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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 90 LCM-126

Date: August 15, 1990

Division: Legal Affairs

TO: Local District Commissioners

SUBJECT: Legal Assistance Program (LAP)
Survey - (IV-D)

ATTACHMENTS: LAP Survey
(Available on-line)

Social Services Law 111-b(9) authorizes the New York State Commissioner of Social Services to contract with not-for-profit agencies and legal services corporations to provide legal services to child support enforcement clients who are not in receipt of Aid to Dependent Children (ADC). These clients are hereinafter referred to as NPA IV-D clients. Effective October 20, 1988, the Department entered into contracts with Monroe County Legal Assistance Corp., Nassau/Suffolk Law Services Committee, Inc. and Neighborhood Legal Services, Inc. to provide such services in the following counties: Erie, Genesee, Livingston, Monroe, Nassau, Niagara, Ontario, Orleans, Seneca, Suffolk, Wayne, Wyoming and Yates.

The purpose of this program, commonly referred to as LAP (Legal Assistance Program), is to increase the legal services that are available to NPA IV-D clients, and to develop expertise in the delivery of legal services related to paternity establishment and child support enforcement. Pursuant to Title IV-D of the Social Security Act, states are required to provide child support enforcement services, including legal services when appropriate, to any custodial parent, regardless of income, who applies for such services. Failure to provide such services can result in federal fiscal penalties. This program is designed, at least in part, to discharge the State's obligation under federal law.

The contractors provide legal services only to those IV-D clients referred to them by the social services district child support enforcement units (CSEUs). The districts must continue to provide all child support enforcement services, other than legal services, to the clients. Such services include location of non-custodial parents, securing voluntary acknowledgments of paternity, issuance of income executions for enforcement purposes and certification for the tax refund offset process.

Because LAP funds are limited, LAP is not able to serve all NPA IV-D clients in the counties in which it operates. Therefore, the districts must determine which cases will be referred to LAP. The contractors have sought to establish a priority for case referrals whereby the districts would refer low income clients first. However, in two districts in which LAP operates, the districts took a different approach. One district took the position that since it could not refer all NPA IV-D cases to LAP, the only fair referral mechanism was a "first come, first served" basis. The other district referred NPA IV-D cases in which the NPA IV-D client had at one time been an ADC client. The latter district's reason for referring those cases to LAP is because such cases often present a conflict of interest for IV-D attorneys. The attorneys must represent the social services districts' interest in collecting child support arrears to offset public assistance paid on behalf of former clients while simultaneously representing the former ADC clients' interests in retaining or increasing support orders for current support.

It is not unusual for these two interests to be diametrically opposed. The American Bar Association issued Informal Opinion 89-1528 (June 5, 1989) in which it intimates that such situations present a conflict of interest for attorneys and, therefore, precludes them from representing both the district and the NPA IV-D client who is a former ADC recipient. This situation presents a unique challenge for districts which must provide legal representation to all NPA IV-D clients but which must, because of a potential conflict of interest in these cases, use extraordinary sources to do so. LAP may prove to be an appropriate and effective mechanism for providing services to NPA IV-D clients in such situations. To determine whether the Department should adopt a policy which would give such cases priority for referral to LAP, we hope that your answers to the attached survey will help us determine the degree to which such conflict of interest cases pose a problem and what preference you have for the types of cases which should be referred to LAP.

Date August 15, 1990

Trans. No. 90 LCM-126

Page No. 3

Accordingly, we would appreciate if you, or appropriate staff, would complete and return the attached survey by September 14, 1990, regardless of whether or not LAP services are currently available in your district. Responses received after September 14, 1990 may not be considered. If you have any questions or concerns, please feel free to contact Assistant Counsel Inez Maria Haettenschwiller at (518) 474-5790.

Susan V. Demers
Deputy Commissioner and
General Counsel

Attachment

DATA

1. _____ Number of open NPA IV-D cases in your district which are former ADC recipients and which require legal services.
2. _____ Number of cases in #1 in which the absent parent owes the agency child support arrears.
3. _____ Total number of open IV-D cases.

Priority of LAP Referrals

Please set forth your preference for which types of cases should receive priority for referral to LAP. Choices include, but are not limited to: cases which pose a conflict of interest for your IV-D attorneys; low income cases; first come, first served basis, cases which present issues of importance to many IV-D clients; etc.

1. _____
2. _____
3. _____
4. _____
5. _____

Additional Comments

If you have any questions or concerns, please feel free to contact Inez Maria Haettenschwiller at (518) 474-5790.

Return Survey To:
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