Privatization of Human Services in Colorado

The El Paso County and Policy Studies Partnership

El Paso County's partnership with Policy Studies Inc. (PSI) is nearing the end of its second five-year term. And each year since January 2001, the El Paso County Board of County Commissioners (BoCC) has approved the expenditure of taxpayer dollars to outsource child support enforcement to PSI, a privately-traded company headquartered in Denver whose core business was created by its lobbying efforts to privatize human services and expanded using powers granted by government to work outside the judicial system to establish, enforce, and modify child support orders.

As an independent contractor for El Paso County's Department of Human Services (DHS), PSI is required to open its Colorado Springs office for inspection by county, state, and federal officials and to routinely report its performance, compliance with state and federal laws, business activities, and policies and procedures through the El Paso County DHS and the Colorado Department of Human Services, Child Support Enforcement Division (CDHS CSE) – the agency accountable to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement for the performance of the State's child support enforcement program. The strength of this oversight structure is unparalleled in private enterprise and is necessary to maintain support for the privatization of human services.

The information that follows examines the child support enforcement case of Mr. Johnson, an El Paso County resident and retired Colorado Springs city worker, to determine how such a well designed system of government oversight and strong internal and external controls failed.[1] The material is intended to educate and inform, to bring about a sharing of ideas, and to encourage action. Your willingness to intellectually participate will leave you better informed about outsourcing and the practical impact of law in everyday life – and hopefully help lead you to work for a real and lasting change in the way government interacts with all of us.

The debate remains open between advocates and critics of outsourcing. Can for-profit corporations accountable to private or public investors provide the same quality of human services as traditional government agencies?

Recently, Arapahoe County's board of commissioners unanimously said no to recommendations from Colorado's Child Welfare Committee that supported the reorganization of the State's current county-administered human services system but expressed the County's commitment to "excellence, quality improvement and enhanced accountability of local and state government in the delivery of human services."[2] In her comments regarding the resolution, Commissioner Susan Beckman (R) said, "Local governments have the ability to be more flexible and responsive

[1] Mr. Johnson is 56 and retired from the City of Colorado Springs in 2005. He worked for 32 years.

[2] Peter Jones, "County opposes social-services takeover", Englewood Herald at http://www.coloradocommunitynewspapers.com, July 30, 2010.

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to meet the needs [of] our most vulnerable populations." The Committee, organized by Governor Ritter in 2008, based its recommendations on research performed by PSI that supported "the regionalization of 53 counties to streamline and improve services" based on its conclusion the current 64-county system was inefficient and fragmented.

Typically, the county human services delivery system consists of two major components – a public assistance unit and a child support enforcement unit. The units interact with each other in the collection of public assistance debt and collection of unpaid child support. PSI acts as a private collector of these obligations and is subject to federal and state laws governing collection practices as a state-licensed collection agency.

You should know that child support orders create a monthly obligation that most divorced men pay. (Women are traditionally granted sole custody of their children by the courts and are entitled by law to receive an equitable financial contribution from fathers for the care of the children.) But the changing attitude toward marriage and sex outside of marriage has led to increasing numbers of single mothers with children and unmarried parents living together. As a result, the courts have found, in the absence of a marital contract to dissolve, they lack the immediate authority to assign parenting responsibilities to the parents of these children when their relationships end and, therefore, cannot expeditiously protect the state's interest regarding their financial support.

As distasteful as it is to make the comparison, a court-ordered child support payment is similar to a monthly installment payment required of a borrower.[3] For the most part, the lender receives fixed payments as agreed but knows that within its loan portfolio a small percentage of loans will not perform as expected. The lender has several remedies for non-performing loans. One is to modify the terms of the loan if the borrower's circumstances have changed significantly from the circumstances present at the time the loan was made and the borrower can be reasonably expected to make a good faith effort to comply with the new loan terms.

A similar child support payment modification remedy is available through judicial procedures to mothers and fathers when a substantial and continuing change in financial circumstances occurs.[4] This process involves filing documents with the court to modify child support and may involve court hearings or other court services. However, in child support enforcement cases, the administrative remedy – review and adjustment – provides a less costly and more expedient means of modifying child support orders outside the court system and is usually pursued on behalf of mothers for the purpose of increasing the father's child support obligation. It is

[3] Recently, Shirley Sherrod was told by state and federal government officials to resign for statements made by her in a March 2010 speech delivered to members of the NAACP; the NAACP also denounced her statements. After the entire speech was reviewed, an apology was issued within days by the NAACP and government officials. The sharing of her professional life experience from a personal point of view using a circumstance 20 years earlier was intended to demonstrate her commitment to help the poor regardless of race gain access to services often denied to them because they lack financial resources or life skills.

[4] Other family members taking care of children are involved in child support enforcement, too. In this document, the discussion is about mothers and fathers only.

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intended to prevent, reduce, or eliminate the mother's need for public assistance. Therefore, review and adjustment is an important component of the State's child support enforcement program and state law requires enforcing counties to review child support orders every 36 months for public assistance enforcement cases and when requested by either the mother or father or state agency for non-public assistance cases. As a delegate for El Paso County DHS, PSI routinely establishes administrative child support orders through review and adjustment.

But the major difference between child support and installment loan payments, other than the morally obvious, is that the government has the power to create an order (a payment) based on the father's ability to earn in the absence of real or sufficient income to meet the child support order (impute his income to increase the amount of the order), suspend state-issued licenses affecting his freedom to travel and work at his profession, and to jail the father when payments are not made.

These powers and others are granted through federal law and in Colorado through Title 14 – Domestic Matters – of the Colorado Revised Statutes (C.R.S.). The amount of the monthly child support payment is determined by Colorado's Child Support Guidelines and the income schedule as provided in section 115 of Title 14, Article 10 – Dissolution of Marriage - Parental Responsibilities (§14-10-115, C.R.S). The determination begins by establishing and verifying the gross monthly incomes of both parents through the collection and review of income verification documents, e.g., income tax returns and pay stubs, as required by statute.

After the gross monthly incomes are determined, the appropriate child support worksheet is selected.[5] The selection of the worksheet is based on the custody arrangement. Worksheet A is used for sole custody and worksheet B for shared custody. (There is a worksheet for split custody.) The number of overnight visits determines the worksheet selected. When worksheet A is used, one parent (the custodial parent) has the child at least 273 days of the year. This allows 92 overnights to the non-custodial parent without affecting the amount of child support paid the custodial parent. When worksheet B is used, both parents have the child more than 92 days a year and the parent owing child support will owe less than under a worksheet A calculation using the same incomes.

The gross monthly incomes, number of children, and listed child-related expenses to be shared by both parents are then entered on the applicable worksheet to determine the monthly child support obligation. If the non-custodial parent owing support pays the monthly cost of health insurance for the child, this amount is credited toward the monthly obligation and reduces it. In Mr. Johnson's case, his monthly child support payment was $438.80 which included a $385.00 credit for the cost of health insurance for his only child.
Additionally and unlike the lender's typical qualified loan customer, most fathers that do not make their child support payments are often unable to meet their own basic needs - many are

[5] Colorado's electronic worksheets are available online at www.courts.state.co.us. On the home page, select the Forms tab to display the forms list and select Domestic/Family. Then, select the appropriate forms option in the Child Support Worksheet Only folder.

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considered impoverished by the same standards applied to women that seek public assistance; some flee from their obligation because they refuse to acknowledge or accept the long term responsibility; some avoid jobs where withholdings via their social security numbers are made; some jump from job to job to avoid income withholding for child support; and some are incarcerated in jails and prisons. And in these instances, most non-supportive fathers lack financial resources – and perhaps life skills – to obtain the legal services necessary to understand the complexities of child support establishment and enforcement and may or may not understand how child support equals love in the minds of children and some, unfortunately, do not care. In Mr. Johnson's situation, he and his former common-law wife have not needed public assistance, are not typical of most families affected by child support enforcement, and enjoyed a good parenting relationship.[6]

Colorado and other states receive federal dollars through block grants as participants in the Temporary Assistance for Needy Families (TANF) program. This program was created in 1996 through welfare reform legislation and was reauthorized in 2006 under the Deficit Reduction Act of 2005. TANF ended entitlement to existing public welfare programs and moved public assistance to the state level to permit states to customize their programs on the basis of their needs but fulfill the mission of TANF, i.e., to provide temporary financial assistance to qualified applicants based on income that "help[s] needy families achieve self-sufficiency."[7] In other words, TANF is controlled, fiscally responsible public assistance to the poor designed to bridge economic gaps during financial difficulties.

Title IV of the Social Security Act provides the legal framework for the TANF program. Title IV consists of five parts: Part A - Block Grants to States for Temporary Assistance for Needy Families (IV-A); Part B - Child and Family Services; Part C – (Grants for Programs Mentoring Children of Prisoners - Repealed); Part D - Child Support and Establishment of Paternity (IV-D); and Part E - Federal Payments for Foster Care and Adoption Assistance. The purposes of Title IV is "to (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families."[8]

To meet the purposes of Title IV and to have access to IV-A block grants, Colorado and other states must have an effective state plan for child support enforcement and paternity establishment. Colorado's state plan is administered by CDHS CSE and requires, among other

[6] High and long-term unemployment has changed the characteristics of people seeking public assistance.
[7] www.acf.hhs.gov, "About TANF".
[8] www.socialsecurity.gov. Social Security Act §401. Part D was created in 1974. In 1973, Roe v. Wade legalized abortion under right to privacy.

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things, that Colorado operates an automated data processing system capable of providing program management, calculation of performance indicators, information integrity and security, a state case registry, information comparisons and other disclosures of information, collection and distribution of support payments, and expedited administrative procedures. These technical expectations are met primarily through the State's computerized database system known as the Automated Child Support Enforcement System (ACSES), while the payment processing requirement is met by the state-wide central processing unit known as the Family Support Registry (FSR).

The administrative procedures are in place *outside* the court system to expedite the collection of child support and increase compliance to orders utilizing state law, the authorities granted to county departments of human services and delegates by CDHS, and the ACSES. These procedures provide for the establishment of child support orders and paternity, garnishment of wages, the identification of assets through Financial Institution Data Matches (FIDM), seizure of financial property through offset and levy, placement of liens on real and personal property, and suspension of state-issued licenses. All of which are incorporated into the Colorado Revised Statutes and Colorado's Child Support Enforcement (CSE) Program mirroring federal law.

The CSE Program is regulated by Colorado Code of Regulations 9 CCR 2504 Volume 6 and is administered through special child support enforcement units within Colorado's 64 county social or human services agencies with an IV-A caseload of 250 or more or through a delegate acting on behalf of a county unit.[9] Two counties – El Paso and Teller – outsource child support enforcement to a delegate, i.e., PSI. In 2005, PSI had 65 locations in 25 states and 27 child support enforcement sites, which included full service child support enforcement offices in nine states.[10] In 2010, PSI had 55 programs in 28 states and the District of Columbia.[11]

The PSI child support enforcement office in El Paso County is registered with the Colorado Secretary of State under the trade name El Paso County Child Support Enforcement Unit (CSEU). (Written communications are also released under another registered trade name, Child Support Services of Colorado (CSSC).)

The purpose of the Colorado CSE (IV-D) Program is "to collect support, to reimburse, in part or whole, Title IV-A grants paid to families, help remove IV-A recipients from the IV-A program by assuring continuing support payments, and assist persons who do not receive IV-A or IV-E foster care to remain financially independent." Additionally, the program is designed to ensure Colorado's compliance to federal law as stated: "Pursuant to sections of the Personal Responsibility and Work Opportunity Reconciliation Act, if Colorado is found by the Secretary

[9] 9 CCR 2504 Volume 6 – quotations are from Volume 6.
[10] PSI proposal page I-9.
[11] https://www.policy-studies.com. The breakdown was generalized by the nature of the contract, unlike the breakdown provided.

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of HHS, on the basis of a federal audit, to have failed to have an effective Child Support Enforcement (CSE) program meeting the requirements of Title IV-D of the Social Security Act and implementing federal regulations, total federal payments to the State of Colorado for the IV-A program may be reduced by up to 5% of such payments."

Colorado's CSE Program requires, among other things, that all child support enforcement units accept referrals from IV-A units and adhere to certain intake requirements for indirect and walk-in IV-A and non-IV-A applicants, which includes an application process.[12] The application requirements are mandated in Volume 6, which addresses, among other things, charging an application processing fee, timing of application delivery, dating applications, collecting required information via standardized forms, and maintaining application logs. The application is in effect a consumer contract.

Volume 6 also sets forth the requirement that all CSE applications must state that no attorney-client relationship exists between the child support enforcement unit and the parties affected by its services. The inclusion of this statement is intended to assign the mother's legal rights to the State and give the State authority to act on the facts disclosed in the application process. By signing the application the mother agrees to the provisions enumerated therein, which requires her to cooperate with the child support enforcement unit in its efforts to establish paternity, locate the father, determine his means of employment, and identify his assets. Provisions are in place to permit the mother to close the case upon written request and under the conditions permitted by the child support enforcement unit as stated: "A written request from the applicant to stop CSE services may be made. However, if you are receiving TANF or assigned arrears are owed, the case may remain open. CSE may also close your case by using criteria established by current state and federal regulations (e.g. not being able to locate you, you do not supply a forwarding address, you do not provide required documents to take the next step to work your case, etc.)."

Mr. Johnson's former wife completed an application for service with the PSI child support enforcement office in Colorado Springs, i.e., CSEU, sometime in September 2008. Mr. Johnson obtained a copy of the affidavit signed by her when he denied claims to back child support for a three year period that he had custody of his son by private agreement. Thereafter, Mr. Johnson made repeated requests for information from the application packet based on discrepancies

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[12] An online application can be seen at www.childsupport.state.co.us. To access from the home page, select Forms and Applications from QuickLinks. On the Forms and Applications page, select Application for Services. Then select El Paso County and respond to the questions (select yes to the paternity question, no to the violence questions, no to the TANF question, select yes to the order establishment question and then select Submit.) On May 27, 2010, Mr. Johnson mailed complaint letters to Attorney General Suthers, CDHS CSE Director Bernhart, and the Colorado Collection Agency Board in response to the May 2010 revision of the El Paso County application that made obtaining an affidavit of custody and direct support optional, considering it is used to seize property and suspend state-issued licenses.

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between the claims of CSEU and the statements made to him by his former wife. His requests were denied under confidentiality claims asserted on her behalf as provided by the application. At the time, Mr. Johnson had no knowledge of the commercial relationship that existed between El Paso County and PSI and therefore believed he was interacting with a government agency and, as such, a neutral third party.

Beginning on March 9, 2010, Mr. Johnson began collecting information to understand the relationship between El Paso County and PSI through the Colorado Open Records Act (CORA). This information included a copy of the current base contract and added items made part of it as well as PSI's Annual Reports to the BoCC. The material going forward often refers to information obtained from one of those documents – PSI's 2005 proposal – and was obtained from El Paso Chief Deputy County Attorney John Thirkell.[13] Its review allowed for an understanding of PSI's policies and procedures, including training, intake, and case management.

In the course of this review, considerations that poor training caused mismanagement of Mr. Johnson's case were dispelled. In that CSEU appeared to have an excellent child support and collections training program that was augmented by CDHS CSE through computer-based training modules and seminars and benefited from the guidance of an onsite and experienced certified collections manager. Thereafter, on-the-job performance based on meeting goals, including accuracy of data input at above-average expectations of at least 80%, was maintained through continuous oversight of work activities, a reward system, and a clear reporting structure to escalate case management problems to higher authorities as needed, including moving administrative enforcement to judicial enforcement utilizing the services of PSI's contracted legal team – specialists in family law and experts in child support enforcement.

On May 28, 2010, Mr. Johnson also contacted the El Paso County Procurement and Contracts Department (CPCD) through CORA to review CPCD records pertaining to the 2005 bid and to identify PSI competitors and provided a copy of the request to Mr. Thirkell. The information that follows was obtained using the material provided by El Paso County Public Communications Specialist Jennifer Brown. (In this instance, the CPCD CORA response was timely, diligently prepared, and attentive to Mr. Johnson's request.)

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[13] CORA compliance is governed by Colorado Revised Statutes, Title 24 – Government - State, Article 72 – Public Records. Part 2 – Inspection, Copying, or Photographing - governs the process of obtaining public records and the time frame for releasing them. There is a three-day required response time with provisions for delay and/or exceptions to the request, e.g., confidentiality. The El Paso Office of the County Attorney (OCA) is responsible for responding to CORA requests on behalf of county departments, units, etc. The OCA woefully failed to meet CORA requirements, as did the CDHS and the Fourth Judicial District Administrator Victoria Villalobos on one of two occasions. However, emails provided by Mr. Thirkell and his improved compliance performance support the opinion that the March 9, 2010 CORA request to El Paso DHS Director Richard Bengtsson was withheld from the OCA.) The only conclusion to be drawn from the failures is that the penalty for non-compliance (a $100 fine and possible confinement), when compared to the perceived value of withholding the information, is an easy trade-off.

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According to the review of the County Attorney's Office and CPCD responses, PSI obtained its first contract with El Paso in November 2000 when the contract was opened to public bidding. The CPCD was responsible for the conduct of the procurement process in year 2000 and 2005 (the subject of this discussion is 2005 forward) and was staffed by certified contract management personnel and guided by well-established policies and procedures designed to ensure fair competition and good stewardship of taxpayer dollars. The contract announcement was published in the Shopper Press, on the CPCD's website and to a public bulletin board internally for walk-in visitors.[14] The request for proposal (RFP) with instructions for obtaining a specification package was also sent by mail and email using the CPCD bidding list it maintained. One "no response" was received from Parent Resource Center, Inc. which did not offer the services required under the contract, while several mailed RFPs were returned as undeliverable.

Vendors interested in the contract attended a mandatory pre-proposal conference where questions were answered about the services required under the contract as contained in the *General Specifications* or specs, i.e., the requirements under the contract for which a written response (proposal) in manuscript form was to be submitted for consideration; Volume 6 framed the specifications. The questions from the pre-proposal meeting were placed into a question and answer format and became addendums to the RFP. The answers to vendor questions appeared to be the responsibility of Toni Herman, the El Paso DHS contract manager, with input from CDHS CSE.

From the typed sign-in sheet for participants in the meeting, interested vendors included Maximus Inc., Young Williams PC, Lagan Technologies, PSI, and ACS Government Solutions; however only Maximus, Young Williams, and PSI names were highlighted, presumably for being in attendance. Maximus was represented by Dave Hogan (Jeff Ball's name was listed but not highlighted).[15] Young Williams was represented by Pat Bergeson for Bob Johns.[16] PSI was represented by Chad Edinges, Judy Roth, Judith Cohen, and Misti Senatore (CSEU Administrator Laura Davidson's name was listed but not highlighted). However, based on the

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[14] http://adm.elpasoco.com/procurement_and_contracts.

[15] The Securities and Exchange Commission filings for Maximus are being reviewed. In the course of searching for information about the 2001 contract with the Nebraska Department of Health and Human Services, the FY 2001 Annual Report (Form 10-K) listed Bob Johns as President of [the] Government Operations Group. According to the 10-K, Mr. Johns was 52 and had worked for the Washington State Department of Social and Health Services for 23 years, including five years as director of the child support division, and had served one year as president of the National Child Support Directors Association. Mr. Johns was an attorney by profession.

[16] The area code is a Mississippi number. *See* www.young-williams-css.com. The bidder's list does not list YWCSS. It does list Child Support Services, Omaha, NE. The email in the CORA documents shows the address of Young Williams PC to be in Chicago, IL.
http://www.thefreelibrary.com/Young+Williams+and+MAXIMUS+To+Operate+Nebraska+Child+Support+Contract.-a072876757. According to a link from the site, PSI lost the Omaha/Douglas County, Nebraska contract to Maximus in 2001. The Mississippi-based law firm of Young Williams contracted with Maximus to provide legal services for an estimated $7.9 million. This amount may be the total value of the contract. The site at (http://childsupportservices.com/contact.html) is copyrighted by Young Williams PC (2007), Omaha, Nebraska.

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letter from the CPCD to a losing vendor and the proposals received, PSI's only competitor was Maximus.

When completed, the sealed proposals (including the required cost proposals) were submitted to the CPCD on October 31, 2005. Each proposal was initially reviewed by CPCD procurement specialist Sharon LeRoux "to determine compliance with mandatory proposal requirements as specified in th[e] RFP." The proposals were subsequently evaluated by an evaluation committee, which was comprised of "three or more County employees, and as appropriate, state employees and community representatives…." In 2005, the Evaluation Committee consisted of four El Paso DHS employees, two "agency" (state) employees, one Connect Care representative, and one Coalition for Child Support Enforcement representative.[17] (Names were withheld.)

