INVESTIGATIVE REPORT

(Final Finding and Closure)

******PUBLIC VERSION******

Edited to remove confidential information

Alaska Ombudsman Complaints A096-3444 and A097-2272

November 13, 1998

SUMMARY OF THE COMPLAINT

An Anchorage woman contacted the Anchorage Office of the Ombudsman in October 1996 to complain about the Department of Revenue, Child Support Enforcement Division (CSED). She complained that CSED had failed to enforce withholding orders issued to her employer. She also charged that CSED was garnishing her income for child support that she had paid already through income withholding. The woman, who will be referred to as the obligor in this public report, told investigators that she began complaining to CSED in 1992 that her former employer withheld support from her wages but never sent the money to CSED. She said that despite her complaints, CSED has for four years required her to pay support that she already has paid.

This complaint (A096-3444) was investigated by Assistant Ombudsman Linda Lord-Jenkins who provided verbal notice that the Ombudsman was reviewing the complaint in November of 1996 and again in August of 1997. This report served as written notice under AS 24.55.140 and 21 AAC 20.110 that the Ombudsman is investigating the following allegations against CSED.

> ***Inefficient: CSED failed to enforce withholding orders for child support sent to the complainant's employer, who was withholding support payments but not forwarding them to CSED.***
>
> ***Unreasonable: CSED continued to garnish the complainant's wages even though the complainant***

already had paid support through agency-ordered wage withholding, and even though the complainant's arrearage was questioned and under review by the Attorney General.

The obligor told investigators that from 1992 through 1997 she repeatedly contacted CSED for help in resolving what she considered an unfair situation. She said CSED staff repeatedly told her that her case had been forwarded to the Department of Law (Law) for review and CSED could do nothing for her.

Following preliminary review of the complaint, the Ombudsman determined that an independent complaint against Law was appropriate and, accordingly, opened Ombudsman Complaint A097-2272. Verbal notice of the Ombudsman investigation of Law was provided in August of 1997. The ombudsman's preliminary report served as written notice under AS 24.55.140 and 21 AAC 20.110 that the Ombudsman is investigating the following allegation against the Department of Law.

Inefficient: The Department of Law failed to act upon a child support case for more than four years after receiving the case for review. Further, this has delayed review of two other similarly situated CSED cases referred to Law for review in 1993.

BACKGROUND

The obligor told the investigator that she and her husband divorced in 1991. Custody of their son was awarded to her ex-husband, who is disabled. He applied for and was granted Aid to Families with Dependent Children (AFDC) benefits, and the case was sent to CSED for collection. Although divorced, the two parents remained close and the obligor received her mail and messages at her ex-husband's' home for some time.

The obligor said that she began working for the Nick's RSVP Maid Service (RSVP) in late 1990. RSVP was owned and operated by Nick Mastrodicasa. She said when she started working at RSVP she directed RSVP to withhold child support from her checks. She said she learned in 1992 that, although RSVP had been withholding $200 per month from her paychecks, the company had not forwarded many of those payments to CSED. Several months after the obligor and her ex-husband complained to CSED about this, CSED staff told her they had forwarded the support file to the Attorney General's office for action.

The obligor obtained custody of her son in September 1995. Her support

arrearage accumulated at a rate of $150 per month plus interest until her son moved in with her, and her ex-husband withdrew from AFDC benefits. At that point, CSED issued a withholding order of $365 per month to pay the arrearage. The obligor's debt grew as high as $20,000 in September 1995 but, as of August 4, 1997, she had paid it down to $12,617.

The obligor told Ms. Lord-Jenkins that she had spoken only with CSED workers about her support arrearages and the failure of RSVP to forward the withheld amount. She said no one from the Attorney General's office ever contacted her about her case. She told the investigator that the arrearage payment was causing a hardship for her and her child. As of fall 1997 her usual two-week pay period take-home pay was $384. After she received custody in 1995 she did not receive support from the child's father but did receive $184 per month from his Social Security Disability check for her son. She and her son have not received public assistance benefits.

In September 1997, Ms. Lord-Jenkins and Child Support Enforcement Officer Phil Petrie met to review the case and the broad issue of employer non-compliance with wage withholding orders. As a result of their discussion and because the case had languished for so long, Mr. Petrie agreed to reduce the obligor's arrearage significantly. Mr. Petrie agreed to collect the $365 monthly payment until October when the Permanent Fund Dividends are issued. CSED would attach the obligor's dividend and at that point agree she would owe no more support. He agreed that if Law ever collected anything from the errant employer, the obligor would receive a portion of the funds. Under this agreement, the obligor would pay $1,823 on the remaining $12,617 debt for a total reduction of $10,794. That agreement has not yet received the necessary approval from Law. (This agreement had to be approved by the Department of Law, which has since done so.)

INVESTIGATION

Case Chronology

Most of the following information was obtained from CSED's computerized case management history notes, which serve as "Record of Contact" notes and provide information about the case. Significant dates are shown in boldface print.

CSED opened a case for the obligor and her former husband in 1987 but did not establish a monthly support amount until 1990. Agency records show that the obligor and her husband were divorced August 17, 1991. He was receiving public assistance and had applied for Social Security

Disability benefits. The obligor and her former husband submitted income statements showing that she earned less than $2,000 in 1990. On April 13, 1990, CSED ordered the obligor to pay her former husband $752 per month for child support. This amount was the "default" amount usually established in cases where the custodial parent is receiving AFDC and the obligor has not submitted income information. This suggests that the obligor did not respond to requests for income information or did not respond on time. When the case was set up, CSED calculated that the obligor had an accrued debt of $3,727 for support owed from December 1, 1989, through April 1990.

On **August 7, 1991**, the court reduced the obligor's support amount to $150 per month. Records show that on **August 27, 1991**, CSED issued a Notice of Liability (NOL) to the obligor ordering her to pay $150 per month with an accrued arrearage of $5,381.

On **October 3, 1991**, CSED sent a withholding order to Nick's RSVP Maid Service directing it to withhold a percentage of the obligor's income. At that time the estimated arrearage was $6,918.

The obligor contacted CSED on **October 9** to ask why the balance was so high when the court had set the support at $150 per month. Case management notes show the caseworker explained the "default NFFR," (Notice and Finding of Financial Responsibility) to her. The notes stated the obligor would submit paperwork to ask CSED to set aside the arrearages based on the high default support amount and substitute it with arrearages based on her ability to pay. The worker wrote, "Says is currently earning $700/month. Will bring in proof, agreed can WID for $200/mo w/verification of earnings."

The obligor brought in proof of her income on **October 10, 1991**, and her withholding order was reduced. Another withholding order was sent to RSVP on **October 10** to reflect the lower withholding amount of $200 per month. On **October 31, 1991**, Pacific West Management Company sent in $100. The relationship of Pacific West Management to RSVP is unclear. At times during the obligor's employment at RSVP, Pacific West sent CSED checks for the obligor's support.

RSVP did not respond to the October 10, 1991, withholding order and CSED issued a letter of reminder on **November 22, 1991**. On **December 4, 1991**, RSVP paid $100. On **December 5, 1991**, RSVP responded to the withholding order and stated that it would withhold $200 per month. On December 13, 1991, Pacific West Management sent CSED $100. On **January 21, 1992**, RSVP sent two $100 checks. No further funds were received from either party until **June 18, 1992**, when Pacific West paid $1,000. This was the last payment recorded from

either party or anyone in this case until 1996.

CSED issued another withholding order to RSVP on March 10, 1992. Again, no funds were received. CSED notes indicate caseworkers called RSVP on **April 13, 1992**, and again on **May 5, 1992**, to "remind" the company about the withholding order and the company's obligation to abide by it. Case management history notes say that the CSED worker spoke with "Nina." Notes indicate the arrearage had reached $11,584 as of May 5, 1992.

CSED issued more withholding orders on **June 2** and **August 7, 1992**. On **September 9, 1992**, the obligor's ex-husband visited CSED to ask why he wasn't receiving his monthly $50 "pass-through" payment from the obligor's support payments. He told caseworkers that the obligor had shown him pay stubs from RSVP indicating that the company withheld $100 every two-weeks. He said he would tell the obligor that CSED was not receiving her payments.

CSED issued a "Letter of Reminder" to RSVP on November 22, 1992, reminding the company to comply with the withholding order.

The obligor visited the CSED office on **December 9, 1992**. CSED's computerized notes indicate that she was upset by RSVP's failure to forward the money. She asked that she be able to withdraw from wage withholding and pay CSED directly. The caseworker noted telling the obligor that CSED had no option but to withhold her wages. The notes state that the caseworker "explained federal regulations." CSED sent another order to withhold and deliver to RSVP on **December 12, 1992**.

By December 12, 1992, the obligor's arrearage had climbed to $12,176. According to CSED records, the obligor's payment history was as follows between April 10, 1990, and April 13, 1993:

September 9, 1991	$150	source unknown
October 31, 1991	$100	from Pacific West Management
November 6, 1991	$931.34	from Permanent Fund Division
November 14, 1991	$100	from Pacific West Management
December 4, 1991	$100	from RSVP Maid Service
December 13,	$100	from Pacific West Management

1991		
January 21, 1992	$200	from RSVP Maid Service (2 checks)
June 18, 1992	$1,000	from Pacific West Management

Case management history notes for **February 2, 1993**, indicate that the CSED caseworker requested the obligor's file from CSED's off-site file storage to review for employer non-compliance.

The obligor left a message on the CSED KIDS telephone line on February 19, 1993, asking what the division was doing about RSVP's non-compliance with the withholding order. Caseworkers called her ex-husband three days later and left a message for the obligor. (Although the two were divorced, she retained her mailing address and a message phone at his address.) The ex-husband told the caseworker that the obligor was considering hiring an attorney, and they both wanted the case referred to Law to act on the employer non-compliance. CSED wrote to the obligor on that date asking that she send them her pay stubs.

Caseworkers referred the file to the Department of Law on April 21, 1993, for action on employer non-compliance. Notes show the arrearage then was $12,880.

The ex-husband visited the CSED office on **July 6, 1993**, to complain about the time that it had taken CSED to act on RSVP's non-compliance. He provided copies of the obligor's pay stubs, which CSED sent to Law for review with the file.

The state initiated an automatic income review on October 19, 1993, and the obligor submitted income information in November. She asked the caseworker if RSVP had responded to the withholding order. The caseworker told her that RSVP had not and the case was "at Law for non-compliance." At that point, her arrearage had reached $14,500. Interest that month was $96.64. The case management history does not reflect that CSED contacted Law in response to her October inquiry.

The ex-husband called CSED on November 16, 1993, to ask the status of Law's review and was told CSED had no response from Law. At that point the obligor's arrearage had reached $14,748, and her November interest payment on the arrearage was $98.14. The case management history reflects that the caseworker told the ex-husband that he could request information on the status of the case at Law and CSED would inquire for him. Notes indicate the ex-husband declined the offer and said he would contact CSED at a later time. The case management history does not show that CSED contacted Law on its own in response to the inquiry.

On **November 22, 1993**, CSED sent to RSVP by certified mail an "employer information letter" warning that the company faced a $1,000 fine if it did not comply with the withholding order. CSED case management notes for this date indicate "Ch 11(Chapter 11)," a reference to bankruptcy. The notes do not indicate how this information was obtained nor whether the information was relayed to Law.

CSED case management history notes do not reflect any contact with the obligor from November 1993 to September of 1994. In **September 1994** CSED began tracking the obligor's assets in order to pursue medical insurance coverage for her son. On **September 15, 1994**, CSED issued a modified withholding order to RSVP directing that the company withhold 50 percent of the obligor's income. Her arrearage had reached $17,283. Interest alone for that month was $113.

CSED issued a letter of reminder to RSVP in **October 1994** and a demand to RSVP in **November 1995**. On **January 11, 1995**, "Deanne" from the Attorney General's office called CSED to ask where the file was.

On **February 28, 1995**, CSED asked Department of Labor (Labor) to determine where the obligor was working. Labor reported she worked for RSVP Maid Service for the last reporting quarter in 1994.

On **May 28, 1995**, CSED case management history noted the following:

> Michelle: Status of old review? Tracing for completion. Need locate on (the obligor's) employer to pursue medical enf.

In **June of 1995** the ex-husband informed CSED that he was considering surrendering custody of his son to the obligor. Staff "explained what would happen" at CSED if he did so.

Although the CSED case management notes do not reflect any other Law activity on or around this date, a note in the CSED file at Law states that someone at that office "found file **6/22/1995** in (Assistant Attorney General) Liz Vasquez's office."

The file notes further state that on **June 22, 1995**, Assistant Attorney General Rhonda Butterfield called CSED's Diane Sindorf regarding an update on the file and to find out if the file should be returned to CSED. The case management notes stated Ms. Sindorf would call Law back with an answer. The next record of contact is from **July 21, 1995**, when Law's notes state Ms. Butterfield called again:

> Have not heard from Diane. T/C to Diane -- still checking. Doesn't think mom worked there for long time. Last time third quarter of 94. RSVP never paid.
>
> CSED asked $200/month WID. June 92 last payment from RSVP. Payments from Pacific West. Got large $ in 92 but problem in 93. 6/92 last pay.
>
> Pull DOL (Department of Labor) records and send.
>
> Diane says [the obligor] still there. Go ahead and demand.

