FAMILY LAW BULLETIN

Number 22 January 2007

WHO ARE THE PARTIES IN IV-D CHILD SUPPORT PROCEEDINGS? AND WHAT DIFFERENCE DOES IT MAKE?

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G.S. 110-130 and G.S. 110-130.1 authorize a county or state child support enforcement agency (also known as a IV-D agency) to initiate, institute, take up, or pursue, on behalf of the custodial parent of a dependent child,[1] a legal proceeding to establish the child's paternity or to establish, enforce, or modify an individual's legal duty to support the child.[2]

These IV-D child support proceedings often are titled "Guilford County, by and through its Child Support Enforcement Office, *ex rel*. Jane Doe [the custodial parent], Plaintiff, vs. John Doe [the obligor], Defendant," or "State of North Carolina, *on behalf of* Jane Doe, Plaintiff, vs. John Doe, Defendant."

It seems clear that the obligor and the IV-D agency—or, perhaps, the county or State—are *parties* to these legal proceeding. But it is less clear whether

- the IV-D agency that initiates, institutes, takes up, or pursues a paternity or child support proceeding is the *real party in interest* in the proceeding;
- the IV-D agency that initiates, institutes, takes up, or pursues a paternity or child support proceeding sues in the interest of the county or State, sues in a *representative capacity* on behalf of the custodial parent who is the agency's client, or sues on behalf of the custodial parent *and* the county or State;
- the custodial parent on whose behalf a IV-D proceeding is initiated, instituted, taken up, or pursued is, or may become, a *party* to the IV-D proceeding.

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[1] IV-D paternity or child support proceedings also may be initiated, instituted, taken up, or pursued on behalf of a dependent child or a person, other than the child's parent, who has custody of a dependent child. Unless otherwise indicated, the term "custodial parent," when used in this bulletin, includes the custodial parents and nonparent custodians of children who receive services from state or county child support enforcement agencies and the children who are the subjects of IV-D paternity or child support proceedings.

[2] Unless otherwise indicated, this bulletin will use the term "IV-D proceeding" to refer to legal proceedings that are initiated, instituted, taken up, or pursued by a IV-D agency to establish the paternity of a child or to establish, modify, or enforce a child support order with respect to a dependent child.

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This *Family Law Bulletin* examines

- who is, and who isn't, a party in a IV-D proceeding;
- whether a custodial parent is, or may become, a party in a IV-D proceeding;
- whether the IV-D agency that initiates, institutes, takes up, or pursues a paternity or child support proceeding does so on behalf of the custodial parent who is the agency's client or acts on behalf of and for the benefit of the county or State;
- why it is important to determine who is and isn't a party in IV-D proceedings; and
- what it means to be a party in a IV-D proceeding.

What Does It Mean To Be a Party?

Who are the parties in a civil action or proceeding?

According to one definition, the parties to a legal proceeding

> are those persons, natural or corporate, who seek to have the court take some action for them, and those against whom such action is sought. The former are called the plaintiffs, and the latter the defendants.[3]

In its most basic sense, then, the term "party" means a person or legal entity that

- brings a civil action or against whom a civil action is brought;[4]
- is joined as a party in a pending civil action;[5] or
- intervenes as a party in a pending civil action.[6]

Why, though, is it important to know who is or isn't a party in a civil action or proceeding? What difference does it make whether a person is or isn't a *party* to a civil action?

One answer is that the persons who are the parties of record in a civil action, and *only* those persons, have "standing … to take part in or control the proceedings."[7] Thus, persons who are parties to a civil action generally have the right to

1. file and respond to pleadings and motions in the proceeding;
2. be notified with respect to pleadings, motions, and subpoenas filed by other parties;
3. engage in discovery;
4. appear and present evidence;
5. call and cross-examine witnesses; and,
6. appeal the court's judgment if aggrieved thereby.

By contrast, persons who are *not* parties to a civil action do not have these rights unless otherwise provided by statute.

