



**A DEATH IN THE FAMILY:
*WHAT IS THE IMPACT ON CHILD SUPPORT MATTERS? (CLE)***

What actions should be taken when a participant in a child support matter dies? What legal ramification does this present? Should you or shouldn't you establish, enforce, or modify a child support order under these circumstances? How do you enforce against the estate of a deceased party? How is change of custody handled if the custodial parent passes away? Does choice of law determine the fate of a child support case if the child dies? If you've encountered these situations – and inevitably you will -- then you need to attend this workshop.

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A Death in the Family: *What is the Impact on Child Support?*

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Speaker: Kelly Peiper, Principal
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Speaker: Chuck Magera, Attorney, SC DSS

Agenda



- Identifying the Death
- If the AF dies
- If the NCP dies
- If the CP dies
- If the child dies
- If someone else dies



Identifying the Death

CP still the best resource

Comes over on FCR from SSA

Check the social security number
against the [social security master
death index](#).

Use a search engine like [google](#) or [yahoo](#)
to check the person's name

If the Alleged Father Dies



- **Establish Paternity. Why?**
 - Knowing who both parents are
 - Legal documentation of both parents
 - Father's name will be on the birth certificate
 - Access to family medical history
 - The right to inherit from either parent
 - The right to receive Social Security or veteran's benefits, if available

Other Potential Benefits



- **Social Security Survivor's Benefits**
- **Veteran's Survivor Benefits**
- **Insurance**
- **Estate Proceeds**
- **Maryland Case**

If the Alleged Father Dies



- **Check State policy manual – OR is a very detailed, good example**
- **Collecting DNA**
 - **Court Order**
 - **Coroner**
 - **Exhumation**
 - **Family Testing**

What Happens to the Support Order when the NCP dies? (3 options)



- **Automatically becomes arrears only until new CP files**
- **Obligation follows the child**
- **Acceleration of current support**
 - **Liability of obligor's estate for future child support**
 - **May receive credit for SS paid out**

Social Security Benefits



Surviving Child Benefits

- Available if the person worked for up to 10 years, depending on the person's age at the time of death
- Clear and convincing evidence needed to establish paternity – testimony is enough
- Children entitled to a monthly payment until age 18
- Online lists the documents you need when applying at the office

The Estate



Someone files a petition in probate court asking for an estate to be probated

The *probate* of someone's estate refers to the process by which a Court recognizes the person's death and authorizes the administration of that person's estate.

Applies both when 1) someone dies leaving a Will and when 2) someone dies without a Will (intestate)

All assets are identified, debts paid, and remaining assets distributed according to either the provisions of his or her Will, or

If no Will, property is distributed according to state law regarding *intestacy*

Identifying the Estate



Probate is generally filed in the county where the deceased resided at the time of death. Contact the clerk.

Probate:

Executor/personal representative is tasked with notifying creditors – either through mail or by posting a notice.

Reasonable diligence is required

Estate Distribution



If you are notified, have roughly 60 days to file a claim. Otherwise, have around 4 months to file, depending on state law. Query what if no SOL in your state?

Estate is insolvent if not enough to pay all creditors – assets are then prorated

Procedure to File Creditor's Claim



Specific creditor's claim form

Federal Notice of Lien can be used across state lines

Priority is under the Uniform Probate Code, but varies from State to State. The UPC allows the following order:

- The costs and expenses of the administration of the estate, the personal representative, filing fees, attorney's fees, etc.
- Funeral expenses
- Federal taxes and debts
- Medical expenses
- State taxes and debts
- All other claimants including creditors
- Heirs

Working Together for Children and Families – A *“Shore” Thing*

If the CP Dies



- **Ongoing child support**
 - Death of a custodial parent does not terminate child support, unless the obligor gets custody of the child/ren.
 - The support order follows the child
 - The obligor's obligation has already been determined. Until the order is modified, the obligor continues to provide to the new custodian at the previous amount.

If the CP Dies



Arrears up to time of death

- 2 Schools of Thought

- Arrears are owed to the custodial parent

- Arrears owed at time of death reduce to a judgment, and become an asset of the CP's estate
- Asset is distributed to beneficiaries of estate by probate or laws of intestate succession
- Child may or may not benefit

If the CP Dies



– Arrears are owed to the child

- Child support is considered a benefit which vests in the child for whom it is ordered
- Past arrears constitute an entitlement
- Arrears become collectible and disbursable to the child's new custodian
- Theory that if the new custodian receives the money, the child will directly benefit.
- In some cases, emancipated children may be entitled to past-due support arrears

If the CP Dies



- **Case closure issues**
 - IV-D assignment ends when CP dies
 - Unless assignment is received from new custodian, IV-D involvement must cease
 - Uncertainty how to reflect payee at court level or SDU
 - Inactivate account until custodian appears
 - Convert to “direct-pay” case to payee-yet-to-be-identified
 - Court or SDU hold monies for specific period of time awaiting appearance of new custodian

If the CP Dies



- **New CP Identification**

- If known, new CP should be given IV-D application or other referral to gain assignment
- Upon receipt of assignment, tribunal or court must be informed of change of payee by order or other administrative notification

If the CP Dies



Establishment/Modification issues

- **Should support change?**
 - In income-share model states, death of a parent constitutes a change of circumstances warranting a modification
 - Modification not automatic or retroactive, unless provided by state law
 - No change in percentage-of-income states, as other parent info irrelevant

If the CP Dies



Establishment/Modification issues

- Calculating support for establishment or modification
 - Only parents have legal obligation to financially support children
 - Support should be based on the obligor's income alone, no matter the model used
 - Custodian's income should not be used, unless specifically required by law

If the Child Dies



Single child cases

- **Termination of support**
 - Support should terminate as of the date of death of the child
 - All subsequent payments should be credited toward arrears owed at date of death
 - Hearing/order should be scheduled or submitted as soon as possible to avoid any chance of overpayment or appearance of “windfall” to custodian

If the Child Dies



Multiple child cases

- **Termination of support**
 - If order is per-child order, automatically adjusts effective as of the date of death of the child
 - If order is not per-child, death of one or more children constitutes a change of circumstances warranting a modification
 - Modification is not automatic nor retroactive, unless otherwise provided by state law

If Someone Else Dies



- Get as much information about the decedent and estate as possible.
- With a name, date of death and location, contact the local Register of Wills to determine if anything has been filed.
- Call the probate office or family of the deceased to verify the obligor's amount of inheritance and the date the estate will be distributed.

If Someone Else Dies



- Contact the obligor for a voluntary assignment.
- If the obligor refuses and is not in compliance with the support order, file a Petition for Contempt and obtain the assignment in court.
- File the lien in probate court, if necessary. The judgment acts as a lien against the inheritance.

If Someone Else Dies



- If you find out about the inheritance after the fact, have the court order the NCP to pay it over for child support arrears
- If nothing else, it is proof of contempt for failure to pay