CSED caseload notes for the July 21, 1995, conversation stated that Ms. Butterfield called CSED. The notes state:
Old referral for employer non-compliance. Per notes, looks like file contains evidence that (employer) did withhold and never sent in and if so, employer should get a letter demanding payment from the attorney general. Last pay from the employer was June 1992. Will pull the Department of Labor records to establish work history since then.
The CSED case management notes do not reflect that CSED received a copy of an Attorney General's letter demanding payment.

CSED notes state that on July 24, 1995, CSED staff wrote:

> CLD RHONDA. GAVE INFO ON DOL. LAST $ FROM RSVP WAS 6/92. EN (employer) OWES $200/MO FROM 7/92-9/94 THEN 50% FROM THEN TO PRESENT. WILL FORWARD DOL PRINT & ALSO GET ORIG NOTICES FROM 93-PRESENT THAT WERE SENT TO RSVP SINCE CASE SENT TO LAW.

In response to Ms. Sindorf's inquiry, Labor informed CSED that the obligor had been employed continuously at RSVP since 1991.

The CSED activity note for **July 26, 1995**, states that workers sent Ms. Butterfield copies of the September 1994 withholding order, the October 1994 letter of reminder and the November 1994 demand letter.

At that point the arrearage had reached $19,997. July 1995 interest was $129.

The ex-husband surrendered custody of his son to the obligor and withdrew from CSED services on **September 20, 1995**. As of September 27, 1995, when the debt was calculated, the arrearage had accrued to $20,408. Interest for that month was $131.14.

CSED issued a modified withholding order of $365 per month to "Nina's RSVP Maid Service" on December 8, 1995. Because the ex-husband withdrew from services and no longer had custody of his son, all support paid from this point on was owed to the state for public assistance benefits paid to him and his son.

CSED case management notes state that Nina "Zares" called the division KIDS line on **December 29, 1995**, to say that the obligor couldn't afford to pay $365 per month because she had custody of her son. The caseworker told her about the CSED arrearage. CSED notes reflect that Ms. Zares told the worker that the obligor's previous employer had withheld support from her wages and never sent it to CSED. The CSED case management notes for this conversation state the following:

> Employer hotline -- Call from/Nina Zares-returned call-left msg & (voice mail) since Team1 CS. Called Nina back. stated she knows o(bligor) has de (dependent) & can't afford to pay this cs (child support), so she shouldn't have to w/hold. Told her o has past debt need pay. She has to w/hold. she stated that o's (obligor's) previous em (employer) took $ out of her ck (check) & never sent it in & it's not o's (obligor's) fault. (Obligor) went down to csed & provided (check) stubs & CSED didn't do any thing about it. told her that (obligor) hasn't been in here and provided any proof to this office & it is a situation which (employer) has no business in. All she needs to do is w/hold $ like we ask. (Obligor) needs to come in and speak to a (representative) with her proof. ok.

Case management notes state the obligor visited the division office on **January 10, 1996**, with pay stubs from Nick's RSVP showing the funds were withheld. The case management notes do not indicate what period of time the pay stubs covered. The obligor again asked that the arrearage be adjusted. CSED sent another reminder letter to Nina's RSVP on this date to send in the wage withholding support. The case management history does not indicate that CSED contacted Law in response to the obligor's inquiry nor does it reflect what was done with the pay stubs the obligor submitted. Despite the objections, Nina's RSVP began withholding the $365 support on a bi-weekly basis and sending the funds to CSED.

Case management history notes for January 30, 1996, state the file was already at the Attorney General's office for employer non-compliance and awaiting action. The case management history does not reflect that CSED contacted Law at this point.

The obligor contacted CSED on **July 19, 1996**, to again ask that the arrearage be adjusted. Case management history notes reflect she was again told that the file was at Law and CSED could not adjust the arrearage "until the court tells us to or money comes in." Case management notes reflect the obligor told the worker she was trying to get the arrearage paid off but it was difficult, especially because she now had her son living with her. Caseworkers told her to write a "hardship letter" and sent her a "390" form, which is a computerized account audit summary. At that point the obligor had been paying $365 per month through wage withholding since January and had paid the arrearage down to $17,722. CSED was no longer charging monthly interest. The case management history does not reflect that CSED contacted Law in response to the obligor's July call.

The obligor called CSED again on September 30, 1996. She again wanted to know the status of the case at Law. She again told the worker she had custody of her son and again said the large amount of withholding was causing them hardship. The caseworker again explained the hardship procedure and again said that the case was at Law. The obligor said she would write a hardship letter. CSED case management history notes do not reflect that CSED received a hardship letter from her around this time. The case management history notes also do not reflect that CSED contacted Law in response to her September inquiry.

The obligor contacted the Ombudsman on October 1, 1996, and spoke to Assistant Ombudsman Mark Kissel. He called the CSED voice mail on October 2, 1996, asking about the status of the case. (After that call the Ombudsman complaint was transferred to Ms. Lord-Jenkins.) CSED case management history notes show that in response to the Ombudsman's call, CSED contacted Assistant AG Butterfield for status information. She returned their call on October 16. CSED case management history notes state:

> . . she has not gotten to (case) yet. File is about 4 inches thick, hopes to get to it soon.

Ms. Lord-Jenkins contacted CSED on October 22, 1996, to check on the status of the case. In response, CSED called Ms. Butterfield that day. Ms. Lord-Jenkins called again on October 30, 1996, to learn the case status and who was handling the case.

During that conversation, CSED supervisor Chuck Washburn told the investigator that CSED was aware of two other cases involving RSVP employees whose wage withholding had not been forwarded to CSED. He said all three cases had been sent to Law years before. CSED staff and Ms. Lord-Jenkins talked again on November 6, 1996, and CSED

staff said the case remained at Law and they did not know when Ms. Butterfield would get to it.

Ms. Lord-Jenkins contacted Ms. Butterfield on November 7, 1996, and was told roughly the same thing about when Ms. Butterfield would be able to work on the case. Ms. Butterfield also said she had determined that former RSVP owner Nick Mastrodicasa had filed for bankruptcy protection. She had requested the bankruptcy file from U.S. Bankruptcy court in Seattle. She said that the file was "four inches thick and she had to review it" before deciding what to do on the obligor's case.

The obligor contacted CSED again July 7, 1997, to find out the case status. Case management history notes reflect that she explained the case history and once again provided pay stubs to caseworker Ken Cook. He told her Law was working on the case but the "responsibility for payments arriving here is with her." She asked that CSED waive any interest on the funds that were withheld from her check but not sent to the agency. She also asked that her arrearage payments be reduced because of the hardship they caused her and her son.

She called CSED again August 22, 1997, to check the status of her requests: Would CSED vacate her interest? Had CSED recalled her file from Law so CSED could consider adjusting her arrearage because her withholding was established at $762 despite her $700 per month income at the time. CSED also recorded receipt of a letter asking CSED to waive the interest charged on the support that RSVP withheld but did not send to CSED. She provided documentation that RSVP withheld $3,399 that was never sent to CSED.

After Mr. Petrie met with the Ombudsman investigator in September 1997, CSED called Ms. Butterfield to determine if "11/24/97 is realistic date for completion of employer non-compliance actions." She said it was.

On October 5, 1997, CSED reviewed the obligor's request for interest waiver and had CSED's accounting section audit the case to separate the interest charged to the $3,399 amount withheld but not sent by RSVP.

Mr. Petrie and CSED's Wendy Jo Williford reviewed the case history, accounting history and default time periods on October 6, 1997. The case management notes state further:

> We may have to set up D case for en non-compliance recovery against RSVP Maid Service. Sat(isfy) WID I 10/15 if PFD is RCVD. De(pendant) is in home with obligor and we have been unable to resolve employer

> issues in over 4 years. Case is being closed as a settlement with money collected to 97 PFD and a portion of additional money received from AGO (Attorney General's Office) action if obtained. PLS inform C of actions on case to collect and close. (Ms. Williford) and (Petrie) agreed not to set up new obligation yet. If we don't set up D case then do a DS1 payable to C for $2000 and SOA for $200 based on any money collected by AGO on (employer) non-comply case. But close and satisfy all actions against Rheba as of 10/15/97.

On **December 4, 1997**, CSED called Ms. Butterfield again to determine the status of the case. She said she was awaiting documentation of the case from "NCP" (non-custodial parent) and would send a letter to RSVP.

Department of Law action

On August 4, 1997, Ms. Lord-Jenkins visited Law to review the CSED file. The file contained a notation of Ms. Lord-Jenkins' November 7, 1996, call to check on Law's progress on the case. The note mentioned Ms. Lord-Jenkins comment that the case had been at Law since April of 1993. The file also contained notes on the following activity while the case was at Law:

April 13, 1993: The case was received at Law. The CSED referral sheet contained the names of two different Law attorneys.

The file contained a note stating that two other CSED cases had been referred to Law at the same time and were affected by whatever opinion was reached in the case. The file for DS was referred to Law on April 13, 1993. The file for DD was referred to Law on April 21, 1993.

June 22, 1995: Ms. Butterfield called Diane Sindorf at CSED regarding updating the file. The AG's note reflects that Ms. Butterfield asked Ms. Sindorf if she should return the file to CSED. Ms. Sindorf said she would check and get back to Ms. Butterfield, but notes entered into the file do not reflect any response until Ms. Butterfield called CSED again on July 21, 1995, to ask Ms. Sindorf again about returning the file. Law's notes indicate Ms. Sindorf again stated she did not know if the file should be returned and she did not believe the obligor worked at RSVP for long. "Last time it was the third quarter of 94. RSVP never paid."

Six months later, in **February of 1996** Ms. Butterfield directed Law paralegal Linda Stevens to obtain the bankruptcy file from federal court.

The file contained a copy of the CSED payment history for the obligor from 1991 through 1993. It also contained a copy of a Labor accounting of the obligor's RSVP wage history from 1990 to 1995. CSED obtained the Labor accounting in early 1995. Records indicate the obligor worked at RSVP every quarter of every year from January 1991 through 1995. Her earnings ranged from a low of $1,077 per quarter in 1991 to a high of $4,659 during the first quarter of 1995.

Ms. Butterfield told Ms. Lord-Jenkins that the two other cases were assigned to other attorneys on an alphabetical basis. She said those attorneys were waiting for her decision on the obligor's case before they decided how to proceed.

Ms. Butterfield said she was unaware that the obligor obtained custody of her son in 1995. During Ms. Lord-Jenkins' August 1997 office visit, Ms. Butterfield commented that she had to have CSED forward the obligor's pay stubs for her review. Ms. Lord-Jenkins pointed out that CSED sent the obligor's pay stubs from 1991 through 1993 to Law in 1993. The file contained no pay stubs after that time nor stubs received by CSED from the obligor around January 10, 1996.

Assistant Attorney General Rhonda Butterfield

Ms. Butterfield joined Law in 1992 and began working in the collections and support section in November 1994. By that time, the obligor's case already had been at Law for 18 months. She said she "inherited" the case file from a different attorney in June 1995, around the time that notes indicate it was "found" in Ms. Vasquez's office. Ms. Butterfield does not recall who had the case before her. She said that she is not certain whether Ms. Vasquez ever was assigned to work on the case because the referral sheet had the names of two other attorneys on it.

The file at Law lacked any notes or other documentation to indicate that Law had taken any action on the case before Ms. Butterfield took over and few after.

Ms. Butterfield said that when she began working in the child support section, it had no established system for prioritizing how and when cases would be worked. However, she said that as long as she has been working in child support, employer non-compliance cases have been regarded as very low priorities. Ms. Butterfield told the investigator that the child support section has given high priority to the many modification requests that Law is reviewing for CSED. Federal and statutory guidelines often dictate the priority that a case is given, she said.

Ms. Butterfield said that when she received the case file she called CSED caseworker Diane Sindorf to determine CSED's direction on how to handle the case. The Ombudsman investigator read her the CSED case management history notes and her note about that communication. The investigator asked if Law ever sent RSVP a letter demanding payment as noted in the CSED case management history notes for July 1995. Ms. Butterfield said she never sent the letter because CSED never provided the Labor information she needed. However, the investigator's review of the file at Law showed that the Labor quarterly reports were included up to the first quarter of 1995.

Ms. Butterfield said her review had been slowed because she had to research the bankruptcy action filed by former RSVP owner Nick Mastrodicasa. According to the State of Alaska Public Information Access System, Nicholas Mastrodicasa, owner of Nick's RSVP Maid Service and Matanuska Merry Maids, filed for bankruptcy protection on **April 6, 1992**. The case was closed on **March 23, 1994**. CSED referred the obligor's case to Law on **April 23, 1993**, nearly a year before the bankruptcy case closed. Ms. Butterfield said that the State of Alaska did not intervene in the bankruptcy case on the obligor's behalf.

Ms. Butterfield said she was reviewing the bankruptcy file to see if anyone else filed a claim for wages on behalf of the custodial parent or other parties involved. She said that technically, the obligor, her ex-husband or CSED could have filed a bankruptcy claim for funds withheld from the obligor's wages. She said although her review was not complete, she had not found any claim filed by the principals in the complainant's case or in the two other RSVP cases referred to Law. Her partial review showed that RSVP owner Nick Mastrodicasa did not list the CSED debt in his bankruptcy papers.