A second answer is that, because "the court can act only with reference to the rights of those who are properly before it, it is necessary to determine in the beginning who should be made parties, and the process and pleadings should show who they are."[8] The judgment in a civil action is binding only on the parties to the action and on nonparties who are represented by, or are in privity with, parties to the action.[9] Or, stated differently, the legal rights of persons who are not parties to a civil action and who are not represented by or in privity with a party to a civil action are not affected by a judgment in the action.[10] Thus, "mere knowledge of proceedings, or an expression of willingness to consent to the result, would not be sufficient to bind one as a party."[11]

And a third answer, related to the second, is that a claim may be asserted only by or against, and relief generally may be granted only in favor of or against, a person who is a party to a pending action.[12]

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[3] T.J. Wilson, et al., *McIntosh North Carolina Practice and Procedure* §571 (2d ed. 1956) [hereinafter *McIntosh*].

[4] Black's Law Dictionary (8th ed.), 1154. *See also* G.S. 1A-1, Rule 13 (counterclaims and crossclaims); G.S. 1A-1, Rule 14 (third party claims); G.S. 1A-1, Rule 17.

[5] *See* G.S. 1A-1, Rules 19 and 20 (joinder of parties); G.S. 1A-1, Rule 22 (interpleader); and G.S. 1A-1, Rule 25 (substitution of parties).

[6] *See* G.S. 1A-1, Rule 24 (intervention).

[7] Strickland v. Hughes, 273 N.C. 481, 484, 160 S.E.2d 313, 316 (1968).

[8] *McIntosh*, §571.

[9] *McIntosh*, §571. A person is in privity with a party to a civil action if the person and the party share a "mutual or successive right or legal interest in the property or claim" that is the subject of the action and the person's rights or interests are adequately represented by the party in the proceeding. Masters v. Dunstan, 256 N.C. 520, 526, 124 S.E.2d 574, 578 (1962).

[10] *McIntosh* §572.

[11] *McIntosh* §572, citing Patillo v. Lytle, 158 N.C. 92, 73 S.E. 200 (1911).

[12] Richardson v. Welch, 232 N.C. 331, 332, 59 S.E.2d 632 (1950). *Cf.* In re Jackson, 84 N.C. App. 167, 171, 352 S.E.2d 449, 452 (1987).

Who Are the Parties in IV-D Proceedings?

G.S. 110-130 authorizes a county, acting through the county's IV-D agency (or through the state IV-D agency in those counties in which child support enforcement services are provided through a state IV-D agency) to institute, take up, or pursue a civil proceeding to establish the paternity of a dependent child or to establish, enforce, or modify an order for the child's support.[13]

G.S. 110-130, however, does *not* create a separate cause of action to establish a child's paternity or to establish, enforce, or modify an order requiring a parent to support his or her minor child. It merely authorizes a IV-D agency to institute, take up, or pursue a paternity or child support proceeding that is authorized under another statute or case law.[14] Nor does G.S. 110-130 specify the means through which a IV-D agency must institute, take up, or pursue a paternity or child support proceeding.[15]

G.S. 110-130.1(c), though, provides that paternity and child support proceedings initiated under G.S. 110-130 "shall be brought in the name of the … [IV-D] agency on behalf of the public assistance recipient or nonrecipient" who is the agency's client.[16]

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[13] North Carolina's child support enforcement program is administered by the State's Department of Health and Human Services (DHHS) and by county child support enforcement agencies. G.S. 110-141. State and county child support enforcement programs often are referred to as "IV-D programs" because they receive federal funding under, and are subject to federal requirements contained in, Title IV-D of the federal Social Security Act. DHHS provides child support services in twenty-nine of the State's one hundred counties through seventeen regional offices. County agencies (such as the county social services department, the county attorney, or a separate county IV-D office) or private contractors that are designated by boards of county commissioners provide child support services in seventy-one counties. *See* G.S. 110-129(5), G.S. 110-130, and G.S. 110-141 (governing responsibility for local administration of the State's IV-D program). North Carolina's child support statutes sometimes refer to these local IV-D agencies as "designated representatives." This bulletin will refer to local (state or county) child support enforcement agencies as "IV-D agencies."

