

NO. 18 - _____
Petition Appendix

In The
Supreme Court of the United States

MICHAEL S. BENT,
Petitioner,

v.

LASHWAY, et al
(STEVEN WAGNER, Assistant Secretary for the
Administration for Children and Families, and CHERYL
STRANGE, Secretary of the Washington Department
of Social and Health Services, and COUNTY of
CLARK municipality),
Respondents.

On Petition for a Writ of Certiorari
to The United States Court of Appeals
for The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**FILED AUG 21, 2018
MOLLY C. DWYER,
CLERK U.S. COURT
OF APPEALS**

**MICHAEL S. BENT,
Plaintiff- Appellant,**

**No. 17-35962
DC.no.3:16-cv-05916-
BHS**

**v.
CHERYL STRANGE,
individually and in her
official capacity as Acting
Secretary of the Washington
Department of Social and
Health Services (DSHS); et al.,
Defendant-Appellant.**

**Western District of
Washington, Tacoma**

MEMORANDUM**

**Appeal from the United States District Court
for the Western District of Washington
Benjamin H. Settle, District Judge, Presiding
Submitted August 15, 2018*****

**Before: FARRIS, BYBEE, and N.R. SMITH, Circuit
Judges.**

*** Cheryl Strange has been substituted for her
predecessor Patricia Lashway as Secretary of the State
of Washington, Department of Social and Health
Services. Steven Wagner has been substituted for his
predecessor Mark Greenberg as Acting Assistant
Secretary for the Administration for Children and
Families. See Fed. R. App. 43(c)(2).**

** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

*** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Michael S. Bent appeals pro se from the district court's judgment dismissing his claims against the federal Administration for Children and Families ("ACF"), and the district court's summary judgment in favor of the remaining defendants in his action alleging federal claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. See *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 970 (9th Cir. 2011) (cross-motions for summary judgment); *Serra v. Lappin*, 600 F.3d 1191, 1195 (9th Cir. 2010) (dismissal under Fed. R. Civ. P. 12(b)(1), 12(b)(6)). We may affirm on any basis supported by the record, *Thomson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008), and we affirm.

The district court properly granted summary judgment for defendant Washington Department of Social and Health Services ("DSHS") because Bent failed to raise a genuine dispute of material fact as to whether DSHS caused a deprivation of Bent's Fourteenth Amendment rights in its administration of Washington's child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. §§ 651-669b. See *Marsh v. County of San Diego*, 680 F.3d 1148, 1152 (9th Cir. 2012) (elements of a § 1983 claim); see also *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) ("[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office.").

Summary judgment for defendant Clark County was proper because Bent failed to raise a genuine dispute of material fact as to whether any policy or custom of Clark County caused him to suffer a constitutional injury. See *Castro v. County of Los Angeles*, 833 F.3d 1060, 1073-76 (9th Cir. 2016) (en banc) (discussing requirements to establish municipal liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978)).

Dismissal of Bent's Administrative Procedures Act ("APA") claim against ACF was proper because Bent failed to allege facts sufficient to show an agency action subject to judicial review, and his entitlement to judicial review. See 5 U.S.C. § 702 ("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."), § 704 (allowing judicial review of agency action made reviewable by statute or final agency action for which there is no other adequate remedy in court); *Gallo Cattle Co. v. U.S. Dep't of Agric.*, 159 F.3d 1194, 1198-99 (9th Cir. 1998) (explaining conditions required for agency action to be "final" under the APA); see also *FTC v. Standard Oil Co.*, 449 U.S. 232, 241-42 (1980) (agency action that was not a definitive ruling and had no legal force or practical effect upon daily business was not final agency action).

The district court did not abuse its discretion by dismissing Bent's APA claim against ACF without leave to amend because amendment would have been futile. See *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 725-26 (9th Cir. 2000) (setting forth standard of review and explaining that "[a] district court acts within its discretion

to deny leave to amend when amendment would be futile”).

We reject as unsupported by the record Bent’s contention that the district court was biased against him.

We do not consider matters not specifically and distinctly raised and argued in the opening brief. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Bent’s urgent motion for authentication of printed paper copies (Docket Entry No. 38) is denied. Bent’s request for recusal, set forth in his opening brief and Docket Entry No. 38, is denied.

AFFIRMED.

APPENDIX B

**UNITED STATES DISTRICT COURT WESTERN
DISTRICT OF WASHINGTON AT TACOMA**

MICHAEL S. BENT,
Plaintiff, **CASE NO. C16-5916BHS**

v. **ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT,
DENYING PLAINTIFF'S
MOTIONS FOR SUMMARY
JUDGMENT, AND DENYING
PLAINTIFF'S MOTION
FOR DEFAULT JUDGMENT**

PATRICIA LASHWAY,
et al., **Respondent.**

This matter comes before the Court on the following motions:

1. Plaintiff Michael Bent's ("Plaintiff") motion for default or summary judgment against Defendants Greg Kimsey ("Kimsey") and Mark McCauley ("McCauley") (collectively "County Defendants") (Dkt. 68);
2. Plaintiff's motion for summary judgment against Defendant Patricia Lashway ("Lashway") (Dkt. 58);
3. The cross-motion for summary judgment of Defendants Kimsey and McCauley (collectively "County Defendants") (Dkt. 76); and
4. Lashway's cross-motion for summary judgment (Dkt. 82).

The Court has considered the pleadings filed in support of and in opposition to these motions and the remainder of the file and hereby grants the cross-motions for

summary judgment in favor of Lashway and Clark County Defendants for the reasons stated herein.

I. PROCEDURAL HISTORY

On October 31, 2016, Plaintiff filed his original complaint in this action against Lashway in her official capacity as Acting Secretary of the Washington Department of Social and Health Services ("DSHS"); the Assistant Secretary for the Administration for Children and Families under the U.S. Department of Health and Human Services (the "Secretary"); McCauley, in his official capacity as Manager and CEO of Clark County; and Kimsey, in his official capacity as Clark County Auditor. Dkt. 1. Plaintiff asserted numerous claims based on the theory that "Lashway inappropriately steers Federal Incentive grant awards to Clark County with intention to bias custodial arrangement in fragmented families." *Id.*

Also on October 31, 2016, Plaintiff moved for the recusal of any judge that was a member of the Washington State Bar Association, on the basis that membership in the same state bar association as Lashway would undermine the impartiality of the Court. Dkt. 3. Plaintiff's motion for recusal was denied. Dkts. 17, 18.

On January 3, 2017, Lashway filed a motion for a more definite statement (Dkt. 24) and the Secretary filed a motion to dismiss (Dkt. 25). On February 22, 2017, the Court granted the Secretary's motion and dismissed Plaintiff's claims against the Secretary with prejudice. Dkt. 35. The Court also granted Lashway's motion for a more definite statement, giving Plaintiff leave to amend his claims against Lashway only. Dkt. 35. On February 27, 2017, Plaintiff appealed. Dkt. 38.

On March 3, 2017, Plaintiff filed an amended complaint. Dkt. 40. On March 14, 2017, the Ninth Circuit dismissed Plaintiff's appeal for lack of jurisdiction because the Court's order did not dispose of all claims against all parties. Dkt. 44.

On March 17, 2017, both the Secretary and Lashway again moved to dismiss the amended complaint. Dkts. 45, 46. On May 23, 2017, the Court entered an order granting the Secretary's motion to dismiss and denying Lashway's motion to dismiss. Dkt. 54.

On June 6, 2017, Lashway filed her answer to the amended complaint. Dkt. 55. On July 27, 2016, Clark County Defendants filed their answer to the amended complaint. Dkt. 57.

On July 28, 2017, Plaintiff moved for summary judgment. Dkt. 58. On August 10, 2017, Lashway moved to extend the deadline for a response to Plaintiff's summary judgment motion. Dkt. 62. On August 24, 2017, the Court granted the extension. Dkt. 66.