Ms. Butterfield said she also must determine if RSVP changed hands during the bankruptcy. She said in August 1997 that she was able to review "half the file" before other duties took her from this case. She said the status of the bankruptcy at the time support payments were collected is a major point of her review.

She also said she had to review the bankruptcy laws and child support laws in effect in 1992 that might have bearing on the case now.

The investigator contacted Susan Notar via Internet email. Ms. Notar is an attorney who is listed in a national child support resource publication as an authority on child support enforcement matters involving bankruptcy. The investigator outlined the circumstances of the case and the RSVP's bankruptcy. She asked who was responsible for filing a claim in the bankruptcy action under the circumstances. Ms. Notar said

that the support agency or Law should have intervened in the bankruptcy action on behalf of CSED's clients. Specifically, she said the agency should have moved to stop the bankruptcy pending the resolution of the employer non-compliance with the withholding orders.

Ms. Butterfield said she also must decide who is liable for the debt if she establishes that the funds were withheld and not paid. While CSED is holding the obligor responsible for paying the debt, it is possible that the business itself might be held liable. She doubted that Mr. Mastrodicasa would be held liable even if he had been sole proprietor of the business. He owned Nick's RSVP but sold it after the bankruptcy. She said the business itself probably would be responsible even if owned by a new person. Nina Bennie bought the business from Mr. Mastrodicasa.

Ms. Butterfield also said that CSED had not provided Law updated information on the case when important changes took place. She said she was unaware that the dependent child had moved in with the obligor or that the ex-husband withdrew from services, thus changing the nature of the case. She said that is information CSED needs to provide for Law to review cases properly.

After the Ombudsman's contact in August 1997, Ms. Butterfield began working the case and asked for an updated accounting of the support history. She told the investigator that she questioned the reasonableness of the amount the obligor was being required to reimburse to the state in light of the default judgment, which originally established the high arrearage.

In November 1997 she reviewed the pay stubs that had been in her files since 1995 and correlated them with payments recorded in CSED records. She verified $1500 of payments withheld and paid to CSED. She was able to determine that only $1800 was withheld from the obligor's checks but not forwarded to CSED.

In a 1998 memorandum to CSED officer Phil Petrie, she stated that the statute of limitations in cases such as the obligor's runs for six years and thus, she had until June 18, 1998 to file suit against Mr. Mastrodicasa. In the DS case the statue runs out on April 20, 1999. No suit has been filed in DS as of this writing.

Assistant Attorney General Marilyn May, Child Support section supervisor

Marilyn May has worked in Law's collections and support section since it was formed in May 1994, a year after the obligor's case was referred to Law. (Ms. May has since left Law to work in the State Court System.)

She said that when she assumed her duties, section attorneys provided her with lists of their cases, but there were far too many to discuss each in detail. Information on the lists was meager. She said she recalls that RSVP was mentioned at some point, but only because she had used the service. She was not aware that Law had three employer non-compliance cases from RSVP. Had she been aware that several RSVP cases were at Law, she would have staffed them with one attorney rather than three, she said.

She acknowledged that the priority for working employer non-compliance cases is low but also said that the section has "never set out a priority list on which cases would be worked first." She said that she recalls that the section has worked on "more than 10 but fewer than 20" employer non-compliance cases.

She estimated Law's seven-attorney support section has about 1,500 cases assigned to it. Ms. May said that she holds caseload conferences with her attorneys but doesn't discuss each of their cases with them on a regular basis because that would be impossible to do.

Ms. May says a suit could be filed against an employer regardless whether it is a corporation or a sole proprietorship and there is no difference in the state's legal ability to seek reimbursement from either form of business entity. Ms. May said four years was too long for this case to have remained on the section's "back burner." She agreed to review the case with Ms. Butterfield.

At a January 1998 briefing about child support for legislators and aides, Ms. May said one weakness in enforcement of the employer non-compliance law is that any monetary penalty assessed by the court would be paid to the state as fines. The penalty would not be paid to the custodial parent in the form of child support.

Ms. May wrote to State Representative Tom Brice about employer non-compliance on September 12, 1995, responding to his inquiry about a major employer that had been paying employees semi-monthly but only making support payments to CSED monthly. This violated AS 25.27.062(e) and .250(f), which require employers to remit support payments within 10 days of the date that the employee is paid.

> We further understand you were informed by CSED that the Department of Law may have resisted enforcement of these income withholding orders. I am the supervisor of the Collections and Support Section of the Attorney General's office, which handles child support enforcement matters. I have surveyed the attorneys in my

section, as well as assistant attorneys general who formerly represented CSED for the past several years, and each has assured me he or she has not advised CSED not to pursue such an employer non-compliance case. I can only assume there must have been some misunderstanding or failure of communication between personnel in the two agencies that led to the error.

As I recently discussed with your aide, Ray Goud, there may be circumstances where an employer's non-compliance may be corrected without resort to the statutory remedies. For example, it might be a waste of state resources to file suit against an employer which misunderstood its obligations, but which, upon learning of its error, immediately changed its procedures to come into compliance. On the other hand, if an employer has a continuing and ongoing compliance problem that it is unwilling to resolve, we would certainly support taking legal action against the employer, including seeking penalties for non-compliance.

The Attorney General's office will work with CSED on any employer non-compliance case referred to us. We will pursue the requested action unless CSED personnel agrees with us that another course appears likely to be more effective and appropriate.

Employer non-compliance is a serious issue. We hope this adequately responds to your concern, and your constituents. The Department of Law and CSED are committed to enforcing compliance with income withholding orders, to the benefit of obligors as well as their children, within the parameters of state laws. If you have any further questions or wish to discuss this matter, please feel free to call."

On September 14, 1995, then-CSED Director Glenda Straube issued a memorandum about the Department of Law's commitment to prosecuting employer non-compliance cases. That memorandum stated in part:

Ms. May strongly denies that they have placed those (employer non-compliance) cases in a "low priority" status. She states that "the AG's office will work with CSED on any employer non-compliance case referred to us." Phil (Petrie), if you disagree with this statement, you need to bring specific cases to my attention. Otherwise, you should no longer relay to myself or to others that the Department of Law will not

pursue employer non-compliance cases.

As for criminal non-support cases, (Law) will review a case for possible criminal prosecution. (Law) further agrees to prosecute at least one, and up to three cases each year at (Law's) discretion. (Law) may prosecute more than three criminal cases each year by mutual agreement of (Law) and CSED." In meetings which you attended, Ms. May informed us that it is likely that they will only pursue one case a year because the Civil section is concerned about getting too heavily involved in criminal matters.

In 1993, the U.S. Office of Child Support Enforcement (OCSE) issued a report critical of the CSED's cooperative arrangement with Law. The report stated that the CSED/Law agreement did not comply with federal requirements for agreements between child support agencies, their legal advisors and the courts. Federal regulation 45 CFR 305.34 requires that support agencies meet six provisions in agreements with legal advisors to qualify for federal financial aid. OSCE found that the Alaska CSED/Law agreement contained only one paragraph describing the purpose of the contract and the billing process. OCSE found that the contract met none of the six provisions listed in 45 CFR 303.107(a) through (f).

Provision One requires a clear description of the specific duties, functions and responsibilities of each party. The Alaska agreement only listed the types of positions assigned to work child support cases; and it failed to define clearly the skills of the personnel.

Provision Two requires clear and precise performance standards, including how many specific actions must be taken and how quickly they must be completed. OSCE wrote that the CSED/Law agreement was "so vague that major case processing problems occurred." As described in the audit report, one such case processing problem occurred when Law informed CSED in 1993 that Law's CSED attorney in Fairbanks had reached the maximum caseload she could manage and would not take any more cases for one month unless it had a court-imposed deadline. OSCE found that, because of the vagueness of the contract, "CSED had no recourse to correct the problem and needed judicial actions were unnecessarily delayed."

Provision Three requires that the parties agree to comply with federal regulations and requirements. The agreement did not include this provision.

Provision Four requires that the agreement outline the estimated budget, allowable expenditures and billing procedures. The OCSE report stated

that the CSED/Law agreements for 1992 and 1993 were nearly identical and included costs of $378,000 for personnel services. However, Law in 1993 claimed that legal costs incurred exceeded the negotiated cooperative agreement amount and demanded an additional $50,000. Their demand did not include a detailed analysis of the services provided or the costs of those services.

Provision Five requires that safeguards for record handling and confidentiality be outlined.

Provision Six requires that the agreement specify the dates on which the agreement begins and ends.

In response to the report, CSED and Law worked out a cooperative agreement that complied with the 1993 OSCE recommendations. The agreement now in effect was signed by Attorney General Bruce Botelho and Department of Revenue (DOR) Commissioner Wilson Condon in August 1997. Section 202 of this agreement states:

> Under this Agreement [Law] shall have the following responsibilities:
>
> (a) (6) Initiate appropriate action in cases CSED refers requesting third-party enforcement or employer non-compliance action within thirty (30) days of receipt of the file from CSED.

Review of other RSVP employees with CSED cases

Ombudsman note: In order to protect the privacy interests of those people whose cases were reviewed by the Ombudsman during this investigation, the names and case numbers of the other RSVP employee-obligors have been abbreviated and the numbers obscured.

CSED provided the Ombudsman with a list of all support cases in which RSVP was at any time an employer. The agency listed 12 support cases with an RSVP connection. Three of those were for one obligor. Three others, those of the obligor, DS and DD, had been referred to Law. The Ombudsman obtained case management history notes for all of the cases.

3AN-90-XXXX, AH versus DS: This case opened in 1986. RSVP was the sixth employer listed on DS's case when Labor notified CSED that he was working at RSVP. Labor notified CSED on June 4, 1992, that DS worked there. CSED notes stated that it issued a wage withholding order to RSVP on June 10, 1992. The case management entry for that

date also noted “RSVP CH 11.”

CSED discovered on July 20, 1992, that case workers had never issued a notice and finding of financial responsibility to DS. Workers sent a letter of reminder to withhold to RSVP on July 21, 1992. On July 22, 1992, DS spoke with CSED and commented that his employer had sent in income paperwork for DS. CSED said they had not received the documentation cited.

CSED notes indicate that DS visited the CSED office on August 6, 1992, to discuss the paperwork. He said he would have little problem producing copies of what had been given to CSED.

CSED issued another withholding order to RSVP on September 28, 1992 and yet another on January 12, 1992. DS visited CSED on January 14, 1993. Notes on this visit indicate he informed CSED that RSVP was withholding support from his checks but not forwarding it to CSED. Caseworkers called RSVP immediately and spoke with Nick Mastrodicasa who told them that he had contracted with a bookkeeper and would check to see what had happened. He said that $2,406 had been withheld as of January 14. DS questioned why RSVP had received two separate withholding orders. The notes state that “because RSVP Chapter11 new [Labor] # assigned, WID out to protect our collection efforts, should be no problem as long as they withhold.”

A note on January 26, 1993, directed that the case file be retrieved from off-site storage and sent to Law for non-compliance action. The case was staffed on February 24, 1993, and notes for that day indicate that the caseworker was directed to contact RSVP one more time to try to get support, then send the file to Law.

On March 25, 1993, the caseworker called RSVP payroll. CSED was told the proper person was in a meeting and caseworkers left a message to return the call. CSED workers called Nick Mastrodicasa on April 5, 1993. He said he would have money in one week or CSED would send the case to Law for action on employer non-compliance.

The case was sent to Law on April 13, 1993 and on April 20, RSVP submitted a check for $2,716. Case management notes for May 3, 1993, state that the check was returned for insufficient funds. CSED called RSVP on May 4 and Nick Mastrodicasa promised he would have the money to CSED within a week. He never did.

CSED sent demand letters to RSVP on April 16, 1994.

No Attorney General action was recorded on the file until 1995 when a

note for March 31, 1995, stated “AG needs file/To Lisa V.” Another note for June 6, 1995, stated Erin from the Attorney General’s office called “to see if file there/laws on 4/93.” On August 7, 1995, a note recorded another telephone call to Linda Stevens in the Attorney General’s office “Continue with non-compliance.”

No monies other than the bad check were ever received on this case from RSVP.

* * * * *

3AE-87-XXXXX, Minnesota versus DD. This case was opened in April 1984. No employer was listed for DD until December 1991 when the Labor income report listed RSVP as his employer. CSED issued a demand letter to RSVP on December 15, 1991. Management notes do not reflect that RSVP responded to the demand letter and another was issued on January 6, 1992. RSVP sent in $118.75 on January 21, 1992. RSVP responded on January 28, 1992, saying DD was paid semi-monthly and they would withhold $118 per month.

RSVP did not send in any money for January through March. On March 23, 1992, a CSED caseworker called to discuss the reasons. Mr. Mastrodicasa told them his wife handled the withholdings but she was out of town. He promised to speak with her to learn how he could handle it on his own and issue checks by week’s end.

