

**WISCONSIN DEPARTMENT OF CHILDREN AND FAMILIES  
Division of Family and Economic Security  
Bureau of Child Support**

**To: Child Support Directors  
Child Support Supervisors or Lead Workers  
Child Support Attorneys**

**From: Director  
Bureau of Child Support**

**CHILD SUPPORT  
BULLETIN**

**No.: 09-29**

**Date: 10/15/2009**

**Subject: CSA's Role, Reviewing and Approving of Stipulations**

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**Purpose**

The purpose of this bulletin is to address the child support agency and the child support attorney's role in reviewing and/or drafting stipulations in the following situations:

- Stipulations that address only custodial arrears
- Stipulations that waive future custodial arrears and/or interest
- Stipulations between the parties that deviate from the percentage of income standard
- Non-modifiable stipulations/stipulations for repayment of arrearages

**Background**

The parties and/or the circuit courts may request that a CSA review a stipulation in a IV-D case which involves only the forgiveness of custodial arrears. Wisconsin mandatory court Form FA-604, the Stipulation and Order to Change Child Support requires review by the CSA in IV-D cases. On this form, the CSA can approve or not approve the proposed stipulation, or to check a box indicating that CSA approval is not required. Some CSA have asked whether the agency approval or rejection of the proposed stipulation is required in cases where no state money is involved.

**Stipulations that Address Only Custodial Arrearages**

BCS does not have a policy requiring CSA's to approve or reject stipulations involving family owed arrearages. We recognize that in individual cases, the parties may be on and off of public assistance programs and the IV-D program may or may not have an interest in the terms of a proposed stipulation involving custodial arrears. We also recognize that local courts have different practices and interpretations about when arrears should be forgiven.

In the absence of BCS policy, counties should work with the local courts to establish uniform policy and procedures with respect to the review, and whether to approve stipulations in cases where the money isn't owed to the state.

In instances that involve state-owed arrears, please refer to CSB08-11r for the procedures for forgiving arrears.

**Stipulations that Waive Future Custodial Arrears or Interest**

It is a well-established case law, that stipulations that purport to limit a child support payee's ability to seek a modification based upon a substantial change of circumstances are void against public policy. "Krieman v. Goldberg", 214 Wis.2d 163, 571 N.W.2d 425 (1997) Because interest becomes a part of the debt that is accruing, legal counsel has advised BCS that stipulations waiving interest would be viewed in the same light. Additionally, interest is statutory, and it is questionable whether parties have the authority to override a statute by stipulation.

Finally, although the interest may be owed to the custodial parent, the decision to waive it may not take into consideration the best interests of the child(ren) which is in the state's interest.

As a practical matter, the court relies on the parties reviewing stipulations to bring any problems with them to their attention. Stipulations that waive future support or interest are against public policy and CSAs should reject stipulations in IV-D cases that propose to waive future support or interest, or limit the ability to modify a child support obligation in the future based on a substantial change of circumstances.

### **Stipulations that Deviate from the Percentage Standard**

A question has arisen as to whether a CSA may approve a stipulation which sets support at an amount that is different than what would have been set under DCF 150, Child Support Percentage of Income Standard. Specifically, CSAs question their role when the support is not assigned to the state.

BCS does not have a policy that requires CSAs to approve or reject stipulations involving deviations from the percentage standard identified in Wis. Stats §767.511(1m). BCS also recognizes that local courts have different practices and interpretations about when an order might deviate from the percentage standard. Some local courts also rely on the CSA to determine whether the calculations are accurate and the deviation is appropriate. If the CSA has the resources available to review the parties' financial circumstances and assess the reasonableness of the proposed stipulation, the CSA may do so.

In the absence of BCS policy, the CSA should work with the local courts to establish policies that are consistent with court practices.

### **Non-modifiable Stipulations/Stipulations for Repayment of Arrearages**

As a general rule, stipulations prohibiting modifications of child support are against public policy. However, a recent unpublished Court of Appeals decision held that it is not against public policy to hold the parties to a payment arrangement that dealt only with arrearages.

In re "the Marriage of Lowrey v. Magnuson," 2008 AP 1012, the parties entered into a stipulation under which the payer continued to accrue 'suspended' arrearages of \$500 per month during his incarceration. The stipulation included a provision reinstating payments on the suspended arrearages 18 months after his release at the interest-free rate of \$100 per month, to be increased to \$200 per month, 24 months after his release. The payer was released from prison in 2001. Until the time the youngest child graduated from high school in 2007, the payer had also been paying \$600 per month in current support. The employer reduced the wage withholding to \$200 pursuant to the terms of the stipulation. The state argued that pursuant to Wis. Stats., § 767.75(1m), the withholding should continue at the amount of the assignment in effect until the current support obligation ended. However, the court held that the stipulation dealt only with arrearages, it was an enforceable contract and not subject to modification.

It is the position of BCS legal counsel that any provision in a stipulation that would otherwise be subject to modification remains modifiable even after the children are emancipated. To ensure that the income withholding can continue at the higher amount after the current support obligation is ended, BCS recommends that stipulations that address repayment on arrearages should include language specifically providing that if there are still arrears on the record after the last child reaches the age of majority, the assignment for current support remains in effect at the full amount pursuant to Wis. Stat. § 767.75(1m).

### **Resources:**

[FA-604](#) Stipulation and Order to Change Child Support  
[Lowrey v Magnuson](#)