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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 79-501
	:	
of	:	<u>June 14, 1979</u>
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Clayton P. Roche	:	
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SUBJECT: NOTICE REQUIREMENTS—Notice given by the county welfare department of the right to have child support enforcement continued, which notice is given by it concurrently with notice of discontinuance of AFDC payments, satisfies the notice requirements of the Welfare and Institutions Code.

The Honorable John K. Van De Kamp, District Attorney, Los Angeles County, has requested an opinion on the following question:

Does a notice given by the county welfare department of the right to have child support enforcement continued by the district attorney, which notice is given by it concurrently with notice of discontinuance of AFDC payments, satisfy the notice requirements of section 11476(2) of the ‘Welfare and Institutions Code?’

CONCLUSION

A notice given by the county welfare department of the right to have child support enforcement continued by the district attorney, which notice is given by it concurrently with notice of discontinuance of AFDC payments, satisfies the notice requirements of section 11476(2) of the Welfare and Institutions Code.

ANALYSIS

Section 11475 *et seq.* of the Welfare and Institutions Code¹ implements in California the Child Support Enforcement Program of Title IV-D of the Social Security Act, the so-called “IV-D Program.” Section 11475 provides that “[t]he department [of Social Services] is hereby designated the single organizational unit whose duty it shall be to administer the state plan for securing child support and determining paternity.” Section 11475.1 then provides that “[e]ach county shall maintain a single organizational unit located in the office of the district attorney which shall have responsibility for promptly and effectively enforcing the obligation of parents to support their children and determining paternity in the case of a child born out of wedlock.” It further provides that “[t]he district attorney shall take appropriate action, both civil and criminal, to enforce this obligation when the child is receiving public assistance and when requested to do so by the individual on whose behalf the enforcement efforts will be made when the child is not receiving public assistance.”

When such public assistance (commonly known as “AFDC”) is to be discontinued, section 11476 provides in part:

“Whenever a family which has been receiving aid to families with dependent children ceases to receive assistance, the district attorney shall:

“(1) Continue to enforce support payments from the noncustodial parent for a period not to exceed three months from the month following the month in which such family ceased to receive assistance and pay all amounts so collected to the family; and

“(2) At the end of such three-month period, if after written notice to the individual, the district attorney is requested to do so by the individual on whose behalf the enforcement efforts will be made, continue to enforce such support payments from the noncustodial parent.

When AFDC is to be discontinued, the practice in some counties is that the county welfare department will provide the “notice to the individual” contemplated by section 11476(2), *supra*, concurrently with the notice it sends of AFDC termination.² The issue

¹ All section references are to the Welfare and Institutions Code unless otherwise indicated.

² We do not read the request for our opinion herein as questioning the legal sufficiency of the wording or format of such notice. We do note, however, that the actual notice sent appears to meet the minimum substantive notice requirements of section 11476(2) since the section does not specifically provide what the notice should state. The actual notice is incorporated into the county’s “Notice Of Intended Action And Right To Request A Fair Hearing,” is set forth near the

presented is whether notice given by the county welfare department at such time satisfies the requirements of section 11476(2). It has been suggested that section 11476(2) may require that this notice is to be given only by the district attorney, and only *after* the expiration of the three-month period specified therein.

It is the conclusion of this office that notice given by the county welfare department of the right to have child support enforcement continued, which notice is given concurrently with notice of discontinuation of AFDC payments, satisfies the provisions of section 11476(2).

Initially, we note that there is nothing in section 11476, or any other law of which we are aware, which specifies who shall give the notice contemplated in section 11476(2)³

bottom of said form in rather small print, and states:

“At your request, collection of child support by the county will continue, or you may have the absent parent send child support payments directly to you. If you want the county to continue to collect child support payments and forward them to you, you should contact the District Attorney.”

Despite the fact that the notice appears to meet the minimum requirements of section 11476(2) as to its wording, we suggest that its notice value would be enhanced if a notice of the same or similar wording appeared in larger print on a separate notice form to accompany the “Notice Of Intended Action And Right To Request A Fair Hearing,” appropriately captioned at the top, and possibly even containing a portion which could be filled in and returned to the district attorney if continuance of child support is to be requested. This would preclude the possibility of the present wording being overlooked on the combined form currently being used.

³ Section 11476 provides in full:

“It shall be the duty of the county department to refer all cases where a parent is absent from the home, or where the parents are unmarried and parentage has not been determined by a court of competent jurisdiction, to the district attorney immediately at the time the application for assistance, or certificate of eligibility is signed by the applicant or recipient. If an applicant is found to be ineligible, such applicant shall be notified in writing that the referral of case to the district attorney may be terminated at such applicant’s request. The county department shall cooperate with the district attorney and shall make available to him all pertinent information as provided in Section 11478.