On August 28, 2017, Plaintiff moved for default judgment or alternatively summary judgment against Clark County Defendants. Dkt. 68. On September 18, 2017, Lashway and Clark County Defendants responded to the motion for default judgment. Dkts. 71, 78. Clark County Defendants also filed a cross-motion for summary judgment. Dkts. 76. On September 22, 2017, Plaintiff replied on his motion for default judgment and his motion for summary judgment against Lashway. Dkt. 80, 81.

On October 5, 2017, Lashway filed her cross-motion for summary judgment against Plaintiff. Dkt. 82.

On October 9, 2017, Plaintiff responded to Clark County Defendants' cross-motion for summary judgment. Dkt. 84. On October 13, 2017, Clark County Defendants replied on their cross-motion. Dkt. 85. On October 16, 2017, Plaintiff responded to Lashway's cross-motion for summary judgment. Dkt. 86.

II. FACTUAL BACKGROUND

Plaintiff and his former spouse, LaShandre Bent ("LaShandre"), were married on June 29, 1991, and have two children. In June 2013, LaShandre filed for divorce and sought to relocate out of state with custody of the children. On June 21, 2013, Clark County Superior Court entered a temporary order requiring that Plaintiff pay \$5,000 per month to LaShandre in family support, beginning June 15, 2013. Dkt. 74-1 at 2-3. The order also temporarily limited Plaintiff's contact with the children to supervised visits on weekends. *Id.*

On August 13, 2013, the Division of Child Support ("DCS") at DSHS opened a case on Plaintiff's child support obligations when LaShandre requested support enforcement services. Dkt. 75 at 3. DCS served Plaintiff with notice advising him to make his child support payments to DCS, with which Plaintiff complied. Dkt. 74 at 2.

On October 10, 2014, Judge Veljacic of Clark County Superior Court entered several orders finalizing Plaintiff's dissolution. Dkt. 74-1 at 5-14 (Parenting Plan), 16-27 (Order of Child Support), 45-53 (Decree of Dissolution), 55-59 (Findings of Fact and Conclusions of Law). Included in these orders was an Order of Child Support requiring that Plaintiff pay child support in increasing amounts through September 30, 2017. *Id.* at

16-27. Also included in these orders was a "Parenting Plan," wherein LaShandre was designated as the "custodian of the children solely for purposes of all other state and federal statutes which require a designation or determination of custody." *Id.* at 9.

At the time of the parties' summary judgment motions, Plaintiff was paying \$1,500 in maintenance and \$808.36 per month in child support through DCS. *Id.* at 16-53.

III. DISCUSSION

A. Motion for Default Judgment

Plaintiff has moved for default judgment against Clark County Defendants. Dkt. 68. The Court has discretion to grant default judgment after a default has been entered against a party for their failure to plead or otherwise defend. Fed. R. Civ. P. 55. While Plaintiff cites Federal Rule of Civil Procedure 55, he makes no argument regarding Clark County's failure to plead or otherwise defend. No default has been entered. Indeed, all of the Defendants in this case have answered the complaint. Dkts. 55, 57. The Defendants have also opposed Plaintiff's motions and filed cross-motions for summary judgment of their own. Dkts. 71, 76, 78, 82, 85. Accordingly, Plaintiff's motion for default judgment is denied.

B. Motions for Summary Judgment

Plaintiff brings claims premised on three alleged wrongs. First, Plaintiff claims that DSHS has violated the Freedom of Information Act by failing to provide him with all of the agreements between DSHS and various Washington courts and political subdivisions. Dkt. 58 at 19-20. Second, Plaintiff complains that the implementation of financial agreements under 42 U.S.C.

§ 654(7) violated his constitutional rights by depriving him of an impartial hearing in his divorce and child custody proceedings in Clark County Superior Court. Dkt. 40 at 21–22. Third, Plaintiff complains that DSHS wrongfully designated him as “noncustodial parent” for the purposes of Title IV-D, which “comes with severe restrictions, extensive tracking and listing on various databases used by various authorities to monitor and constraint [sic] persons of interest including rapists, criminals, and terrorists.” *Id.* Each of the parties have moved for summary judgment on all of Plaintiff’s claims stemming from these three alleged wrongs.

1. Summary Judgment Standard

Summary judgment is proper only if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). There is no genuine dispute of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must present specific, significant probative evidence, not simply “some metaphysical doubt”). See also Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to

resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

In determining the existence of a dispute over material fact, the Court must consider the substantive evidentiary burden that the nonmoving party must meet at trial—e.g., a preponderance of the evidence. *Anderson*, 477 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual issues of controversy in favor of the nonmoving party only when the facts specifically attested by that party contradict facts specifically attested by the moving party; the nonmoving party may not merely state that it will discredit the moving party's evidence at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory, nonspecific statements in affidavits are not sufficient, and missing facts will not be presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888–89 (1990).

2. FOIA Claim

The Court dismisses Plaintiff's FOIA claim. FOIA applies only to agencies of the executive branch of the *United States federal government*. *Moore v. United Kingdom*, 384 F.3d 1079, 1089 (9th Cir. 2004) (citing 5 U.S.C. §§ 551(1), 552(f)). DSHS is an agency of Washington State, and therefore not subject to FOIA. See *Kerr v. U.S. Dist. Court for N. Dist. of California*, 511 F.2d 192, 197 (9th Cir. 1975), *aff'd*, 426 U.S. 394 (1976). Additionally, even if DSHS was a federal agency subject to FOIA, Plaintiff has not submitted a FOIA

request to DSHS, which would preclude his claim. 5 U.S.C. § 552(a)(3).

3. Impartial Hearings

The Court also dismisses Plaintiff's claims against DSHS and Clark County Defendants premised on his theory that DCS reimbursements to Clark County Court deprived him of impartial hearings in his divorce proceedings. See Dkt. 40 at 12–16, 21–36. Federal law authorizes DCS to reimburse courts that help it obtain “optimum results” through expeditious resolution of Title IV-D cases. 42 U.S.C. § 654(7); 45 C.F.R. § 303.101. Clark County Superior Court is eligible for such reimbursements because it provides a weekly docket before a court commissioner that is exclusively dedicated to the Title IV-D caseload. Dkt. 73 at 3. Notably, Clark County does not receive reimbursement from DCS for hearing time before Superior Court judges. Dkt. 72 at 2.

Defendants have shown that the outcome of these Title IV-D cases have no effect on any benefit to the commissioners or judges of courts with DCS contracts. All judges and court commissioners receive the same salary, regardless of the outcome or caseload of their Title IV-D cases. RCW 43.03.012; RCW 2.24.030; Dkt. 72 at 1–2. Moreover, Plaintiff has failed to show that the Clark County reimbursement contract with DCS has any connection whatsoever to his dissolution proceedings, which were adjudicated by a Superior Court judge. See Dkt. 74-1. Indeed, federal law prohibits DCS from issuing any reimbursements related to the activity of Superior Court judges. 45 C.F.R. § 304.21. Moreover, these reimbursements are entirely unrelated to the outcome of any commissioner case on the Title

IV-D docket, but are instead related to the time and resources dedicated to those cases. Dkt. 72 at 2; Dkt. 73 at 3–4.

Plaintiff has failed to provide any evidence, or even a cognizable theory, as to how DCS reimbursements had any effect on the impartiality of the tribunal presiding over his dissolution proceedings. Accordingly, Plaintiff has failed to show any unlawful deprivation of his rights and his constitutional claims must fail.

4. “Noncustodial Parent” Designation

Finally, the Court dismisses Plaintiff’s challenge of his designation as a “noncustodial parent” under Title IV-D.

Plaintiff argues that his designation as a “noncustodial parent” violates federal law. Specifically, Plaintiff argues that “only parents guilty of a heinous crime resulting in them losing legal rights of parental custody can be considered a federal noncustodial parent under Title IV-D,” and it is therefore wrong for DSHS to label him as a “noncustodial parent” as the result of court-ordered child support payments. Dkt. 86 at 2 (citing Dkt. 40 at 8–12). Therefore, Plaintiff argues, because “[n]o State Court had adjudicated Plaintiff to be a ‘noncustodial parent’ . . . , DSHS incorrectly applied that apparent quasi-criminal federal classification” and he cannot be designated as a “noncustodial parent” for the purposes of Title IV-D. Dkt. 58 at 5.