CSED issued another withholding order to RSVP on April 8, 1992, and on June 10, 1992, CSED received a letter from Minnesota child support asking why they had only received one support payment. A supervisor directed a caseworker to call RSVP and find out where the money was. Staff called Mr. Mastrodicasa on June 10. He told them RSVP had mailed the payments in May. CSED told him they had not yet received the checks and directed him to locate a canceled check. On June 16, CSED realized he had not responded to this directive and staff called him again. This time he said the checks had been returned to RSVP and he would re-mail them to CSED. CSED recorded receipt of $1,175 on June 18, 1992.

Minnesota wrote again on July 6 asking for information on the withholding.

CSED called RSVP again on August 11 to find out where the funds were. Nick Mastrodicasa told them this time that he had been out of town and his business had had a recent change in payroll. On August 13 he called to say he would mail the checks to CSED that day.

RSVP owner Nick Mastrodicasa called CSED on September 16, 1992 to say he was bringing in support for DD's case. CSED recorded receipt of a $475 check from RSVP on September 16, 1992.

Minnesota contacted CSED again on September 21, 1992, asking where the money was. Supervisors directed staff to contact RSVP again on November 2, 1992, to ask why no payment had been received for October. The obligor visited CSED on November 23, 1992, asking for a printout of all his payments.

On December 2, CSED called RSVP and asked for Mr. Mastrodicasa to return the call. The caseworker called again on December 18 and Mr. Mastrodicasa agreed to notify his payroll office to send a support payment to CSED. The CSED worker was directed to contact RSVP again on December 31, 1992, after no payment came in. On January 6, 1993, Mr. Mastrodicasa told CSED that he had sent a $400 payment on January 4, 1993. Minnesota wrote to CSED again January 12, 1993, asking if there was a problem with the support. CSED informed them that a problem had developed that might require legal action.

CSED called RSVP on March 3 and March 15, 1993, asking Mr. Mastrodicasa to call the agency. No return call was recorded. On April 18 CSED asked DD to supply his pay stubs for the time he worked for RSVP. CSED sent the case file to Law on April 21, 1993.

On September 7, 1993, CSED ordered a "bank sweep" against DD but recorded no payments. CSED attached his permanent fund dividend that year. No case management entries about RSVP or the action at Law were recorded until January 17, 1995, when "Donna" from Law called to locate the file. On August 7, 1995, Linda Stevens from Law called to determine whether RSVP was still in business. On March 5, 1996, CSED asked Law to return the file because DD was no longer in Alaska. The case was closed as of March 29, 1996.

* * * * *

BE had three cases open with CSED:

3AE-90-0XXXX, AL versus BE was opened in December of 1990.

3AE-93-XXXXX, Pennsylvania Public Welfare versus BE was opened March 9, 1993.

3AE-93-XXXXX, SR versus BE was opened March 19, 1993.

BE's cases listed several employers before he began working for RSVP

in 1993. CSED learned that BE was working for RSVP after Labor issued a quarterly report on December 3, 1993. By that time RSVP's bankruptcy case had been closed and the three RSVP cases had been at Law for more than 18 months.

RSVP was added as an employer on all three cases BE had with CSED. No withholding order was issued at that time to RSVP in the AL/BE case and in March 1994 CSED received documents indicating the case was being closed by court order. However, the custodial parent requested CSED services in April and the case remained open. CSED did not issue a withholding order to RSVP or another employer in the AL/BE case until September 22, 1994.

In the Pennsylvania/BE case, CSED issued a withholding order to RSVP on December 20, 1993. BE contacted workers and asked for leeway to work a night job and they issued a "satisfaction of order" on January 6, 1994. However, workers sent another withholding order on February 7, 1994. RSVP did not send any funds. CSED received another employment update from Labor on September 9, 1994, indicating that RSVP was still employing BE. Workers issued another withholding letter on September 19, 1994, and a letter of reminder to RSVP in this case on October 31, 1994.

In the SR/BEcase, case management notes state that BE sent a letter to CSED on January 10, 1994 after receiving his notice of financial responsibility for this case to discuss payment for his three cases and his various jobs. The caseworker's entry for this date says "MAIL: letter from Obligor says take all SO1 (support) & arrs (arrearage) payment out of his checks from RSVP Janitorial."

On February 4, 1994, CSED added another employer to the list of employers for BE. Three days later, a note directs CSED workers to issue withholding orders to "En5 and En6," two employers added to the list after RSVP was listed as an employer. The orders to these two other employers were issued February 7, 1994. CSED had not, at this time sent RSVP a withholding order.

The updated quarterly income information from Labor was added to this case summary on September 9, 1994. RSVP remained listed as one of BE' employers. CSED issued a withholding order to RSVP on September 14, 1994, another withholding order modification on September 22, 1994, and a reminder letter to RSVP on November 9, 1994.

BE visited CSED on November 10, 1994, to discuss his concerns that RSVP had not made the child support payments. He brought a check

from RSVP for support payments. The notes indicate that the caseworker told him to obtain a receipt from CSED "and if we have problems w/RSVP we will deal with him."

BE called CSED again on November 14, 1994, asking for a printout showing how the support payments had been applied to his cases. He also discussed interest being charged him for the times that his employer did not comply with the withholding order. The note for this conversation states he would write to another caseworker about that question.

RSVP sent in two payments for the AL/BE case and the two other cases on November 10, 1994. CSED recorded no other payments until February 27, 1995, when the caseworker called the cleaning service several times. Owner Nick Mastrodicasa told CSED he had sent checks for $1,168.76 on February 14, 1995. He said the company was about two months behind in submitting funds because the company had gotten "two new accounts."

CSED workers called RSVP three times in April 1995 because the agency received no checks after February 14. Workers finally spoke with Mr. Mastrodicasa and told him that if the three months of checks were not immediately remitted he could be responsible for the entire debt. No payment was received.

Another demand letter was mailed to RSVP on May 12, 1995. On May 26, BE called to discuss the situation with RSVP not honoring the demand. He told workers that RSVP was withholding support but not sending it to CSED.

CSED issued another demand letter to RSVP on August 8, 1995. BE called CSED on August 17. CSED told him it had issued the August 8 demand and if RSVP did not honor the withholding order, CSED would refer the case to Law for employer non-compliance action.

BE asked the caseworker for advice on what action he could take against RSVP. He said other RSVP employees were in the same situation. The CSED worker noted the following response:

Not sure but he and his coworkers may want to see an attorney and file class action suit against (RSVP) Best talk to a LN (lawyer).

On September 11, 1995, BE called to ask about the status of the CSED withholding demand letter. CSED workers told him RSVP had not responded and the next step was for him to provide proof that money had been withheld. "We will then pursue thru AG's to get the money."

BE asked if CSED would adjust the amount of interest charged on the unremitted withholding.

On October 20, 1995, BE called CSED and wanted to know if his employer had paid. The note stated "Yes, total of $4,762 on his three cases??" This note does not reflect which employer he was referring to. CSED was listing payments from two other employers at the time. However, a review of the case accounting summary indicates CSED received a total of $4,762 in payments on the three cases on October 6, 1995. The notes did not indicate which employer remitted the checks.

BE again visited CSED to discuss whether CSED would waive the interest charged on withheld funds that had not been paid to CSED.

BE' cases were brought current by withholding from two other employers and his cases never were referred to Law.

* * * * *

3AE-91-XXXX, CK versus CH:

This case was opened on August 15, 1991. Labor informed CSED on December 3, 1993, that CH had worked for RSVP in the prior reporting quarter and earned $428 per month. CSED sent an employment information letter to RSVP on February 14, 1994.

CSED issued a withholding demand to RSVP on January 31, 1996. CSED sent a letter of reminder on March 15, 1996, a Demand for Delivery on April 18, 1996, and a letter of reminder and withholding order on May 30, 1996. The new employer responded on June 5, 1996, saying RSVP had changed owners and names in 1995 and CH had never worked for her.

* * * * *

3AE-90-XXXX, JK versus DV:

This case opened in March 1993. Labor information provided in May indicated DV worked for RSVP Maid Service. He was served with a notice of finding of financial responsibility on July 11, 1994. A default support order was entered August 23, 1994.

CSED sent RSVP a withholding order on October 12, 1994, and a letter of reminder on November 1, 1994. CSED sent RSVP a demand for delivery of wages on January 20, 1995. On February 28, 1995, a caseworker sent the following note: "Phil -- RSVP Maid Service again--

should we send to Law for non comp?" No reply was listed. In January 1996, Labor indicated that DV's last employment anywhere was in the fourth quarter of 1993. No further entries were filed for RSVP in this case.

* * * * *

3AE-89-XXXXX, RM versus JT: This case opened in 1986. CSED listed no monies paid for nearly a decade. RSVP was added as JT's fourth employer on June 14, 1994. CSED issued a withholding order to RSVP on that date, a reminder letter on July 25, 1994, and a demand letter on August 25, 1994. On September 12, 1994, JT visited CSED and said he had learned that RSVP had withheld money from his check and not sent it to CSED.

On September 27, 1994, CSED called RSVP and was told that JT recently had terminated his employment there. Case notes show no further entries about RSVP.

* * * * *

3AE-91-XXXXX, EP versus RM: This case opened on January 19, 1991. RSVP was added to the case employer list on September 9, 1994. RSVP was listed as his ninth employer for the life of the case. CSED sent a withholding order to RSVP on September 14, 1994, and another order specifying the exact amount of support to be withheld on October 6, 1994. On November 3, 1994, CSED issued a reminder letter to RSVP. Another demand letter was issued on January 9, 1995. CSED case management notes do not reflect that RSVP ever responded to any of the demands in any manner or ever sent in support for this case.

* * * * *

3AE-89-XXXXX, LG versus RL: This case opened in October 1986. RSVP was the 23rd employer listed on CSED case management notes for this case. RSVP was added as an employer on September 6, 1995. (The new owner purchased RSVP from Mr. Mastrodicasa during this month.) CSED issued a withholding order on September 8 directing RSVP to withhold $2,225 per month. CSED issued a letter of reminder on October 25, 1995, and additional demands on December 12, 1995, and January 23, 1996. CSED checked Labor records in February 1996 and learned that RL had not worked there since the third quarter of 1996. Records indicate RSVP never responded to the withholding orders with information or funds.

* * * * *

3AE-90-XXXX, State of Oregon versus SD: This case opened in October 1987. Labor informed CSED that RSVP had been a quarterly employer for SD on January 9, 1996. A withholding order for $1,539 per month was issued to RSVP on that date. On January 18, 1996, a CSED worker noted that RSVP was "out of business" as of September 1995. Another notation in February 1996 again showed that RSVP was no longer in business. However, the August Labor report indicated that SD was working at the new employer and an order was issued on August 16, 1996. The new owner responded in September that SD never worked for her business.

Review of cases referred to Law

As part of this investigation, CSED provided Ms. Lord-Jenkins a list of all CSED cases that were awaiting action at Law as of June 6, 1997. There were 1,994 cases at Law at the time. The list contained 36 cases noted as employer non-compliance case referrals. The list does not include cases that were referred to Law, acted upon and returned to CSED.

The review showed that Law still held cases referred to it in 1986, 1989, and 1994. Three CSED cases referred to Law in 1993, including the obligor's and DS cases from RSVP, remained there. (The DD case, which was closed in 1996, was not included in the list.)

One 1994 non-compliance referral remained on Law's caseload, six cases from 1995 remained; 17 from 1996 and 11 from 1997 remained as of August 1997.

CSED provided another printout of the CSED cases at Law as of December 19, 1997. The total caseload had dropped to 1,528 cases. Seven of the employer non-compliance cases listed in June had been returned to CSED. The list showed that 30 of the cases listed in June remained at CSED and 20 new cases had been added since June 1997.

Of the cases that were moved off Law's caseload between June and December 1997, one had been transferred to Law in the year 1989, four in 1996 and two in 1997.

Technological communication problems

CSED and Law are able to communicate with each other through an email system. However, Law is unable to access CSED's computerized case management system to research the status of cases. Law must rely on CSED to provide and update information on cases referred to Law for action. Conversely, if Law takes an action in a case, it has no way of

noting that action in the CSED case management system.

Ombudsman Investigation A096-4578

In ombudsman investigation A096-4578, released in the spring of 1997, the Ombudsman criticized Law and CSED for extensive delays in processing modifications. Investigation revealed that a CSED modification file had been "lost" after being sent to Law. Additionally, investigators found that Law delayed action on modifications for long periods of time.

As a result of that investigation, the Ombudsman recommended that:

- Law and CSED should devise a method for ensuring the prompt transfer of case files to Law.
- CSED and Law should develop a case management system that allows monitoring of cases between their offices.
- CSED, Law and the court should coordinate procedures for handling routine modification-related motions, keeping as a goal completion of the entire modification process within 180 days.

CSED rejected the recommendation that it and Law develop a case management system that would allow monitoring of cases between offices. CSED stated:
We have a method to monitor case files going to and from the Department of Law. However, we don't control what happens to them once they reach there. Thus, we had no control over the fact that Law could not find [a particular] file in its own offices.
Law accepted the recommendations and stated:
This has been the goal of Law and CSED for some time. Due to incompatibilities between our present computer systems, it was decided some time ago to wait until CSED's new system is in place. We understand that system is currently scheduled for installation by April 1 (1997). Law and CSED will work together to develop a system of codes that Law's staff can enter into CSED's case management system so the progress of the case through both offices will be available in one place and accessible to both offices.
Ms. May told the investigator that CSED's computer system, scheduled at that time to be operational on October 1, 1997, (would) be delayed somewhat. She said that when that system is functioning, she hopes that Law will have caseload access so that both agencies can work on the same system. CSED's computer system was last scheduled to be operational on December 31. That date was recently delayed for two to three months. CSED converted to the new system in Spring of 1998.

