

AGREE     DISAGREE

COMMENTS: \_\_\_\_\_ \*REGION DIRECTOR, CUSTODIAL AGENCY \_\_\_\_\_ Date \_\_\_\_\_

APPROVED     DENIED

COMMENTS: \_\_\_\_\_ \*DIVISION DIRECTOR, CUSTODIAL AGENCY (or designee) \_\_\_\_\_ Date \_\_\_\_\_

RESPONSE FROM ORS:

AGREE     DISAGREE

COMMENTS: \_\_\_\_\_ Date \_\_\_\_\_ ORS DIRECTOR (or Designee) \_\_\_\_\_ Phone \_\_\_\_\_

APPROVED     DENIED

COMMENTS: \_\_\_\_\_ DHS EXECUTIVE DIRECTOR (or Designee) \_\_\_\_\_ Date \_\_\_\_\_

**\* All custodial agency signatures must be obtained prior to sending the form to ORS, or the form will be returned to the caseworker.**

CHILD IN CARE (CIC) GOOD CAUSE WAIVER OR DEFERRAL OF SUPPORT PAYMENTS, CONTINUED...

payments and is usually initiated by DCFS in response to a hardship observed by the caseworker or expressed by the family. The waiver/deferral request should be initiated after the ORS process is complete, however.

Waiver requests have been considered when unpreventable losses such as uninsured medical expenses occur, for the temporary loss of employment due to disability or reduction in forces, or when **DCFS determines that collection of child support may interfere with treatment of a**

**child or prevent family reunification.**

According to ORS, it is "generally not appropriate to request that no child support be paid" and ORS will generally reject requests that ask for reduction or postponement of support payments due to a reduction in the family's standard of living or if paying support payments place stress on the parents because there are other non-essential debts in the household.

The next time you have a cli-

ent who is at risk of failing to finish the family plan because of a financial hardship, consider whether a waiver, deferral or reduction will assist that parent.



## CHILDREN'S JUSTICE SYMPOSIUM

It's an event which the Attorney General's office apparently does not consider of interest to child welfare defense counsel, rather, the target audience is law enforcement, AAG's, GAL's,



Sun Tzu: Victory may be produced out of knowledge of the opponents tactics.

DCFS and CJC personnel. Why? Unknown, since clearly parents—and their defense counsel—are equally interested in justice for children. Anyway, you might want to check out this year's symposium at the Zermatt on May 15, 16 and 17. A word of caution, however, at last year's symposium there was a definite "us versus them" mentality and some speakers loosed some rather demeaning comments regarding defense counsel. It was helpful, however, to hear the speakers and understand the bases for some of the positions taken by "the

other guys."

Topics this year include: Medical/Legal Issues in Child Sex Abuse; Role of Medical provider in Abusive Head Trauma and Abusive Fractures; Interdisciplinary Child Abuse Investigations; Child Abuse Involving Children with Disabilities; Forensic Interviewing of Crime Victims with Disabilities.

For more information on the seminar, the brochure suggests you contact Laura Seklemian at 801-281-1238 or email her at lseklemian@utah.gov.

"Characteristics of motivational interviewing includes affirmation of the client's freedom of choice and self-direction"

## WHAT IS "MOTIVATIONAL INTERVIEWING"

One topic at this year's PD Conference is "motivational interviewing." Just what is "motivational interviewing?"

Motivational interviewing evolved from treatment involving alcoholics. Rollnick, S & Miller, WR, *Behavioral and Cognitive Psychotherapy*, 23, 325-334. As such, the technique translates well to our drug-addicted clientele.

Rollnick and Miller define "motivational interviewing" as a client-centered counseling style for eliciting behavior change by helping clients to explore and resolve ambivalence." <http://www.motivationalinterview.org/clinical/whatismi.html>

No one suggests that defense counsel engage in psychotherapy and counseling, nonetheless, motivational interviewing can be a useful tool

for defense counsel as we meet with our clients and try to determine their objectives in a child welfare proceeding or during our consultations regarding their progress with their family plans. Much of the work of defense counsel involves helping parents make realistic decisions about their case; motivational interviewing—being "goal directed" can help attorneys help parents motivate to change.

The spirit of motivational interviewing can be characterized by the following:

1. Motivation to change is elicited from the client, not imposed from without;
2. It is the client's task, not the counselor's, to articulate and resolve his/her ambivalence;
3. Direct persuasion is not an effective method for

resolving ambivalence.

4. The style is generally a quiet and eliciting one. Id.

Motivational interviewing is not a technique, rather, it is an interpersonal style guided by an understanding of what triggers change. Id.