However, contrary to Plaintiff’s contentions, the Clark County Superior Court specifically designated LaShandre as the “custodian of the children solely for purposes of all other state and federal statutes which require a designation or determination of custody.” Dkt.

74-1 at 9. Because LaShandre was designated as the custodial parent for the purposes of federal laws such as Title IV-D, Plaintiff is necessarily the noncustodial parent. To challenge this designation by the Superior Court, Plaintiff must seek review or amendment of the parenting plan entered by the Clark County Superior Court, which review he cannot seek here. See *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007); *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003).

5. Housekeeping

Defendants have raised numerous other arguments to assert their entitlement to summary judgment, including (but not limited to) arguments on Eleventh Amendment immunity and judicial immunity. Because the Court has already concluded that Plaintiff's claims must be dismissed for the reasons stated above, it need not consider these additional arguments.

IV. ORDER

Therefore, it is hereby **ORDERED** that Lashway's cross-motion for summary judgment (Dkt. 82) and Clark County Defendants' cross-motion for summary judgment (Dkt. 76) are **GRANTED** and Plaintiff's claims are **DISMISSED**. Plaintiff's motions for default judgment (Dkt. 68) and summary judgment (Dkts. 58, 68) are **DENIED**.

The Clerk shall enter judgment in favor of the defendants and close this case.

Dated this 30th day of October, 2017.

s/ Benjamin H. Settle
BENJAMIN H. SETTLE
United States District Judge

APPENDIX C

**UNITED STATES DISTRICT COURT WESTERN
DISTRICT OF WASHINGTON AT TACOMA**

MICHAEL S. BENT,
Plaintiff, **CASE NO. C16-5916BHS**

v. **ORDER GRANTING**
 DEFENDANT'S MOTION

PATRICIA LASHWAY, **FOR A MORE DEFINITE**
 STATEMENT AND
 DEFENDANT'S MOTION
Respondent. **TO DISMISS**

This matter comes before the Court on Defendant Patricia Lashway's ("Lashway") motion for a more definite statement (Dkt. 24) and Defendant Mark Greenberg's¹ ("Greenberg") motion to dismiss (Dkt. 25). The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby grants the motions for the reasons stated herein.

I. PROCEDURAL HISTORY

On October 31, 2016, Plaintiff Michael Bent ("Bent") filed a complaint against Lashway, individually, and in her official capacity as Acting Secretary of the Washington Department of Social and Health Services ("DSHS"); Greenberg individually, and in his official

¹ On January 21, 2017, Naomi Goldstein ("Goldstein") replaced Greenberg as the Acting Assistant Secretary for the Administration for Children and Families (ACF) under the U.S. Department of Health and Human Services (HHS). Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Goldstein, in her official capacity, is automatically substituted for Greenberg in his former official capacity.

capacity as Acting Assistant Secretary for the Administration for Children and Families (“ACF”); Mark McCauley in his official capacity as Manager and CEO of Clark County; and Greg Kimsey in his official capacity as Clark County Auditor. Dkt. 1. Bent asserts numerous claims based on the theory that “Lashway inappropriately steers Federal Incentive grant awards to Clark County with intention to bias custodial arrangement in fragmented families.” *Id.*, ¶ 25. On January 3, 2017, Lashway filed a motion for a more definite statement (Dkt. 24) and Greenburg filed a motion to dismiss (Dkt. 25). On January 16, 2017, Bent responded to Lashway’s motion. Dkt. 27. On January 18, 2016, Bent responded to Greenburg’s motion. Dkt. 29. On January 20, 2017, Lashway replied. Dkt. 30. On February 3, 2017, Goldstein replied. Dkt. 31.

II. DISCUSSION

A. More Definite Statement

Federal Rule of Civil Procedure 12(e) provides that “[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e). Federal Rule of Civil Procedure 9(b) provides that, “[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b).

In this case, Lashway’s primary contentions are that Bent’s complaint fails to plead fraud with particularity and fails to provide sufficient allegations to form an appropriate response. Dkt. 24. The Court agrees with the former argument, which is sufficient to grant the motion. Even though Bent’s claims assert

violations of his constitutional rights, if “the claim is said to be ‘grounded in fraud’ or to ‘sound in fraud,’ . . . the pleading of that claim as a whole must satisfy the particularity requirement of Rule 9(b).” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103–04 (9th Cir. 2003). Bent alleges that Lashway submitted “false claims” and fraudulently misrepresented that Bent had “abandoned his children, leaving them in need of support or care.” Dkt. 1, ¶¶ 84, 86. Bent, however, fails to provide “‘the who, what, when, where, and how’ of the misconduct charged.” *Vess*, 317 F.3d at 1106 (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)). Moreover, Bent “must set forth more than the neutral facts necessary to identify the transaction. The plaintiff must set forth what is false or misleading about a statement, and why it is false.” *Id.* (quoting *Decker v. GlenFed, Inc. (In re GlenFed, Inc. Sec. Litig.)*, 42 F.3d 1541, 1548 (9th Cir. 1994)). Accordingly, the Court grants Lashway’s motion because Bent has failed to provide sufficient notice of the alleged fraudulent misrepresentations and false claims.

B. Motion to Dismiss

Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the complaint is construed in the plaintiff’s favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed factual allegations but must provide the grounds for entitlement to relief and not

merely a “formulaic recitation” of the elements of a cause of action. *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007). Plaintiffs must allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 1974.

In this case, Goldstein moves to dismiss both the official capacity and individual capacity claims. First, Goldstein argues that Bent’s Administrative Procedures Act (“APA”) and 42 U.S.C. § 1983 claims must be dismissed because the Court lacks jurisdiction over both claims. Dkt. 25. The Court agrees. “[S]ection 1983 only provides a remedy against persons acting under color of state law.” *Ibrahim v. Dep’t of Homeland Sec.*, 538 F.3d 1250, 1257 (9th Cir. 2008). Goldstein does not act under authority of state law. Similarly, the APA provides for judicial review of “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704. Even if Bent could identify some final agency action, he has failed to show that he has no other adequate remedy in court. For example, he has petitioned the Supreme Court for a writ of certiorari on the removal of his concurrent state action. Either that Court instructs this Court to address the issues on the merits or it would seem that Bent could appeal the state trial court decision through the state appellate courts. Accordingly, the Court grants Goldstein’s motion on the official capacity claims.

Second, Bent’s individual capacity claims fail as well. Bent has failed to show that he properly served Greenberg in his individual capacity, and, even if he did perfect service, Bent may not assert an APA claim against an official in his or her individual capacity. See, e.g., *Rogers v. U.S. Parole Comm’n*, CIV. 10-1179-TC,

2011 WL 4544633, at *2 (D. Or. Aug. 11, 2011), report and recommendation adopted, CIV. 10- 1179-TC, 2011 WL 4547957 (D. Or. Sept. 29, 2011) (citing 5 U.S.C. § 703). Accordingly, the Court grants Goldstein's motion on the individual claims.

III. ORDER

Therefore, it is hereby ORDERED that Lashway's motion for a more definite statement (Dkt. 24) and Goldstein's motion to dismiss (Dkt. 25) are GRANTED.

Bent may file an amended complaint consistent with this order no later than March 3, 2017. Failure to file a complaint or otherwise respond will result in DISMISSAL of his claims against Lashway.

The Clerk shall terminate Greenberg and Goldstein.

Dated this 22nd day of February, 2017.

s/ Benjamin H. Settle
BENJAMIN H. SETTLE
United States District Judge

APPENDIX D

**UNITED STATES DISTRICT COURT WESTERN
DISTRICT OF WASHINGTON AT TACOMA**

MICHAEL S. BENT,
Plaintiff, **CASE NO. C16-5916BHS**

v.

PATRICIA LASHWAY, **ORDER ON REVIEW OF**
et al., **REFUSAL TO RECUSE**
Respondent.