The reasonableness of the obligor's overall support debt

A review of the obligor's payment history indicated that the case was established with an arrearage of $3,727 on April 10, 1990. According to CSED caseload management notes, this amount was owed for a period from December 1989 through April 1990. This approximates the "default" support that CSED has routinely established when a custodial parent receives public assistance benefits and the obligor fails to provide income information. the obligor's scheduled payments were $752 per month for the months of April through October 1990 when CSED learned that the obligor had been living in the ex-husband's' home caring for him. The $752 figure is how much an AFDC family with one child receives per month. Then the obligor was charged no support until October 1991 when CSED determined that she owed support for the period from January 1991 through August 1991. An accounting adjustment added $6,016 to her arrearage balance, which equaled eight months of support at $752 monthly.

After receiving notice of the increased arrearage, the obligor contacted CSED in September 1991 to determine why her balance was so high, especially in light of the recent court order directing that she pay only $150 per month. She told the worker she only earned $700 per month and was unable to pay $752. The worker told her to bring in proof of her earnings and CSED would be able to adjust the withholding to $200 per month. Case notes for September 9, 1991, also state "Request for order review to O/C".

Notes for October 9, 1991 state:

> [Obligor] in with proof of income, will lower WID to $200/mo. Also brought in statement signed by her & [Custodial parent] that she lived with him till 10/90. Will [review arrears.] **She also had paperwork for set aside, will submit to** ." [Emphasis supplied]

Labor records indicate that the obligor grossed no more than $3,088 per three-month quarter during that time. As of October 1991, she had accrued an $11,566 arrearage at the $752 per month rate. Her monthly support from October on was $150 per month. Had her arrearages been established retroactively at the $150 per month established by Judge Andrews in August 1991, she would have been paying on an acquired arrearage of about $4,000, not including interest, as of October 1991. This would have saved her around $7,000.

CSED has a procedure whereby obligors owing a debt to the state to reimburse a "default amount" of public assistance child support can

petition to have the debt retroactively reduced to the amount they were able to pay at the time. It appears that at one time the obligor submitted a request and supporting income information to reduce the arrearage to a more reasonable level, but the agency did not act on her request.

Ms. Butterfield said that such action might be appropriate in this case.

The obligor's payment was increased from $200 per month to $365 when she assumed custody of her son and the ex-husband withdrew from services. The $365 was based on the arrearage the obligor supposedly had at the time: $20,000. If CSED had recalculated her arrearage to reflect a lower initial support of $150 per month instead of $752, her arrearage would have been about $12,000 in 1995. CSED has established a payment amortization schedule to determine monthly payments on an arrearage. The monthly payment is based on the amount of arrearage owed. According to the schedule, the obligor's monthly payment would have been an estimated $285 if the total arrearage had been $12,000 in 1996 when the new employer started withholding. That does not factor in the payments that were withheld but not remitted to CSED or interest accrued on those payments.

Alaska statutes, Federal and State regulations; CSED policies

> ***Alaska Statute 25.27.020***. Duties and responsibilities of the agency.
>
> (a) The agency shall
>
> (1) seek enforcement of child support orders of the state in other jurisdictions and shall obtain, enforce, and administer the orders in this state;
>
> (2) adopt regulations to carry out the purposes of this chapter and AS 25.25, including regulations that establish
>
> (A) schedules for determining the amount an obligor is liable to contribute toward the support of an obligee under this chapter and under 42 U.S.C. 651 -- 669 (Title IV-D, Social Security Act);
>
> (C) subject to AS 25.27.025 and to federal law, a uniform rate of interest on arrearages of support that shall be charged the obligor upon notice if child support payments are 10 or more days overdue or if payment is made by a check backed by insufficient funds; **however,**

an obligor may not be charged interest on late payment of a child support obligation, other than a payment on arrearages, if the obligor is

(i) **employed and income is being withheld from the obligor's wages under an income withholding order**;

(b) In determining the amount of money an obligor must pay to satisfy the obligor's immediate duty of support, the agency shall consider all payments made by the obligor directly to the obligee or to the obligee's custodian before the time the obligor is ordered to make payments through the agency. **After the obligor is ordered to make payments through the agency, the agency may not consider direct payments made to the obligee or the obligee's custodian unless the obligor provides clear and convincing evidence of the payment.** [Emphasis supplied]

AS 25.27.260. Civil liability upon failure to comply with an order or lien, states that if a person:
(5) intentionally fails or refuses to honor an assignment of wages or an income withholding order under AS 25.27.062 that was served by the agency through personal service by a process server or through certified mail, return receipt requested, the person, . . is liable to the agency in an amount equal to 100 percent of the amount constituting the basis of the lien, order to withhold and deliver, attachment, or withholding of wages or income, together with costs, interest, and reasonable attorney fees.
15 AAC 125.170 Income Withholding; Employer's Transmittal of Money to Agency, requires that an employer who CSED serves with an income withholding order under AS 25.27.062, 25.27.250, or 15 AAC 125.310 shall send the amount ordered to be withheld to the agency within 10 days after the date the employee is paid.

The U.S. Department of Health and Human Services issues periodic informational notices to child support enforcement agencies nationwide to answer questions raised in various jurisdictions. Action Transmittal OCSE-AT-97-10, issued July 30, 1997, raised the question about how penalties will be imposed on employers not complying with timeframes regarding income withholding in interstate cases.

The booklet cited regulations at **45 CFR 303.100(h)(7)**, which directs that “the law and procedure of the state where the non-custodial parent resides,” shall apply.

15 AAC 125.145 Interest on child support arrearages.

(a) The agency will charge the obligor interest, upon notice, on child support more than 10 days overdue or on payments made by check on an account with insufficient funds. Child support is overdue when payment is not received by the agency on the date specified in the superior court order, notice and finding of financial responsibility, or hearing officer's decision. However, an obligor will not be charged interest on an overdue payment of a child support obligation other than a payment on arrearages if the payment is withheld from the obligor's wages, unemployment compensation or worker's compensation. Notice to the obligor in the form of a computerized billing or statement of account will be sent by first class mail to the obligor's address of record.

(f) If the right to receive child support has been assigned to a governmental entity, the agency will, in its discretion, enter into a written agreement to waive interest on arrearages. If the right has not been assigned, the agency will, in its discretion, enter into a written agreement to waive interest only upon the approval of the obligee.

CSED policy 8270.8 states that when a case is referred to Law, the caseworker is supposed to "suspense" (the case) for a review of the enforcement status in 120 days. If no status information has been received, the worker should contact Law and enter any status information into the enforcement record information. The worker also should provide a status response to the payee and "re-suspense for contact with Law within another 60 days."

CSED Policy 8290.1 states that when an employer fails to answer an Order to Withhold and Deliver within the prescribed time, the CSED may refer the matter to the Law for action.

CSED Policy 8290.2 states that when a judgment is obtained against a company or organization for failure to comply with the Order to Withhold and Deliver Property, a file must be established to show the State of Alaska as the recipient. The case is assigned to Team 3 as a special enforcement case and "must be coded to exempt them from administrative enforcement."

45 CFR 303.100(f) Notice to the employer for immediate and initiated withholding. (1) To initiate withholding, the state must send the absent parent's employer a notice which includes the following:

(iv) That the withholding is binding upon the employer until further notice by the state;

(vi) That, if the employer fails to withhold wages in accordance with the provision of the notice, the employer is liable for the accumulated amount the employer should have withheld from the absent parent's wages;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same wages;

(ix) that the employer must implement withholding no later than the first pay period that occurs after 14 working days following the date the notice was mailed;

ANALYSIS AND PRELIMINARY FINDING

The obligor charged that CSED was inefficient in actions to force RSVP to pay the support that the business withheld from her wages.

The obligor also alleged that CSED was unreasonable by collecting $365 every month to pay back support she says was already collected from her through CSED-mandated wage withholding. She contends that besides being fundamentally unfair, this amount of collection placed an unreasonable hardship on her and her child.

She further contends that CSED was unreasonable by continuing to collect the arrearages from her while Law sluggishly reviewed her complaints about RSVP's non-compliance with the CSED withholding order.

She held that CSED should have collected from her long-time employer, Nick Mastrodicasa, who, she says, for several years violated CSED's withholding orders, Alaska statutes and federal law by withholding support from her salary but never sending it to CSED. She argues that the state's failure to pursue her allegations and evidence against RSVP made CSED's pursuit of her $365 per month all the more unreasonable.

The obligor did not name CSED's legal counsel, the Department of Law, in her complaint. The Ombudsman decided to add Law to this investigation because of Law's extraordinary failure to act for nearly five years as this file, and two others nearly identical to it, were at the department for action.

CSED and Law wield a heavy hammer in enforcement. They have tremendous power to demand, levy, garnish and sue. Federal law gives child support agencies the equivalent of a mandate to use these powers. Under federal regulations, obligors have little choice but to pay child support through the state support enforcement agency. But with this mandate comes the responsibility to act efficiently and fairly.

This places a burden on child support agencies to efficiently collect support from compliant obligors and to pursue non-compliant obligors. In the case of the complainant, and the other obligors, CSED had the burden of pursuing their employer, RSVP Maid Service, too. This obligation was not properly fulfilled.

* * * * *

Allegation 1: Inefficient: *CSED failed to enforce withholding orders for child support sent to the complainant's employer, who was withholding support payments but not forwarding them to CSED.*

The Office of the Ombudsman's Policy and Procedures Manual at 4040(14) defines *performed inefficiently* as:

> (a) a limit established by law (statute, regulation, or similar enacted source) or
>
> (b) a limit or balance established by custom, good judgment, sound administrative practice, or decent regard for the rights or interests of the person complaining or of the general public.

It took CSED 18 months from the time RSVP first was listed as the obligor's employer to the April 1993 referral to Law. During that time RSVP forwarded no support to CSED, provided no information on her income to CSED and ignored CSED withholding orders. RSVP owner Nick Mastrodicasa gave CSED varying stories telephonically but did not respond in an acceptable manner to the legal orders issued him.

It took CSED four months from the first actual report by the ex-husband that RSVP was withholding support but not forwarding it for CSED to refer the case to Law. The Ombudsman cannot find fault with the speed of the referral after the "report" of non-compliance but questions CSED's lack of action against a non-compliant employer for 18 months. This analysis, however, will focus on the CSED's actions after it referred the case to Law.

CSED has, through the life of this case, repeatedly and unquestioningly

deferred to Law when questioned about the status of the obligor's case. CSED told her that it could take no action on her pleas for a reduced arrearage repayment because "the case was at Law." This placed the obligor on a frustrating four-year merry go-round: There was motion but no progress.

In the obligor's case, CSED failed to follow its own procedure and reasonable expectations by failing to consult Law when the obligor and her ex-husband asked repeatedly about RSVP's failure to remit her support payments. CSED staff were supposed to be the squeaky wheel to Law in tracking cases referred for legal action. Instead--for the obligor and Messrs. DD and DS--they were silent partners with Law during years of inaction.

The obligor's case history indicates that despite numerous inquiries from the custodial parent and the obligor parent, CSED inquired of Law only once from April 21, 1993, until October 1996, when Ombudsman questions prompted a call to Law. CSED's own policy requires that workers "suspense" referrals to Law for 120 days initially then every 60 days thereafter until the case is returned to CSED. This was not done. Periodic inquiries from CSED might well have kept the three RSVP referral cases from becoming "lost" at Law for two years.

In fact, at several points during the case history, CSED caseworkers seemed totally unaware of the history of the obligor's case and unequipped to deal with it.

In 1995 when the new employer called CSED to argue that a $365 garnishment was too much for the obligor and that her prior employer had not remitted support he withheld, caseworkers told her that the obligor had never questioned the withholding and in essence, to shut up, pay up and mind her own business. The CSED caseworker need not have taken the new owner's statements as the gospel truth. However, her inquiry and statements should have encouraged CSED workers to at least review the computerized case notes before dismissing her outright. At the point that the new owner called, her call was logged on page 10 of the case management notes.

If the caseworker had reviewed even the prior page, the caseworker would have seen the following entry for July 21, 1995:

> TCAG (Telephone call attorney general) RHONDA. OLD REFERRAL FOR EMPLOYER NON-COMPLIANCE. PER NOTES, LOOKS LIKE FILE CONTAINS <u>EVIDENCE THAT EN DID W/H & NVR SNT IN</u> & IF SO, EN SHOULD GET A LTR

> DEMANDING PYMT FRM AG. LAST PAY FRM EN WAS 6/92. WILL PULL DOL TO FIND OUT WRK HISTORY WITH THEM SINCE. [Underline emphasis supplied]

A review of the file should have led to a call to Law. Instead, CSED *again* ignored or dismissed the information and failed to act.

A review of the obligor's case payment history also indicates that the support order began at a default support amount of $752 per month that was clearly -- then and now -- unreasonably high for the wages the obligor earned.