“Upon referral from the county department, the district attorney shall investigate the question of nonsupport or paternity and shall take all steps necessary to obtain support for the needy child and determine paternity in the case of a child born out of wedlock. Upon the advice of the county department that a child is being considered for adoption, the district attorney shall delay the investigation and other actions with respect to the case until advised that the adoption is no longer under consideration. The granting of aid to an applicant shall not be delayed or contingent upon investigation by

Accordingly, it would appear that the legislative purpose and intent would be adequately served whether the notice is given by the district attorney or the county welfare department. The fact of notice, not by whom it is given, is the operative requirement of the statute.

As to the suggestion that section 11476(2) requires that the notice contemplated therein be given “at the end of . . . [such] three month period” specified therein, we conclude that the section contains no such requirement. We believe that an analysis of the complete sentence, of which subdivisions (1) and (2) are parts, demonstrates that the adverbial phrase “at the end of such three month period” found in subdivision (2) modifies the verb “continue.” Essentially, the sentence sets forth the district attorney’s duties with respect to enforcement of child *support in two time frames*. Subdivision (1) sets forth the district attorney’s duty to unqualifiedly *continue* to enforce support payments for a period not to exceed three months. Subdivision (2) then sets forth his duty after such time, that is, to continue to do so “at the end of such three month period,” but only upon a certain specified condition. That condition is that he be requested to do so by the proper “individual.”

the district attorney.

“Where a court order has been obtained, any contractual agreement for support between the district attorney or the county department and the noncustodial parent shall be deemed null and void to the extent that it is not consistent with the court order.

“Whenever a family which has been receiving aid to families with dependent children ceases to receive assistance, the district attorney shall:

“(1) Continue to enforce support payments from the noncustodial parent for a period not to exceed three months from the month following the month in which such family ceased to receive assistance and pay all amounts so collected to the family; and

“(2) At the end of such three-month period, if after written notice to the individual, the district attorney is requested to do so by the individual on whose behalf the enforcement efforts will be made, continue to enforce such support payments from the noncustodial parent.

“The district attorney shall, where appropriate, utilize reciprocal arrangements adopted with other states in securing support from an absent parent for any child. In individual cases where utilization of reciprocal arrangements has proven ineffective, the district attorney may forward to the Attorney General a request to utilize federal courts in order to obtain or enforce orders for child support. If reasonable efforts to collect amounts assigned pursuant to Welfare and Institutions Code Section 11477 have failed, the district attorney may forward a certified copy of such court order to the Attorney General with a request that the case be forwarded to the Treasury Department for collection. The Attorney General, where appropriate shall forward such requests to the Secretary of Health, Education, and Welfare, or his designated representative.”

In short, instead of framing subdivisions (1) and (2) in “parallel construction,” subdivision (2) appears to have been cast in an “inverted” sentence structure, placing the adverbial phrase in a position remote from the verb which it is intended to modify. Had parallel construction been used the section would read that “the district attorney shall:

“(1) continue to enforce support payments from the noncustodial parent for a period not to exceed three months . . .; and

“(2) continue to enforce such support payments from the noncustodial parent at the end of such three month period, if after written notice to the individual, the district attorney is requested to do so”

This conclusion is supported by the federal regulations which section 11476(2) implements. That regulation is unambiguous on the point that the phrase “at the end of such three month period” modifies the district attorney’s duty to continue to collect support payments if requested to do so. Thus, 45 Code of Federal Regulations, section 302.51 (e) provides:

“(e) Whenever a family for whom child support payments have been collected and distributed under the title IV-D State plan ceases to receive assistance under the title IV-A State plan, the IV-D agency may:

“(1) Continue to collect current support payments from the absent parent for a period of not to exceed three months from the month following the month in which such family ceased to receive assistance under the title IV-A State plan, and pay all amounts so collected to the family; and,

“(2) At the end of such three month period, if the IV-D agency is authorized to do so by the individual on whose behalf the collection will be made, continue to collect such support payments from the absent parent and pay the net amount of any amount so collected to the family after deducting any costs incurred in making the collection from the amount of any recovery made.”

It is evident that subdivision (2) of section 11476 was drafted to parallel subdivision (2) of the federal regulation. Significantly, the federal regulation contains no language regarding notice to be given to the AFDC recipient family as does section 11476(2). Without such language, it is much clearer in the federal regulation that the phrase “at the end of such three month period” modifies the verb “continue,” and thus applies to the continued collection of support by the “IV-D” agency, which in California is the district attorney.

Finally, we are aware of no particular purpose which would be served by a three months delay in notifying a recently terminated AFDC family of its ability to request continued enforcement of child support; nor has any such purpose been suggested to us. We would presume that the earlier the notice is sent, the better it would be both administratively for the district attorney's child support unit, and for the involved child or children, to insure that no gap in enforcement procedures occurs.⁴

⁴ This conclusion is supported by the practice in some counties where, when child support enforcement proceedings are first undertaken by the district attorney, the district attorney immediately asks the AFDC recipient family whether he should continue to enforce child support in the event that AFDC is terminated.