Plaintiff has filed a "Verified Complaint for Declaratory, Injunctive and Compensatory Relief" which was assigned to the Honorable Benjamin H. Settle of this District. Dkt. #1. Concurrently with his Complaint, Plaintiff filed a Motion for Recusal. Dkt. #3. In that motion, Plaintiff alleges the fact that the Defendant Lashway and the presiding judge are both members of the Washington State Bar Association ("WSBA") creates an appearance of partiality requiring the recusal of Judge Settle (and any judicial officer who is a member of the WSBA). *Id.* at 2. Judge Settle has declined to recuse himself and the matter has been referred to this Court in accordance with our Local Rules. Dkt. #17; LCR 3(e).

This Court concurs with Judge Settle: common membership in a state bar association between members of the bench and members of the bar creates

neither the appearance nor the reality of bias or impartiality. The legal process would grind to a halt if an out-of-state judge were required for every lawsuit where counsel and the presiding judge were members of the same bar association. Tellingly, Plaintiff cites no cases where recusal has been required under such circumstances.

Plaintiff also appears to be under the impression that the federal courts are compelled to enter into "financial agreements" with the Washington Department of Social and Health Services ("DSHS") (see *id.* at 1-2; "appropriate courts' must accept financial agreement by order of 42 U.S.C. § 654(7)") and that this "enables [Defendant Lashway] to compromise any court she desires." *Id.* at 1. Suffice it to say that this Court does not understand this to be the mandate of the federal statutory scheme and that no impartiality or bias arises therefrom. Neither the judges of the federal bench nor the federal courts themselves derive any financial benefit from any arrangement with Washington DSHS, nor has Plaintiff cited any actual evidence of same.

Pursuant to 28 U.S.C. § 455(a), a judge of the United States shall disqualify himself in any proceeding in which his impartiality "might reasonably be questioned." Federal judges also shall disqualify themselves in circumstances where they have a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C. § 455(b)(1).

Under both 28 U.S.C. §144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate if "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be

questioned." *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th Cir.1993). This is an objective inquiry concerned with whether there is the appearance of bias, not whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th Cir.1992); *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). But there must be a reasonable basis upon which to question a judge's ability to be impartial.

The Court finds no evidence upon which to reasonably question Judge Settle's impartiality and **AFFIRMS** his denial of Plaintiff's request that he recuse himself.

The Clerk **SHALL** provide copies of this Order to Plaintiff and all counsel of record.

Dated this 7th day of December, 2016.

s/ Ricardo S. Martinez
RICARDO S. MARTINEZ
Chief United States District Judge

APPENDIX E

**UNITED STATES DISTRICT COURT WESTERN
DISTRICT OF WASHINGTON AT TACOMA**

MICHAEL S. BENT, Plaintiff,	CASE NO. C16-5916BHS
v.	ORDER DECLINING TO VOLUNTARILY RECUSE AND REFERRING MOTION TO CHIEF JUDGE
PATRICIA LASHWAY, et al., Respondent.	

This matter comes before the Court on Plaintiff Michael S. Bent's ("Bent") motion for recusal. Dkt. 3. On October 31, 2016, Bent filed a complaint against Defendants Mark Greenberg, Greg Kimsey, Patricia Lashway ("Lashway"), and Mark McCauley alleging that the federal government pays unconstitutional incentives to state courts. Dkt. 1. Bent also filed a motion for recusal asserting that Lashway is a member of the Washington State Bar Association ("WSBA") and arguing that it would appear impartial if a judge who is also a WSBA member presides over the proceeding. Dkt. 3.

Whenever a motion to recuse directed at a judge of this court is filed pursuant to 28 U.S.C. § 144 or 28 U.S.C. § 455, the challenged judge will review the motion papers and decide whether to recuse voluntarily. If the challenged judge decides not to voluntarily recuse,

he or she will direct the clerk to refer the motion to the chief judge, or the chief judge's designee. Local Rules, W.D. Wash. LCR 3(e).

Regarding the merits, "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Preston v. United States*, 923 F.2d 731, 733 (9th Cir. 1991) (quoting 28 U.S.C. § 455(a)).

The Court disagrees with Bent that membership in the state bar establishes an appearance of bias. Thousands of attorneys and hundreds of state court judges are members of the WSBA and maintaining such a membership with parties to a case does not create actual or apparent conflicts. Absent evidence establishing or tending to establish impartiality, the Court declines to recuse. Accordingly, the Court will refer the motion to the chief judge for further consideration.

IT IS SO ORDERED.

Dated this 5th day of December, 2016.

s/ Benjamin H. Settle
BENJAMIN H. SETTLE
United States District Judge

APPENDIX G

[Redacted]

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
DIVISION OF CHILD SUPPORT (DCS)
Noncustodial Parent Information Update / Request

TO: BENT MICHAEL ST'GEORGE
XXXXXXXXXXXXXXXXXXXX
VANCOUVER WA 98684-XXXX

RE: LASHANDRE NICHELE BENT
CASE NUMBER: XXX4616

The Division of Child Support (DCS):

1. Is providing information to you about your child support case. See the remarks section below.
2. Needs information from you about your child support case. See the remarks section below. If appropriate, use page 2 for your response. Provide DCS the information before _____.

Remarks:

Your child support case has been adjusted per the Final Order of Child Support filed 12/15/2016. The Order changed ongoing support from \$808.37 to \$808.36 effective 10/2016.

The order also changed support from \$808.37 to \$969.99 for August and September 2016.

These changes resulted in a past-due support debt of \$412.46. A copy of the debt calculation is

attached for your review and records. Please contact me if you have any questions or concerns. Thank you.

If you have questions, contact Nicholas Roark 360 664-6861 at the address or telephone numbers listed below.

December 22, 2016
DATE

N ROARK
AUTHORIZED
REPRESENTATIVE
DIVISION OF CHILD
SUPPORT

DIVISION OF CHILD SUPPORT
PO BOX 11520
TACOMA WA 98411-5520

Within Olympia calling area (360) 664-6900
Outside Olympia calling area (800) 345-9964

APPENDIX H

[Redacted]

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
DIVISION OF CHILD SUPPORT (DCS)
Noncustodial Parent Information Update / Request

TO: BENT MICHAEL ST'GEORGE
XXXXXXXXXXXXXXXXXXXX
VANCOUVER WA 98684-XXXX

RE: LASHANDRE NICHELE BENT
CASE NUMBER: XXX4616

The Division of Child Support (DCS):

1. Is providing information to you about your child support case. See the remarks section below.
2. Needs information from you about your child support case. See the remarks section below. If appropriate, use page 2 for your response. Provide DCS the information before _____.

Remarks:

Per 10/10/14 Order of Child Support: Child Support for [Child 2] increases to \$803.37 per month beginning 10/1/16 and per 10/10/14 Decree of Dissolution: Maintenance decreases to \$1500 per month beginning 10/1/16. Total obligation effective 10/1/2016= \$2,303.37.

If you have questions, contact Nicholas Roark 360 664-6861 at the address or telephone numbers listed below.

September 13, 2016
DATE

N ROARK
AUTHORIZED
REPRESENTATIVE
DIVISION OF CHILD

SUPPORT

DIVISION OF CHILD SUPPORT

PO BOX 11520

TACOMA WA 98411-5520

Within Olympia calling area (360) 664-6900

Outside Olympia calling area (800) 345-9964

DEBT CALCULATION

(Running Balance, No Certification)

State of Washington Division of Child Support

10/3/2016 9:42:21 AM

DCS Olympia PO Box 11520 Tacoma, WA 98411

(360) 664-6900 / 1-800-345-9964

Assigned SEO: N. Roark

Completed by: N. Roark

IV-D Case#: XXX4616

NCP: Bent, Michael St George

CP: Bent, Lashandre Nichele

Month	Order	Amount	Monthly	Running
	Amount	Paid	Debt	Balance

Comment:

Per Temporary Order filed 6/21/2013 in the Superior Court of Washington, Clark County, No. 13-3-01210-1: Child support \$5000 per month beginning 6/15/2013.