Characteristics of motivational interviewing include:

1. seeking understanding of the client's frame of reference;
2. Expressing affirmation and acceptance;
3. Eliciting and selectively reinforcing the client's self motivational statements;
4. Monitoring the client's degree of readiness to change; and
5. Affirming the client's freedom of choice and self direction.

# CIP FUNDED ASSESSMENT AFFIRMS VALUE OF PRACTICE GUIDELINES

An emphasis on the significance of juvenile court recognition of the import of DCFS practice guidelines received validation in an assessment funded by Utah’s Juvenile Court Improvement Project (CIP). The resulting report is entitled *Evaluating front-loading Strategies in Child Abuse and Neglect Cases: Are We Improving Outcomes for Children and Families?*

One recommendation resulting from the findings of the evaluators included , as a **key recommendation**, that Utah “ensure that the DCFS Practice Model , which incorporates a problem-solving, family-focused model, IS FULLY IMPLEMENTED IN ALL CASES.” NCWRC, <http://www.abanet.org/child/statesum/state.cfm?State=UT>. (emphasis added)

Judge Tena Campbell of the US District Court for Utah ordered DCFS to implement the Practice Model; DCFS developed Practice Guidelines to implement the Practice Model, the Director for DCFS expects all DCFS people to

follow the Practice Guidelines, and a court improvement evaluation of our child welfare courts cites as a “key recommendation” that the courts “ensure” that the practice model is FULLY implement in ALL cases. There can be no doubt by now that DCFS has a duty to follow the Practice Guidelines.

Defense counsel, in encouraging caseworkers to internalize the principles of the Practice Model , may feel they face challenges akin to those faced by the founding fathers seeking adoption of a new constitution. As Alexander Hamilton remarked,

*“Among the most formidable of the obstacles which the new Constitution will have to encounter may readily be distinguished the obvious interest of a certain class of men in every state to resist all changes which may hazard a diminution of power, emolument, and consequences of the offices they hold under the State establishments....”* Federalist Papers No. 1. <http://www.yale.edu/lawweb/>

avalon/federal/fed01.htm. Sometimes, it is the DCFS supervisors and managers—those who have been in the system for some period of time—who pose the greatest obstacle to implementation of the practice guidelines.

Diligent oversight by defense counsel can ensure that the Practice Model is fully implemented with outcomes for children and families improved as a result.



It is recommended that Utah “ensure that the DCFS Practice Model...is fully implemented in all cases”

## PROPOSED AMENDMENT TO JUVENILE COURT RULES

Rules of Juvenile Procedure:

URJP 07. Warrants. Amend. The changes incorporate procedural provisions from the Utah Code on search warrants. The changes also create procedures to implement the requirements of Anderson v. Taylor, 2006

UT 55. The rule requires a judge to retain warrant documents from the time a warrant is issued.

Approved as an expedited amendment under Rule 11-101(6)(F).

Subject to further change after the comment period.

Effective Date: April 30, 2007.



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We're on the web!  
[www.parentaldefense.org](http://www.parentaldefense.org)



At the foundation of our civil liberties lies the principle that denies to government officials an exceptional position before the law and which subjects them to the same rules of conduct that are commands to the citizens.

-Justice Louis D. Brandeis

## PARENTAL DEFENSE CONFERENCE AGENDA

**The Annual Parental Defense Seminar** will take place April 16 and 17, 2007 at the Zermatt Resort in Midway, Utah. The conference will be held at the same time the Juvenile Court Judges and AAG hold their annual meetings. The Agenda and Presenters include:

R. Chris Barden, Ph.D. J.D. L.P. **Examining Expert methodologies in Child Welfare Cases.**

Nickie Wolfe, **About DCFS and Accessing Discretionary funds**

David Boyer, **HIPAA Requirements and Releases**

Panel Discussion— **Tips and Tricks to representing parents in Child Welfare Proceedings**

Brad Lundahl, PhD., **Motivation Interviewing Techniques and Application**

Jason Brophy, Weber Mental Health—**Drug Testing: What Do The Results Really Mean?**

Danielle Allison—**Appellate Law and Juvenile Appeals Update**

Dan Shumway—**Court Reports in Juvenile Court**

Sharon S. Sipes—**Reasonable Efforts**

Lisa Lokken—**Legislative and Adam Walsh Update**

Diane Akiyama, Office of Prof. Conduct—**Ethics for Parents' Counsel**

**13.5 hours of CLE (pending); To register, follow the link from "Events" on the website: [www.parentaldefense.org](http://www.parentaldefense.org)**