[17] Connect Care provides administrative services for behavioral health organizations. The "Coalition" search did not return a specific Colorado Springs entity under that name. However, the National Coalition for Child Support Options (NCCSO) was returned in the search. This organization is made of "parents, concerned citizens, community and business leaders, attorneys, and members of the child support enforcement community who have joined the fight of the national epidemic of unpaid child support." The organization lobbies against legislative actions intended to end privatization of child support enforcement and claims to have successfully prevented Texas House Bill 3120 from coming out of committee in 2005. The Bill was introduced by Representative Helen Giddings (D) and "would have driven every private child support enforcement agency out of Texas." In California in 2004, the lobbyist claimed success in Governor Swarzenegger's veto of Senate Bill 339 that "had many requirements which would have made it impossible for private support enforcement agencies to continue providing services." (See http://www.childsupportoptions.org.) The Bill was introduced by Senator Alpert (D). "This bill would enact the Private Child Support Collection Act. These provisions would regulate the activities of private collectors, as defined. Among other things, the bill would limit the fees that may be charged by a private child support collector, require that entity to make specified disclosures to the child support obligee, authorize the obligee to cancel any contract entered into with that entity, specify the terms of any private agreement reached with the obligor, and regulate advertising by the private child support collector." In the Governor's veto of the bill, he told the Senate: "While I support ensuring parents are not taken advantage of in securing child support payments, this bill will have the effect of severely limiting a consumers choice to go to a private collection agency when government efforts to collect child support falter." "I welcome many of the provisions of this bill that would ensure that families are protected when they choose to contract with a private agency; however the provisions such as capping the amount a collection agency can charge and prohibiting a person from contracting with a private collection agency when they have received partial payment in the last six months are particularly onerous to the industry and to parents seeking choices. Federal Review of the subject, as well as the California Performance Review, have identified the need for private agencies in child support collections." David Conder, president of the association for private child support enforcement companies, Child Support Enforcement Council, said he supported consumer protection provisions that "made up 85% of the bill." (Maximus has a stronghold in California and Texas. In October 2009, California had 1,371,838 TANF recipients; 1,375,310 in November, and 1,397,981 by December. For the same months, Texas had 115,128; 115,335; and 117,830.)

Effective January 1, 2010, California Family Code (Division 9, Part 5, Chapter 9, §5610-5616 effective September 29, 2006) included: fee limitations (fees not to exceed 33 1/3% of required summary judgment of total amount owed and not to exceed 50% of the fee as charged by a private child support collector); contract cancellation limitations, payment redirection; current support limitations; and prohibited the charging of fees attributed to actions taken by a government entity and required the refunding of such fees. In comparison, Colorado Revised Statutes (C.R.S. Title 12, Article 14 – Colorado Fair Debt Collections Practices Act, Child Support Consumer Protection Act, effective July 1, 2006) established provisions similar to California's. The maximum fee to be charged was 35% as a percentage of total collected, and prohibited assessment of other fees or costs, including an application fee. It also

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According to CPCD requirements as stated: “The Evaluation Committee shall independently evaluate proposals and determine if all requirements are met, based on the criteria set forth in this RFP. Each evaluator shall independently score each proposal. The evaluation scoring shall use the pre-established criteria and weights set forth in the RFP. Each evaluator shall use only whole numbers for scoring each element.”

The RFP matrix or scorecard was divided into four weighted categories on a point system that totaled 130. The first category was Proposer Qualifications & Background (20 point maximum) and included four subcategories worth a maximum of 5 points each: Qualifications, Organizational Chart, Project Team, Background & Financial Info. The second category was Proposer Experience (20 point maximum) and included four subcategories worth a maximum of 5 points each: Prior CSE Experience, References & Contractual Relationships, Current Staff Experience, and New Staff Proposed. The third Category was Technical Approach (60 point maximum) and included three subcategories with varied weights: Understanding the Project worth a maximum of 15 points, Project Management worth a maximum of 10 points, and Project Approach – Emphasis on how approach will result in accomplishment of goals and principles of this RFP – worth a maximum of 35 points. The fourth category (30 point maximum) was Cost Proposal with no subcategories.[18] (The evaluation scores were withheld.)

CPCD procedures state that after proposals are scored “[t]he committee may then short list for interviews the specific firms whose proposals best meet or exceed all of the criteria required.” Then competing vendors are notified of the decision. According to the CPCD CORA response, Maximus was notified by teleconference. “After a contract is awarded, vendors who were not selected may request a debriefing.” “A debriefing with the vendor usually is held to discuss the proposal’s particular strengths and weaknesses and possibly how it could be improved for future RFPs.” According to the response, Maximus did not request a debriefing.

The Evaluation Committee’s recommendation was presented to the Board of County Commissioners (BoCC) for a vote.[19] Four of the current commissioners were in office in November 2005; all are Republicans. They were Jim Bensburg (first elected in 2002), Wayne

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required that the private collector’s contract “shall explain in easy-to-understand language how the amount is to be calculated” and provided that the person contracting with the collector could cancel the contract at anytime after 30 days, or if the collector failed to make a collection in 12 consecutive months, or violated the Article with respect to the contract. [Effectively placed controls on other competitors of the government’s collectors.]

[18] The CPCD CORA response pertaining to the evaluation process included a document not shown in the RFP subtitled “Evaluation Statement.” The Statement (a sample) appeared to be based on scores to be transferred from the matrix and multiplied with the points assigned by the evaluator based on the quality of the proposal, i.e., 4 for excellent, 3 for above average, 2 for average, 1 for below average, and 0 for non-responsive, to yield a total score in the related category. Perhaps a better option to introducing another subjective measure would be to develop standards of presentation that are easy to understand and capable of being met by anyone seeking a government contract. Establishing a level playing field allows the free market to work as it should and encourages participation.

[19] http://bcc.elpasoco.com/. Commissioners are elected to a four year term.

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Williams (first elected in 2002), Sallie Clark (first elected in 2004), and Dennis Hisey (first elected in 2004). (The fifth member is Amy Lathen (R) who was elected in 2008.)

The Recommendation for Award was released on November 19, 2005 for approval by the BoCC at the December 22, 2005 formal agenda meeting. (The minutes of the meeting approving the contract were not obtained.) The value of the contract signed on December 22nd, and approved on February 28, 2006 by CSE Director John Bernhart as designee for the CDHS executive director, was $4,538,827.00 with four annual renewals thereafter of comparable (negotiable) value. Under the terms of the contract effective January 1, 2006, PSI was required to employ 60 CSEU full-time equivalent employees and to meet the County's contract provisions regarding PSI's subcontracted employees. At the time, PSI used the contracted services of Priority Process Service, a sole proprietorship owned by Willie Jones, and Belveal & Eigel, LLC, a law firm with four attorneys.[20]

During the bidding process and after the award, vendors may file protests. According to the CPCD response, "there were no records showing written protest prior or during RFP process." This response was in contrast to other assertive negative responses and left open the question that protests may have been filed but not kept. This was only of interest because protests by competitors provide an insight into the bidding process by actual participants. As mentioned, one competitor in the 2005 bid was Maximus, a much larger publicly-traded government contractor headquartered in Virginia and PSI's major competitor.[21] Maximus also competed for the contract when it went out to bid in year 2000 and subsequently protested. Because this information was outside of the CORA request, the reason for protesting the award is not known.

The base contract obtained by Mr. Johnson included, among other things, PSI's year 2005 proposal and two addendums to the RFP, i.e., questions from vendors and answers from El Paso DHS, that indicated PSI had numerous and apparent deficiencies in the utilization of information technology, especially in the ability to accumulate important operating and performance statistics for tracking and reporting purposes (accountability measures). Preparers of PSI's proposal noticeably addressed these deficiencies throughout it by incorporating anticipated changes in technologies or referred to successes at other PSI locations in other states to overcome them.

However, the same deficiencies are still present as learned through the first El Paso DHS CORA request dated March 9, 2010 that requested, among other things, the following information: "(3) The official number of CSE applications processed for the last three years; (4) The official number of CSE cases designated as IV-D for the last three years; and (5) The official number of

[20] The Law Firm is now registered with the Colorado Secretary of State as Belveal Eigel Rumans & Fredrickson, LLC. Belveal & Eigel, LLC was formed as a limited liability company in February 2002. Its principle office is in Canon City, Colorado. Its registered agent is Donald Belveal, the managing attorney. ("Partner" is used in this document and may not be technically correct for "members" of the LLC.)

[21] www.maximus.com. Maximus is a publicly traded company listed on the New York Stock Exchange. As of July 2010, it reported having 220 locations in 31 states, Canada, Australia, the United Kingdom, and Israel. (Appearing "international" is part of big-business and supports all-expenses-paid travel for corporate executives to places most people will never see.)

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CSE cases closed and reasons for closing them in the last three years." The response by Mr. Thirkell on April 19th on behalf of the El Paso DHS stated, "Items 3, 4, and 5 are not kept in the format you requested by the El Paso County Department of Human Services and it would be labor intensive for staff at the Department to attempt to access and synthesize the information in the manner you have requested. If it is available from the Colorado Department of Human Services or the Family Support Registry, you should contact them directly with those requests." This response was comparable to the addendum responses to questions from Maximus as illustrated below.

> Addendum 2, Question No. 5: Please provide a breakdown of the number of new cases referred to the El Paso County child support office during each year covered by the existing contract period. For each year, please provide a breakdown of the subtotal of cases referred by category of case. For example, the number of newly-referred foster care cases, Medicaid cases, non-TANF cases, etc. for each of the years of the existing contract period.
>
> Response: The information is not available in the format requested. The Monthly Monitoring Reports distributed at the Pre-proposal Conference do specify the Enforcing Caseload Counts for each year. In addition, the current vendor reports that they had a total of 3,904 new cases in 2002 (with no breakdown of the different case types). There has been no breakdown of Public Assistance cases (e.g., Medicaid, TANF, Food Stamps, etc.). However, a total of 1,449 public assistance cases were received in 2003 and 1,426 were received in 2004. A total of 1,365 Non-Public Assistance cases were received in 2003 and 1,610 were received in 2004. A total of 679 cases were received in 2003 and 815 were received in 2004. [(1) Monthly and Quarterly Monitoring Reports are ACSES reports. CSEU is almost totally dependent on the State for performance data which is in turn only the data it reports. (2) The IV-A unit and IV-D unit are separate units, although one CSEU employee is assigned to the IV-A unit as required by the contract. (3) PSI is permitted to charge a $20 application fee for non-IV-A applicants and potentially earned $78,080.00 from its new cases in 2002.)]

Additionally, Mr. Johnson's very poor customer service experience, i.e. an inability to maintain continuity in the handling of his case and unreturned calls, indicates the deficiencies in customer service have not been corrected. The Maximus and El Paso DHS addendum dialogue below exemplifies another PSI technology deficiency related to his personal experience.

> Addendum 2, Question No. 20: (RFP Section 11, Scope of Services B.8, Customer Service, page 9) a) How many calls does the customer service unit currently receive per day? b) How many customer service representatives does the current contractor utilize to provide the customer service tasks in this RFP? c) Has the State developed a customer service satisfaction survey instrument in the past? If so, will the State provide a copy? d) What is the average call duration in the current office? e) What are the current hours of the customer service unit? f) How many lines are currently in place? g) Does the current contract currently meet the one minute hold time?

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Response: a) The information is not available as requested. As stated in Addendum 1, the total number of inbound calls in 2004 was 35,021. Through August 2005, the vendor received 23,127 inbound calls; b) The current vendor does not have a specifically designated customer service unit at this time; c) It is unknown whether the State developed a customer satisfaction survey instrument in the past. The current vendor developed its own customer satisfaction survey tool; d) This information is not currently tracked; e) As stated above, the current vendor does not have a specifically designated customer service unit at this time; f) The current vendor does not have specifically designated customer service lines. Each employee has a telephone line; g) This information is not currently tracked. [(1) In 2004 with approximately 250 regular business operating days, inbound calls per day equaled 140. With 60 full-time equivalent employees, each employee handled 2.3 inbound calls per day. (2) The year 2005 customer service survey tool mentioned is offered to walk-ins by CSEU employees. During the course of Mr. Johnson's personal visits he was never offered one. CSEU however maintains that its surveys routinely produce ratings above 80% and include custodial and non-custodial parents (or other parties responsible for children.)]

Addendum 1 questions and responses allowed for a broad view of Colorado's child support enforcement program and provided insight into PSI's performance. (Unlike Addendum 2, the vendor was not identified and could have been either Maximus, Young Williams, or another vendor. Because the State has a graduated corrective action plan for County child support enforcement units with deficiencies, these questions and answers were of particular interest:

Question: Please provide information on any notification of deficiencies received by the current vendor, from "Alert Letters" to "Warning Letters" to "Notices of Intent to Take Actions," including the subject matter, the correct action requested, whether the current vendor corrected the deficiency, and any penalties imposed for failure to correct any deficiency.

Response: No notifications of deficiencies have been issued.

Question: What are the current vendor's performance incentive and penalty rates and what has the current vendor received in incentives and/or penalties since it began operations in Colorado Springs?

Response: a. The current performance incentive rate is equal to a maximum of two (2) percent of the contract price for each of the five (5) federal goals and for the customer service goal. The penalty rate is equal to a maximum of two (2) percent of the contract price for each of the five (5) federal goals and the customer service goal; b. The current vendor has not received any incentive payments. They paid a penalty of $207,927.00 for 2001; $157,265.20 for 2002; $93,167.50 for 2003; and $46,209.60 for 2004. [Specs page 28 indicated a one percent incentive and penalty rate and provided more detail.]

In 2005, PSI agreed to meet or maintain Colorado's annual goals during the term of the five-year contract as follows. (The five federal performance standards to receive available incentives are

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Paternity Establishment Percentage, Percent of Cases under Order, Percent of Current Support Paid, Percent of Cases Owing Arrears that Make Payment on Arrears, and Cost Effectiveness. State goals necessarily include the five federal goals and are set at or higher than federal goals and include other state-specific goals.)

Paternity Establishment - meet or exceed 90% through year 2010 by building community awareness of paternity establishment services, building relationships with custodial and non-custodial parents to facilitate cooperation, improve processes to decrease establishment time, use the administrative subpoena to locate alleged fathers, develop interviewing skills to increase Administrative Procedures Act (APA) orders, and continue to close unworkable cases.

Collections - increase the amount collected each year by training staff to collect payments in full and offering to accept credit card payments, develop interviewing skills to increase collections, and continue to close unworkable cases. [The 2005 State goal was $281,557,823.00.]

Percentage of Caseload with Orders - meet or exceed 80% through year 2010 by building community awareness of order establishment services, building relationships with custodial and non-custodial parents to facilitate cooperation, improve processes to decrease order establishment time, use the administrative subpoena to increase the number of located non-custodial parents and obtain financial information, develop interviewing skills to increase agreed APA orders, and continue to close unworkable cases.

Percentage of Current Support Paid - achieve a straight-line increase in the percentage of current support based on the year 2005 year-end percentage by "target[ing] cases based on case characteristics and payment history using Performance, Enhancement Analysis, and Knowledge (PEAK) and apply[ing] **best practices** identified by research conducted by the AIM group"; by "target[ing] additional cases for initiating reviews for modifications and notifying customers about the potential of a modification of their order"; "use tools recently developed by CSSC – administrative lien on financial accounts, administrative subpoena"; "ensure fair and just orders, facilitated by using administrative orders to gather information"; "reinforce and monitor the use of the CSSC new order procedure (implemented in Fall 2005) to get non-custodial parents started off on the right footing"; "reinforce and monitor the use of the CSSC outcome-focused procedures (implemented Fall 2005) to encourage 'phone first' and taking all steps necessary to get results"; "be at the forefront of deploying best practices identified by the Current Support Order Analysis Project."[22] [The El Paso County goal was 62.4% for 2005. The State goal was 68% by year 2010.]

[22] www.acf.hhs.gov/programs/cse/pubs. Best practices are published by the U.S. Department of Health and Human Services, Administration for Children & Families. Statistical information is readily available.

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Percentage of Cases with at Least One Payment during the Year - achieve a straight-line increase in the percentage of arrears cases with at least one payment during the year based on the year 2005 year-end percentage by "target[ing] cases based on case characteristics and payment history using Performance, Enhancement Analysis, and Knowledge (PEAK) and apply[ing] best practices identified by research conducted by the AIM group"; "use tools recently developed by CSSC – administrative lien on financial accounts, administrative subpoena"; "reinforce and monitor the use of the CSSC new order procedure (implemented in Fall 2005) to avoid building arrears"; "reinforce and monitor the use of the CSSC new order procedure (implemented in Fall 2005)"; "close unworkable cases"; and "develop enhanced training in collection and negotiation skills." [The El Paso County goal was 77% for 2005, proved difficult to meet, and was subsequently reduced. The State goal was reset to 70% by year 2010.]

IV-D Cases with Medical Coverage - *Performance measures not established.*[23] PSI's Response: The new 2005-2009 National Strategic Plan places a new emphasis on medical support enforcement. It is expected that a medical support incentive will be in place by FFY 2008. We are cognizant of our role in the State's overall medical support performance and the potential impact on incentives to El Paso County, and will continue to establish, identify and enforce health insurance coverage for children. In developing additional strategies to achieve any performance measures that may be established under this contract, we will draw on the experience of two projects in [the] states of New Jersey and Illinois in which the medical support function has been outsourced to PSI. We expect CSSC [to] be a leading county in medical support performance under the contract."

Cost-Effectiveness Ratio - Continue to achieve a cost effectiveness ratio of 7-10% by increasing collections, implementing document imaging, "lever[ing] technology initiatives, such as creating macros for redundant date entries on ACSES and creating

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[23] PSI has joined other lobbyist in healthcare to promote reform of the healthcare "system" that currently only exists via Medicare, Medicaid and various state government children's healthcare programs. PSI has been shifting its revenue-generating capabilities to anticipated reforms in its specialized area of child support enforcement beginning in 2002. In April 2002, PSI acquired Child Health Advocates, a non-profit struggling to meet its operation of Colorado's Child Health Insurance Program and Child Health Plan Plus. In June 2002, PSI acquired certain assets of Arista Associates and then Delta Health Administration and Consulting Services, adding 210 employees specializing in healthcare delivery. These strategic acquisitions occurred in preparation for PSI's year 2003 bid for Colorado's $6 million "technology" contract for Child Health Plan Plus that it subsequently lost to Affiliated Computer Services under protest. (Maximus also protested. Both claimed the judges were biased toward ACS as Colorado's established processor of Medicaid claims.) In addition to gaining operational experience in healthcare to increase its ability to compete in the area of medical support establishment and enforcement, PSI began reshaping its management team. As examples, current CEO and Director Margaret Laub was the former CEO of McKesson Health Solutions with 15 years experience in healthcare services. Board member Dr. Peter Bach is a practicing physician and medical researcher as well as an operating advisor at Pegasus Capital, a PSI investor. (In August 2010, Dr. Bach's name was not listed by PSI as a director; it was listed in June 2010.) Two PSI executives, Eric Rubin and Marty Bobroske also worked for McKesson. (PSI has downsized. Any employee named herein may or may not be presently employed by PSI.) Joan Henneberry worked as a Colorado appointee to Health Policy Studies Division, Center for Best Practices at the National Governors Association. And Board member Alfred Gordon is founder and CEO of National Strategies Inc., a government lobbying firm.

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print intercept tools to more efficiently process documents generated on ACSES", and "continuously improve program and administrative processes." [CER = total dollars collected divided by total dollars spent.]

Customer Service Performance - "One goal around customer service performance will be negotiated with the selected Contractor." The example used was to mail a letter and customer satisfaction survey card to 1000 randomly selected cases with known addresses mid year and then evaluate returned cards anticipated at a 15-20% return rate. In response, PSI referred to the addendum answer issued by El Paso DHS and agreed to an "alternative evaluation framework and measures for customer service, if the Department so desires," and then stated "[b]ased on the past results of our current survey and recognition and feedback from other sources within the community, we are confident that we will exceed an 85 percent satisfactory rating under any customer service performance measurement." PSI also included its list of customer service strategies beginning with "build[ing] community awareness about CSSC's paternity and establishment services" and including "strengthen[ing] our partnership with the Parent Opportunity Program to promote supportive services to non-custodial parents." [24]

Other than performance matters, PSI's proposal also brought together the relationship between PSI and the law offices of Belveal Eigel Rumans & Fredrickson, LLC (the "Law Firm") and its relationship to El Paso County and the El Paso County District Court.

The Law Firm's relationship with El Paso began in 1997 (then Belveal & Eigel, LLC) as counsel for the County's child support enforcement program. PSI subsequently hired the Law Firm to provide legal services to CSEU. The managing attorney Donald Belveal and senior partner Christina Eigel led their staff in delivering the Law Firm's services to PSI. In 2005, the oversight of their contract was the responsibility of PSI's corporate project manager Mary Ann Miller. Ms. Miller reported to PSI's regional manager, attorney Judy Roth. Both Ms. Miller and Ms. Roth managed PSI child support enforcement offices in Nebraska earlier in their careers.

The Law Firm's "[l]egal services are limited to specific child support cases and do not include any general legal advice or representation of PSI or CSSC employees. All four attorneys are licensed to practice law in Colorado and are members in good standing with the Colorado Supreme Court. In addition PSI and all attorneys strictly adhere to the Colorado Rules of Professional Conduct and abide by any and all federal, state and local regulations and statutory

[24] www.elpaso-pop.com: "The Parent Opportunity Program of El Paso County (POP) is designed to help non-custodial parents get the most out of their relationship with their kids while fulfilling their child support responsibility. To be eligible to receive POP services, applicants must be non-custodial parents who are residents of El Paso or Teller Counties, Colorado, and have an income of not more than 185% of the federal poverty level." (See http://www.liheap.ncat.org/profiles/povertytables/FY2010/popstate.htm.) "Developed in 1997 as part of El Paso County's Welfare Reform Plan, POP began assisting participants in September 1998. Operated by Policy Studies Inc., POP provides services through a community partnership comprised of El Paso County Department of Human Services, Center on Fathering, Goodwill Industries, and Child Support Services of Colorado."