06/2013	\$5,000	\$0	\$5,000	\$5,000
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Comment:

7/8/2013 \$2500 payment per 18-433

7/15/2013 \$732 payment per 18-433

07/2013	\$5,000	\$3,232	\$1,768	\$6,768
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Comment:

8/1/2013 \$2500 payment per 18-433

8/1/2013 \$4646 payment per 18-433

08/2013 \$5,000 \$7,146 (\$2,146) \$4,622

Comment:

Per Email dated 9/16/2013 from CP. NCP current through 9/16/2013. CF Adjusted.

09/2013 \$5,000 \$9,622 (\$4,622) \$0

Comment:

Per Email from Custodial Parent sent 11/8/2013. NCP made two \$2500 payment on 10/1/2013 \$5000 total payment for 10/2013.

10/2013 \$5,000 \$5,000 \$0 \$0

Comment:

Per Order From October 18, 2013 Hearing, filed 11/1/2013. Temp Order remains in full effect with addition that ~CP shall reimburse CP \$100 per month for children's cell phone use. CF adjusted to \$5100/mo effective 11/1/2013.

11/2013 \$5,100 \$0 \$5,100 \$5,100

12/2013 \$5,100 \$5,100 \$0 \$5,100

01/2014 \$5,100 \$10,200 (\$5,100) \$0

02/2014 \$5,100 \$5,100 \$0 \$0

03/2014 \$5,100 \$5,100 \$0 \$0

04/2014 \$5,100 \$5,100 \$0 \$0

05/2014 \$5,100 \$5,100 \$0 \$0

06/2014 \$5,100 \$5,100 \$0 \$0

07/2014 \$5,100 \$5,100 \$0 \$0

08/2014 \$5,100 \$5,100 \$0 \$0

09/2014 \$5,100 \$5,100 \$0 \$0

Comment:

Per Order of Child Support filed 10/10/14 in the Superior Court of Washington, Clark County, No. 13-3-01210-1: Child support for [Child 1] & [Child 2] \$1436.92 per month from 10/14-9/15. Increases to

\$1527.49 10/15-9/16. Increases to \$1616.73 10/16-9/17.

Per Divorce Decree filed 10/10/2014 in the Superior Court of Washington, Clark County, No. 13-3-01210-1: Spousal Maintenance \$2500/month 10/14 through 9/15. Decreases to \$2000/month 10/15 through 9/16. Decreased to \$1500 per month 10/16 through 9/2017.

10/2014	\$3,937	\$3,937	\$0	\$0
11/2014	\$3,937	\$3,937	\$0	\$0
12/2014	\$3,937	\$3,937	\$0	\$0
01/2015	\$3,937	\$3,937	\$0	\$0
02/2015	\$3,937	\$3,937	\$0	\$0
03/2015	\$3,937	\$3,937	\$0	\$0
04/2015	\$3,937	\$3,937	\$0	\$0
05/2015	\$3,937	\$3,937	\$0	\$0
06/2015	\$3,937	\$3,937	\$0	\$0
07/2015	\$3,937	\$3,937	\$0	\$0
08/2015	\$3,937	\$3,937	\$0	\$0
09/2015	\$3,937	\$3,937	\$0	\$0

Comment:

Per Order of Child Support filed 10/10/14 in the Superior Court of Washington, Clark County, No.13-3-01210-1: Child support for [Child 1] & [Child 2] increases to \$1527.49 10/15-9/16. Per Divorce Decree filed 10/10/2014 in the Superior Court of Washington, Clark County, No.13-3-01210-1: Spousal Maintenance decreases to \$2000/month 10/15 through 9/16. Combined Obligation: \$3527.49

10/2015	\$3,527	\$3,527	\$0	\$0
11/2015	\$3,527	\$3,527	\$0	\$0
12/2015	\$3,527	\$3,527	\$0	\$0
01/2016	\$3,527	\$3,527	\$0	\$0
02/2016	\$3,527	\$3,527	\$0	\$0

03/2016	\$3,527	\$3,527	\$0	\$0
04/2016	\$3,527	\$3,527	\$0	\$0
05/2016	\$3,527	\$3,527	\$0	\$0
06/2016	\$3,527	\$3,527	\$0	\$0
07/2016	\$3,527	\$3,527	\$0	\$0

Comment:

Dependent child, [Child 1] emancipated 7/10/16.
Ongoing support for [Child 2] \$763.75/mo; plus
\$2000/mo maintenance= \$2763.75/mo total
obligation.

08/2016	\$2,764	\$2,764	\$0	\$0
09/2016	\$2,764	\$2,764	\$0	\$0

Comment:

Per 10/10/14 Order of Child Support: CS for [Child 2]
increases to \$808.37 per month beginning 10/1/16
through 9/30/17 and Per 10/10/14 Decree of
Dissolution: Maintenance decreases to \$1500 per
month beginning 10/1/16 through 9/17 =
\$2,308.37/mo total obligation effective) 0/1/2016.

10/2016	\$2,308	\$0	\$2,308	\$2,308
Totals	\$171,454	\$169,145	\$2,308	

APPENDIX I

**SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK**

In the Matter of the Marriage of: LA SHANDRE BENT, Petitioner	Case No. 13-3-01210-1
and MICHAEL ST. GEORGE BENT, (QDRO- Respondent.	ORDER HP 401(k))

This Order is intended to be a Qualified Domestic Relations Order ("QDRO") as defined in Section 206(d) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and Section 414(p) of the Internal Revenue Code of 1986, as amended (the "Code").

ORDER

SECTION 1:

REQUIRED BACKGROUND INFORMATION

A. Identification of the Plan

This Order applies to benefits under the Hewlett-Packard Company 401(k) Plan (the "Plan").

B. Identification of Participant

1. Participant's Name: Michael Bent
2. Mailing Address: 16506 SE 29th Street, Apt. K-91 Vancouver, WA 98683
3. Participant will keep the Plan advised at all times of Participant's current mailing address.

C. Identification of Alternate Payee

1. Alternate Payee's Name: La Shandre Bent

2. Mailing Address:

PO Box 970502 Boca Raton, FL 33497

3. Alternate Payee will keep the Plan advised at all times of Alternate Payee's current mailing address.

D. Alternate Payee's Beneficiary

Alternate Payee may designate a beneficiary at any time following entry of this Order by following the Plan's beneficiary designation procedures. If Alternate Payee fails to make a valid beneficiary designation or if Alternate Payee's designated beneficiary is not living when any payment is to be made on Alternate Payee's behalf, then payment will be made in equal shares to Alternate Payee's survivor(s) in the first surviving class among the following: (1) spouse (including domestic partner as defined by the Plan), (2) children, (3) parents, (4) brothers and sisters, and (5) estate.

E. Statement of Confidential Information

The Social Security number and date of birth of Participant and Alternate Payee must be entered on a separate form supplied by the Plan entitled "Statement of Confidential Information." The form must be completed and returned to the Plan's QDRO administrator at the address listed on the form with a copy of this Order, or as soon as possible thereafter. This information is required for tax and identification purposes. The form is not a public record and must not be filed as part of these proceedings.

SECTION 2:

**DETERMINATION OF ALTERNATE PAYEE'S
COMMUNITY / MARITAL PROPERTY INTEREST IN
PARTICIPANT'S BENEFIT**

A. The Court finds that during all or a portion of the period from the commencement of Participant's participation in the Plan to the date of dissolution of the parties' marriage on October 10, 2014, Participant earned Plan benefits that are property of Participant and Alternate Payee, subject to division by this court.

B. In satisfaction of Alternate Payee's community/marital property interest, the Court awards Alternate Payee, as Alternate Payee's sole and separate property, 50% Participant's total account balance in the Plan as of June 10, 2013 (or the nearest valuation date if the account cannot be valued on June 10, 2013) (the "Determination Date"), plus the earnings, gains or losses on Alternate Payee's award accruing from the Determination Date to the valuation date closest to the date of distribution to Alternate Payee will be made (the total amount shall hereinafter be referred to as "Alternate Payee's Interest"). The calculation of earnings, gains or losses will be determined in accordance with the Plan's procedures.