CSED failed to act on the obligor's repeated requests that her withholding be reduced below the $365 monthly level because it was a hardship on her and her son. CSED repeatedly told her no "because the case was at Law." Workers then failed to inquire of Law how much longer the case would take -- for four years. If Law had taken action within a reasonable time, CSED's response might have been acceptable, but there is no way to justify such a response beyond 12 months.

CSED failed to issue withholding orders to RSVP on a regular basis after the case was referred to Law. From the time RSVP was listed as an employer until September 1995, CSED issued only 12 withholding orders and letters of reminder to Nick's RSVP, despite the obligor's continued and documented employment there, despite her allegations and submission of evidence and despite RSVP's repeated failure to respond or to pay support. One might argue that repeated withholding orders would be ignored, but it also is not difficult to envision RSVP claiming that it did not pay because it did not continue receiving withholding orders.

CSED failed to submit important information to Law about developments in this case, such as the change in custody, the ex-husband' withdrawal from services, and information on other RSVP obligors.

CSED more than doubled its monthly collection amount after the obligor assumed custody of her son. It is sadly ironic that the state intensified its collection efforts to repay a debt to the state at the time the obligor regained custody of her child. CSED did not devote these same efforts to enforce a debt to the ex-husband when he was the custodial parent, but once the obligor was supporting the child, the state was determined to get its share. In this, CSED failed to consider the best interest of the child and the lengthy history of benign neglect by CSED and Law. CSED might well argue that it is merely a collection agency, but the failure to note and act on the change of custody gives their

actions in this case the appearance of indifference.

CSED caseworkers also gave inconsistent advice to the various RSVP obligors:

- CSED told the obligor that CSED could not stop the withholding because of federal regulations. In fact, under some circumstances, federal regulations allow state support agencies to suspend withholding.

- CSED told the obligor she was responsible for ensuring the funds got to CSED -- even if they were sidetracked by RSVP and even though CSED was not reacting to her complaints.

- Another obligor who alerted CSED that RSVP was withholding from several RSVP employees and not forwarding the money to the agency was told that he should get a lawyer and pursue this in court. This man and the others were working for minimum wage at RSVP. The state gave them no option but wage withholding. Their wages were withheld but not sent in. CSED and Law ignored this and in fact enabled RSVP to continue to thwart a legal order. And these low-paid obligors should hire a lawyer? With what would they pay?

If the case management notes are to be believed, at least one supervisor did not respond to a subordinate who "flagged" an RSVP case and asked for advice on whether to transfer the case to Law. With the exception of this documented case, individual CSED caseworkers seemed unaware that RSVP's non-compliance in each of the nine other cases were episodes in a long history of non-compliance. CSED staff had a lot of information at hand, more than enough to establish a definite pattern of civil non-compliance and possibly enough to establish criminal behavior at RSVP. By failing to check the computer for other RSVP employees with CSED cases, or to send out an electronic alert, CSED lost the chance to establish a pattern, collect some of the withheld funds from RSVP or even prosecute RSVP for theft.

Admittedly, CSED staff generally are not trained investigators, but it would not have taken much to send a system-wide alert telling other enforcement officers to look for a pattern in their cases.

While failing to sanction RSVP or to establish a pattern with other RSVP employees, CSED staff at the same time zealously enforced against some of their obligors:

One obligor repeatedly complained and presented evidence to CSED about RSVP's non-compliance in his case. Instead of going after the employer, CSED initiated a bank sweep against the obligor. This was perfectly legal under federal regulations, but was it reasonable or fair to the obligor who was working with the agency?

When the ex-husband questioned the status of the obligor's case in November 1993, CSED caseworkers told him if he asked them to ask Law about the case's status, they would. He deferred and his inquiry was insufficient to prompt CSED to question the progress at Law despite CSED policy requiring such an inquiry.

In mid-1995 Ms. Butterfield "inherited" the obligor's file and queried CSED about its status. CSED caseworkers did not respond to her inquiry for a month and only provided information when she contacted them again.

Given the above facts , the Ombudsman proposes to find the allegation that CSED was inefficient in enforcing withholding orders against RSVP and collecting child support from it to be **justified**.

Allegation 2: Unreasonable: *CSED continued to garnish the complainant's wages even though the complainant already had paid support through agency-ordered wage withholding, and even though the complainant's arrearage was questioned and under review by the Attorney General.*

The Office of the Ombudsman Policy and Procedures manual at 4040(2) defines *unreasonable* as:

> (A) a procedure adopted and followed by an agency in the management of a program is inconsistent with, or fails to achieve, the purposes of the program,
>
> (B) a procedure that defeats the complainant's valid application for a right or program benefit, or
>
> (C) an act that is inconsistent with agency policy and thereby places the complainant at an disadvantage to all others.

The obligor's original withholding was established as a default amount based on an AFDC monthly benefit. The $752 was more than she made in a month. She repeatedly asked the agency to reduce the amount of arrearage upon which her post-1995 support was based. CSED told her it could not consider such a request because "the case was at Law." She

asked the agency to waive accrued interest on the arrearage. She was told CSED could not consider such a request because "the case was at Law." She asked that she be allowed to pay her support directly to CSED and eliminate RSVP as the middleman. She was told CSED could not consider such a request because of federal regulations.

There appears to be no reason for CSED to refuse at least to consider her requests. CSED had no idea what was going on at Law in this case because CSED never asked. Law had not been asked to determine if the original monthly support amount was reasonable, only to make RSVP send them the money.

The Ombudsman understands that rigid federal regulations have seriously limited CSED's ability to exercise discretion in many situations. Mandatory income withholding is one of them. However, the Ombudsman is disturbed by the failure of CSED staff to ever question the wisdom, fairness or simple common sense of refusing to waive wage withholding in the obligor's case when she and two others had produced evidence of RSVP's actions. This evidence was sufficient to send this case and two others to Law for action. Why was it not sufficient to prompt a different way to collect the support?

At the very least, CSED should have given serious consideration to temporarily waiving the wage withholding in these cases. CSED was not getting money from RSVP under the obligor's withholding order. The obligor was willing to pay directly. Why not try to have her pay directly? Had someone at the agency taken the time to look for a pattern with RSVP non-compliance, there was sufficient evidence to support such a radical experiment.

Federal regulations may be powerful and ordinarily applicable but they are not sacrosanct. This was not an ordinary case. It was made extraordinary by Law's failure to act for five years. Someone, somewhere at CSED should have thought outside the "CFR box" and realized that the imposition of these rules was causing harm to this obligor and, by the way, was not collecting the support due. This woman was treated without compassion by a succession of caseworkers. She deserved better. She was a mother who was supporting a child. Both were harmed by the failure of the state to do its job.

CSED's failure to even consider the obligor's application for a reduction in arrearage because "the case was at Law" clearly placed her and her son at a disadvantage and clearly was inconsistent with the purposes of the CSED program.

The Ombudsman therefore proposes to issue a preliminary finding of

justified to Allegation 2.

When two allegations are investigated and both are found to be justified, the proposed finding for the complaint, in this case against CSED, is ***justified***.

A0972272 Inefficient: *The Department of Law failed to act upon a child support case for more than four years after receiving the case for review. Further, this has delayed review of two other similarly situated CSED cases referred to Law for review in 1993.*

The obligor's case record at Law indicated that Law employees failed for more than two years to take any action on the obligor's case or the others. If the CSED files and files at Law are to be believed, these cases were misplaced at Law until 1995. Once the cases were found, Ms. Butterfield did not take meaningful action on the obligor's case for more than two years. She told CSED caseworkers in 1995 that Law needed to send a more severe warning to RSVP. She asked for current Labor information. Ms. Butterfield admitted to the Ombudsman investigator that she never wrote the warning letter, saying she never received the information she needed. However, that information was in the file when Ombudsman investigators reviewed it, current to the date of the request. She had a paralegal retrieve the RSVP bankruptcy file in early 1996 but had done little more than measure its thickness until the fall of 1997 when pressed by the ombudsman investigator.

The delay from 1993 to 1995 allowed the RSVP bankruptcy to continue unchallenged and has in all likelihood jeopardized whatever claim the obligors might have had against RSVP in bankruptcy court. Ms. Butterfield said that while the RSVP employee obligors or CSED could have filed a claim in the bankruptcy proceeding while it was proceeding, she said nothing indicated that anyone ever told this to the employee obligors who were relying on Law to protect their interests.

In one of the other cases referred to Law, the delay from 1993 to 1997 led to the case being closed at CSED. Law then dropped its case with no action against Nick's RSVP.

Because of the delay by the State of Alaska, one option then being considered was that the new employer might well be held accountable for Nick's debt because the new employer purchased the business and she is a successor in interest.

Attorneys at Law also failed to inform their supervisor of significant aspects of this case, i.e. there were three RSVP cases at Law for action which, Ms. May indicated, would have increased the priority of this

case. Instead, the cases were distributed alpha-numerically among attorneys, none of whom really claimed responsibility for the group of cases or grasped their significance.

The facts uncovered by this review require the Ombudsman to issue a finding of ***justified*** to the allegation that Law acted inefficiently in this case.

AGENCY RESPONSE TO PRELIMINARY FINDING

Department of Revenue Commissioner Wilson Condon responded to the Ombudsman's preliminary finding for CSED and the Department of Law on May 22, 1998. The commissioner's written response in essence memorialized an earlier inter-agency meeting to discuss the preliminary finding. That meeting was attended by Commissioner Condon and Attorney General Bruce Botelho (telephonically); CSED Director Barbara Miklos (who was not in charge of CSED for the time that the obligor's case events occurred), Assistant Attorney General Marilyn May, DOR Special Assistant Larry Persily, and CSED CSEO IV Phil Petrie and Assistant Ombudsman Linda Lord-Jenkins. (Mr. Petrie has since left CSED.)

Commissioner Condon's response to the findings is as follows:

> First, we agree with your proposed findings that the Child Support Enforcement Division and the Department of Law operated inefficiently in handling [the obligor's] child support case and wage-withholding problems with her employer. There's no question the obligor was mistreated in the way government went about its job. Overall, we plead guilty and agree the complaint is justified. However, we believe a single, all-encompassing finding would be more accurate and more relevant than your proposed three-way finding of two inefficiencies and one unreasonable.
>
> For example, allegation No. 1 that the child support agency was inefficient in failing to enforce the withholding orders sent to the obligor's employer is a little misleading. The fact is we were too efficient -- we kept collecting even when we knew there was a problem. That sounds a lot like allegation No. 2; that we were unreasonable in handling her case. Because the case truly is one mess, not three, wouldn't it just be easier to say, yes, we were inefficient in dealing with this case and the

overall problem of employer noncompliance rather than arguing over the nuances of three seemingly indivisible infractions?

My other request is that if this report is to be made public, perhaps it could be reorganized and simplified so that it's easier for the non-ombudsman and non-child-support proficient to follow. That would mean folding the Department of Law actions and inaction into the rest of the case chronology that starts on Page 2 of the report, and presenting a summarized listing of the events in the case. I don't suggest this as a cover-up or to minimize the errors in handling the obligor's case. My recommendation is only aimed at avoiding any misunderstanding that could result from unfamiliar readers trying to track the players and events through several different interviews spread over two dozen pages. It's your call, as I said, it's just a suggestion.

Before I respond to the recommendations offered in the report, I'd like to talk about life before, during and after the RSVP/[obligor] case. Many of the problems relate not to a lack of policies and procedures but to our past failure -- at Law and the child support agency -- to incorporate the right values into every decision we make. I say past failures because this report helped focus everyone's attention on the continual need to do what's right for parents and their children. Doing the right thing means making the correct management decisions when a problem develops. We could have reams of policies and procedures, and still the obligor's case could have sat silent for four years. I believe that an emphasis on common sense and public service, together with increased training for line staff, will do much more than a few additional pages in our policies book to prevent a case like this from ever happening again.

Your report also has helped us recall some of our past shortcomings. Those include inadequate staff levels at Law and CSED, and insufficient communication between the two agencies on setting priorities for handling cases. The flow of case-management information between the agencies was clearly inadequate given the expanding workload. The computer-generated list of CSED cases at Law was so large and amorphous that it failed to serve its intended purpose. Dysfunctional is a word of the ' 90s

and it certainly fit our past efforts to monitor employer non-compliance cases between Law and CSED.

Unfortunately, people may judge us on these past practices stretching back several years. Fortunately, we've changed.

CSED has benefited from an increase in staff the past few years, as has the Department of Law section that handles child support matters.

More than staff numbers, the change has come in agency values. CSED and Department of Law personnel are committed to finding the right answers for every case -- not the one-size fits all answer.

CSED is about to adopt new regulations that will more clearly guide the determination of child support obligations for non-custodial parents.

The agency no longer uses the amount of public assistance grants as the basis for its child support orders in default cases. For years, these so-called "Default NFFR's (Notice of Finding of Financial Responsibility) were set at an amount equal to the public assistance grant received by the custodial parent when the non-custodial parent refused to provide CSED with sufficient financial information. Not only did this result in monthly obligations set far above a person's ability to pay, but they created lasting problem cases that each accumulated tens of thousands of dollars in arrears and drove people away instead of bringing them in to fix the problem. Default NFFR's are now based on our best information as to each person's income capacity and/or average wage for his or her profession. We also hope to find a better answer than the statewide average wage we currently use, and we have held several discussions with personnel at the departments of Law and Labor to find the answer.