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provisions governing the operation of the CSE Program. Currently Christina Eigel is designated as a Special Deputy District Attorney for the purpose of conducting CSE work."

Ms. Eigel earned her juris doctorate degree from Boston College in 1995 and was admitted by the Colorado Bar Association on October 23, 1995. In 2005, she was a member of the El Paso County Women's Bar Association where she served as El Paso County Representative to [the] Board and on the Judicial Committee. She was the president of the El Paso County Women Lawyers Association, a board member at-large on the Colorado Family Support Council, and served on the federal Office of Child Support Enforcement Legislative Subcommittee. In 2007, Ms. Eigel was a co-presenter with Mr. Belveal on legal ethics to CSEU staff.[25] She is currently a member of the El Paso County Bar Association and is a Colorado Bar Association member in good standing with the Colorado Supreme Court.

Ms. Eigel's current service to the Law Firm and PSI includes "drafting pleadings and responding to motions, conducting discovery, preparation and overall trial management, preparing orders, drafting appellate briefs, and providing counsel to CSSC regarding interpretation of Colorado and federal child support law." Under El Paso's contract with PSI, Ms. Eigel and other members of the Law Firm are required to carry professional liability insurance coverage related to the services they provide. In 2005, the Law Firm held a minimal three million dollar policy.

However, as a special deputy district attorney, Ms. Eigel is afforded prosecutorial immunities as determined under year 1871's major civil rights statute 42 U.S.C. §1983. As an advocate for the State, she is afforded absolute immunity despite acting intentionally in bad faith or with malice. And she is afforded qualified immunity when acting outside of that role as a detective or administrator, for example, unless she clearly violates established law that any reasonable attorney should know. As a result of the federally established protections, persons injured as a result of her prosecutorial misconduct have little or no standing before the court in civil suits. The victim's potential for righting wrongs (errors of fact and law at trial) traditionally lies in the appellant process, whereas righting wrong behaviors through professional discipline lie with the Colorado Supreme Court's Attorney Regulation Counsel, Attorney Regulation Committee, and/or presiding disciplinary judge.

These immunities, the well established relationship with the El Paso County District Court, and Ms. Eigel's loyalties to PSI and the Law Firm create an environment where PSI has an unfair advantage in how cases are handled and decided in court, as was demonstrated in Mr. Johnson's case.

This unfair advantage can also be understood from an article ran by the *Denver Post* in October 2006 when it reported a "bizarre identity theft" of a child's birth name.[26]

The child was born to an unmarried woman who pursued child support through El Paso County child support enforcement. (PSI/CSEU was not under contract until 2001.) As happened, the

[25] PSI 2007 Annual Report to BoCC.

[26] Jim Spencer, "Girl a victim of bizarre identify theft", Denver Post.com, October 11, 2006, 1:00 a.m.

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child's birth name was changed without her knowledge to that of the biological father in year 2000. Ms. Dague told *Denver Post* columnist Jim Spencer when paternity was established in court, the child's father paid child support, then paid it sporadically, and was currently paying it but had had no relationship with his daughter. The child told Mr. Spencer, "He's not really a dad to me. He's really just someone I know. My old name makes more sense."

Ms. Dague had attempted to replace her daughter's lost birth certificate in 2005 through the Colorado vital statistics division using her daughter's birth name for the search. The division could not locate the child's birth record and subsequently learned the child's name had been changed to the biological father's in 2000 by the El Paso County District Court. The division was unable to produce a court order but found a handwritten note from Donald Belveal of El Paso County child support enforcement. Ms. Dague's attorney, Ray Chamberland, pursued location of the court order and told the columnist, "We know of no court order that authorized changing the child's name." And without the original order, the division had no authority to change the name on her birth certificate.

From 2005 to October 2006 (approximated at a year), Ms. Dague was told by those she contacted that because her daughter was a juvenile (almost 11 years old) they could not talk to her or they failed to return her phone calls. Ms. Dague told the reporter, "Last week, someone from El Paso county child support enforcement called and said they would do me a favor and have their attorney file paperwork to change her name (back)." Ms. Dague's attorney had already acted on her behalf without success.

When the columnist contacted El Paso County magistrate Evelyn Sullivan, the court official overseeing the daughter's case, she refused to comment because the child was a juvenile. And "Belveal didn't return a call on Tuesday." Mr. Spencer ended his column in a way that also expresses Mr. Johnson's concerns: "That's an awful lot for a little girl to carry. If the Colorado justice system can't lift its load, it's not operating in anything close to the best interest of the child."

Key to PSI's success within the court system where its offices are located is the relationship it develops with local court officials. "Much of our success in El Paso County and in our other operations results from our ability to establish and sustain functional and cooperative working relationships with such entities as clerks of court, sheriff's offices, judicial officials, and IV-A agencies."[27] On February 14, 2003, Judge Carey Garrett in the Knox County, Tennessee Juvenile Court commended PSI for its service to Knox County:

> PSI has fulfilled its commitment to provide strong management and sufficient staff as well as other needed resources in order to increase response to the public's need to receive child support services in a timely manner. The number of child support petitions filed in Juvenile Court establishing paternity and/or setting support has increased from 45 in March 2002 to 244 in January 2003. This reflects the increased attention being given to the cases by both caseworkers and attorneys. The addition of a dedicated customer

[27] PSI's 2005 proposal.

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service unit has greatly improved the ability of the citizens to reach this office and receive the requested attention on their case.

I was pleased that Robert Williams, President of PSI, asked to meet with me in December 2002 to gain an understanding of the issues facing the Court and the program. This kind of direct involvement and show of interest from the President of the company indicates to me that the Knox County operation is important to the company and that they take seriously their contractual commitment to provide quality service."[28] (This letter may have been used as a letter of recommendation; on July 1, 2003, PSI's five-year contract term with Davidson County in the 20th Judicial District began. It ended June 30, 2008. PSI's contract with Knox County ran from March 1, 2002 to March 1, 2007. Both client references were included in PSI's proposal without reasons for not securing second contract terms.

PSI's year 2005 proposal also informed El Paso County of two pending actions wherein PSI and the Tennessee Department of Human Services were plaintiffs in Bradley County courts. The El Paso County Attorney's office withheld PSI's opinion on the outcome of the cases as an exception to CORA stating, "There is a legal opinion letter by Counsel for Policy Studies, Inc. (PSI) as to pending litigation that would impinge on the right to privacy of third parties in the four listed cases then involved in litigation with PSI and would impact the attorney-client privilege between PSI and their attorneys. This document is dated October 13, 2005." Nevertheless, the published opinion filed on August 29, 2006 for the Court of Appeals at Knoxville in the case of John Micheal Shealy v. Policy Studies Inc. d/b/a Child Support Services of TN was available online.[29] A summary follows.

Shealy and David Reagan were two fathers that joined in litigation in December 2001 alleging that their due process rights were violated when PSI administratively increased the amount of their child support orders and issued wage assignments without providing notice and hearing. The Court acted on their joined complaint and issued temporary restraining orders preventing the Tennessee Department of Human Services (DHS) from acting on the administrative orders entered by PSI. Thereafter, petitions were filed on behalf of the former wives of Shealy and Reagan to modify child support to increase the orders through the court. Shealy and Reagan eventually agreed to the proposed orders. And DHS dismissed the previous administrative orders "for naught." Shealy and Reagan then sought a summary judgment on the issues of constitutionality and separation of powers, as did the DHS. Following a hearing on February 18, 2004, the trial court granted the summary judgment filed by Shealy and Reagan and denied the judgment requested by DHS to uphold the constitutionality of the statute(s) at issue.

But on January 1, 2005, the Tennessee statute at issue on the constitutionality question was amended.

[28] PSI's 2005 proposal page II-13.

[29] http://www.tsc.state.tn.us/OPINIONS/tca/PDF/063/ShealyjmOPN.pdf.

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Then on April 21, 2005, Chancellor Bryant entered the detailed order granting Shealy and Regan's motion for a summary judgment and ruled against DHS/PSI's motion for a summary judgment. Appellate Judge Charles Susano described the Court's (Chancellor Bryant's) ruling:

> The trial court concluded: (1) that PSI was granted "judicial power" to make and enforce child support orders with no automatic or mandatory judicial review, which, according to the court, violated the doctrine of separation of powers in the Tennessee Constitution; (2) that Tenn. Code Ann. § 36-5-103(f) violated due process because PSI drafted pleadings, decided whether child support should be increased, and entered orders by non-attorneys who had a financial stake in the outcome; (3) that Tenn. Code Ann. § 36-5-103(f) violated due process because it did not provide for a hearing prior to the issuance of an administrative order increasing child support; (4) that Tenn. Code Ann. § 36-5-103(f) violated due process because it provided for a different standard of proof in an administrative hearing as opposed to a judicial hearing; and (5) that Tenn. Code Ann. § 36-5-501 violated due process and the separation of powers doctrine because PSI has the power to summarily issue wage assignments. The trial court summarized its conclusions as follows:
>
>> In conclusion, this Court finds the current statutory scheme for the collection of child support in this state fails to provide a predeprivation hearing, operates under a different standard of proof, and violates the Doctrine of Due Process as well as the Doctrine of Separation of Powers, all in violation of the Constitution of the State of Tennessee. Therefore, the Plaintiffs are granted summary judgment.

The State and PSI appealed the Bradley County Court's decision and subsequently "filed a motion on September 15, 2005 for an extension of time within which to file their appeal due to incomplete records from the Chancery Court of Bradley County."[30] Nearly a year later on August 29, 2006, the Court of Appeals concluded that all of the plaintiffs' claims were moot and vacated the judgment of the trial court and remanded the case back to the trial court with instructions to dismiss. In making its rulings, the Court of Appeals relied on the new orders agreed by Shealy and Reagan to rule their claims were moot and did not take up the issue of

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[30] (1) This quotation is from PSI's 2005 proposal page I-12. (2) A "chancery court is a court of equity, or fairness, created to hear those types of cases where the strict application of the law could not give adequate remedy." Chancery courts hear cases for "divorce, alimony, and child custody and support; all matters in equity, including cases of fraud or mistake, property rights, conveyances of property, mortgages and liens on property, injunctions, specific performance of contracts; matters testamentary and of administration; matters of idiocy, lunacy, and persons of unsound minds." A chancellor is a judge in a chancery court.

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constitutionality because the amendment had remedied the current statutory scheme and taking up the issue of constitutionality of the previous version of the statue served no useful purpose.

In support of his decision, Judge Susano quoted liberally from Ashley v. Jones (Tenn. Ct. App., August 24, 2005) because of the similarities it shared with Shealy & Reagan. In this case, Ashley was the mother receiving child support when DHS entered an administrative order that reduced the child support payment by one half. She filed a similar complaint claiming violation of due process. The DHS argued that it had complied with administrative procedures that required an adjustment for either parent requesting it, if the circumstances warranted the adjustment, and sent notice as required. (In 2005 in Tennessee, a 15% change in circumstances was required, while 10% was required in Colorado.) When the Court of Appeals ruled in her case, it commented on the same statute as did Shealy & Reagan as follows.

> The mother herein was deprived of property or property interest, i.e., the monthly payment of a court-ordered amount, by the action of the department. The question is whether such deprivation was effected without the process that was due.
>
> Notice and opportunity to be heard are the minimal requirements of due process. *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1949). *See also In re Riggs*, 612 S.W.2d 461, 465 (Tenn. Ct. App. 1980). The most fundamental element of due process is "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'["] *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, (1965). The Department argues the mother herein received notice and could have sought an administrative review which would have provided the opportunity for a hearing. The question is whether post-deprivation notice and hearing are sufficient.
>
> [W]e do not doubt that the government has an important fiscal and organizational interest in meeting the requirements of Title IV-D by substituting a streamlined administrative procedure for more lengthy and expensive judicial proceedings. The Department has not argued that its interest outweighs that of a recipient facing a reduction in support. It also does not argue that a procedure requiring pre-decision and pre-deprivation notice would burden it to the detriment of any interest it might have. Such an argument would be difficult to sustain in view of recent statutory amendments that require such notice before an administrative modification order becomes effective. Tenn. Code Ann. § 36-5-103(f)(4) and (5) (effective January 1, 2005).
>
> No one could seriously doubt that a petition for modification of child support could not be granted by a court without notice to the other party, the opportunity to contest the modification, and a hearing. We conclude an administrative agency cannot unilaterally reduce a child support recipient's support without, at least, pre-deprivation notice and the opportunity to be heard without violating the due process provisions of both the United States and the Tennessee Constitutions.

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The other Bradley County pending case cited in PSI's proposal was filed July 15, 2005 and petitioned for "Contempt and to Show Cause alleging that the State of Tennessee through PSI were in violation of a Permanent Restraining Order dated November 13, 2003 and sought "a refund of all monies withheld from payroll checks, attorneys fees, costs, expenses and discretionary costs." (No information on the outcome was found online.)

The Law Firm information contained in PSI's proposal was critical to understanding the role it played in the prosecution of Mr. Johnson's case. Other information was sufficient to increase understanding of the child support enforcement system that exists between the executive, legislative, and judicial branches of local, state, and federal governments. Notwithstanding the usefulness of PSI's proposal for Mr. Johnson's purposes, the CPCD should demand that vendors avoid the salesmanship exhibited in PSI's 2005 proposal and give "clean" statements to program requirements as well as request that the El Paso DHS provide responses to questions without the appearance of bias toward the current vendor. These actions would restrict the size of the proposals thereby making the rating process more efficient; hold the evaluation committee members more accountable for their decision and improve their independence; eliminate a vendor's ability to hide its deficiencies; and give the appearance of fair and open competition. The CPCD should also require disclosure of reasons for "ended" client relationships. Verifying references of former clients provides another avenue for researching vendor performance and attitude, with the awareness that negative information is unlikely to be disclosed by the vendor.

For example, PSI operated a full-service child support enforcement program in Douglas County, Nebraska using the trade name of Child Support Services of Nebraska beginning in February 1993. At that time, PSI entered a five-year contract with the Nebraska Department of Social Services and contracted with a local law firm for legal services. In 1998, the then Nebraska Department of Health & Human Services (DHSS) entered into a new three year contract with PSI. Over the course of this time, the Douglas County Public Defender's Office filed motions on behalf of 365 parties alleging that the opposing attorney's employer, PSI, was practicing law but did not comply with the Nebraska Supreme Court's Professional Service Corporations rule and filed motions alleging that PSI and the attorneys it employed were violating certain canons of the Nebraska Code of Professional Responsibility.[31] (The canon violations were related to the sharing of fees with a non-lawyer and practicing law within a corporate form wherein a non-lawyer was a corporate director. Identifying the violations allowed the Public Defender's Office to access the court to have PSI removed from Nebraska.)

The Legal Aid Society joined the Public Defender's Office and filed motions asserting similar claims in 36 cases involving paternity and moved the court to disqualify PSI. The lower court granted the motion and PSI was prohibited from practicing law under its contract with the Nebraska DHHS. PSI appealed the decision in 1999 but Nebraska did not. Therefore, the appeal was dismissed because PSI did not have standing for the actions underlying the appeal after disqualification.

[31] http://www.ncpa.ne.gov/ctopinio/98-774.htm.

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The Nebraska contract subsequently went to Maximus in 2001. Maximus hired Young Williams, Henderson, Fusilier & Associates, PA, a Mississippi-based law firm for legal services; the estimated cost of the subcontract was $7.9 million.[32]

The El Paso base contract and renewals obtained through CORA reflected the current five year contract period with PSI that began January 1, 2006 and ends December 31, 2010. (The year 2010 renewal was requested but not provided.) The value of the base contract was $4,538,827.00. The value of the renewal for 2007 was $4,541,681.00 and was amended mid-year to add $57,620.70 for the 2006 incentive earned and to include $17,500.00 for expanded locate/diligent searches service (expanded to find relatives of children in the custody of the El Paso DHS) for a total amended value of $4,616,801.00. The value of the 2008 renewal decreased to $4,155,135.00 through negotiations and was broken out between the child support enforcement program and the Parent Opportunity Program (POP), specifying that $96,938.00 was to be designated for POP services. The total value included an anticipated incentive of $41,602.00 for 2007 and an increase in the amount paid for Diligent Searches to $21,852.00. The value of the 2009 renewal was $4,162,669.00 and was broken out in the same manner as in 2008 with the same amount allocated for POP services and included an anticipated incentive of $49,136.00 for 2008 and the same allocation for Diligent Searches. The marked decrease in the value of the contract was attributable to the economic downturn that began in the fourth quarter of 2007.

On December 21, 2008, *The Gazette* reported County budget reductions had eliminated 69 job positions and resulted in 111 layoffs during the year and would reduce the county's budget of $234.8 to $232.3 in 2009.[33] One of the departments taking a major reduction was DHS, which was cut by $385,000.00 from $41.8 million to $41.4. The DHS budget cuts were directed at child support enforcement (this was not disclosed); other department activities were not affected.[34] In this regard, Director Barbara Drake reported no layoffs and "hope[d] her decision to have more people process food stamp and other welfare applications and investigate abuse claims will maintain services."

The District Attorney's Offices also reported taking a $1.2 million cut from $10.1 million to $8.9 million. The then District Attorney-elect Dan May reported no layoffs but was considering taking more plea bargains, charging more for fees and copies, seeking grant money, and converting some attorney positions to lesser paid paralegal positions.

In May 2009, following the release of PSI's 2008 Annual Report to the BoCC, CSEU IV-D Administrator Laura Davidson spoke to *The Gazette* newspaper in Colorado Springs.[35] Ms.

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[32] *See* also footnote 15. This amount sounds like the total value of the contract – unable to confirm.

[33] Pam Zubeck, "El Paso County budget cuts will cut deep", The Gazette, December 21, 2008; Gazette.com.

[34] www.acf.hhs.gov: "The CSE Program is federally funded, i.e., the Federal government pays 66% of State administrative costs, 90% of paternity laboratory costs, and (subject to cap and other limitations) 80% of approved automation costs, but it is administered by State and local governments." (Funding may have changed since 2008.)

[35] Debbie Kelley , "El Paso County collected most child support in '08", The Gazette, May 5, 2009; Gazette.com.

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Davidson reported a 6.5% increase in collections from 2007 to $42.5 million for 2008 and the largest amount collected by a county in the state and the largest since PSI's contract began in 2001. She attributed the gains to training, "beefing up customer service", improving its ability to prove that parents can pay, and "stepping up efforts to impose sentencing on offenders as soon as the first payment is missed" as well as being able to intercept federal stimulus checks and changes to the Deficit Reduction Act that authorized child support enforcement offices to collect child support arrears from non-custodial parents of emancipated children (the age of emancipation in Colorado is 19). Ms. Davidson also reported an 8% increase over 2007 in POP employment results with job placement for 190 of 270 participants.[36]

According to other PSI statistics, 79% of the money collected on child support in 2008 was from wage garnishment and, as of the first quarter of 2009, the percentage had dropped to 54% with a 174% increase over 2008 in collections from assignment of unemployment benefits. (This compares to 65% from wage garnishment in 2005.) Ms. Davidson also reported a 2008 caseload of 17,824 and an average child support order of $300.00. In caseload comparison, Denver County had 24,457 cases and collected $42.2 million.

PSI routinely compares its performance in El Paso County, an outsourced county, to Denver County, a county-administered program, using peer group analysis.[37] Denver and El Paso Counties are the two largest counties by population and are included in the 10 large county group and therefore provide a larger employment base for collections from wages. The U.S. Bureau reports the following statistics for Denver County: 2009 population estimated at 610,345 (state population 5,024,748); **persons under 5 years old 8.7%** (2008); persons under 18 - **24.8%** (2008); persons 65 and over 10.4% (2008); **female persons 49.1%** (2008); white persons 83.0% (2008 per Census Bureau: persons only reporting one race); **black persons 10.0%** (2008); American Indian or Alaska native persons 1.4% (2008); **persons of Hispanic or Latino origin 34.3%** (2008 per Census Bureau: Hispanics may be of any race, so are also included in

[36] According to PSI's 2005 proposal, the Department of Corrections was involved with 50% of POP participants.

[37] The Denver Child Support Enforcement Division website is at http://www.denvergov.org/Default.aspx?alias=www.denvergov.org/Child_Support. The 2010 logo is like most child support enforcement marketing messages – the children shown are all "of color"; three seem to be Hispanic or Asian and one appears to be black. Child support applications are available in English and Spanish. The affidavit of non-disclosure is in both English and Spanish. The other forms are in English only, including the pamphlet-like form, "Modifying Child Support." The application also states: ___ You are required to complete and sign an affidavit agreeing to the amount of child support arrears owed (if there is a current child support order)." As previously stated, this requirement was made optional in El Paso County as of May 2010. The site also has an online customer survey form that collects the following information: kind of person making request (custodial parent, non-custodial parent, employer, other state agency); type of service requested (telephone, mail, materials, personal office visit, website); then asks: calling Denver's customer service phone line is a good way to get information about my case (strongly agree, agree, disagree, strongly disagree); treated with courtesy and respect (always, sometimes, rarely, never); letters and notices easy to understand (strongly agree, agree, disagree, strongly disagree); my caseworker promptly responded to letter or phone call (strongly agree, agree, disagree, strongly disagree); overall pleased with the service received from Denver CSE (strongly agree, agree, disagree, strongly disagree); and asks what is the reason for contacting the Denver CSE (want to speak to caseworker, got letter in mail, need a payment record, drivers license suspended, where to make payments, want a paternity test, when is court hearing, other).