C. Earnings transferred to the Alternate Payee will be calculated using the following formula:

Total Earnings* X Alternate Payee's Award
Participant's vested account balance as of
June 10, 2013 plus contributions and loan
repayments, less any withdrawals and loans
posted between June 10, 2013 and the date of
transfer.

* Total Earnings = Total Interest + Total Dividends + Total Realized Gain/Loss + Total Unrealized Gain/Loss

D. As soon as administratively practicable following the date the Plan administrator determines that this Order is a QDRO, Alternate Payee's Interest will be handled as follows:

The Plan administrator will establish a separate account for Alternate Payee's Interest in accordance with the Plan's QDRO procedures.

Alternate Payee may direct the investment of his separate account in accordance with the rules applicable to investments under the Plan. However, until a separate account is established, Alternate Payee's Interest will remain subject to the same investment options as elected by Participant.

The Plan will pay Alternate Payee's Interest to Alternate Payee as soon as administratively practicable following the date Alternate Payee elects a distribution in accordance with the Plan's procedures.

The Alternate Payee may elect to receive Alternate Payee's Interest in any form in which such benefit may be paid under the Plan to the Participant (other than in the form of a joint and survivor annuity with respect to Alternate Payee and his or her subsequent spouse).

If Participant had an outstanding loan balance under the Plan as of June 10, 2013, Alternate Payee's assigned share of the benefits will be calculated after the loan balance is subtracted from the total account balance as of June 10, 2013. In no event will Alternate Payee receive an amount that is greater than Participant's non-loan account balance.

E. If Alternate Payee dies before receiving Alternate Payee's Interest, then Alternate Payee's Interest will be distributed to Alternate Payee's beneficiary in accordance with the terms of this Order and the Plan.

SECTION 3:

DETERMINATION OF PARTICIPANT'S BENEFIT

Participant is entitled to (i) the remainder of the Participant's account balance as of the valuation date closest to the Determination Date, plus any investment earnings, gains or losses thereon accruing after the Determination Date, and (ii) one-hundred percent (100%) of any contributions or forfeitures allocable to Participant under the Plan after the Determination Date, plus any investment earnings, gains or losses thereon.

SECTION 4:

GENERAL PROVISIONS

A. Interpretation of Order

This Order will not be construed to:

Provide to Alternate Payee any type or form of benefit, or any option, otherwise provided under the Plan;

Provide a benefit to Alternate Payee which could have the effect of increasing Participant's total accrued benefit; and

Provide Plan benefits to Alternate Payee that are required to be paid to another alternate payee under another order previously determined to be enforceable against the Plan.

B. State Law

This Order is made pursuant to the domestic relations law of the State of Washington, including RCW 26.09.010 et seq.

C. Participant's Cooperation Required

Participant must cooperate fully with Alternate Payee and the Plan to carry out the conditions of this Order.

D. Correcting or Terminating Payments

1. The Plan will retain any rights it may have under its terms to suspend or terminate payments to Alternate Payee and Participant provided that either Participant or Alternate Payee may contest such suspension or termination through any administrative remedies available under the Plan.

2. Payments by the Plan pursuant to this Order will be without prejudice to any right the Plan has under applicable law to seek recoupment or offset for overpayment.

3. If the Plan pays one party a portion of the other party's benefits under the Plan and this Order, the party receiving the overpayment will return that portion to the Plan, which in turn, will pass that portion on to the other Party.

E. Participant's Beneficiary

This Order does not revoke or affect in any way any prior beneficiary designation made by Participant on file with the Plan. Following entry of this Order, Participant may designate a beneficiary, including Alternate Payee, or revoke any beneficiary designation with respect to benefits payable under the Plan without Alternate Payee's consent, in accordance with the Plan's beneficiary designation procedures.

F. Effect of Plan Changes

If changes in the terms of the Plan prevent the Plan from making any payment expressly provided for in this Order, the Plan is authorized to interpret the Order in a manner that is consistent with this Order and the Plan as changed. Any such interpretation by the Plan is subject to review by the Court in accordance with Section 5 by petition of either party.

G. Plan Loans

Alternate Payee is not eligible to take a loan from the Plan. Once Alternate Payee's Interest is segregated by the Plan administrator, such amount will not be treated as Participant's benefits for any purpose under the Plan's loan provisions.

H. QDRO Processing Fee

Participant will be charged a \$300 QDRO processing fee for this QDRO. This fee will be assessed against the Participant's account balance at the time the initial paperwork is submitted to QDRO Consultants.

(remainder of this page intentionally left blank)

SECTION 5:

RESERVATION OF JURISDICTION

The Court reserves jurisdiction over this asset to make such further orders as are appropriate to enforce or clarify the provisions of Sections 1 through 4.

DATED this 16 day of July , 2015.

_____/s/ Liebman,
D _____

SUPERIOR COURT JUDGE/COMMISSIONER

Presented by:

/s/ Foster, T.

Foster, T.

Attorney for Petitioner

APPENDIX J
CONSTITUTION PROVISIONS

U.S. Constitution amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution amendment XIV § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Passed by Congress June 13, 1866. Ratified July 9, 1868.)

APPENDIX K

FEDERAL STATUTES AND AGENCY REGULATIONS

5 U.S.C. § 701—

Application; definitions provides in pertinent part:

(a) This chapter applies, according to the provisions thereof, except to the extent that—

- (1) statutes preclude judicial review; or
- (2) agency action is committed to agency discretion by law.

5 U.S.C. § 702—

Right of review provides in pertinent part:

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

5 U.S.C. § 704—

Actions reviewable provides in pertinent part:

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.

26 U.S.C. § 401. Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section

...
(27) DETERMINATIONS AS TO PROFIT-SHARING PLANS.—

(B) PLAN MUST DESIGNATE TYPE.—In the case of a plan which is intended to be a money purchase pension plan or a profitsharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designates such intent at such time and in such manner as the Secretary may prescribe.

//

(k) Cash or deferred arrangements

//

(2) Qualified cash or deferred arrangement

A qualified cash or deferred arrangement is any arrangement which is part of a profit sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)—

(A) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election—

(i) may not be distributable to participants or other beneficiaries earlier than—

(I) severance from employment, death, or disability,

(II) an event described in paragraph (10),

(III) in the case of a profit-sharing or stock bonus plan, the attainment of age 59½,

(IV) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies, upon hardship of the employee, or

(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and

(ii) will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years;

(C) which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election is nonforfeitable, and

(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof).

//

(9) Compensation

For purposes of this subsection, the term "compensation" has the meaning given such term by section 414(s).

//

(11) Adoption of simple plan to meet nondiscrimination tests

(A) In general

A cash or deferred arrangement maintained by an eligible employer shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement meets—

(i) the contribution requirements of subparagraph (B),

(ii) the exclusive plan requirements of subparagraph (C), and

(iii) the vesting requirements of section 408(p)(3).

(B) Contribution requirements

(i) In general

The requirements of this subparagraph are met if, under the arrangement—

(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds the amount in effect under section 408(p)(2)(A)(ii),

(II) the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (I) as does not exceed 3 percent of compensation for the year, and

28 U.S.C. § 455 - Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. § 1254 Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. § 1331 Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1447 - Procedure after removal

generally, provides in pertinent part:

(c) A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

29 U.S.C. § 1056. Form and payment of benefits

(a) Commencement date for payment of benefits

Each pension plan shall provide that unless the participant otherwise elects the payment of benefits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which—

(1) occurs the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan

(2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan or

(3) the participant terminates his service with the employer.

//

(c) Forfeiture of accrued benefits derived from employer contributions

No pension plan may provide that any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable) is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply (1) to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit, or (2) to the extent that an accrued benefit is permitted to be forfeited in accordance with section 1053(a)(3)(D)(iii) of this title.

(d) Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

//

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term “qualified domestic relations order” means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate

payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan

//

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

//

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined.