And rather than simply rest on our changes for present and future cases, we've set up a special team to review past Default NFFR's and, when appropriate, set new, realistic orders and adjust the arrears. The team already has handled 140 cases totaling more than $6 million in arrears.

CSED in March started using its first new computer system in 13 years. Though caseworkers are still getting used to the new screens and command lines, the system provides many improvements. One of which is that the Department of Law will have desktop access to the child support computer system. Training sessions are being scheduled for Law staff so that they can expand the read-only access they currently have from their terminals and begin inputting case management information into the data files. (This training has been completed.)

Though we know computers don't hold all the answers, we also acknowledge they can help. A case in point is the new spreadsheet developed and maintained at the Department of Law. This file lists all of the employer non-compliance child support cases at Law, the employee's name, the attorney assigned to the case, the employer's name, the date opened and action taken. This new effort separates out these important cases from the hundreds of other files maintained at Law and allows the attorneys and CSED quick access to the cumulative information. Never again will we fail to realize that an employer is cheating more than one employee. The Department of Law also plans to compile similar lists for other unique sets of CSED cases, such paternity cases and modifications.

The Department of Law also has changed its procedures and will consolidate with one attorney any multiple cases from the same employer.

Your investigator served to jump-start Law into taking action on its employer non-compliance cases this past winter. Since then, the state has filed suit against three employers and settled with at least five -- with seven others in settlement talks.

Finally -- before I get to the recommendations -- the Department of Law would like to correct a few factual inaccuracies in the investigative report:

The advice of the bankruptcy expert, Susan Notar, appears to assume that CSED and Law had notice of the bankruptcy filing. This was not the case. Neither CSED nor any of the employees with child support wage-withholding orders were listed as creditors in the

> bankruptcy filing. In fact, the claims bar date in the bankruptcy was July 30, 1992, nearly a year before the cases were transferred to Law. We propose that you delete this paragraph.

The Department of Law contested the Ombudsman's statement that CSED was responsible for intervening in the RSVP bankruptcy case. The response stated CSED was not officially noticed of the bankruptcy nor listed as a party in the action therefore the assertion that CSED should have intervened was incorrect.

The ombudsman requested clarification on Law's objections to Ms. Notar's comments on bankruptcy responsibility. DOR Special Assistant Larry Persily responded for the division:

> The child support case notes provide two indications of bankruptcy for RSVP. One note was entered Oct.20, 1993, and the other on Dec. 23, 1993. There is no indication in the file or on the computer that the Department of Law was ever notified of the Chapter 11 suspicion. There also is no record that CSED ever sent anything to the bankruptcy trustee for RSVP, leading me to believe that the agency maybe suspected a Chapter 11 filing but never confirmed it. On the other hand, since Nick Mastrodicasa filed for bankruptcy in April 1992, it's possible that CSED had become aware of it by the fall of 1993, but, again, there's no confirmation in the file.
>
> In his bankruptcy filings, Mr. Mastrodicasa failed to list CSED as a creditor. He listed his Alaska student loan and his state unemployment taxes, and because of that the Department of Law and Department of Education were officially notified of the case. But no such notice was ever served on CSED or on the Department of Law on behalf of CSED.
>
> Mr. Mastrodicasa also failed to list any of his employees as creditors in the bankruptcy filing, just as he failed to list the child support obligors he had stolen from by withholding their payments.
>
> The Department of Law first became aware of the bankruptcy filing in January 1996. We're not sure how Law discovered it, but a memo from Diane Wendlandt is

the first mention of it in Law's files.

AAG Rhonda Butterfield tells me that the bankruptcy court now sends a Notice of Commencement of Bankruptcy in every case to the local IRS office and CSED – even it neither are listed as a debtor. This policy would seem to prevent a reoccurence of Mr. Mastrodicasa's case in which he lied about his creditors.

OMBUDSMAN RESPONSE TO REVENUE'S COMMENTS

The Ombudsman appreciates Commissioner Condon's thorough and sincere review of the preliminary finding and willingness to make the painful admission that CSED and Law mishandled this case.

Commissioner Condon admits that CSED and Law ill-served the obligor, her former husband and their son in the state's handling of their case. He characterizes the obligor as being "mistreated by the way government went about its job." This sort of admission in government is refreshingly candid and, unfortunately, true.

The ombudsman declines Commissioner Condon's suggestion that the three allegations be combined into one allegation. The allegation of inefficiency at CSED is separate and distinct from the allegation of inefficiency at the Department of Law. The allegation that CSED unreasonably did not reduce the obligor's support payment looks at decisions made by CSED staff, not mere inefficiency.

The Ombudsman declines to incorporate the scant listing of Law's actions in this case into the actions of CSED for the simple reason that Law's inaction stands alone.

The agency's response then discussed how an increase in staff awareness and training coupled with a good dose of common sense will help to improve CSED performance far more than will adding policies and procedures to the agency policy manual. The Ombudsman will never argue against the exercise of common sense and supports it here. However, it must be recognized that CSED staff will frequently encounter situations which leave them scratching their heads. Common sense aside, they will be judged on how they follow CSED policy. In order to do so they must have something to refer to – a policy manual.

The CSED policy manual directs that staff who have referred cases to Law regularly ask about the status of those cases. They are not directed to call up the attorney general on a weekly or even a monthly basis but

every 60 days. That is common sense manifested in existing CSED policy.

Regarding the comment that CSED "did its job too well, continuing to collect when the agency knew there was a problem," we must point out that CSED continued not collecting. Nothing was collected after June 18, 1992. A few letters were sent.

The commissioner then points to an increase in CSED and Law collections staff as an improvement in the past few years. The increase, however how small at Law, can only be considered a positive step. The reduction in the number of cases at Law certainly indicates an improvement. However, the investigation did not find, nor did Law assert, a correlation between the number of cases on Law's caseload and Law's inaction in the obligor's case. The record showed that the case was simply "lost" at Law for two years and, we argue, not searched for because no one at CSED followed policy and reported it missing.

The commissioner also cited CSED's change in policy regarding establishing support orders based on "default NFFRs" and the formation of a special team to deal with obligors whose support order was established by such a default order.

The Ombudsman wishes to point out that this policy change was accomplished and the special team formed on CSED's own initiative, prior to the issuance of the preliminary finding in this case. Ms. Miklos states that the team is proactive rather than reactive. She said when CSED staff travels to rural Alaska for outreach they often attempt to determine if CSED obligors have support obligations established by default. The Ombudsman commends this proactive operation. However as we are congratulating CSED on initiating this team, we must point out that it did not help the obligor who repeatedly asked for a reduction in her support amount which was based on a default NFFR.

Regarding the response from Law concerning responsibility for responding to the bankruptcy filing, the record shows that someone at CSED was aware that RSVP was in bankruptcy because someone included the "chapter 11" reference in the case management history of the obligor's and DS cases. CSED case management notes for June 10, 1992 noted "Ch 11" in the DS case, two months and four days after the RSVP bankruptcy file was opened. CSED notes for November 22, 1993 indicated "Ch 11" for the obligor, admittedly a long 19 months after the RSVP bankruptcy case was filed but long before the bankruptcy case was closed.

Common sense dictates that when CSED learns that an employer or

obligor is in bankruptcy, even if the division is not *officially notified,* that the division should take some specific steps to protect both parents' and, in the obligor's case, the state's interest. Law contends and records do not dispute that no one from CSED notified Law. If that is the case, Law cannot be faulted for not intervening in the bankruptcy case. CSED's information that the bankruptcy court now automatically sends notices of commencement in every case to CSED should help prevent this from happening again. It also implies that CSED will inform Law.

RECOMMENDATIONS

Recommendation 1: *This review revealed more than a dozen cases where RSVP Maid Service employed child support obligors. Three of those cases were transferred to Law for action. Investigation indicates that a timely systematic review by CSED and Law of all the RSVP employer cases could have provided additional information to assist Law to pursue RSVP. Such a review of RSVP's record would have revealed nine other obligors in 12 cases where RSVP ignored repeated CSED notices to collect support. The review also would have shown a pattern by RSVP of not responding to CSED correspondence at all. More importantly, such a review would have revealed that in one case, RSVP's owner repeatedly employed delaying tactics and lies to stave off collection efforts and then issued a check on insufficient funds.*

CSED should train staff who encounter apparent cases of employer non-compliance to review all cases involving the employer for patterns of non-compliance. This information should be supplied to Law when cases are referred.

Agency response: Law's new spreadsheet on employer non-compliance and regular reviews of that report by Law and CSED staff is our affirmative response to Recommendation No. 1.

Ombudsman response: Law's collection and support section has developed a database devoted strictly to employer non-compliance cases. Assistant Attorney General Diane Wendlandt is unofficially supervising work on the database and employer non-compliance cases. The case list included 41 open employer non-compliance cases and 22 cases that have been closed in 1998. The spreadsheet developed by Law is a very positive step toward improving case tracking at Law. The department-wide system envisioned for completion in 1999 should further this task in all areas. However, our recommendation was directed at CSED as the custodian of information on all employers who have been served with WIDS.

The agency's response assumes that all cases involving employers who do not respond to or comply with a withholding order are referred to Law. In the obligor's case, three of 12 RSVP employee cases were referred to Law. Nine other cases had similar elements indicating that RSVP was not complying with or responding to the CSED withholding orders. These cases were not referred. Some of the cases that remained at CSED did not appear, individually, to contain elements that would warrant legal action by Law. However, taken as a whole, the cases would have provided a clearer pattern of the extent of this employer's non-compliance and deception. This clearer pattern in turn might have prompted the assistant attorney general in charge of the case to move more quickly to resolve the issue.

CSED recently initiated some radio image ads of children's voices ' thanking' the bookkeepers and employers who faithfully complied with support withholding orders. CSED also should remind employers who do not comply with withholding orders that there is a statutory price to be paid. Common sense would indicate that when an employer blatantly ignores one WID, there is good cause to believe other WIDs might be ignored. A quick check would provide valuable information to assist Law in pursuing that employer.

The Ombudsman finds this recommendation to be partially rectified.

Recommendation 2: *CSED caseworkers who refer cases to Law are directed by agency policy to track those cases on a regular basis. This was not done in the obligor's case or those of the other RSVP obligors. CSED should emphasize the importance of such tracking in all caseworker training.*

Agency response: It would not be productive to involve or even train every CSED caseworker in tracking cases at Law. Ordering [Employment] Range 13 Child Support Enforcement Officers to keep track of Range 22 attorneys could only serve to confuse the process. Therefore, we disagree with the broad nature of Recommendation No. 2. That said, Law is responsible to CSED, and CSED management is responsible for ensuring that Law does its job. Senior management at CSED and Law are aware of the importance of tracking employer non-compliance cases and will be vigilant for any cases that appear to be languishing.

Ombudsman response: The CSED response to the overall preliminary finding suggests common sense should be exercised instead of adding another policy and procedure to the CSED manual. The ombudsman supports common sense in all things. "Common sense" dictates that a case that has lain dormant on an attorney's desk for four years be

questioned by someone. Who better to question the issue than the Range 13 CSEO who has ‘ looked in the face’ of the people involved?

The Ombudsman understands that Law is responsible to CSED and CSED management is responsible for ensuring that Law does its job. We also accept that senior CSED management and Law are aware of the importance of tracking employer non-compliance cases. But it was ever thus. Law has been responsible to CSED since before the obligor’s case occurred. Since that time CSED management was supposed to be responsible for ensuring Law did its job. And they were all aware of the importance of tracking all cases at Law. But when CSED staff had agency policy to rely upon and when the obligor (and DS) repeatedly questioned their case status, nobody induced Law to act for four years until the ombudsman intervened.

The response brings to mind the obscure verse “lost in the land of the bean and the cod where the Cabots speak only to the Lodges and the Lodges speak only to God.” Under this system, nobody seems to be talking to the attorneys.

This ‘ trust me, we’ll do better’ attitude troubles the ombudsman given the circumstances in which the obligor and her son lived while no one questioned Law’s Range 22 attorneys. In 1995, a Range 22 employee was paid $4442 per month -- $1025.07 per week according to statute. The obligor lived month-by-month on wages totaling far less than the weekly amount paid a Range 22 attorney. Meanwhile she was repaying a debt to the state that she had already paid and supporting her son while the state said ‘ trust us’ and did nothing to hold accountable the person who had waylaid her support payments.

CSED has not responded positively to the recommendation that CSED direct staff to follow CSED policy and regularly track the case progress at Law. The Ombudsman has no choice but to declare this recommendation to be <u>not rectified</u>.

Recommendation 3: *The variety of advice given to the RSVP employee obligors reflects a basic misunderstanding of how to handle employer non-compliance cases. CSED staff should be retrained on the proper advice to give to employees in this situation.*

Agency response: In response to Recommendation No. 3, a memo will be sent to appropriate CSED staff, advising them how to advise parents caught up in employer non-compliance cases.