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applicable race categories); **white persons not Hispanic 50.9%** (2008).[38] (Conversely, white persons Hispanic is **49.1%**.)

The U.S. Census Bureau reports the following statistics for El Paso County: 2009 population estimated at 604,542 (state population 5,024,748); **persons under 5 years old 7.4%** (2008); persons under 18 - **25.9%** (2008); persons 65 and over 9.6% (2008); **female persons 50.2%** (2008); white persons 85.2%; **black persons 7.0%** (2008); American Indian or Alaska native persons 1.2% (2008); **persons of Hispanic or Latino origin 13.6%**; **white persons not Hispanic 73.7%** (2008). (Conversely, white persons Hispanic is **26.3%.**) [Poverty among all populations is tied to race/ethnicity. In Denver County in 2008, **18.0%** of the population lived below the federal poverty level. In 2000 (the last completed published census), **27%** of the population age 5 and up spoke another language other than English at home and **21.1%** of the population age 25 and up did not graduate from high school. In El Paso County in 2008, **10.6%** of the population lived below the federal poverty level. In 2000, **11.4%** of the population age 5 and up spoke another language other than English at home and **8.7%** of the population age 25 and up did not graduate from high school. (Persons of Hispanic or Latino origin have increased as a group due to relaxed federal regulation of immigration because of national diplomatic economic pursuits prior to 1986. Therefore, the number of uncounted primarily Mexican and Central American Spanish-speaking immigrants substantially inflates would-be U.S. population/language counts, making the reported statistics most reliable for U.S. citizens of Mexican or Central American decent, including native-born Americans of the related origin and children of illegal immigrants with citizenship as a birthright.).][39]

There are other disparities in the comparison. Primarily, PSI's Colorado Springs location is within 40 miles of five military installations and home to both active and inactive military families. With military collections guaranteed and consistent, CSEU takes a strong enforcement posture as stated in its 2005 proposal: "For members of the military, we issue an income assignment to the Defense Finance and Accounting Service (DFAS) in Cleveland, Ohio. Military members are not allowed to use a voluntary allotment, as they can revoke these at anytime." When military review and adjustments are conducted, "[i]f the non-custodial parent resides on base, we impute this income as 'in kind' compensation, thus justifying an upward adjustment of income in setting support, according to Colorado Child Support Guidelines. We obtain medical

[38] "Race" equals white (origins in any of the original peoples of Europe, the Middle East, and North Africa); black (origins in the original peoples of Africa or America); American Indian or Alaska native (origins as the indigenous peoples of America and Alaska and South and Central America); Asian (origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent); Native Hawaiian and Other Pacific Islander (origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands); two or more races (a reporting option). "Ethnicity" equals Hispanic or Latino, or Not Hispanic or Latino.

[39] The U.S. Census Bureau reports these comparable population statistics for California: 2009 population estimated at 36,961,664); **persons under 5 years old 7.4%** (2008); persons under 18 - **25.5%** (2008); persons 65 and over 11.2% (2008); **female persons 50.0%** (2008); white persons 76.6%; **black persons 6.7%** (2008); American Indian or Alaska native persons 1.2% (2008); **persons of Hispanic or Latino origin 36.6%**; **white persons not Hispanic 42.3%** (2008). (Conversely, white persons Hispanic is **57.7 %**.) **13.3%** of the population lived below the federal poverty level. In 2000 (the last completed published census), **39.5%** of the population age 5 and up spoke another language other than English at home and **21.2%** of the population age 25 and up did not graduate from high school.

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support from military parents." [Military enlistment has traditionally provided an avenue to escape or prevent poverty or gain immediate independence from family through the benefits of full-time employment, job training, housing, and healthcare. Recruiters visit high schools annually to inform juniors and seniors of the benefits of military enlistment, reaching the pool of 18-year-olds eligible for active duty without college plans. This group is also reached through the Internet using seductive website designs with games. Military enlistment is open to qualified resident aliens as well. (Parents should know what their children are accessing on the Internet. *See* www.airforce.com and www.goarmy.com.)]

Within the community, "CSSC case managers and attorneys have relationships with local military personnel to facilitate gathering information and serving non-custodial parents. CSSC staff and attorneys have teamed with the Assistant General Counsel for DFAS Garnishment Operations in presenting training on working with the military at the annual Colorado Family Support Council Conference."

PSI indicated that "[m]anaging the interstate caseload is an integral and challenging part of a[n] IV-D agency's responsibilities."[40] "The interstate caseload is especially challenging to El Paso County due to the large military presence at surrounding defense installations, including Fort Carson, Schriever Air Force Base, Peterson Air Force Base, and the U.S. Air Force Academy." (The fifth military site is the Cheyenne Mountain Directorate for operations of NORAD, the bi-national aerospace monitoring and advanced warning defense operation involving the United States and Canada; other military Air Force operations formally conducted in Cheyenne Mountain were moved to Peterson Air Force Base in 2006 to reduce redundancies.)

In 2009 as the economic downturn continued, PSI collections decreased from $42,581,088.00 in 2008 to $42,299,791.00 and the State chose not to set a collections goal. On June 16, 2010, *The Gazette's, Gazette.com,* published a blog for reader comment that reported that PSI collected the most money for the third consecutive year, despite decreased collections state-wide, and spent $7 million dollars less for administrative expenses than Denver County.[41] The blogger wrote "How? El Paso County completely outsources its collections to Policy Studies Inc., a Denver-based company, while Denver County runs the program itself. The small government proponents that run the county turned the child support payments announcement into a hammer to drive home its point about the efficacy of public private partnerships." BoCC Commissioner Sallie Clark, identified by the blogger as "the liaison commissioner to the Department of Human Services,"

[40] Collection goals are set for interstate child support enforcement both as an initiating and responding county.

[41] The posting was June 16, 2010, 10:31 a.m. by Breed. The link in Gazette.com is http://safetynet.freedomblogging.com. Freedom Communications owns *The Gazette*. Another related site on the SafetyNet link is FreedomPolitics.com and both have 2010 copyright notices under Freedom Communications. Per http://www.freedom.com/newspapers/community.html: "With a combined circulation of nearly a one million subscribers, the Newspapers Division remains committed to the communities it serves by **focusing on local customers and markets**, doing what it does best-delivering quality news **products** every day." "The Newspapers Division is part of Freedom Communications, headquartered in Irvine, Calif., a **privately owned**, information and entertainment company of print publications, broadcast television stations and interactive businesses. The broadcast stations – five CBS, two ABC network affiliates and one CW affiliate – reach more than 3 million households across the country. [Not very many in a nation of over 310 million "counted" people.]

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reportedly issued this statement: “This is another example of the unique public private partnerships El Paso County maintains to provide better service at a lower cost.” “The services PSI helps El Paso County provide, by ensuring children in our community are properly cared for, will have benefits for years to come.”

The mounting job losses associated with the recession (stabilized depression) affected tax receipts and expenditures at the state level. For example, the October 2008 TANF caseload state-wide was 8,559 families for a total of 20,665 recipients, including 16,307 children.[42] By September 2009, 10,364 families qualified for TANF for a total of 25,889 recipients, including 19,737 children.

During this fiscally challenging economic climate and projections of long term unemployment, Mr. Johnson’s former wife applied for the services of CSEU in Colorado Springs sometime in September 2008 without his knowledge. On October 4, 2008, Mr. Johnson played a video poker game while waiting for a poker tournament at the Midnight Rose Casino in Cripple Creek, Colorado to begin, and won.[43] As required to collect winnings, he completed IRS Form W-2G and submitted the form to the office for payout. Mr. Johnson was subsequently pulled aside for privacy (he is a frequent customer with good relationships with other customers and staff) and was told his social security number matched with Colorado’s child support database. Extremely embarrassed and confused, he waited for the Casino to process the payout and complete the required paperwork. Mr. Johnson was then given his payout of $963.95; copy B of the IRS form; a gambling intercept receipt showing deductions of one month’s child support ($438.80), a licensee fee of $15.00 and a portal administration fee of $10.00; and the computer-generated notice from the CDHS CSE advising him that “[a]ll, or part of, your winnings have been intercepted because you owe a child support debt, child support arrearages, or child support costs pursuant to Section 26-13-118.7, C.R.S.”

[42] Available DHHS, ACF data for Colorado for this period. Going forward, by November 2009 the caseload increased to 27, 862 and then to 29,093 by December.

[43] In 1997, Congress commissioned a two-year study of legalized gambling to understand its social and economic impact in American life. The National Gambling Impact Study Commission released its report “to the President, Congress, Governors, and Tribal Leaders” on June 18, 1999. In a cursory review of the introduction and Report – and as an opinion related to that review, the Commission’s unanimously adopted final report indicates there is no public consensus regarding the acceptance of gambling as an industry as a whole and that commission members were equally as divided as members of the public. The Commission’s only true consensus occurred on two fronts: (1) The “subject of gambling’s impact is too extensive to be fully captured in a single volume”; (2) Local communities accept or reject gambling and gaming based on their own acceptance of the industry by members of those communities. In Commission Chairman Kay C. James introduction to the Report she said, “But although the growth of gambling is a national phenomenon, gambling itself is of greatest concern to the individual communities in which it operates or is proposed to operate. It is at that level that its impact is felt most keenly and where the debates surrounding this issue are most energetically contested. Those communities form no common front: one community may welcome gambling as an economic salvation, while its neighbor may regard it as an anathema. As such, there are few areas in which a single national, one-size-fits-all approach can be recommended.” See the Report at http://govinfo.library.unt.edu/ngisc/reports/intro.pdf.

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Title 26 of the C.R.S. is the body of law governing Colorado's human services system and is titled *Human Services Code*. According to the C.R.S. editor's note, Title 26 from 1963 was repealed, revised, and reenacted in 1973. In 1993, legislators amended Article 1- Department of Human Services to restructure the Department stating in §26-1-102:

> (1) The general assembly declares that state and local policymakers and health and human services administrators recognize that the management of and the delivery system for health and human services have become complex, fragmented, and costly and that the health and human services delivery system in this state should be restructured to adequately address the needs of Colorado citizens.
>
> (2) The general assembly further finds and declares that a continuing budget crisis makes it unlikely that funding sources will keep pace with the increasing demands of health and human services.
>
> (3) Therefore, the general assembly finds that it is appropriate to restructure the principal departments responsible for overseeing the delivery of health and human services and to reform the state's health and human services delivery system, using guiding principles and within the time frames set forth in article 1.7 of title 24, C.R.S. It is the general assembly's intent that the departments of public health and environment, health care policy and financing, and human services be operational, effective July 1, 1994.

The Article referenced on the CDHS CSE notice is Article 13 - Child Support Enforcement Act; the Legislative declaration provided by §26-13-102 states, "The purposes of this article are to provide for enforcing the support obligations owed by obligors, to locate obligors, to establish parentage, to establish and modify child support obligations, and to obtain support in cooperation with the federal government pursuant to Title IV-D of the federal "Social Security Act", as amended, and other applicable federal regulations."

Section 118.7 provides the legal basis for intercepting gambling winnings and is titled, *Lottery Winning Offsets*. Subsection (1)(a) requires the CDHS to "periodically" report to the Colorado Department of Revenue any persons who owe child support debt or costs to the Colorado Department of Revenue or who owe child support arrearages or child support costs which are subject to enforcement under Section 106.[44] The report must include the person's social security number and the amount owed and any other identifying information required by the Department of Revenue as required by (b). (The last four digits of Mr. Johnson's social security number, date of birth, name, and address were listed.) Subsection (2) requires the CDHS to notify the lottery winner that the State intends to offset the current debt, arrearages, or costs against the winnings. The notification must inform the obligated party of the rights to object and to request an

[44] §14-14-104 (1) states that "[a]ny payment of public assistance by a county department of social services (IV-A unit) made to or for the benefit of any dependent child or children creates a debt, which is owing to the county department of social services, recoverable by the county as a debt due to the state by the parent or parents who are responsible for support of the dependent child or children in an amount to be determined as follows:…"

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administrative review "pursuant to the rules and regulations of the state board of human services."

In accordance with state law, CDHS CSE notified Mr. Johnson of his right to object to the offset and to request an administrative review in writing within 30 days from the date of the notice, stating, "An administrative review can only be requested if you believe there is an issue of mistaken identity or you disagree with the total arrears owed on this notice." The written request was required to be directed to the "County Child Support Enforcement Office listed below", which was "Jonica Brunner, Colorado Springs, CO 80903, El Paso County Child Support Enforcement Unit, 30 East Pikes Pk Ave, Ste 203." The notice also provided that Mr. Johnson had the right to waive the administrative review by "providing a notarized, signed written statement" to the CDHS CSE by fax to release the winnings immediately against the child support owed. The winnings were to be released to Family Support Registry (FSR) account number 10988509.

On Sunday October 5th, Mr. Johnson contacted his former wife and explained what had happened at Midnight Rose. She apologized for his embarrassment and told him to "take care of it." On Monday, Mr. Johnson went to the address on the notice to speak to Jonica Brunner. Instead he spoke with Ms. Luz Moralez. Mr. Johnson complained about failing to receive notice of the child support action. Ms. Moralez told Mr. Johnson she had no knowledge of the intercept and could not provide (was unable to locate) any information.[45] Eventually, Mr. Johnson connected the child support enforcement action to a letter he received dated October 2nd .

This form-like, computer-generated notice was also from Ms. Brunner, a paralegal employed by CSEU, and advised Mr. Johnson of his right to request a modification of child support (as per CCR Volume 6, section 6.261.2). The notice did not state why he should make the request but said the request should be made to the El Paso County Delegate Child Support Enforcement Unit, phone number 719-457-6331. On the date he received the letter and for the next 11 months, "delegate" meant nothing to him. He believed he was interacting with County social services caseworkers.

The letter informed Mr. Johnson of his right to request a review for modification pursuant to 42 United States Code (USC) §666(a)(10)(c) – Notice of Right to Review, which established the three year cycle for review of child support orders for possible modification at the request of either parent or the agency.[46] Code of Federal Regulations 45 (CFR) 303.8 subsection (3) states,

[45] CSEU employees are required to enter all case management information on ACSES. Employees can access ACSES from their computers and review the data on any case as long as another employee is not working with that case on ACSES at that time. If for some reason Ms. Moralez was not authorized to access ACSES, or it was inaccessible as explained here, she could have asked someone else with authority to help him or asked him to wait until she was able to clear the other user and sign in. CSEU was unprepared (unrehearsed) to deal with him.

[46] 42 USC §666 – Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement. This law, among other things, required the recording of social security numbers. 666 (a)(13) – Recording of social security numbers in certain family matters. *Procedures requiring that the social security number of* – (A) any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application; (B) any individual who is subject to a divorce decree, support

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"Review means an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support…."

Pursuant to federal laws and regulations, Colorado therefore requires CSEU to review every support order for IV-A cases at least once every thirty-six months and to review non-IV-A support orders at the request of either party or any IV-D agency in compliance with CSE Program Manual section 6.261 and 6.715 regulations. Section 6.261.3 (A) states, "Either party in cases with an active order may request a review of the order. The request shall include the financial information from the requesting party necessary to conduct a calculation pursuant to the Colorado Child Support guidelines. The requesting party shall provide his or her financial information on the form required by the Division of Child Support Enforcement"; (B) states, "The delegate Child Support Enforcement Unit may initiate a review of a current child support order upon its own request."

Section 6.715 – Modification of Administrative Orders - governs the administrative processes used by the delegate child support enforcement unit. Subsection 6.715.2 states, "The delegate Child Support Enforcement Unit may initiate a modification action in accordance with Section 6.261 to add, alter or delete provisions of an administrative order by serving the noncustodial parent with a Notice of Financial Responsibility for Review and Adjustment by first class mail, not less than 11 calendar days prior to the date stated in the Notice, and proceeding to either establish an order pursuant to a negotiation conference under Section 6.710 or issuing a default order pursuant to Section 6.712, or requesting a court hearing pursuant to Section 6.714.

Section 6.710 – Issuance of Order of Financial Responsibility governs the process of entering an administrative order. 6.710.1 states, "If a stipulation is agreed upon at a negotiation conference, the delegate Child Support Enforcement Unit shall prepare and issue an Order of Financial Responsibility (CSE-105) as prescribed by the state department. 6.710.2 states, "The order shall

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order, or paternity determination or acknowledgement be placed in the records relating to the matter; and (C) any individual who has died be placed in the records relating to the death and be recorded in the death certificate. [(1) The first social security number was issued in 1936 after the Security and Exchange Commission was established by Congress in 1934 in the Securities Exchange Act during the presidency of Franklin Delano Roosevelt. The first chairman of the SEC was Joseph Kennedy (1934-1935), the father of John F. Kennedy, and a major contributor to FDR's presidential campaign. Joseph Kennedy's accumulation of wealth was rumored to have been derived from crafty business dealings, including the illegal importation of liquor during prohibition. Much of his wealth, therefore the wealth of his family, was built as an investor in real estate during the Great Depression. He also invested heavily in the entertainment industry in Hollywood, California. (2) SEC.gov: "The SEC consists of five presidentially-appointed Commissioners, with staggered five-year terms. One of them is designated by the President as Chairman of the Commission – the agency's chief executive. By law, no more than three of the Commissioners may belong to the same political party, ensuring non-partisanship." (Appearance only.)]

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be signed by the noncustodial parent and by the county director or employee of the delegate Child Support Enforcement Unit designated in writing by the county director."

Additionally, the October 2nd notice from Ms. Brunner advised Mr. Johnson that "[r]equesting a review through the El Paso County Delegate Child Support Unit is not the same as filing a motion to modify with the court" and may take several months, with the child support order remaining the same until a new order is entered. "Keep in mind that the El Paso County Delegate Child Support Enforcement Unit may not have the authority to retroactively modify your child support order to the date you initially requested in your review." The letter also stated, "This same notice has been sent to the other party, who also has the right to request a review for possible modification."

Retroactive modification of child support (looking back from the date of a requested modification) is prohibited by law except for a voluntary change in custody. Pursuant to C.R.S. §14-10-122 – Modification and termination of provisions for maintenance, support, and property disposition automatic lien – subsection (1)(d), child support can only be retroactively modified as follows.

> If maintenance or child support is modified pursuant to this section, the modification should be effective as of the date of the filing of the motion, unless the court finds that it would cause undue hardship or substantial injustice or unless there has been a mutually agreed upon change of physical custody as provided for in subsection (5) of this section. In no instance shall the order be retroactively modified prior to the date of filing, unless there has been a mutually agreed upon change of physical custody. The court may modify installments of maintenance or child support due between the filing of the motion and the entry of the order even if the circumstances justifying the modification no longer exist at the time the order is entered.

To request a review, Mr. Johnson was directed to contact the CSEU or go to the website for information, then submit a written request and provide an Income and Expense Affidavit and supporting financial documents. "A review of the amount of child support will be based on verification of each party's income and application of the child support guidelines."

Colorado's child support guidelines are established by §14-10-115. The purpose is stated in subsection (1):

> (a) The child support guidelines and schedule of basic child support obligations have the following purposes:
>
> > (I) To establish as state policy an adequate standard of support for children, subject to the ability of parents to pay;
> >
> > (II) To make awards more equitable by ensuring more consistent treatment of persons in similar circumstances; and

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(III) To improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in establishing levels of awards.

Subsection (2) – Duty of Support - Factors to Consider – provide the applicability of the statute:

(a) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the child's support and may order an amount determined to be reasonable under the circumstances for a time period that occurred after the date of the parties' physical separation or the filing of the petition or service upon the respondent, whichever date is latest, and prior to the entry of the support order, without regard to marital misconduct.

(b) In determining the amount of support under this subsection (2), the court shall consider all relevant factors, including:

(I) The financial resources of the child;

(II) The financial resources of the custodial parent;

(III) The standard of living the child would have enjoyed had the marriage not been dissolved;

(IV) The physical and emotional condition of the child and his or her educational needs; and

(V) The financial resources and needs of the noncustodial parent.

According to Ms. Brunner's notice, "[t]he review may result in an increase, decrease, or no change in the amount due. At least a 10% change to your current child support order amount is required per law for a change to occur." This requirement is also established by C.R.S. §14-10-122 as shown below.

(1) (a) Except as otherwise provided in section 14-10-112 (6), the provisions of any decree respecting maintenance may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unfair, and, except as otherwise provided in subsection (5) of this section, the provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of changed circumstances that are substantial and continuing or on the ground that the order does not contain a provision regarding medical support, such as insurance coverage, payment for medical insurance deductibles and copayments, or unreimbursed medical expenses. The provisions as to property disposition may not be revoked or modified unless the court finds the existence of conditions that justify the reopening of a judgment.

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(b) Application of the child support guidelines and schedule of basic child support obligations set forth in section 14-10-115 to the circumstances of the parties at the time of the filing of a motion for modification of the child support order which results in less than a ten percent change in the amount of support due per month shall be deemed not to be a substantial and continuing change of circumstances.

Without any knowledge of the foregoing laws governing child support determination and modification, Mr. Johnson scheduled a review through Ms. Moralez for October 10th. On October 7th, Ms. Brunner printed and mailed a letter confirming his request. This letter had a logo, looked like a standard business letter, although form-like (a template), and was from PSI/Child Support Services of Colorado using the same address shown on the modification notice. It provided similar information found in the October 2nd letter, requested financial information, and advised that upon review of the financial information he and his former wife would be notified of the findings. Then, "[i]f a change in the child support amount is needed or health insurance should be added, we will ask you and the other parent to agree to the changes in your order. Either party has the right to request a court hearing should they disagree with the proposed change." "You are required to complete, sign before a Notary and return the enclosed Affidavit with Respect to Child Support, along with the following: (1) A copy of your last 3 IRS Federal income tax return[s], along with W-2s and 1099 Forms. (2) Your pay stubs for the first three months and verification of any non-wage income." "If we do not receive this information from you, we will deny the request for modification." The letter closes, "I look forward to working with you to make this important determination for your children."