42 U.S.C. § 602—(Pre-1996 revision)

State plans for aid and services to needy families with children; contents; approval by Secretary; records and reports; treatment of earned income advances, provides in pertinent part:

(a) Contents: A State plan for aid and services to needy families with children must—

(11) provide for prompt notice (including the transmittal of all relevant information) to the State child support collection agency (established pursuant to part D of this subchapter) of the furnishing of aid to families with dependent children with respect to a child who has been deserted or abandoned by a parent (including a child born out of wedlock without regard to whether the paternity of such child has been established);

42 U.S.C. § 606—(Pre-1996 revision)

Definitions provides in pertinent part:

(a) The term “dependent child” means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home (other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States)

42 U.S.C. § 651. Authorization of appropriations

For the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living, locating noncustodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for assistance under a State program funded under part A of this subchapter) for whom such

assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

42 U.S.C. § 653. Federal Parent Locator Service

(a) Establishment; purpose

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(2) For the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations, the Federal Parent Locator Service shall obtain and transmit to any authorized person specified in subsection (c)— (A) information on, or facilitating the discovery of, the location of any individual— (i) who is under an obligation to pay child support; (ii) against whom such an obligation is sought; (iii) to whom such an obligation is owed; or (iv) who has or may have parental rights with respect to a child, including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer; (B) information on the individual's wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); and (C) information on the type, status, location, and amount of any assets of, or debts owed by or to, any such individual.

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42 U.S.C. § 653a. State Directory of New Hires

(g) Transmission of information

(1) Transmission of wage withholding notices to employers Within 2 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the

State agency enforcing the employee's child support obligation shall transmit a notice to the employer of the employee directing the employer to withhold from the income of the employee an amount equal to the monthly (or other periodic) child support obligation (including any past due support obligation) of the employee, unless the employee's income is not subject to withholding pursuant to section 666(b)(3) of this title.

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(h) Other uses of new hire information

(1) Location of child support obligors The agency administering the State plan approved under this part shall use information received pursuant to subsection (f)(2) to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations, and may disclose such information to any agent of the agency that is under contract with the agency to carry out such purposes.

42 U.S.C. § 654 - State plan for child and spousal support

(7) [A State plan must] provide for entering into cooperative arrangements with appropriate courts and law enforcement officials ...

(A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and

(B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

42 U.S.C. § 655(a) - Amounts payable each quarter:

- (1) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter an amount — (A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 654 of this title,
- (2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is — ... (C) 66 percent for fiscal year 1990 and each fiscal year thereafter.

42 U.S.C. § 658a(b) - Amount of incentive payment

(1) In general

The incentive payment for a State for a fiscal year is equal to the incentive payment pool for the fiscal year, multiplied by the State incentive payment share for the fiscal year.

(2) Incentive payment pool

(A) In general

In paragraph (1), the term “incentive payment pool” means—

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- (ix) \$483,000,000 for fiscal year 2008; and
- (x) for any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year, multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year.

(B) CPI

For purposes of subparagraph (A), the CPI for a fiscal year is the average of the Consumer Price Index for the 12-month period ending on September 30 of the fiscal year. As used in the preceding sentence,

the term "Consumer Price Index" means the last Consumer Price Index for all-urban consumers published by the Department of Labor.

(3) State incentive payment share

In paragraph (1), the term "State incentive payment share" means, with respect to a fiscal year—

(A) the incentive base amount for the State for the fiscal year; divided by

(B) the sum of the incentive base amounts for all of the States for the fiscal year.

(4) Incentive base amount

In paragraph (3), the term "incentive base amount" means, with respect to a State and a fiscal year, the sum of the applicable percentages (determined in accordance with paragraph (6)) multiplied by the corresponding maximum incentive base amounts for the State for the fiscal year, with respect to each of the following measures of State performance for the fiscal year:

(A) The paternity establishment performance level.

(B) The support order performance level.

(C) The current payment performance level.

(D) The arrearage payment performance level.

(E) The cost-effectiveness performance level.

(5) Maximum incentive base amount

(A) In general

For purposes of paragraph (4), the maximum incentive base amount for a State for a fiscal year is—

(i) with respect to the performance measures described in subparagraphs (A), (B), and (C) of paragraph (4), the State collections base for the fiscal year; and

(ii) with respect to the performance measures described in subparagraphs (D) and (E) of paragraph (4), 75

percent of the State collections base for the fiscal year.

(B) Data required to be complete and reliable

Notwithstanding subparagraph (A), the maximum incentive base amount for a State for a fiscal year with respect to a performance measure described in paragraph (4) is zero, unless the Secretary determines, on the basis of an audit performed under section 652(a)(4)(C)(i) of this title, that the data which the State submitted pursuant to section custodial parent (15)(B) of this title for the fiscal year and which is used to determine the performance level involved is complete and reliable.

(C) State collections base

For purposes of subparagraph (A), the State collections base for a fiscal year is equal to the sum of—

(i) 2 times the sum of—

(I) the total amount of support collected during the fiscal year under the State plan approved under this part in cases in which the support obligation involved is required to be assigned to the State pursuant to part A or E of this subchapter or subchapter XIX of this chapter; and

(II) the total amount of support collected during the fiscal year under the State plan approved under this part in cases in which the support obligation involved was so assigned but, at the time of collection, is not required to be so assigned; and

(ii) the total amount of support collected during the fiscal year under the State plan approved under this part in all other cases.

(6) Determination of applicable percentages based on performance levels

(A) Paternity establishment

(i) Determination of paternity establishment performance level

The paternity establishment performance level for a State for a fiscal year is, at the option of the State, the IV-D paternity establishment percentage determined under section 652(g)(2)(A) of this title or the statewide paternity establishment percentage determined under section 652(g)(2)(B) of this title.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's paternity establishment performance level is as follows:

If the paternity establishment performance level is:

At least: But less than: The applicable percentage is:

80%		100
//		
0%	50%	0.

Notwithstanding the preceding sentence, if the paternity establishment performance level of a State for a fiscal year is less than 50 percent but exceeds by at least 10 percentage points the paternity establishment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's paternity establishment performance level is 50 percent.

(B) Establishment of child support orders

(i) Determination of support order performance level

The support order performance level for a State for a fiscal year is the percentage of the total

number of cases under the State plan approved under this part in which there is a support order during the fiscal year.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's support order performance level is as follows:

If the support order performance level is:

At least: But less than: The applicable percentage is:

80% 100

//

0% 50% 0.

Notwithstanding the preceding sentence, if the support order performance level of a State for a fiscal year is less than 50 percent but exceeds by at least 5 percentage points the support order performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's support order performance level is 50 percent.

(C) Collections on current child support due

(i) Determination of current payment performance level The current payment performance level for a State for a fiscal year is equal to the total amount of current support collected during the fiscal year under the State plan approved under this part divided by the total amount of current support owed during the fiscal year in all cases under the State plan, expressed as a percentage.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's current payment performance level is as follows:

If the current payment performance level is:

At least: But less than: The applicable percentage is:

80%

100

//

0%

40%

0.

Notwithstanding the preceding sentence, if the current payment performance level of a State for a fiscal year is less than 40 percent but exceeds by at least 5 percentage points the current payment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's current payment performance level is 50 percent.

(D) Collections on child support arrearages

(i) Determination of arrearage payment performance level

The arrearage payment performance level for a State for a fiscal year is equal to the total number of cases under the State plan approved under this part in which payments of past-due child support were received during the fiscal year and part or all of the payments were distributed to the family to whom the past-due child support was owed (or, if all past-due child support owed to the family was, at the time of receipt, subject to an assignment to the State, part or all of the payments were retained by the State) divided by the total number of cases under the State plan in which there is past-due child support, expressed as a percentage.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's arrearage payment performance level is as follows:

If the arrearage payment performance level is:

At least: But less than: The applicable percentage is:

80% 100

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0% 40% 0.

Notwithstanding the preceding sentence, if the arrearage payment performance level of a State for a fiscal year is less than 40 percent but exceeds by at least 5 percentage points the arrearage payment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's arrearage payment performance level is 50 percent.