Ombudsman Response: The ombudsman investigator requested a copy of the memorandum and obtained one dated August 31, 1998. The

memorandum directs that a CSED collections officer assign a high priority to a case where evidence suggests that the employer withheld wages but did not forward the money to CSED. The caseworker is directed to determine that the wage payments have not been sent to CSED; contact the obligor (if the obligor was not the person to inform CSED of the problem) and ask the obligor to provide evidence that the funds have been withdrawn from their paychecks. If evidence is strong that the wages have not been forwarded, the caseworker is supposed to notify his supervisor who will inform the Investigation Section. The investigation section will notify the appropriate attorney in the Department of Law.

The memorandum further states that the Investigation Section will, depending on the circumstances of the case, recommend to the CSEO IV that CSED should suspend withholding until the matter is resolved. The CSEO IV will evaluate circumstances such as the length of time that the situation has gone on and the employer's response to CSED's telephone and written demands that they pay.

This memorandum satisfies the recommendation and this portion of the recommendations is rectified.

Recommendation 4: *CSED lacks policy and procedures for dealing with employer bankruptcies. Policy does exist when the obligor declares bankruptcy. Admittedly, employer bankruptcy is less common but obviously worth addressing. CSED should develop a policy and process to address wage withholding when employers declare bankruptcy. CSED also should establish policy and procedures for deciding when to deal with the bankruptcy trustee in appropriate cases.*

Agency response. Revenue agrees to implement Recommendation 4. CSED policy will be to immediately notify Law with any information on a possible or pending employer bankruptcy involving child support obligors as employees. CSED then, under advice of its attorney, will take immediate steps when necessary to protect the employees and their child support obligation. Law will be consulted as to how wage-withholding orders should be handled in bankruptcy actions. (As stated above, the U.S. Bankruptcy Court is now routinely notifying CSED of all bankruptcies.)

Ombudsman Response: This response, coupled with the information that CSED is automatically notified in any bankruptcy filing, satisfies the recommendation. This portion of the recommendation will be closed as rectified.

Recommendation 5: *The Department of Law should immediately*

complete work on the obligor's case and the cases of all others harmed by RSVP's actions. In the obligor's case, CSED should immediately audit her entire payment history, reducing the original arrearage to reflect a reasonable lower support amount, eliminating the wages withheld but not remitted from consideration as arrearages, eliminating interest charged during the Nick's RSVP withholding problems, and refund to her any overpayments due her.

Agency response:

> We have determined that $3,700 was withheld from the obligor's wages to pay her child support obligation while employed at RSVP. However, her employer forwarded only $1,600 of that to CSED. We have given her credit for the $2,100 her employer kept, plus we have backed out the interest charges on the assumption that her wage withholding payments, if properly handled, would have been timely. CSED also conducted an audit of her account history and recalculated her support payments based on accurate income information (vacating the default order). The adjusted balance on her account is now zero, and anything the state is able to recover from the $2,200 taken by Mr. Mastrodicasa will be refunded to the obligor. Any penalties or other funds recovered in the litigation will be retained by the state.

Ombudsman Note and Response: Additionally, the Department of Law on June 10 filed suit against Mr. Mastrodicasa, former owner of RSVP, alleging he withheld $2,200 from the obligor's wages under a child support income-withholding order in 1992-93 but then improperly kept the money instead of sending it to CSED. The complaint also alleges that he failed to withhold and deliver an additional $5,600 from her wages between 1992 and 1995 for child support. The suit asks that he be ordered to pay the $2,200 and the $5,500 plus interest on both amounts, a civil penalty and the state's cost in the action.

The court file in this case contained Mr. Mastrodicasa's July 2 response to the lawsuit. In a response filed pro se, he stated that his former wife was his bookkeeper and was responsible for the failure to pay. He said he vaguely remembered the obligor but knew nothing of the support issue. He stated that he was currently paying off the Internal Revenue Service for debt owed to the IRS but was willing to pay $100 per month to pay off the $2,200 he withheld from the obligor but didn't forward to CSED. As for $5,600 he failed to withhold plus penalty and interest, he said he threw himself on the mercy of the court. No court date has been set.

CSED also has been in contact with the other RSVP employee apparently harmed by Mr. Mastrodicasa's failure to deliver withheld wages, DS. CSED is waiting for DS to provide more information before the division can complete audit of his case.

The agency's actions, some of them initiated by Mr. Petrie during discussions with the ombudsman prior to the issuance of the preliminary finding, satisfy the recommendations. This portion of the recommendations is closed as rectified.

Recommendation 6: *Law has stated publicly that negotiating settlements with non-compliant employers benefits families more than prosecuting non-compliant employers. They say that under state statute, any court fine levied against employers would go into the general fund rather than to the custodial families. CSED and Law should therefore consider seeking statutory changes to AS 25.27.260 to direct monetary judgments obtained in violation of AS 25.27.260 be paid to the custodial families rather than the state unless the debt is from public assistance and actually owed to the state.*

CSED response: CSED declined to implement Recommendation 6. The Commissioner responded:

> While we agree that it may seem appropriate in some cases for the penalty to be paid directly to the custodial parent, in many cases this proposal would result in a windfall for the parent. Where the state has devoted significant resources pursuing a case, some or all of the penalty should go to the state. We believe a legislative change here would create more problems than it would solve.

Department of Law response: The Department of Law initially relied on CSED to respond on Law's behalf. Based on the above response, the Ombudsman found this recommendation to be not rectified. However, CSED Director Barbara Miklos requested an attorney general opinion on the issue and provided that memorandum to the Ombudsman. The memorandum, authored by AAG Diane Wendlandt, states:
Under AS 25.27.260(a), a non-compliant employer is liable to the state in an amount equal to 100 percent of the basis of the withholding order. We have interpreted this to mean that if the court enters a judgment against a non-compliant employer for the penalty under AS 25.27.260(a), the money recovered under that judgment is owed to the state and must be paid into the state's general fund. By statute, the civil penalty under AS 25.27.260(a) cannot be paid to the child support obligee as payment of the child support debt.

This does not mean, however that all amounts collected from a non-compliant employer must be paid to the general fund. When we pursue an employer for violation of a withholding order, we assert two claims. First, we demand payment of the full amount that should have been withheld or that was withheld and improperly retained by the employer, plus interest on that amount. This is essentially a tort claim for conversion of the amounts owed to CSED (on behalf of the obligee or the state) under the withholding order. Second, we demand payment of the civil penalty under AS 25.27.260(a). The penalty is in addition to the amount that should have been withheld and delivered by the employer under the withholding order.

The first amount mentioned – the amount that should have been withheld, plus interest – is always applied to the support obligation, whether the state obtains a judgment or the case is settled prior to judgment. Thus, if the support was owed to the custodial parent, this amount would be paid to the custodial parent as child support when it is collected from the non-compliant employer.

As noted above, however, the civil penalty must be paid to the general fund and is not applied to the child support debt. For this reason, when we settle a case prior to entry of a judgment, we will characterize as much of the settlement amount as possible as payment of this amounts that should have been withheld. Thus, those amounts can be paid to the custodial parent rather than tot he general fund. Usually, amounts collected from non-compliant employers are paid into the general fund only when a settlement cannot be reached and we must therefore obtain to judgment to collect the civil penalty.

Thus, under the existing statute, there is an added incentive for both CSED and non-compliant employers to settle employer noncompliance claims prior to judgment. From CSED's perspective, settlement results in the payment of more money to the child support obligee. From the employer's perspective, if the settlement amount is applied to the child support debt, the employer has a right to recover that amount from the employee/obligor. This right does not exist if the money is treated as a civil penalty payable to the state.

(CSED) Director Barbara Miklos said it is difficult to assess how well such cases have been pursued under the existing statute prior to the obligor's case. Assistant Attorney General Marilyn May said Law does not have statistics on the number of such cases taken to court. However, since the preliminary finding was issued, Law has filed seven cases against non-compliant employers and thus far, settled one lawsuit against Denali Broadcasting. Denali in July paid $2399 in past-due

support, $1500 in interest and a $5,000 penalty. Law filed suit against Mr. Mastrodicasa June 10 and, as stated above, that suit is pending.

Based on this response and Law's recent track record in pursuing non-compliant obligors, the Ombudsman is satisfied that the rights of the custodial parent are protected by existing practice. This recommendation is therefore closed as rectified

Recommendation 7: *CSED and Law should coordinate efforts to ensure that, when referred to Law, cases for the same obligor, same custodial parent or same employer with similar issues are assigned to the same attorney.*

Agency response: Law responded that it has adopted this recommendation and will assign such cases to the same attorney. A review of the employer non-compliance spreadsheet confirmed this response. This portion of the recommendation is rectified.

Recommendation 8: *While Law has made progress in completing legal work on old cases and returning them to CSED, far too many old cases still languish there. CSED clients expect action when their cases are referred to Law. Sadly, this expectation is unrealistic. Law should move cases higher on its priority list the longer the cases have been at Law. Old cases should be given high priority for action or be returned to CSED.*

Agency response: The combined response from CSED and Law agreed with the recommendation but cautioned that "a positive resolution will not come immediately. In addition to the cases in court and those in settlement talks, Law has about 40 other employer non-compliance cases on its work list. Old cases have been assigned a higher priority; that was immediate. But, unlike administrative matters such as issuing policy memos, the legal issues will take time to argue and, if necessary, to prove in court. Please be assured, however, that we will not leave the cases until the job is complete."

Ombudsman response: Law's employer non-compliance spreadsheet provided to the Ombudsman indicates that Law has dramatically reduced the number of employer non-compliance cases at the department. The spreadsheet also shows that those cases that have not been resolved and/or closed have had significant action. This progress is encouraging and we hope that it was not made at the expense of any other category of case at Law.

The spreadsheet also has provided some interesting information on the referred cases. Included on the list of non-compliant employers were

some fairly substantial and easily located employers: the U.S. Department of the Interior, Bering Straight School District, a rural Alaska City Council, several Native non-profit corporations, and a major North Slope Borough corporation.

Additionally, two employers were listed as being out of business on cases that were referred to Law in 1996 and 1997. Another three referred in 1995 and 1996 required business entity research. Law had three separate non-compliance cases for the same employer. Based on the case notes listed on the spreadsheet, Law had collected $39,153 in support, interest and penalties for all the closed cases in the months since the Ombudsman's preliminary finding was issued and Law prioritized these cases.

Non-compliant employers paid penalties in all but one case. In that case the employer was a retired couple whose business was run by their son. Their son also was the obligor and had assured his parents that the debt was being paid. In another case the employer owed $10,525 and was assessed $10,525 in penalties. The penalty was routed to the custodial parent, according to the assistant attorney general involved in the case.

The Ombudsman review of the cases pending at Law in June of 1998 indicated that cases that were listed as being "opened" there prior to 1995 totaled 9 percent of the total caseload, a decrease from the 17 percent of the caseload in June of 1997. Additionally, during that time, Law's CSED total caseload dropped 35 percent from 1528 to 1005.

However, information for the DS case indicated that DS was "opened" at Law in February of 1998. The investigator questioned Ms. Mays about the reason for this and learned that the case had been returned to CSED for additional information and returned to Ms. Butterfield's caseload on the February 1998 date. CSED Investigator Dan Cates said that the file was returned to CSED to gather updated financial information and for staff to determine if DS had information about the amount of money actually withheld from his RSVP wages and not forwarded to CSED.

The "opened" date is entered manually into the case listing; it is not changed automatically when an action occurs on it. Thus, this relatively current date in the DS case makes it appear that the case had recently transferred to Law for action and had a far younger ' shelf life' than the obligor's case which actually transferred at the same time in 1993. This strikes the Ombudsman as inaccurate and as tending to defeat the attempt to properly manage attorney caseloads.

The Ombudsman discussed this issue with Ms. May who agreed that

this interim spreadsheet should be corrected to reflect the first date that a case was transferred to Law for action.

Despite this minor reservation, given the effort that Law has expended in reducing the CSED caseload for legal action, this portion of the recommendations is closed as rectified.

FINDING OF RECORD AND CLOSURE

Although CSED objected to the format of the allegations, neither CSED nor Law contested the preliminary findings of justified to the three allegations. These allegations will therefore be closed as justified.

CSED's and Department of Law's response to the recommendations was mixed with some recommendations rectified and others not rectified. In instances where the ombudsman finds a combination of responses, the finding is closed as partially rectified.

These complaints are closed as justified and partially rectified.

POSTSCRIPT

Ms. Lord-Jenkins contacted the obligor on September 1, 1998 to discuss the impending closure of her complaint. The obligor told Ms. Lord-Jenkins that she recently learned that her credit bureau record reflected that she owed CSED a debt of $5027. She said this prevented her from obtaining a 'first time buyers' home loan. The obligor said that she spoke with Daniel Cates from CSED and was told that the division had audited her payment history with a specific review of the time she was paying a support amount set by the "default NFFR." The adjusted audit indicated that she owed $1000 for the support during that time.

He said he asked the obligor in June to review the new corrected figures and, if she did not disagree with the reduced support for that time the figure would be adjusted in light of the overall support owed. He said with the default NFFR amount changed, the obligor's balance was zeroed out which happened two days prior to the Ombudsman contact.

However, he also said that CSED had not sent corrected notices to the credit bureau since February so that the obligor's corrected zero arrearage had not been corrected. He said that he would direct the person responsible for correcting credit reports to correct the obligor's report.