CSEU's notice of intent to deny modification when income information is withheld is based on the statutory requirement found in subsection (5)(c) of §14-10-115, C.R.S., which states:

> Income statements of the parents shall be verified with documentation of both current and past earnings. Suitable documentation of current earnings includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period. A copy of wage statements or other wage information obtained from the computer database maintained by the department of labor and employment shall be admissible into evidence for purposes of determining income under this subsection (5).

When Mr. Johnson met with Ms. Brunner, he had not yet received the letter requiring income verification documents. Nonetheless, Ms. Brunner met with him and informed him that he owed 39 months of unpaid child support, which included 30 months that his son lived with him. He explained the change of custody and denied owing child support for the three year period (he paid child support for the first six months after the change in custody occurred). On the same date, Ms. Brunner printed another letter using the PSI/CSSU logo to disclose the information that established the debt, including the total owed of $16,071.60. The letter stated in part, "Colorado law provides a number of enforcement remedies to help us collect past-due support. However, we prefer to work *with you. It is important that you understand that it is your responsibility to*

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contact me with any new information such as a change of address, a change of employment or any new orders for support. We will delay taking any enforcement action on the arrears balance to give you the opportunity to pay your monthly support amount *and* make arrangements to payoff your arrears balance, or notify us that you believe that the arrearage balance shown above is incorrect." The letter also said, "Please see the 'IMPORTANT NOTICE' attached. 'FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTIONS PRACTICES ACT, GO TO HTTP://WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM.'" [47]

Mr. Johnson contacted his former wife again and was told by her she was not trying to collect child support for the years at issue. She subsequently said, "They took the ball and ran with it." Therefore, Mr. Johnson explained the change of custody with CSEU caseworkers in person and by phone on numerous occasions, believing the matter could be easily resolved. (Ms. Brunner never met with him again.)

Although Mr. Johnson made many requests for information, the only document provided to him was the Affidavit of Custody and Direct Support completed and signed by his former wife. She entered her name, the name of their son, his birth date, Mr. Johnson's name, and the amount of the child support order. She also placed a check-mark next to "Yes. The child(ren) have been in my custody and resided with me at all times since the children's birth." She then entered the amounts paid in table columns by year beginning the month the first payment became due after their divorce became final on September 25, 1997, i.e., October 1, 1997. The 1997 payments for October through December were entered as $450.00 each month; the next seven years were entered as $450.00 per month for all years. Then beginning the year the change of custody occurred, the year 2005 payments for January through June were entered as $450.00 each month and $0 was entered as paid from July through December; and each month in years 2006 and 2007 were entered as $0. Then beginning the year his son returned to live with his mother, i.e., 2008, the months from January through September were entered as $0.[48] Upon the listing of all payments, the signing and dating of the affidavit as September 29, 2008, Ms. Moralez notarized it. (Most CSEU employees are notaries.)

Mr. Johnson believed the affidavit provided the legal authority to take child support enforcement action and was therefore a document necessarily obtained during the application process. However, according to the 2005 RFP intake requirements, "[t]he Contractor shall upon receipt of a referral, application for services, or interstate request, make an assessment of the case to determine necessary action pursuant to the time frames of the Federal Regulations set forth in 45 CFR Section 303, as amended, and 6.400 of the State Regulations as amended. Necessary action shall include, but is not limited to: soliciting information necessary to take case action; initiating

[47] The text is formatted as it appears in the letter.

[48] From January through October 4, 2008, his former wife remained silent on the issue of child support. She had contacted Mr. Johnson after the change of custody about putting their son on her insurance plan at work. He offered to add the cost of the insurance to his monthly child support payment. She did not get back with him. He believed her silence was in consideration of the three years he did not receive child support and that she knew he was planning to build a house for him and his son.

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verification of information; requesting additional information if location information is inadequate; and documenting the automated system and case records."

PSI responded to this RFP requirement by stating that within 20 days (the legal timeframe) a case file is set up, location (address, employer, and assets) efforts have been made, and the case is entered on ACSES.[49] The response also included a general overview of the intake team, i.e., the specialized workgroup responsible for performing those tasks and transferring cases to the next workgroup. The team, like the other teams – establishment, enforcement, and fiscal – is supervised by a team leader. The intake team leader supervises daily activities of the intake case managers (caseworkers) on her team, the team's administrative assistant and the order entry manager (she enters orders on ACSES for new cases with an order, issues income assignments, and records judgments with the County Registrar of Deeds).[50]

According to this information and other information in PSI's proposal, if Mr. Johnson's former wife was a walk-in applicant, she would have been directed to an intake case manager at that time for an interview. If the application was mailed in, the administrative assistant would have opened the envelope, reviewed it, and directed the application to an intake case manager. But in either case, the administrative assistant was responsible for creating the case file and entering the case on ACSES within 5 days.

The date of the affidavit concerned Mr. Johnson because the FSR account was set up 11 days before the affidavit was obtained. This issue was raised with the Colorado Collection Agency Board (CAB) when Mr. Johnson requested an independent investigation of PSI's collection practices. CSEU's collection manager, Gloria Smith-Swain responded to CAB compliance investigator Dara Rockett Benoit by letter on April 1, 2010. Relevant excerpts follow.

> Mr. Johnson's child support case was created on ACSES on September 17, 2008. We began posting the monthly child support obligation in the month of application so the

[49] RFP Requirement II- B 2 stated: "Locating or location is defined to include the verification of a residence, employer address where the non-custodial parent may be served, or verification of a residence of a custodial parent where a child support payment can be received. Location efforts also include locating sources of income and assets. The Contractor shall establish and utilize local resources for locating parents as well as utilize the State and Federal Parent locator resources as necessary and required. Appropriate location sources include, but are not limited to, information from the agencies administering or maintaining records of public assistance, general assistance, medical assistance, food stamps, social services, wage and employment data, New Hire Directories, worker's compensation, unemployment insurance, property and income taxation, driver's licenses, professional licenses, vehicle registration, criminal or open court records, friends, relatives, current and past employers, telephone listings, U.S. Postal Service, financial references, unions, fraternal organizations, police, parole, probation records, military, city directories, credit reporting agencies and various location resources available through the Internet. Such location efforts include assisting the State in locating absent parents for other jurisdictions." (CSEU uses Experian for expanded credit reporting services.)

[50] CSEU is a predominantly female employer and must comply with federal and state equal employment opportunity laws. As specified in the General Specifications for the 2005 RFP, CSEU must comply at all times with Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex – among other characteristics that disadvantage equally qualified persons unfairly when seeking employment.

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$438.80 that Mr. Johnson was ordered to pay per the Dissolution of Marriage effective September 25, 1997 (Attachment B) started posting September 2008. A Redirect Notice (Attachment C) informing Mr. Johnson to send his child support payments to the Family Support Registry was sent on September 18, 2008. He has also been sent a monthly billing coupon starting September 18, 2008 to remind him to make his monthly child support payments. [(1) Mr. Johnson had no knowledge of the child support enforcement case prior to the gambling intercept on October 4th. (2) A copy of the redirect notice was requested from CDHS CSE Director Bernhart and provided by another CSE employee, Marti Houston. She could not provide a copy of the notice but provided a template. She wrote "our office does not keep case specific copies of Redirect Notices sent. Our automated system creates a chronology of the date the notice is sent to you. Enclosed is a copy of that chronology."]

We obtained a completed Direct Payment Affidavit from [Name] on September 29, 2008 so that we could complete a beginning balance calculation of the child support arrears owed by Mr. Johnson.[51] The beginning balance notice, calculation and supporting documentation (Attachment F) was mailed to both parties on October 10, 2008, indicating the arrears due was $16,071.60 as of September 30, 2008. This notice gives Mr. Johnson 30 days to dispute the balance before we add it to the ledger and begin collection activities on the arrears balance. We did not receive any correspondence from him or direct contact from Mr. Johnson during this 30 day time frame and the arrears balance was added to his ledger on November 30, 2008. [The notice states "immediately"; no reference is made to any number of days to dispute the debt.]

Since the FSR account was created on September 17th and using the 5-days allowed to the intake administrative assistant, Mr. Johnson's former wife's application was received as early as September 12th.[52] If CSEU met its 20-day timeframe for completing intake procedures, an intake case manager assessed her case, interviewed her in person or by phone, and directed it to the next team, i.e., the establishment team's review and modification manager, by October 2nd, which could explain the October 2nd modification notice. But the modification notice was, in fact, the "other side" of the notice requirement, as indicated by the statement that CSEU "may not have the authority to retroactively modify your child support order to the date you initially requested in your review. In consideration of Mr. Johnson's former wife's statement to him around October 10th, something had changed since she first applied.

[51] This is presumably the Affidavit of Custody and Direct Support.

[52] The gambling intercept on October 4th reported only the FSR account number. The modification notice on October 2nd reported both the FSR account number and the child support enforcement case (CSE) number. The CSE case number appears on all notices thereafter. The CSE case number is shared between the county child support enforcement unit or its delegate using ACSES and the judicial case management system using the Integrated Colorado Online Network (ICON). One of the purposes of the link is to set up a Family Support Registry (FSR) account to process intercepted and/or voluntary court-ordered child support and public assistance reimbursement payments. FSR is operated by a contracted fiscal agent yet to be identified.

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Based on the training of CSEU intake caseworkers, Mr. Johnson's case was a preferred case – a court order existed, the applicant was non-TANF (increased the likelihood of collection), the amount of the order was above average, he had an excellent payment history, his address was stable and local, he had regular income from retirement, and he shared parenting responsibilities in other ways, which was all learned during the interview with his former wife. Consequently, Mr. Johnson's case would have been expedited for collection and would not have needed the full 20 days permitted. In fact from the information known to CSEU, his case stood to immediately benefit PSI's annual performance in four of the federal goals, i.e., Percent of Cases under Order, Percent of Current Support Paid, Percent of Cases Owing Arrears that Make Payment on Arrears, and Cost Effectiveness, at the end of a difficult year.[53]

How Mr. Johnson's case stood to benefit Ms. Brunner's performance or benefit her team's performance is not known. The reward system was not discussed in PSI's RFP, although special recognition was given to a trainer in an RFP response and in the 2009 Annual Report to CSEU staff for the largest lump sum payment award for 2008 accepted by Administrator Laura Davidson. However in Shealy and Reagan, personal incentives associated with the review and adjustment process led to naming a PSI employee that prepared the administrative orders as a defendant. Judge Susano's opinion provided the only information about bonuses as follows.

> DHS entered into a contract with the defendant Policy Studies, Inc. ("PSI"), to provide child support enforcement services. PSI is compensated by the state based upon a percentage of the child support it collects, subject to annual caps set forth in the contract. Employees of PSI do not have a specific dollar amount of child support that they are required to collect, but they do have individual performance goals and receive a bonus for meeting those goals. PSI is also obligated to assist noncustodial parents in obtaining reductions in child support if such reductions are warranted under the Guidelines.
>
> Connie Bell is employed by PSI. Ms. Bell is the office manager for the district office which includes Bradley County. As office manager, Ms. Bell, who is not an attorney, signs administrative orders. She receives a performance bonus based upon the amount of child support the district office collects.

Frustrated by CSEU's unwillingness to consider the information he provided about the change of custody to eliminate the 30 months from its calculation, Mr. Johnson took the position that he would not make any voluntary payments. To him, the act of making a payment represented an admission to the debt. During this time, Mr. Johnson received the following automated enforcement notices: Notice of Non-Compliance for Driver's License Suspension (January 19, 2009), Notice of Financial Institution Data Match (FIDM) Lien (January 21, 2009), Notice of

[53] On page RFP page III-60, PSI addressed the process of civil contempt and the legal team's ability to work effectively with the El Paso County District Court to use the process to increase lump sum payments. One month prior to public bidding, CSEU prepared approximately 100 contempt actions for hearings on November 13, 2005. "From this roundup, we expect to see an increase in the percentage of cases paying on arrears and total collections, which will directly benefit children in El Paso County."

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FIDM Lien/Levy (February 6, 2009), Notice of Credit Reporting (February 8, 2009), and Notice of FIDM Lien/Levy (March 5, 2009); all of which were to add pressure and force him to comply.

Instead, Mr. Johnson mailed a written request to CSEU for an administrative review on February 18th. The form-like letter from Ms. Brunner with the PSI logo was received by him after its date of March 4th . A check mark was placed next to, “You/Your client’s request for an Administrative Review of contested child support arrearages is scheduled as indicated below.” “You/your client do/does not need to come to this office for the review to take place. Please mail to this office by 00/00/0000: a) Copies of any modifications made to you/your client’s court order; b) Records of child support payments made to the court, to the parent receiving support or to the Family Support Registry. Additional comments: PLEASE PROVIDE ANY INFORMATION CONCERNING PAYMENTS MADE DIRECTLY TO [NAME] NO LATER THAN 3/18/2009. The letter also stated and emphasized by underlining, “This will only be a review of the total payments you/your client have/has made toward you/your client’s order obligation.

Mr. Johnson met with CSEU fiscal team specialist Melissa Balquin on April 3rd and explained the change of custody to her. During this meeting, Ms. Balquin told him he was being uncooperative as he continued to assert that he did not owe child support for the three year period. Ms. Balquin’s decision letter of the same date conveyed these findings:

1. For the purposes of this review, the arrearages are calculated from June 1996 though March 2009.
2. There have been two orders for support in this case: June 25, 1996 order for $500.00 child support and $500.00 spousal support commencing June 1996 and September 25, 1997 order for $438.80 child support commencing September 1997. Spousal support was waived in the September 1997 order.
3. Total child support accrued on this case from June 1996 through March 2009 is $75,993.20.
4. Total payments received through the Family Support Registry from June 1996 through March 2009 are $438.80. Total payments made directly to [NAME] are $41,850.00.

Therefore, this office concludes that you owe child support arrears in the amount of $33,704.40 through March 2009. [This compares to $16,071.60 as of September 2008 plus $1,316.40 for October through December 2008 plus $1,316.40 for January through March 2009 for a total of $18,704.40. The substantial increase was caused by adding together $7,500.00 in temporary spousal maintenance and $7,500.00 in pre-settlement child support - $18,704.40 plus $15,000.00 totals $33,704.40.]

Frustrated again by the refusal to consider the change of custody and the near doubling of what he was alleged to owe, Mr. Johnson appealed to the State CSE division within 30 days as required. During his phone conversation with Mary Ann Hicks, he explained the change of

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custody to her. He received the same form-like letter from her dated May 1, 2009, but on State letterhead. This administrative review was scheduled for May 28th.

Mr. Johnson obtained a copy of this letter at the same time he requested the Redirect Notice. (Mr. Johnson received the letter but misplaced it. He is "organizationally" challenged by his own admission.) This was the State's decision in its letter of June 29th based on the records provided by CSEU and the information he submitted:

1. For purposes of this review the arrears are calculated from June 25, 1996 through March 31, 2009.
2. On June 25, 1996, the El Paso County District Court entered a Temporary Order obligating you to pay $500.00 per month for child support and $500.00 per month for spousal support.
3. On September 25, 1997, the Court entered a Dissolution of Marriage that incorporated a Stipulated Separation Agreement filed with the Court July 14, 1997. This Order obligated you to pay $438.80 per month for child support, and terminated spousal support.
4. During the period of June 1996 and August 1997, your child support obligation totaled $7,500.00 (15 months x $500.00 = $7,500.00).
5. During the period of September 1997 and March 2009, your child support obligation totaled $60,993.20 (139 months x $438.80 = $60,993.20).
6. Ms. Dolbow provided a statement attesting to the fact that you paid off her residence [his previous home] in lieu of spousal support due from June 1996 through September 1997.
7. Through March 31, 2009, one payment was received through the Family Support Registry (FSR) for $438.80.
8. Based on [NAME's] Affidavit of Custody and Direct Support, you paid a total of $41,850.00 direct to her between October 1997 and June 2005. [$41,850.00 is the voluntary amount of child support paid at $450.00 per month from October 1997 through June 2005. From June 1996 through August 1997, Mr. Johnson paid temporary court-ordered child support at $500.00 per month for a total of $7,500.00. The CSE, "relying on information from CSEU", considered the amount unpaid. If Mr. Johnson owed back temporary child support, spousal support would not have been waived on September 25, 1997.]

Decision

This office concludes that your arrears balance as of March 31, 2009, is $26,204.40 ($7,500.00 + 60,993.20 - $438.80 - $41,850.00 = $26,204.40). The difference between our findings and those of El Paso County's is the credit provided by [NAME] for maintenance due between June 1996 and September 1997. By copy of this letter I am requesting the El Paso County CSE Unit adjust their records within ten (10) calendar days according to Volume 6, Section 6.903.

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> If you do not agree with this agency's decision, you have the right to apply for a judicial review of this decision by filing an action for review with the appropriate State District Court, pursuant to provision Section 24-4-106(4), Colorado Revised Statutes. Any such action must be filed in accordance with rules of Civil Procedure for Courts of Record in Colorado within thirty days (30) days after the agency decision. [Leslie McGrew for Larry Desbien, Section Chief Division of Child Support Enforcement.][54]

Mr. Johnson's frustration intensified when his former wife said she told the State CSE representative she was not trying to collect child support for the three year period – and knowing the increase was blatantly wrong.

On May 15th, Mr. Johnson received a Treasury Department notice of offset for his 2008 federal income tax return of $3,540.50 that was posted to the FSR account on June 4th, which was followed by the posting of his state refund of $861.00 on June 30th.[55] (The refund amounts are high because Mr. Johnson does not use withholding allowances to avoid an unplanned tax liability for the year.) During this time, Mr. Johnson visited the CSEU office for the purpose of verifying that the money was going to his former wife for his son's benefit, asking at times to look with caseworkers at their computer screens.

On August 18th, the CSE notified the Department of Motor Vehicles (DMV) to start the process of suspending Mr. Johnson's driver's license stating:

> Be advised that the above-named obligor has failed to comply with a child support order (s) as outlined in Section 26-13-123, C.R.S. The obligor's rights of review have been evaluated or the time within which such review may be requested has lapsed. Therefore, we request you begin the process of suspending the obligor's driver's license pursuant to Sections 26-13-123, C.R.S. and 42-2-127.5, C.R.S.[56]

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[54] §24-4-106(4) governs judicial review of a final state agency action and explains the general process available to an aggrieved party for filing the action in the court of jurisdiction. (Title 24 is named, Government – State. "The residence of a state agency for the purposes of this subsection (4) shall be deemed to be the city and county of Denver."

[55] Intercepted funds or levied funds are held for 30 days to allow the obligor to dispute the claim. Mr. Johnson's 2009 refunds were intercepted this year as well. However, because Mr. Johnson was being audited by the IRS and called about an assessment for year 2007 on May 26th, he learned his federal return had not been processed at the time the Colorado Department of Revenue seized his state tax refund. The State issued its notice of offset on May 13th for $968.00. The IRS issued its notice of offset on June 7th for $5,274.44. (The 2007 assessment of $863.78 was deducted. Mr. Johnson did not waste his time to appeal.)

[56] Title 26 is the Human Services Code; Article 13 is known as the Child Support Enforcement Act; Section 123 is: Drivers' licenses – suspension for non-payment of child support. Title 42 is Vehicles and Traffic; Article 2 governs drivers' licenses; Section 127.5 authorizes the suspension of drivers' licenses for violation of child support orders. Generally, the DMV must notify the obligor in writing and give notice that the license will remain suspended until the department receives a letter of compliance. The obligor's license will be suspended in 30 days from the date of notice if a compliance letter is not submitted. The obligor has the right to obtain a 90-day probationary license for work purposes only.

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On August 19th, Mr. Johnson received a notice from the DMV that effective September 21, 2009 his license was suspended. On September 21st, Mr. Johnson filed a motion to modify child support with the El Paso County District Court to move the child support enforcement case to court for judicial review. He mailed copies of the form, i.e. JDF 1403 - Verified Motion to Modify Child Support Pursuant to §14-10-122, C.R.S., with his sworn financial statement to his former wife and CSEU; the form stipulated that any response was to be made in writing within 15 days.

The form was handwritten and stated: "[NAME] RESIDED WITH RESPONDENT FROM 7/1/2005 TO 12/2007 30 MONTHS. RESPONDENT REQUESTS CHILD SUPPORT BE CREDITED TO CHILD SUPPORT OBLIGATION ARREARS 438.80 x 30 = 12864.00 PETITIONER PAID Ø CHILD SUPPORT TO RESPONDENT DURING THIS TIME."