(E) Cost-effectiveness

(i) Determination of cost-effectiveness performance level

The cost-effectiveness performance level for a State for a fiscal year is equal to the total amount collected during the fiscal year under the State plan approved under this part divided by the total amount expended during the fiscal year under the State plan, expressed as a ratio.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's cost-effectiveness performance level is as follows:

If the cost-effectiveness performance level is:

At least: But less than: The applicable percentage is:

5.00 100

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0.00 2.00 0.

42 U.S.C. § 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

...

(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

(A) any refund of State income tax which would otherwise be payable to a noncustodial parent will be reduced, after notice has been sent to that noncustodial parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such noncustodial parent; (B) the amount by which such refund is reduced shall be distributed in accordance with section 657 of this title in the case of overdue support assigned to a State pursuant to section 608(a)(3) or 671(a)(17) of this title, or, in any other case, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and (C) notice of the noncustodial parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to

the State agency requesting the refund offset, and to the State agency enforcing the order.

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(10) REVIEW AND ADJUSTMENT OF SUPPORT ORDERS UPON REQUEST.—

(A) 3-YEAR CYCLE.—

(i) IN GENERAL.— Procedures under which every 3 years (or such shorter cycle as the State may determine), upon the request of either parent or if there is an assignment under part A of this subchapter, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved—

(I) review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(II) apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(III) use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.-

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(16) AUTHORITY TO WITHHOLD OR SUSPEND LICENSES.— Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses,

professional and occupational licenses, and recreational and sporting licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

42 U.S.C. § 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

45 C.F.R. § 260.30 What definitions apply under the TANF regulations?

The following definitions apply under parts 260 through 265 of this chapter:

Noncustodial parent means a parent of a minor child who:

- (1) Lives in the State; and
- (2) Does not live in the same household as the minor child.

45 C.F.R. § 303.35 Administrative complaint procedure.

(a) Each State must have in place an administrative complaint procedure, defined by the State, in place to allow individuals the opportunity to request an administrative review, and take appropriate action when there is evidence that an error has occurred or an action should have been taken on their case. This includes both individuals in the State and individuals from other States.

(b) A State need not establish a formal hearing process but must have clear procedures in place. The State must notify individuals of the procedures, make them available for recipients of IV-D services to use when requesting such a review, and use them for notifying recipients of the results of the review and any actions taken.

45 C.F.R. § 303.52 Pass-through of incentives to political subdivisions.

The State must calculate and promptly pay incentives to political subdivisions as follows:

- (a) The State IV-D agency must develop a standard methodology for passing through an appropriate share of its incentive payment to those political subdivisions of the State that participate in the

costs of the program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by those political subdivisions. In order to reward efficiency and effectiveness, the methodology also may provide for payment of incentives to other political subdivisions of the State that administer the program.

(b) To ensure that the standard methodology developed by the State reflects local participation, the State IV-D agency must submit a draft methodology to participating political subdivisions for review and comment or use the rulemaking process available under State law to receive local input.

APPENDIX L
STATE STATUTES AND AGENCY REGULATIONS

REVISED CODE OF WASHINGTON

RCW 26.09.285 Designation of custody for the purpose of other state and federal statutes.

Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time shall be deemed to be the custodian of the child for the purposes of such federal and state statutes.

RCW 26.16.125 Custody of children.

Henceforth the rights and responsibilities of the parents in the absence of misconduct shall be equal, and one parent shall be as fully entitled to the custody, control and earnings of the children as the other parent, and in case of one parent's death, the other parent shall come into full and complete control of the children and their estate.

RCW 74.04.011

Secretary's authority—Personnel.

The secretary of social and health services shall be the administrative head and appointing authority of the department of social and health services and he or she shall have the power to and shall employ such

assistants and personnel as may be necessary for the general administration of the department....

The authority vested in the secretary as appointing authority may be delegated by the secretary or his or her designee to any suitable employee of the department.

RCW 74.08.090

Rule-making authority and enforcement.

The department is hereby authorized to make rules and regulations not inconsistent with the provisions of this title to the end that this title shall be administered uniformly throughout the state, and that the spirit and purpose of this title may be complied with. The department shall have the power to compel compliance with the rules and regulations established by it. Such rules and regulations shall be filed in accordance with the Administrative Procedure Act, as it is now or hereafter amended, and copies shall be available for public inspection in the office of the department and in each county office.

WAC 388-14A-1000

The DSHS division of child support is the Title IV-D child support enforcement agency for the state of Washington.

(1) The division of child support (DCS) is the part of the department of social and health services that provides child support enforcement services for the state of Washington under Title IV-D of the federal Social Security Act. DCS acts as the Washington state support registry (WSSR) under chapter 26.23 RCW. ...

(5) DCS is responsible for the statewide administration of wage withholding under Title IV-D.

(6) DCS is the agency referred to in federal law as "the Title IV-D agency," and performs all duties assigned to the Title IV-D agency.

WAC 388-14A-1015

What laws regulate the actions of the division of child support?

(1) The following are the primary state and federal laws which apply to the division of child support (DCS):

(a) Title IV-D of the Social Security Act sets out the federal requirements for a state's support enforcement program.

(b) Title 45 of the Code of Federal Regulations contains the federal regulations regarding support enforcement programs.

(c) Chapter 26.23 RCW establishes the Washington state support enforcement program.

(2) Most state statutes governing DCS are found in Title 26 RCW and chapters 74.20 and 74.20A RCW.

(3) The Washington Administrative Code (WAC) contains the state regulations regarding the Washington state support enforcement program.

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?

"Noncustodial parent or NCP" means the natural or biological parent, adoptive parent, adjudicated parent, presumed parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. A parent is considered to be an NCP when for the majority of the time during the period for

which support is sought, the dependent child resided somewhere other than with that parent.

WAC 388-14A-1060 The division of child support cooperates with courts and law enforcement.

(1) The division of child support (DCS) is authorized to enter into cooperative arrangements and written agreements including financial arrangements with the appropriate courts and law enforcement officials (including Indian tribes) to assist DCS in administering the state plan for support enforcement.

(2) These cooperative arrangements include the investigation and prosecution of fraud related to paternity and child support.

(3) DCS shares the federal funds it receives under 42 U.S.C. 655 according to the cooperative and financial agreements.

(4) Any support payments that are made by a noncustodial parent (NCP) after DCS refers a case to a court or law enforcement official must be submitted to the Washington state support registry.

APPENDIX M

Child Support Federal Performance Incentives Frequently Asked Questions

What are performance incentive payments?

Incentives are amounts of money that the federal government pays to states for running an effective child support program, based on the provisions of 42 U.S.C. 658a.

How do states receive performance incentive payments?

- 1.) A state must pass an annual data reliability audit and review.
- 2.) Performance is measured in 5 key areas
 - a. paternity establishment
 - b. order establishment
 - c. collection on current support cases
 - d. cases paying towards arrears
 - e. cost effectiveness
- 3.) States are paid from a capped pool of incentive funds
- 4.) Any incentives a state receives must be reinvested in the state's child support program

Where does the money come from?

Funding for the incentive payments comes from the Federal Budget general fund. Although the law providing for incentive payments is found in the Social Security Act, social security tax payments do not fund the incentives. Social Security tax payments go to the Social Security trust fund which is a separate account.

How is the incentive amount determined?

The funds available for incentive payments are authorized and distributed according to Federal law. Federal law caps the total amount available for

distribution nationally and then sets the formula, including performance rates on each of the incentive measures, that determines the allocation to each state.

Is the incentive pool likely to grow?

Congress authorized fixed dollar amounts for the incentive payment pool through 2008. After that, the incentive pool is multiplied by the percentage increase in the consumer price index (CPI) between the two preceding years. For example, for fiscal year 2009, if the CPI increases by one percent between fiscal years 2007 and 2008, the incentive pool for 2009 would increase one percent over the 2008 incentive payment pool amount.

Why do county clerks share in incentive payments?

Federal rules require that states share incentive payments with political subdivisions that help them carry out the activities required under the state child support enforcement plan. Each state develops its own formula to determine the amount of money that is shared. In Washington the formula involves determining what percentage of court pleadings in a county relate to child support and what costs are involved in processing those pleadings. Counties submit monthly invoices to the state to claim payments.