His former wife did not file a response with the Court (she returned the envelope unopened). Because Mr. Johnson believed the motion would be approved by default, he contacted his wife by letter to advise her she could be held responsible for 30 months of unpaid child support. Then on October 14th and six days after the deadline, CSEU attorney Tracy Rumans, a partner in the Law Firm, filed her response, stating in paragraph 5: "The CSE Unit has no knowledge of the living arrangements of the minor child during the time period in question. The CSE Unit requests that Respondent be required to set his motion for hearing before the Court so that a factual determination may be made."[57]

Increasingly frustrated by the unrelenting pressures of CSEU, Mr. Johnson began seeking legal advice and researching his problem.[58]Around October 22nd, Mr. Johnson read "Child support aided by lady luck" in *The Gazette* and realized that CSEU was a privately owned company (PSI) and learned more about the gambling intercept.[59] From an August 7, 2008 *Gazette* article, "Jackpots seized for overdue payments", he learned of its legislative history.[60] In that the bill

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[57] The Law Firm's main office address is at CSEU at 30 East Pikes Peak Avenue.

[58] Mr. Johnson, like many people that gamble, considers playing cards a social experience. He finds it an interesting way to meet people from all walks of life. One of the people he plays poker with occasionally is a former Public Defender. While Mr. Johnson did not discuss his child support enforcement case with him because of the embarrassment that it has caused him, he did discuss generalities about the legal expertise needed to defend against government agency actions (at the time he thought CSEU was a government social services agency). Mr. Johnson then sought legal advice from Colorado Springs attorney Greg Maceau. At the time, Mr. Johnson was not as knowledgeable about the mishandling of his case and Mr. Maceau only commented that it was difficult to fight Child Support Enforcement. He placed the value of his services at $3,500.00 plus a 40% contingency fee. Mr. Johnson left to consider the offer and returned at a later date to provide more detail to see how things might proceed. However, Mr. Maceau was too busy to talk with him and seemed disinterested.

[59] On July 29, 2010, the CSE intercepted another video game winning at Midnight Rose for $1,537.75. This time Mr. Johnson explained his current problems with Kale Williams, the staff member who processed the tax form, receipt, and notice for him.

[60] Debbie Kelley, The Gazette.com, August 7, 2008, 11:57 PM.

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authorizing gambling offsets for child support was introduced by Representative Joel Judd (D) in 2007 and went into effect in July 2008. (By the date of the article, forty-two winnings had been intercepted for approximately $60,000.00.) While this was of no concern to Mr. Johnson, his anger intensified because of his perception of PSI's financial motive for pursuing the child support enforcement case against him.[61]

On October 22, 2010, according to the judicial case management system, i.e. Integrated Colorado Online Network (ICON), Magistrate Evelyn Sullivan reviewed Mr. Johnson's motion and vacated it.[62] However, on October 31st, the $11,569.50 seized from Mr. Johnson's Ent Federal Credit Union account posted to the FSR, bringing the total of involuntary child support payments to $16,409.80.

On November 19th and for unknown reasons, Magistrate Lyle changed the case status to "Held and Continued." Then on November 24th, he vacated the motion again then reopened it the same day and issued the Delay Prevention Order (DPO). The DPO required a hearing be set within 30 days and ordered the production and exchange of certain financial disclosures prior to the hearing. Non-compliance constituted "a failure to diligently prosecute the action" and was "grounds to dismiss the action without prejudice through an entry of dismissal by Minute Order in the Registry of Actions without notice to counsel/party."[63] Mr. Johnson set the hearing on

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[61] CSEU procedures include negotiation conferences. This was not an option undertaken by CSEU when CSEU had the power assigned to it to bring his former wife into the dispute for a just resolution. After taking control of the management of the case, Mr. Johnson lost all opportunity to resolve this privately with his former wife. As a result of its actions, their once good parenting relationship has been completely destroyed and, as a result, he lost nearly two years in his relationship with his now 19 year-old-son.

[62] http://www.courts.state.co.us: (1) ICON "is the case management system for the trial courts, probation, and jury commissioners, and is the core database for numerous data exchanges between the courts and other state/federal governmental entities, including a Statewide CICJIS system. ICON/Eclipse also fully integrates with the Statewide electronic case filing system for attorneys managed by LEXIS/NEXIS for the Colorado Courts, and also feeds the Statewide public access system also managed by LEXIS/NEXIS for the Colorado Courts." (2) Chris Kain, 09/12/07, Dish Statement of Work: Project DISH (Data Information SHaring) *"allow[s] the Colorado Department of Human Services Division of Child Support Enforcement (CSE) to collaborate with the Colorado Judicial Department… to allow for the electronic filing of child support cases with the court. It builds on work conducted by the Federal Office of Child Support Enforcement (OCSE) to encourage collaboration between courts and child support agencies, and specifically on work to create an adaptable means of electronic case filing and information exchange."* To be used for administrative orders. (In 2007, approximately 70% of orders were APA orders.)

[63] Mr. Johnson filed a 27-page affidavit with the El Paso County District Court on April 9, 2010. This is paragraph 60: "I expected to receive notice of the hearing by mail within a few days. It did not come. After I waited a week longer, I went to the N/CS Division and asked a clerk that was working on the docket why I had not received my notice of the hearing. At that time, she gave me a copy of the Notice of Appearance. It was stamped December 7, 2009. The hearing was scheduled for January 13, 2010 at 2:30 p.m. in Division N/CS, W370." [See http://www.courts.state.co.us/Courts/Supreme_Court/Directives/05-01.pdf: On December 8, 2006, the Colorado Judicial Department adopted the policy formed by the Public Access Committee (CJD 05-01) to govern the public's access to court records. Section 4.60 is *Court Record Excluded from Public Access.* Subsection (a) is the "catch-all-

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December 7, 2009 and it took place on January 13, 2010, with Magistrate Lyle presiding. Ms. Eigel prosecuted the case for the State, while Mr. Johnson acted as his own defense. (His former wife appeared without legal representation.)

The information that follows is taken, in large part, from Mr. Johnson's complaint to the Colorado Supreme Court Attorney Regulation Counsel to explain how Mr. Johnson's case was handled in the El Paso County District Court.[64] This information was also provided in similar form to Colorado Attorney General John Suthers on April 19th after repeated efforts to gain the assistance of his office as early as February 17th. As a result of his inaction and that of Governor Bill Ritter's from March 10th forward as well as the refusal of the Attorney Regulation Counsel and the Colorado Commission on Judicial Discipline to take action, Mr. Johnson notified Attorney General Suthers of his intent to file suit alleging a violation of his civil rights and named CDHS as a party to the complaint as stated:

> On April 5th, April 19th, and May 3rd, you received other communications from me regarding the State's alleged interference in the resolution of my child support modification case. The April 19th twenty-seven page document was provided to you to assist you in the understanding of the misconduct that occurred on January 13, 2010 and that is known to be ongoing.
>
> Today, I am giving notice of my intent to file suit against the State of Colorado as required by §24-10-109, C.R.S. on the basis that Colorado, through judicial proceedings, has violated my Fourteenth Amendment rights to due process and the equal protection of

others" policy and states: "Information in court records is not accessible to the public if protected by federal law, state law, court rule, court order, case law, or this policy." Subsection (b) lists: "relinquishment cases, juvenile delinquency cases, mental health cases, judicial bypass cases, dependency and neglect cases, adoption cases, paternity cases, and truancy cases." At http://www.courts.state.co.us/userfiles/File/Court_Probation/Court_Of_Appeals/ACCESSPOLICY.pdf, the Colorado Court of Appeals added the following types of cases to Subsection (b): "Domestic Relations cases (except the redacted Decree of Dissolution and/or Separation agreement). (The policy on sealed records covered the other ones listed.)

[64] The Attorney Regulation Counsel is the vehicle for redressing grievances concerning attorney misconduct. The body of law that establishes the rules for Colorado courts in civil procedures is found in the Colorado Rules of Civil Procedure (C.R.C.P.). Chapter 20 is the body of law that governs attorney discipline and disability, the attorneys fund for client protection, and mandatory continuing education. Rule 251.3 (a) gave the Colorado Supreme Court the authority to appoint a "Regulation Counsel." The attorney must be a State-licensed attorney with five or more years of experience. While acting as a regulation counsel, the appointed attorney cannot hold any other public office or engage in the private practice of law. Rule 5 defines the responsibilities of the regulation counsel, including "maintain[ing] and supervis[ing] a permanent office to serve as a central office for the filing of requests for investigation and for the coordination of such investigations." They take a prosecutorial position in matters pertaining to their responsibilities.

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the laws. Said suit is afforded no protection by the Colorado Governmental Immunity Act.

As previously mentioned, the State's prosecutors have absolute immunity for their conduct and the same immunity is extended to judges under the guise that the fear of civil liability would prevent them from acting to the full measure of their responsibilities.[65] There is therefore almost a total reliance on professional ethics and disciplinary and disability proceedings to protect the public from abuse of state power. This is best described through the communications between Mr. Johnson and the Office of Attorney Regulation Counsel that began on April 6, 2010. The letter that follows also discloses his continued frustration with the State's handling of his ethics complaints at all levels and the frustration in which he was pursuing the only remedies left available to him.

> Dear Ms. Mares:
>
> The above case numbers were assigned to my complaint filed with the Office of Attorney Regulation's central intake division by phone as required on April 6, 2010. Please know it was impossible to provide sufficient information to Carla, the non-lawyer support staff member that took my complaint, in 20 minutes, or to expect her to accurately interpret the distress in which the complaint was made. I also understand you may not have had adequate time to review and rule on my complaint. Please know the complaint is not, and should not be seen as, an effort on my part to have the final orders reviewed by the OAR; the petitions for review were filed in accordance with the Colorado Rules of [for] Magistrates, although presently being kept from entry into the Register of Actions.
>
> As you are aware, the focus of your investigation is the ongoing alleged judicial and professional misconduct in the N/CS Division of the El Paso County District Court and the alleged involvement of Magistrate Candea-Ramsey (10-1147), former Magistrate John Paul Lyle (10-1150), and attorneys Christina Eigel (10-1148) and Tracy Rumans (10-1149), partners in the Law Offices of Belveal Eigel Rumens & Fredrickson LLC, acting on behalf of the third party intervenor/defendant, CSEU, in my action. For the purposes of providing more direction in your investigation, I will focus on the misconduct as it has occurred chronologically beginning with Christina Eigel. I maintain that it was impossible for any one person named in this complaint to individually accomplish what has

[65] Complaints against magistrates (appointed licensed attorneys with more limited responsibilities than elected judges) are made through the Attorney Regulation Counsel. Complaints against judges must be made through the Colorado Commission on Judicial Discipline.

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> The details of my complaint follow. As you will learn, my complaint could not have been explained in the time permitted. I can only hope your review will be independent and fair. Suffice it to say, I am not confident it will be.

Mr. Johnson's complaint began with Ms. Eigel because of the conflict inherent in her role as the State's prosecutor, manager of the case on the CSEU legal team, and partner in the Law Firm. The information that follows looks back at his communications with the Office of Attorney Regulation Counsel and compares it with information learned since that time.[66]

CHRISTINA K. EIGEL

Violation of Right to Due Process

Failure to adhere to state and federal law/suppression of constitutional rights

Prior to the entry of the final orders on March 26, 2010, Mr. Johnson was mailed a copy of the proposed child support modification order on February 11, 2010; he did not respond. On February 25, 2010, Mr. Johnson was mailed a copy of the motion to approve the proposed amended order and the proposed amended order. The proposed order mailed to him on February 11 had been changed to add arrears together. As a result, "interest" language now appeared in the proposed amended order. Mr. Johnson filed the written response to the proposed amended order on March 2, 2010 titled, "Objection to Proposed Amended Order." The opening sentence stated the purpose very clearly: "to object to the entry of the proposed amended order as moved by EL Paso County CSE Unit, Third Party Intervenor, and request a hearing by the Court pursuant to C.R.S. §24-4-105." Mr. Johnson alleged conflict of interest and raised specific discovery issues.

Attorney Eigel responded on March 11, 2010 and within the 30 days required by the Statute. Yet, the response purposefully did not address the issue of whether a hearing should be granted. She did not request the Court deny the motion for a hearing; instead, she moved a second time to have the proposed amended order entered. Her decision to ignore the intent of the motion was the same as denying his right to due process. Mr. Johnson had a right to have his objection heard and to submit a motion to compel, as referenced in the motion for a hearing if necessary; he was being subjected to unknown financial liability and the forced sale of real property to satisfy the arrears judgment being sought.

[66] The letters were written in the first person. The tense was changed as necessary to refer to him as "Mr. Johnson."

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On March 15, 2010, Mr. Johnson filed a second motion for a hearing titled, “Continued Objection to Proposed Amended Order” following the receipt of attorney Eigel’s three responses of March 11. Mr. Johnson mailed copies as stated in the Affidavit of Service. Attorney Eigel did not respond to the motion mailed to her. However, on March 23, 2010, he learned the motion was not listed as an event on the El Paso County District Court’s online system nor was it in his case file. On March 29, 2010, Mr. Johnson notified Chief Judge Kirk Samelson the motion was missing through an ethics complaint packet indirectly hand-delivered to him and, then, on April 5, 2010, did likewise provide an ethics complaint packet to Judge Thomas Kane.

On April 12, 2010, as court record irregularities continued to develop, Mr. Johnson confirmed the missing motion had not been entered into the Register of Actions. On April 12, he submitted a letter of complaint pursuant to §13-1-103, C.R.S. to have the missing motion recorded in the ROA. The ICON system was updated and now reports: “DOCUMENT MISPLACED IN FILE; NOT ENTERED IN ECLIPSE UNTIL 4-13-10.” However, the April 12th letter sworn by Mr. Johnson specifically stated the Continued Objection was not in the case file on March 23rd or April 9th when he physically inspected it. When he located the third order issued by Magistrate Ramsey after June 15th, he confirmed that on March 26th she was in possession of the missing motion.

Notwithstanding his late efforts to affect the ROA, Attorney Eigel was aware from March 2, 2010 to the actual approval of the amended order on March 26th of his request to have his objection heard. The Attorney’s obligations to existing codes of conduct governing her profession were severely compromised by the close relationship between her and her employer and, therefore, prevented the fair and orderly resolution of Mr. Johnson’s modification action. Attorney Eigel has a special obligation and privilege to uphold the laws of this State that are formed upon the State’s Constitution and framed by the Constitution of the United States. Mr. Johnson alleges that attorney Eigel did knowingly and willfully disobey the laws of this State and prevented him from enjoying his rights and privileges as a citizen of Colorado and the United States for corrupt purposes.

Discovery

The Response to Objection to Proposed Amended Order stated in part, “Respondent’s objections relating to requests for discovery from the CSE Unit are not relevant to the proposed Amended Order. No issues of discovery were addressed at the January 13, 2010 hearing.” Attorney Eigel’s language is correct; no issues were “addressed.” Discovery was an ongoing issue with CSEU and continued to be an issue when judicial proceedings began.

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The excerpt that follows is taken from the petition filed on April 9, 2010. [67]

> The testimony given in court can be compared with the limited information provided to me by the CSEU through a copy of [NAME's] attached Affidavit of Direct Custody and Support (Affidavit) dated September 29, 2008.[68] When it was first shown to me, I knew only that 30 of the 39 months marked with zeros corresponded with the three year change in custody. Then after talking with [NAME], I confirmed she was not trying to collect child support for that period of time. Later, upon closer examination of the Affidavit, I noted [NAME] had placed a check mark next to the statement "[t]he child[ren] have been in my custody and resided with me at all times since the children's birth." I also noted she had given me credit for paying child support for the first six months of 2005 after the change in custody occurred. Therefore, the outstanding balance in 2008 shown in the amendment to the Verified Motion was presumed by me to be paid.
>
> On the date of the hearing, I also did not realize the Affidavit was signed 11 days after CSEU created [NAME's] Family Support Registry Account and assigned the child support enforcement case number to it. (See attached.) This irregularity was first cited in the first motion for change of venue on March 4, 2010 and was re-cited in the second motion for a hearing on March 15, 2010. Attorney Eigel did not take the opportunity to explain it in her March 11, 2010 response to my first motion for change of venue or choose to respond to it in the second motion for a hearing. In fact, attorney Eigel stopped responding on March 11, 2010 following CSEU's issuance of the levy to American National Bank stating the Order (Amended Order) had been entered January 13, 2010 commencing January 1, 2010.
>
> In the first motion filed by me on March 2, 2010, I requested a hearing by raising the issue of self-dealing and alleging a conflict of interest and, then, provided six reasons to show good cause to grant a hearing. The first three reasons were issues of discovery, while the fourth and fifth were related to the existing discovery concerns and an anticipated discovery problem. The Magistrate's diligent review of my case file should have indicated I believed I was entitled to information used to seize my financial assets and suspend my driver's license, thereby restricting my personal freedom in two different ways.
>
> In attorney Eigle's Response to Objection to Proposed Amended Order, Number 4 states: "Respondent's objections relating to requests for discovery from the CSE Unit are not relevant to the proposed Amended Order. No issues of discovery were addressed at the January 13, 2010 hearing." The record refutes this defense. I raised issues of discovery early in attorney Eigel's direct examination of me. "Well, my question has always been for 16

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[67] TR is in reference to the original transcript filed with the Petition for Review on April 9, 2010. The transcript was prepared from the one hour audio CD by B&M Legal Transcriptions, LLP, P.O. Box 873, Colorado Springs, CO 80901.
[68] [NAME] or [NAME's] means Mr. Johnson's former wife.

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months, dealing with, uh, Child Support Enforcement here in town. Uh, it's more based on the information that they have, uh, that they won't release to me. I don't know what [NAME] came to CSE for. (What) did she come to CSE for?" [TR Page 7 lines 12-16]

Ms. Eigel's immediate response was comparable to CSEU's refusal to consider anything but child support payments during the three administrative reviews it conducted. Ms. Eigel said, "Let's - - let's focus on - - at this time I'm trying to focus on what are you asking the Court to do today? Are you asking the Court that you not owe child support for the three years that Marcus - - you're saying Marcus lived with you?"[TR Page 7 lines 17-20] I responded, "I'm asking to be heard by Policy Studies who runs Child Support Enforcement. I - - I need to be heard. I have, uh fought this battle for 16 months, okay. My issue is not with [NAME], it never has been. This is the first contact, ma'am, I've had with you. After many calls to your office, okay. I've called Belveal, Rumans, and your name, I'm not sure." [TR Page 7 lines 21-25; TR Page 8 line 1]

I continued stating, "We - - this is my first contact with anyone outside of the caseworkers at CSE. And I've tried since October 4th of 2008. And I would like to know what prompted the enforcement actions against me and what Policy Studies knows. And that is all I've ever wanted for the last 16 months. [NAME] has done nothing wrong." [TR Page 8 lines 7-11] She then immediately shifted to the motion to modify child support I filed on September 21, 2009. I then attempted to shift back to the ongoing dispute with CSEU/Policy Studies. District Magistrate John Paul Lyle then said, "Sir. You['re] on the witness stand and you're under oath. You're to be answering questions." [TR Page 9 lines 12-13]

Right to examine witness for purpose of diligently prosecuting my action/discovery/obstruction of justice

Mr. Johnson had a right to examine [NAME] under oath and to ask questions. He intended to pursue her statement to me that she was not trying to collect child support for the three year period at issue and her statement to me "they took the ball and ran with it." Upon direct examination for this purpose, attorney Eigel immediately objected when Mr. Johnson asked how many times she talked with CSEU. The record is as follows: "Objection. Relevance." Magistrate Lyle responded, "Objection is sustained. You don't need to answer the question. Anymore questions?" Mr. Johnson responded, "Uh, I'm - - I guess, Your Honor, I need to have some clarification." Magistrate Lyle responded, "I'm not gonna ask questions for you, and I'm not allowed to give you legal advice. So if you've got other questions for this witness while she's under oath, go ahead and ask them. If you don't _ ." I said, "Uh, well, sir, I asked how many meetings she has she had with child _ ." Magistrate Lyle responded, "All right. Then I disallowed that question, so you need to move on_." I said, "I understand." Magistrate Lyle continued, " _ to something else." I said, "All of my questions, sir, have to do with the - -

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management of the case that has been enforced against me." Magistrate Lyle stated, "Which has nothing _." I continued, "And I feel like I am wasting your time." [TR Page 28 lines 2-20] The exchange continued briefly until Magistrate Lyle **instructed** my former wife to step down. [TR Page 28 lines 21-25]

Attorney Eigel did not adhere to the intent of the modification hearing, as stated in the Delay Prevention Order (DPO) issued by Magistrate Lyle on November 24, 2010. The purpose of setting the hearing was to ensure the action was being diligently prosecuted. Mr. Johnson presumed attorney Eigel and the Court were interested in justice, not in obstructing it.

Violation of income verification provisions required to determine the equitable contribution of financial support by both parents/discovery

Attorney Eigel was unable to provide my former wife's verifiable income in violation of the DPO that required compliance to certain disclosure requirements, including the order to "file all disclosures as required by JDF Form 1125: Mandatory Disclosure Form 35.1." From September 21, 2009 to the hearing on January 13, 2010, Mr. Johnson provided verified income information and a sworn financial statement that included disclosure of all personal and real property owned by me. His former wife provided a CSEU affidavit form verifying income, child care expenses, medical insurance expenses, and miscellaneous child-related expenses.

The failure to produce verified income indicates CSEU's noncompliance with Code of Colorado Regulations for the Child Support Enforcement Program found in 9 CCR 2504-1. Because of the expertise of attorney Eigel it is inconceivable that she had no knowledge of CSEU's obligation to collect and verify my former wife's income; it is likewise impossible to believe the income and expense affidavit required as part of the application for service was never completed. It is also impossible to believe, as an expert in Colorado's Child Support Guidelines, attorney Eigel failed to understand the significance of income in determining the dollar amount of the new child support order.

The excerpt that follows is taken from the petition filed on April 9, 2010.

> There are two primary considerations for determining child support – the income of both parents and parenting time. As discussed under the Change in Custody heading, [NAME] reported no wages earned in 2005, she thought she earned $9.70 an hour in 2006, did not know what she earned in 2007. Then during attorney Eigel's continued direct examination, attorney Eigel agreed to estimate what she made in 2008 using her current hourly rate of $10.69 and [NAME's] statement that she had received small raises between 2006 and 2009.
>
> According to CSEU's online application guidelines, [NAME] was required to provide a verification of income (i.e. pay stubs, tax returns) at the time of her application for collection

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services. Based on Court testimony and the failure to provide me with the financial disclosures and other documents specified in the DPO issued by Magistrate John Paul Lyle on November 24, 2009, my only reference to [NAME's] income is the attached Affidavit with Respect to Child Support (Affidavit) that I believe was associated with attorney Tracy Rumans' October 14, 2009 response to my September 21, 2009 motion to modify child support. The Affidavit is divided into sections. The section to verify income is under Your Primary Employment. It has three places to mark an X to identify the source documents relied upon as proof of income: IRS tax forms for the last three years, pay stubs for the last three months, and various forms to prove income from self- employment. None of them were marked. Beneath this subsection, [NAME] stated that she started working for her current employer in September 2005 and presently earns $10.69 per hour.

Malicious Prosecution

Custody, imputation of income, unequal treatment

Attorney Eigel was unable to conduct a proper prosecution of Mr. Johnson's action because of the existing conflict of interest and related self-interest of her employer in the outcome of not only the child support modification case, but also the child support enforcement case. As a result, attorney Eigel sought to modify child support in such a way to reach and exceed the amount of money already intercepted through administrative actions. In order to accomplish that objective, she pre-determined the necessity of using child support worksheet B showing mother having child and then imputed Mr Johnson's income to cause stepped-up increases in child support for the last three months of 2009 and the first eight months of 2010. The inclusion of his former wife's inheritance gave the appearance of fairness after Mr. Johnson gave information about the job offers she could use to impute his income. This information was not known in advance to her and it caught her by surprise. But once the record had begun to establish itself, she pursued her predetermined end.

The excerpt that follows is taken from the petition filed on April 9, 2010.

> During attorney Eigel's direct examination pertaining to my income, she established that I retired in 2005, I was not certified as disabled, my only source of income was my retirement through documents provided by me, and I received a cost of living increase each year between 3 and 3 [1/2]%. Attorney Eigel began the questioning by asking, "And your current financial indicate - - financial affidavit, excuse me, indicates you're receiving $5,291.00 per month in retirement. Is that correct?" [TR Page 10 lines 3-5]
>
> She then focused her attention on whether or not I intended to work during my retired years, in much the same manner as CSEU IV-D Administrator Laura Davidson. I told her I had three potential jobs but my driver's license was suspended and the jobs were out of town or

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out of the country. My interests in working again, and not in Iraq, was based on the uncertainty of the ongoing dispute with CSEU, and its continued impact on me financially.

On direct examination, attorney Eigel asked, "And what type of job - - employment were the job offers for?" I responded, "It was for electrical work. I'm a member of, uh, the International Brotherhood of Electrical." Attorney Eigel then immediately asked, "Do you have an electrician's license?" I answered, "I have - - yes, ma'am, I'm registered with the State." [TR Page 11 lines 8-12] Through attorney Eigel's next series of questions, I told her, after complaining about answering questions about how much the jobs would have paid and being admonished by Magistrate Lyle to answer her questions, I said the job in Iraq paid $280,000, the job in California paid $190,000, and the job in Colorado was a contract job paying $38.00 per hour.

Attorney Eigel and Magistrate Lyle then began discussing worksheets and imputing income. In the record for 2005, Attorney Eigel states, "One child. Mother's income, she indicated she was unemployed. I (inaudible) I believe at that time it was $893.00 month. This would show that - - I'm not imputing any additional income to Mr. Johnson - - child support would be $467.00, which is not a 10 per cent change. Does the Court want me to calculate it with imputation of income? Or just go forward to 2006?" District Magistrate Lyle responded, "I would like you to comment on why we don't impute in this case." Attorney Eigel answered, "And we would be asking the Court to impute. Mr. Johnson testified he has multiple job offers (inaudible) since he's been retired, from a high of $280,000.00 in Iraq to $190,000.00 in California. (Inaudible) Would not be requesting imputation of those amounts of money. He did indicate he's a licensed electrician, and that he had a job offer on the eastern plains of Colorado at $38.00 an hour, which would be an additional $6,857.00, which would give him 6,857, plus the 47-01, would be an income of 11,288. (Which means that) child support would increase in 2005, using the guidelines in effect at that time, to $1,045.00. Without the imputation, again there is no 10 per cent change. Using that same computed - - imputed income of father, plus we're now showing a three per cent increase, 48-42 (inaudible) gross income of 11, 429. [TR Page 32 lines 3-25]

The imputation of income was based on attorney Eigel's determination of my ability to earn after I retired in 2005, knowing my ability to work was adversely affected by my driver's license suspension. Attorney Eigel asked and I answered, "Do you have a disability that prevents you from being employed?" "No, ma'am." "Have you looked for employment since 2005?" "I have actually had several job offers." "Have you taken any of those job offers?" "I have been unable to, ma'am." "Why have you been unable to?" "My driver's license is suspended." "When did your driver's license get suspended?" "I believe it was September 21, 2009." "And were those job offers before or after September 21?" "Before." "Why were you – why were you unable to accept the job offers you received before September 21st?"

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"Three of them were out of state. And one was actually in Iraq." [TR Page 10 lines 16-25 through TR Page 11 lines 1-7]

Attorney Eigel's approach to the change of custody at dispute was likewise reliant on establishing the use of worksheet B, showing mother having child for years 2006 and 2007. In hindsight, the objection to Mr. Johnson's question to his former wife about her meetings with CSEU was likely attorney Eigel's concern he would inquire about her preparation for the hearing.

The excerpt that follows is taken from the petition filed on April 9, 2010.

> The ongoing dispute with CSEU centered on the three year change in custody that CSEU officially refused to recognize beginning October 10, 2008. The record shows attorney Eigel first framed this change in custody in her direct examination of [NAME] by asking her if there was a "voluntary change of physical care in January 2005." [TR Page 17 lines 1-2]. [NAME] responded in the affirmative, and [NAME] offered her explanation. "Um, I had asked Mr. Johnson if he could help me. Our son was not going to school, he wasn't, you know. And Mr. Johnson was retired. And I ask him if he could possibly start living with him. And, why - - as it turned out he had him half time and I had him half time." [TR Page 17 lines 5-9] After a detailed discussion of changing schools that included identifying school districts, Attorney Eigel asked [NAME]: "Lets start with January 2005 when [CHILD] was in Skyview Middle School, was he living primarily with Mr. Johnson?" [NAME] answered "Yes." (TR Page 18 lines 16-19) Then Ms. Eigel immediately asks, "And was he - did you have parenting time with Marcus?" "Yes" "And what was your parenting time?" "Thursday and Friday and Saturday and Sunday" "Four per week?" "Yes or other times Friday, Saturday, Sunday." [TR Page 18 lines 20-25] Attorney Eigel then asks the leading question, "So would you say it was about 50/50 parenting time?" [NAME] answered, "Absolutely, Yeah." [TR Page 19 lines 1-2] From this point in the record and through the direct examination of [NAME] about custody during years 2006 and 2007, "50/50" is used by attorney Eigel four more times and given by [NAME] two more times. [TR Page 19 lines 14, 17, 23; TR Page 20 line 9; TR Page 21 line 18]

Summary Judgment

The March 2, 2010 motion for a hearing raised the allegation the "adding together of arrears" was in self-interest and not for the purpose of benefiting Mr. Johnson's former wife or his son. Mr. Johnson stated among other things: "I allege that Third Party Intervenor – PSI intends to assess interest on the arrears added together by the amended proposed Order of February 18, 2010, at a future date with or without direction from Petitioner." "I contend that Third Party Intervenor – PSI has preserved claims to interest on the amendment to the proposed Order from

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January 13, 2010 which states: 'Wherefore, the El Paso County CSE Unit moves the Court to approve the attached Amended Order which includes the arrears balance owed by Respondent and reserves Petitioner's right to seek interest due on the support arrears.' 'Said preservation of claims to interest subjects me to potential unknown financial responsibility.'"

The reason for adding principal and interest language was, in his opinion, to set up a summary judgment for which attorney Eigel intended to force him to sell real property. This was discussed at length in his affidavit filed with the petition of April 9, 2010 with direct reference to §14-10-122, C.R.S., and more specifically to 1.5 that is dedicated to IV-D cases and discusses liens on personal and real property. Because of Mr. Johnson's anticipated continued refusal to make voluntary child support payments, attorney Eigel was prepared to force his cooperation using the continued suspension of his driver's license to incentivize him to cooperate and pay off the alleged arrears.

Criminal Misconduct/Obstruction of Justice

Attorney Eigel knowingly and willfully drafted an order that did not comply with court testimony by manipulating standard child support worksheets for corrupt purposes.

In the preceding section, Mr. Johnson's former wife stated their son lived with him in 2005. Yet attorney Eigel and Magistrate Lyle eventually determined no modification was permitted for 2005. Therefore, worksheet A showing mother having child remained in effect. The correct worksheet would have been worksheet A showing father having child, which would have determined his former wife should have paid child support to him. Secondly, after establishing a 50/50 parenting schedule with child living with him by covert means and being unable to re-examine his former wife's testimony, attorney Eigel prepared the worksheets for years 2006 and 2007 stating, "This Worksheet is for one child living most of the time with Mother. Overnight parenting time with Father: 145 (39.726%)."

Providing Fraudulent Information to a Financial Institution

Attorney Eigel stopped responding after March 11, 2010, which coincided with the notice of lien and levy served on American National Bank. The notice contained information only known by Belveal Eigel Rumans & Fredrickson LLC and the N/CS Division, i.e. the effective date of the proposed Amended Order and the commencing date of the new order. A regular CSEU employee would not have established the lien. This is an excerpt from my affidavit:

> 116. On March 11, 2010, a letter was printed and served on the American National Bank at 3033 E. First Avenue, Denver, Colorado 80206, titled "Colorado Division of Child Support Enforcement Notice of Lien and Levy." The total amount due was $14,485.20 as of March 11, 2010. The letter was from the Colorado Division of Child Support

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Enforcement, State Enforcement Unit. It provided as before: "Once you have returned the remittance notice and/or surrendered any funds, the lien and levy automatically inactivates." "Please do not surrender funds under $25." However, when compared to the Ent Credit Union levy notice, it does not appear to be computer-generated. The first sentence reads: "The total amount of past-due child support is $14,485.20 as of 3/11/2010." The bottom portion of the letter states: "Date order entered: 1/13/2010." The last line was a form number. It reads: "CSE532 (8/09). Unlike the Ent Credit Union letter of January 19, 2009, it has a bar code along the right margin. The bar code may have been applied by the Bank for image-indexing purposes.

117. On March 12, 2010, a letter was prepared and mailed to me at my home address from American National Bank. The Bank sent a copy of the levy notice and debited a total of $50 from my account. It said, "The amount of $0.00 will be held for thirty days (30), after (30) days the funds will be sent to Colorado Division of Child Support Enforcement. The remaining amount of $50 will be applied towards our processing fee. If the funds in your account(s) were not sufficient to satisfy the levy, all of your funds have been removed." "If funds are unavailable at the time of a presentment, checks may be returned 'Refer to Maker' for two weeks. The normal Non-Sufficient Funds processing fee will still apply."

Until March 26, 2010, Mr. Johnson presumed the Amended Order had been approved and he had 15 days to appeal the decision. At the time, he did not understand the appellate process or know that magistrate final rulings were required to be reviewed in the district court prior to going to the appellate court. Therefore, Mr. Johnson filed a Notice of Appeal that was presumed to be "giving notice of intent to appeal." The Notice was accepted by the clerk for the case file only. The accompanying affidavit was not accepted, and he was instructed to file the appeal with the Court of Appeals first and then file a Notice of Appeal.

Nevertheless, on March 26, 2010 while attempting to file the Notice of Appeal, Mr. Johnson was told Magistrate Candea-Ramsey had just approved the Amended Order and it was placed in the mail. He received the Amended Order and the two other Orders on March 27th. Therefore, Mr. Johnson knows the lien and levy contained fraudulent information and was issued for corrupt purposes. [UPDATE: After Mr. Johnson's petitions were denied by El Paso County District Judge Deborah J. Grohs, Mr. Johnson located the third order issued on March 26th. This is the information provided to the El Paso BoCC on July 16th:

Mr. Johnson received four court orders by mail on March 27, 2010. Each order was dated March 26, 2010. Three of the orders were personally signed by Magistrate Jayne-Candea Ramsey and gave answer to all of the pleadings and motions filed by Mr. Johnson beginning March 2, 2010, while the order modifying child support was stamped using a

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nondescript facsimile of the Magistrate's printed name in all capital letters. Mr. Johnson raised questions about the use of the stamp to members of the judiciary, regulating bodies, the state attorney general and governor, also an attorney by profession. Mr. Johnson held the opinion the stamp was used for corrupt purposes, i.e. to protect the Magistrate from future allegations that: (1) she knowingly signed an order that was obtained through corruption of the judicial process and (2) contained errors of fact and law.]

JOHN PAUL LYLE

Former Magistrate John Paul Lyle was employed by the Fourth Judicial District under a State Judicial Department contract. Mr. Johnson initially requested his contract from County Attorney William Louis on March 9, 2010 and received a phone call from the County on April 8th apologizing for not meeting CORA's three-day requirement. The employment contract was designated for "Grant-Funded Salary Employees." The HR section displayed a Year 1 start date of January 1, 2010 and an end date of January 31, 2010 and identified the Budget and Program signature of Linda Edwards on January 4, 2010.

According to the body of the contract, subject to termination, the duration of attorney Lyle's employment was from January 1, 2010 to June 30, 2010. The "term" of his office became a focus after realizing attorney Eigel back-dated the proposed Order and Amended Order to the date of the hearing. Mr. Johnson raised this issue as well as alleged former Magistrate Lyle did not have legal authority to preside over the hearing when he filed the first change of venue motion on March 4, 2010. On that date, he believed his term ended on January 1; Mr. Johnson did not know he was employed under a contract. Upon learning his contract was terminated on January 31, 2010, Mr. Johnson filed an amendment to the first motion to correct this error. He still maintained attorney Eigel back-dated the proposed order for corrupt purposes.

In attorney Eigel's combined response to the first motion and the amendment on March 11, 2010, she stated: "In his Amendment to Extraordinary Motion for Change of Venue, Respondent alleges that the undersigned counsel seeks to backdate the order to the term of Magistrate Lyle. The proposed order properly reflects the date on which the Order will be signed by the Court (left blank when filed with the Court) and the date the order is effective, i.e. the date of the hearing. Respondent's time for filing of review commences when the written order is signed by the Court. The inclusion of the hearing date as 'nunc pro tunc' does not eliminate his time period to seek review of the Magistrate's order."

Mr. Johnson's concern about the backdate had nothing to do with filing of review. He did not know why attorney Eigel elected to assign the hearing date to the order produced from the hearing on January 13th. He based his concern on the late submission of the first proposed order on February 11th. The legal definition suggested there was not only an unknown reason for

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submitting the proposed order so late, but it also required a court order. This is the referenced definition of *nunc pro tunc*:

> Nunc pro tunc is a Latin term meaning "now for then". It refers to a thing is done at one time which ought to have been performed at another. Permission must be sought from the court to do things nunc pro tunc, and this is granted to answer the purposes of justice, but never to do injustice. A judgment nunc pro tunc can be entered only when the delay has arisen from the act of the court.
>
> Latin for "now for then," this refers to changing back to an earlier date of an order, judgment or filing of a document. Such a retroactive re-dating requires a court order which can be obtained by a showing that the earlier date would have been legal, and there was error, accidental omission or neglect which has caused a problem or inconvenience which can be cured. Often the judge will grant the nunc pro tunc order ex parte (with only the applicant appearing and without notice). Examples: a court clerk fails to file an answer when he/she received it, and a nunc pro tunc date of filing is needed.[69]

Mr. Johnson also knew the worksheets attached to the proposed orders were prepared by attorney Eigel's law firm as early as January 26, 2010 because the date was recorded at the bottom of the worksheets. This is the excerpt from his affidavit:

> 72. On January 26, 2010, "Belveal & Eigel LLC" recalculated the alleged arrears, including years 2006 and 2007 that used Worksheet B showing Mother having child, and eventually denied modification for year 2005 because no substantial change occurred while using Worksheet B showing Mother having child.

The following excerpt is from a working draft of an appeal intended to be filed with the Court of Appeals in Denver. Mr. Johnson did not pursue the appellate process as a remedy for relief. The outcome was anticipated to result in continued injustice and further delay. The references to the official record of the court are abbreviated as "Dist. Rec." The record is the same document indentified in other places as "TR". The open animus and hostility toward Mr. Johnson is obvious.

> After the Court had taken my sworn testimony (Dist. Rec. at 3, ¶ 18 - Dist. Rec. at 16, ¶ 5) and [NAME] sworn testimony (Dist. Rec. at 16, ¶ 6 - Dist. Rec. at 28, ¶ 25), the prosecution recalled me to the stand for sworn re-direct examination. Dist. Rec. at 29, ¶ 1-6. Upon the conclusion of questioning and the prosecution's

[69] http://definitions.uslegal.com

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announcement to the Court there were no other questions, Magistrate Lyle asked my date of birth to which I responded "3/5/54." Dist. Rec. at 30, ¶ 23-25.

Magistrate Lyle then made three statements:

> THE COURT: Thank you. You may step down. (PAUSE.) (I look) forward to this. Dist. Rec. at 31, ¶ 1-2.

The State then informed the Court:

> Your Honor, in regard to child support, the motion filed by Mr. Johnson requests basically modification and credit, starting for the time period 2005. Motion states specifically that [CHILD] resided with the respondent from July 1of '05 to December 2007, 30 months. Respondent requests child support (inaudible), child support obligation arrears 4-38-80 times 30 equals $12,864.00. Petitioner paid zero child support to respondent during this time. Dist. Rec. at 31, ¶ 4-11. (*See* also Dist. Rec. at 7, ¶ 6-9.)

The Court subsequently ruled, in the matter of custody, that a private and voluntary change of custody occurred from January 2005 through December 2007 and was made in the best interest of my son. Dist. Rec. at 35, ¶ 14-24. But the Court also agreed with the State that my parenting time during this three year period was 50 percent for each year during the part of the year my son attended school, with zero percent parenting time for each summer between school years. *Id. ;* Dist. Rec. at 36, ¶ 10-13. Therefore, child support was retroactively modified using worksheet B, showing [NAME] having our son the majority of the time. *Id. ;* Dist. Rec. at 35, ¶ 4-5 and 23-24.

The Court also ruled to modify child support for the years going forward, i.e. 2008, 2009, and commencing January 1, 2010, "based on the increased earning capacity of the parties" (Dist. Rec. at 39, ¶ 12-17) achieved by adding $6,587.00 of imputed income to my retirement benefit (Dist. Rec. at 32, ¶ 12-20) and including two inheritances of $60,000.00 (Dist. Rec. at 33, ¶ 12-15) and $90,000.00 (Dist. Rec. at 33, ¶ 19-20) in the calculation of [NAME's] gross income. As a result, my original child support obligation of $438.80 (Dist. Rec. at 3, ¶ 11) decreased to $355.00 for all of 2008 (Dist. Rec. at 33, ¶ 12-18) and to $369.00 for the first nine months of 2009 (Dist. Rec. at 33, ¶ 25 - Dist. Rec. at 34, ¶ 1) and then increased substantially beginning October 1, 2009 to $958.00 and to $1,357.00 beginning January 1, 2010 (Dist. Rec. at 38, ¶ 21-22.)

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Conspiracy to Obstruct Justice/Violation of Right to Due Process/Fraud

When Mr. Johnson later determined attorney Jayne Candea-Ramsey was sworn in on February 12th, he believed attorney Eigel had purposely withheld the submission of the order to former Magistrate Lyle for corrupt purposes.

Based on the transcript and his increased knowledge of the ongoing misconduct in the handling of his action, Mr. Johnson now believes former Magistrate Lyle was unwilling to sign attorney Eigel's proposed order submitted soon after the hearing and prior to his contract termination date – or the State told him to resign.

The excerpt from the Petition filed on April 9th follows. The transcript indicated to Mr. Johnson that most issues were resolved prior to the hearing. (On the date of the hearing, worksheets and imputing income meant little to him.) The child support amounts for each calculated period equaled what was determined in Court at the end of a one hour hearing and appeared in the proposed orders. The only other document to be prepared was a spreadsheet-style summary attached to the proposed orders that was a "plug in" type table; former Magistrate Lyle said the "State" would prepare it while referring to CDHS CSE. Mr. Johnson also knew former Magistrate Lyle brought case files into the courtroom prior to the start of the docket.

> After a personal exchange between Magistrate Lyle and attorney Eigel, "Your Honor. I'm sorry, your Honor, child support - - (inaudible) Would request that child support would be modified at least as of October 1, 2009 to $958.00, and then $1,357.00 commencing January 1, 2010." [TR Page 34 lines 22-25]
>
> In the record of the Findings and Rulings by the Court, Magistrate Lyle listened to Attorney Eigel as she explained how Worksheet B would be used and how she determined the monthly child support obligation. Magistrate Lyle responded, "All right. Those are the figures that I want used." Attorney Eigel said, "Okay." Attorney Eigel's calculation concluded, "So then for 2005, it's 4-67, which was no 10 per cent change. For 2006, and that's imputing income minimum wage to mother, for 2006 mother became employed. Child support reduces to $346.00. For 2007 mother - - and this is where estimating that she had gotten a raise to approximately $10.00 an hour, increasing father's retirement but I imputed income. 2007 child support would be $355.00." [TR Page 36 lines 15-21] Then attorney Eigel works through the other years using estimates of [NAME's] income and Mr. Johnson's imputed income.
>
> Magistrate Lyle then summarized what was happening between him and attorney Eigel: "All right. Child support from October, 2009 will be $958.00 a month. And then

commencing as of January 1st, 2010, it's $1,357.00 a month. All payments are to be made through the Family Support Registry by income assignment. [TR Page 37 lines 18-20] Attorney Eigel then informed Magistrate Lyle the State's administrative review did not consider the change in custody and, therefore, adjustments would need to be made.

Magistrate Lyle responded, "All right. The arrears balance is likely to be impacted somewhat, although from the numbers I'm looking at, it won't be - - it won't be significant, or it won't be tremendously significant. But those calculations are to be re-done by the State pursuant to this new ruling Any questions, [NAME]? Her response, "What just happened?" [TR Page 38 lines 8-13]

The following excerpt is from my affidavit as of March 26, 2010:

67. In the hearing on January 13, 2010, I attempted to question [NAME] about the number of times she talked with CSE Unit employees. Attorney Eigel objected on grounds of relevance and former El Paso County District Magistrate John Paul Lyle sustained the objection. I was attempting to verify [NAME's] statement to me that "they took the ball and ran with it." Toward the end of the hearing, former El Paso County District Magistrate John Paul Lyle asked [NAME] if she had anymore questions. Her response was something similar to "yes, what just went on?" I kind of chuckled and said, "really." I therefore understood my dispute with PSI was going to be as difficult as I was told it would be. As of January 13, 2010, I believed former El Paso County District Magistrate John Paul Lyle had assisted the CSE Unit and attorney Eigel in their efforts to derail legal avenues of fighting PSI. I did not know what to do next.

68. In the hearing on January 13, 2010, following the sustained objection, I told the Court I had no further questions because my questions had nothing to do with [NAME]. I wanted [NAME] to know my issues were not about her or our private agreement concerning our son.

69. In the hearing on January 13, 2010, former El Paso County District Magistrate John Paul Lyle entered orders modifying child support and instructed attorney Eigel to recalculate the alleged arrears owed by me to reflect the modification. I remember former El Paso County District Magistrate John Paul Lyle and attorney Eigel talking about worksheets and discussing my ability to work, imputing income on my ability to earn. I recall former El Paso County District Magistrate John Paul Lyle speaking to her and saying something like, "you have your work cut out for you on this one."

70. During the hearing on January 13, 2010, former El Paso County District Magistrate John Paul Lyle warned me about the difficulty of a lawsuit, and I informed him I had already heard the same thing from local attorneys. When I was finished, I asked him for

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permission to approach the bench. He seemed annoyed and said something to the effect he had other cases waiting. I told him I was almost finished and then handed him the letter I prepared for the hearing. When the hearing ended, I stepped out into the hall and said goodbye to [NAME] and her sister. I then returned to the courtroom to give attorney Eigel a copy of the letter. I watched former El Paso County District Magistrate John Paul Lyle read my letter during the next hearing. I sat through the Court's docket. When it ended, I gave attorney Eigel her copy. Prior to the hearing, I had given [PERSON] a copy of the letter to show to [NAME].[70]

Violation of Right to Equal Treatment

On October 22, 2009, eight days after attorney Rumans' late response to Mr. Johnson's motion to modify child support, Magistrate Evelyn H. Sullivan reviewed his action and vacated it. On November 19, former Magistrate Lyle reviewed the action and updated its status to "Held and continued." On November 24, he vacated it, then reopened it, and issued the DPO with instructions to set a hearing within 30 days and submit certain disclosures and sworn financial statements prior to the hearing.

According to the DPO, the purpose of the hearing was to determine if the motion was being diligently prosecuted. Noncompliance with its requirements constituted a failure to diligently prosecute the case and was grounds for dismissal without prejudice by Minute Order without notice to parties. Mr. Johnson set the hearing on December 7 to comply with the order and, at the request of his former wife, agreed to a hearing date of January 13, 2010. When he did not receive notice, Mr. Johnson went to the El Paso District Court and it was delivered by hand. Had he failed to appear, his action would have been dismissed.

Mr. Johnson's former wife's financial disclosure did not comply with the DPO. The CSEU document titled "Affidavit with Respect to Child Support" was "generic" as previously discussed. The section for identifying income verification source documents, i.e. tax returns for the last three years, pay stubs for the last three months, or proof of income from self-employment, was not marked. The Affidavit also indicated her current employment began in September 2005, the year the change in custody occurred, although in Court she testified she was unemployed in 2005.

As previously mentioned, former Magistrate Lyle readily accepted the lack of proven income and, then, listened without reservation as attorney Eigel estimated Mr. Johnson's former wife's income. Had he not submitted the required disclosures as ordered in the DPO, his motion to

[70] Mr. Johnson's former wife's sister attended the hearing.

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modify would have been dismissed for noncompliance, and the hearing would never have taken place.

When former Magistrate Lyle considered imputing income to 2005, attorney Eigel proposed to more than double it based on my current ability to earn. Yet there was never a similar discussion of imputing my former wife's income during 2005 or suggest she work an extra job or seek a better paying job in years 2006 and 2007 to increase her contribution to our son's physical support.

Mr. Johnson was also not afforded the opportunity to pursue attorney Rumans' statement in her response stating, "The CSE Unit has no knowledge regarding the living arrangement of the minor child during the time period in question. The CSE Unit also does not know whether Petitioner disputes Respondent's motion." Mr. Johnson maintains that, at all times, every party involved in the handling of both the child support enforcement case and modification case, treated him in an unfair way because he was a so called deadbeat dad – and working age men are not normally recipients of TANF or other public assistance.

JAYNE CANDEA-RAMSEY

For a period of time, Mr. Johnson believed former Magistrate Lyle had authority to approve the proposed Amended Order simply because he presided over the hearing. He also did not know "the Court" was represented by Magistrate Candea-Ramsey until he learned she had denied the proposed Order of February 11th on February 18th to add arrears together. The following excerpt from Mr. Johnson's affidavit explains the only background information available to him.

> 74. At http://thesidebar.freedomblogging.com/tag/jayne-candea-ramsey, the *Colorado Springs Gazette*'s "*The Sidebar",* displayed this post on February 10, 2010 at 10:54 a.m.:
>
> **New Magistrate**
>
>> Former senior Deputy District Attorney Jayne Candea-Ramsey has been appointed magistrate. She'll be sworn in on Friday Feb. 12 at 4 p.m. in 4th Judicial District Judge Thomas Kane's courtroom 406 South.
>>
>> Candea-Ramsey was one of the two prosecutors last year who tried the case of Darneau Pepper. He was convicted in a double homicide and sentenced to two consecutive life terms plus 908 years in prison.

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Obstruction of Justice/Conspiracy to Obstruct Justice/Violation of Right to Due Process/Fraud

Mr. Johnson has no way of knowing how or why Magistrate Candea-Ramsey lost her independence in his action. He does know she was a high-ranking prosecutor and perceivably an expert in establishing motives, following leads, and gathering evidence. He therefore finds it impossible to believe she could have missed every opportunity to right the wrongs in the handling of his case.

For the purposes of this document, an excerpt from Mr. Johnson's affidavit is presented first and is followed by the memorandum brief included in the April 8th Petition for Review pertaining to Magistrate Candea-Ramsey's final Order of March 26 denying change of venue.

> 134. On March 26, 2010, I presented what I perceived to be a notice of intent to appeal the Amended Order entered on March 11 by District Magistrate Candea-Rampsey. The Notice of Appeal – Designation of Record was accepted in the El Paso County District Court with the clerk's instructions to retain the personal records referenced therein for filing with the Court of Appeals in Denver.
>
> 135. On March 26, 2010, I was also informed "the approved Amended Order was mailed today." The confusion caused by the simultaneous filing of the Notice of Appeal and the approval of the Amended Order as well as the procedural misstep was understandable.
>
> 136. On March 27, 2010, I received copies of two Orders and a copy of the Amended Order in the mail.
>
> 137. On March 27, 2010, I reviewed the Order personally signed and marked March 26, 2010 from District Magistrate Candea-Ramsey. This order was based on her review of the Extraordinary Motion for Change of Venue filed on March 4, the Amendment to Extraordinary Motion for Change of Venue filed on March 9, and the Second Extraordinary Motion for Change of Venue filed on March 11 and Attorney Eigel's combined response to the Extraordinary Motion for Change of Venue and it's amendment filed on March 11. The order was titled "Order". All three change of venue requests were denied for two reasons: (1) [NAME] and I resided in El Paso County; (2) The Court did not find good cause to change venue. The Order states: "Order was entered in a proceeding in which consent was not necessary and any appeal must be taken within 15 days pursuant to Rule 7(a) of the Colorado Rules for Magistrates." [Notes: The reasons are summarized and coincide with the Order. Attorney Eigel did not respond to the Second Extraordinary Motion for Change of Venue. Rule 7(a) is a C.R.C.P. Rule. The Colorado Rules for Magistrates is the body of rules that outline professional codes of conduct for magistrates.]
>
> 138. On March 27, 2010, I reviewed the Order personally signed and marked March 26, 2010 from District Magistrate Candea-Ramsey. This order was based on her review of the Verified Motion to Modify Child Support Pursuant to §14-10-122, C.R.S. filed on

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March 8 and the Amendment to Verified Motion to Modify Child Support filed on March 10 and Attorney Eigel's response to the Verified Motion to Modify Child Support on March 11. The order was titled "Order". Both motions to modify were denied for three reasons: (1) "The Motion goes to the objections Respondent has to the Court's rulings issued on January 13, 2010. Respondent states in the Motion [t]he purpose of filing this VERIFIED MOTION TO MODIFY CHILD SUPPORT is to obtain an answer to my original request for modification on September 21, 2009, and to encourage the thorough investigation of the extraordinary events that have occurred to date and perceived by me to be ongoing."; (2) No "**showing of changed circumstances that are substantial and continuing**." (The Magistrate put the text in bold and added the text "Emphasis added."); (3) There was no allegation of changed circumstances. The Order states: "Order was entered in a proceeding in which consent was not necessary and any appeal must be taken within 15 days pursuant to Rule 7(a) of the Colorado Rules for Magistrates." [Notes: The reasons are summarized and coincide with the Order. Attorney Eigel did not respond to the Amendment to Verified Motion to Modify Child Support. The Magistrate mentions "objections". However, she elected not to enter an Order upon review of the Objection to Proposed Amended Order (Objection) filed on March 2 and Attorney Eigel's response to it on March 11. The Objection was a listing of reasons supporting my motion for a hearing of the Objection. Attorney Eigel's response never addressed the "hearing" issue. Instead, she argued the Amended Order should be approved. The Magistrate also elected not to enter an Order upon review of the Continued Objection to Proposed Amended Order (Continued Objection) filed on March 15. Said Continued Objection was not recorded in the registry of actions on March 22. Upon the review of my records, I verified I had mailed the stamped first page but had the stamped last page. Regarding the Objection and Continued Objection, I learned from the registry of actions that the Magistrate held a hearing on March 1 and the Objection date was reported as March 3 not March 2. I did not attend the alleged hearing. Attorney Eigel did not respond to the Amendment. In fact, Attorney Eigel stopped responding after March 11. And again, Rule 7(a) is a C.R.C.P. Rule. The Colorado Rules for Magistrates is the body of rules that outline professional codes of conduct for magistrates.]

139. On March 27, 2010, I reviewed the Amended Order marked March 26, 2010 from District Magistrate Candea-Ramsey. I already had a copy of the "proposed" Amended Order. The "approved" Amended Order does not bear her personal signature; it is stamped: JAYNE CANDEA-RAMSEY. [UPDATE: After June 15th, Mr. Johnson learned that Judge Grohs denied his petition on the basis of an invalid order and notified the BoCC as follows: Both the Judge's and Magistrate's orders take up the language of C.R.M. Rule 7(a)(4) which states, "A final order or judgment is not reviewable until it is written, dated, and signed by the magistrate…." This language was not made part of the Magistrate's Orders that were effective and appealable only after they too were reduced to writing, dated and signed by the magistrate. The applicable court rule that governs the entry of judgments and orders is found in Rule 58(a) of Chapter 6 of the Colorado Rules of Civil Procedure, which states the entry of a judgment (or order) is not effective until

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after it is signed and dated by the court; the court being represented on March 26, 2010 by Magistrate Jayne Candea-Ramsey.]

The above excerpt was included in the affidavit Mr. Johnson attempted to file with the Notice of Appeal. Prior to filing the affidavit with the Petition for Review on April 9th, statements of correction had to be added due primarily to learning the Amended Order was not approved on March 11th. A correction was also necessary to explain new information known about the Rules for Magistrates. This is the correction pertaining to notes:

> 144. [CORRECTION] The notes to Affidavit Number 137 and 138 need clarification. The Colorado Rules of Magistrates also contains a Rule 7(a). And C.R.M. Rule 1 states: “These rules are designed to govern the selection, assignment, and conduct of magistrates in civil and criminal proceedings in the Colorado court system.” C.R.M. Rule 5(g) states: “All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 251.1, et. seq. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.”

When Mr. Johnson filed petitions to appeal the final orders entered by Magistrate Candea-Ramsey, he submitted general memorandum briefs with each one. In the brief for review of the final Amended Order, he raised three issues:

- Did the Magistrate’s two known reviews of my case file support her final ruling to deny a change in venue for failure to show good cause?

- Did the 22 days between the filing of the first motion for change of venue and the Magistrates’ final ruling provide an adequate amount of time to investigate my allegations and set a hearing to diligently prosecute my motions for change of venue in the interest of justice?

- Did the Magistrate deny my motions for change of venue and ignore my requests for a hearing as a willing participant in the conspiracy to prevent a just resolution of my ongoing dispute with CSEU?

Mr. Johnson’s summary was as follows.

> I was provided an opportunity under law to request a change of venue on the basis I did not believe I would be treated fairly in El Paso County. I relied on the integrity of the legal professionals involved in my case to uphold the rule-of-law and to conduct

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themselves according to the Colorado Code of Judicial Conduct and the Colorado Bar Association's Rules of Professional Conduct. Without their adherence to the same, it was not only impossible to find justice in the El Paso County District Court but also impossible for the self-policing provisions of the Code and Rules to protect me and others like me from future abuses.

TRACY RUMANS

Malicious Prosecution

Attorney Ruman's overt involvement in the modification action had been limited to her October 14, 2009 response to Mr. Johnson's September 21, 2009 motion to modify child support until June 4, 2010, at which time she was permitted to file a late response to the April 5th petition. Prior to that time, Mr. Johnson held that she may not have had personal knowledge of the change of custody. But since that time with an increased understanding of CSEU's procedures and the use of ACSES and ICON, that opinion changed.

INCOMPLETE –

Note: Received letter from the Colorado Commission on Judicial Discipline on August 1st. Executive Director William J. Campbell issued another confidential letter. It was in response to his receipt of the documents used in the Addendum to the BoCC, including the location of the third order, the approval of the stamped order modifying child support, the missing motion, and the language used in the orders. He explained those documents (he called them the "four letters") did not support allegations of misconduct by Chief Judge Samelson. That was true. They were to support his new complaint against Judge Grohs. Mr. Campbell held that the Commission had no authority to address misconduct by magistrates or other court staff. And wrote: "The issues you raise regarding child support and the court's records are important to you. Your recourse is to pursue them under a continuing jurisdiction of the District Court in custody matters, through an appropriate motion, or by appeal to the Court of Appeals." [Personal message deemed unnecessarily privileged.]

CHIEF JUDGE KIRK SAMELSON

The chief justice of the Colorado Supreme Court appoints the chief judge from among district judges who then serves at the pleasure of the chief justice. A chief judge exercises the administrative powers over all judges of all courts within his district with the powers delegated to the chief judge by the chief justice.

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The chief judge has specific responsibilities for magistrates under his supervision as outlined in the Colorado Rules for Magistrates.

The chief judge and magistrates are subject to the Colorado Code of Judicial Conduct. The chief judge has the authority to undertake disciplinary proceedings with the concurrence of the chief justice. As licensed attorneys, the chief judge and magistrates are subject to the Colorado Rules of Professional Conduct.

Obstruction of Justice/Conspiracy to Obstruct Justice

The excerpt that follows is from the affidavit accompanying Mr. Johnson's ethics complaint letter to Chief Judge Samelson on March 29, 2010

> 94. On March 4, 2010, I filed an "extraordinary" motion for change of venue, citing a perceived conflict of interest between the N/CS Division of the El Paso County District Court and the El Paso County Child Support Enforcement Unit and me. I also made references to discovery problems and other irregularities. I asked for relief.
>
> 95. On March 4, 2010, I indirectly provided Fourth Judicial District Chief Judge Kirk Samelson with a courtesy copy of the extraordinary motion for change of venue for administrative purposes by handing a copy to his administrative assistant.
>
> 96. In his letter postmarked March 8, 2010 and dated, March 5, 2010, Chief Judge Kirk Samelson denied my motion stating, "As chief judge, I do not have the authority to reverse a decision made by another judicial officer or to change venue." He advised me to "file a request with the presiding magistrate, and go through the normal appeal process if you wish to have a decision reversed."
>
> 97. On March 8, 2010, I filed a verified motion to modify child support on the basis of the same income information relied upon by the law offices of Belveal Eigel Rumans & Fredrickson on January 26, 2010 for the periods of October through December 2009 and commencing January 1, 2010. This time, I entered information concerning the proceeds from the sale of the two ATVs sold by Ms. Dolbow in 2008 that I sought to have applied against claims for unpaid child support in 2008.
>
> 98. On March 9, 2010, and prior to retrieving the Judge's letter effectively denying my extraordinary motion for change of venue from my mailbox, I filed an amendment to the extraordinary motion for change of venue. The primary purpose was to state for the record that item Number 1 in the original extraordinary motion for change of venue was incorrect and why. The additional information discussed the perceived significance of the timing of attorney Eigel's filing around the former El Paso County District Magistrate John Paul Lyle's contract end date on or about January 31, 2010.

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99. On March 9, 2010, I indirectly provided Fourth Judicial District Chief Judge Kirk Samelson with a courtesy copy of the amendment to the original extraordinary motion for change of venue for administrative purposes by handing it to his administrative assistant.

107. On March 11, 2010, I filed the second extraordinary motion for change of venue. The introductory paragraph stated:

> I, Robert Wayne Johnson, received the attached letter from Chief Judge Samelson by U.S. mail at my home address on Tuesday, March 9, 2010. The "courtesy" copy provided to him on March 4, 2010, was for informational purposes only. I presumed the El Paso County Clerk of Court knew how to direct legal documents as appropriate - the original filed motion for extraordinary change of venue having been marked "Division: N/CS", as have been all filings to date. I now allege the "misunderstanding" on Chief Judge Samelson's part was an intentional device to prevent the OBJECTION TO PROPOSED AMENDED ORDER from being heard outside El Paso County; said objection having been filed within 15 days in writing as required. Respondent hereby requests that this Court change venue for all matters presently before the N/CS Division of the El Paso County District Court, in this domestic case, outside of the Fourth Judicial District that includes Teller County, and as grounds, therefore, state the following:…

This time, I did not provide Chief Judge Samelson a courtesy copy.

148. On March 29, 2010, I indirectly provided Fourth Judicial District Chief Judge Kirk Samelson with the ethics complaint letter package by handing it to his administrative assistant and obtaining her sign-off for receiving it. The package included my 32-page affidavit.

149. On March 29, 2010, at the same time, I indirectly provided Fourth Judicial District Chief Judge Kirk Samelson with the child support case resolution letter.

152. On April 2, 2010, I retrieved the letter from the mail from Chief Judge Samelson dated March 29, 2010 in response to my ethics complaint letter package that states in part: "As I mentioned in my March 5, 2010 letter to you, I do not have authority as chief judge to reverse a decision made by another judicial officer. You must go through the normal appeal process if you wish to have a decision reversed." His letter did not address my ethics complaint.

153. By April 2, 2010, I understood the oversight responsibilities of Chief Judge Samelson with respect to magistrates as provided in the Colorado Rules of Magistrates. I

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also understood his obligation to the principles of the Colorado Code of Judicial Conduct and the Colorado Rules of Professional Conduct.

154. On April 5, 2010, I filed the Petition for Review with Memorandum Brief for the final Amended Order.

155. On April 8, 2010, I filed the Petition for Review with Memorandum Brief for the final Order denying change of venue.

156. Today, I filed the Petition for Review with Memorandum Brief for the final Order denying my new motion to modify child support.

Mr. Johnson attempted to enlist the support of Judge Thomas Kane on April 5, 2010 by delivering an ethics complaint packet to him indirectly. His administrative assistance was reluctant to accept it and would not sign-off for its receipt. Mr. Johnson told her she could shred it if she wanted.

Judge Kane did not respond.

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