[14] G.S. 49-14, for example, creates a civil action to establish the paternity of a minor child. G.S. 50-13.4 recognizes a civil action to establish an order requiring a parent to support his or her child. Case law recognizes a cause of action for "prior maintenance" (requiring a noncustodial parent to reimburse a child's custodian for expenses incurred in caring for the child). *See* Napowsa v. Langston, 95 N.C. App. 14, 381 S.E.2d 882 (1989); Stanley v. Stanley, 118 N.C. App. 311, 454 S.E.2d 701 (1995); Taylor v. Taylor, 118 N.C. App. 356, 455 S.E.2d 442 (1995), *rev'd. on other grounds*, 343 N.C. 50, 468 S.E.2d 33 (1996); State *ex rel.* Fisher v. Lukinoff, 131 N.C. App. 642, 507 S.E.2d 591 (1998). G.S. 50-13.7 authorizes civil proceedings to modify child support orders. And a number of statutes authorize judicial proceedings to enforce child support orders.

[15] At a minimum, G.S. 110-130 gives a county or the county's IV-D agency *standing* to bring a civil action under G.S. 49-14 to establish the paternity of a dependent child and to bring a civil action under G.S. 50-13.4 to establish a child support order for the benefit of a dependent child. And to this extent, G.S. 110-130 implicitly modifies the provisions of G.S. 49-14 and G.S. 50-13.4 regarding standing to commence civil paternity and child support proceedings.

[16] Federal and state law require IV-D agencies to provide child support services on behalf of any dependent child who receives public assistance under the State's Work First (Temporary Assistance to Needy Families [TANF]) or foster care assistance (Title IV-E) programs, *and* to any minor child whose parent or custodian applies for child support services. *See* 42 U.S.C. §654(4)(A)(i), (ii); 45 C.F.R. 302.22; G.S. 110-130.1(a), (c). These parents, custodians, and children generally are referred to as "IV-D recipients" or "IV-D clients." IV-D cases involving children who are receiving, or have received, TANF or IV-E foster care benefits generally are referred to as "IV-D PA" cases. IV-D cases involving children who have never received public assistance are referred to as "IV-D NPA" cases. In federal fiscal year 2003, approximately 70 percent of North Carolina's IV-D caseload involved families who were receiving, or had previously received, public assistance, while 123,645 (approximately 30 percent) of North Carolina's 417,936 IV-D cases involved families who had never received public assistance. U.S. Dept. of Health and Human Services, Office of Child Support Enforcement, 2003 Annual Report to Congress, Table 42 (www.acf.hhs.gov/programs/cse/pubs/2005/reports/annual_report/table_42.html). When a child receives public assistance, the child's right to support is assigned, by operation of law, to the State. G.S. 110-137. *See also* 42 U.S.C. §608(a)(3). This assignment, however, appears to be an assignment of the right to receive child support payments made on behalf of the child, *not* an assignment of the custodial parent's or child's *cause of action* for support. And more importantly, it is clear that this assignment is a *partial* and *contingent* assignment, *not* a *complete* assignment of the child's right to support. *See* 42 U.S.C. §608(a)(3) (providing that the amount of the assignment may not exceed the amount of public assistance paid on behalf of

Neither G.S. 110-130 nor G.S. 110-130.1 expressly says who is, and who isn't, a *party* in paternity or child support proceedings that are initiated, instituted, taken up, or pursued by a IV-D agency pursuant to G.S. 110-130 and G.S. 110-130.1. Nonetheless, it seems clear that, at a minimum, the county or local IV-D agency is, or may become, a party to a IV-D proceeding.

May a County IV-D Agency Sue in the Agency's Name Rather Than the County's Name?

In order to be a party to a civil action or proceeding, a person or entity must (a) be in existence, and (b) have the legal capacity to sue or be sued.[17]

As a general rule, "[all] persons, natural and corporate, are capable of suing and being sued, unless excluded by some statute or rule of law."[18] In particular, the State of North Carolina has the legal capacity to sue, and actions by the State may be brought in the name of the State by any properly authorized officer or agent.[19] Similarly, as corporate bodies and political subdivisions of the State, North Carolina's counties are expressly authorized to sue and be sued in their corporate names.[20] On the other hand, county *agencies*, such as the county department of social services, are *not* independent corporate entities and, absent specific statutory authority, lack the legal capacity to sue or be sued.[21]

Some county IV-D agencies, therefore, initiate IV-D proceedings in the county's name, rather than in the name of the county IV-D agency and title their IV-D actions as "Orange County on behalf of Jane Doe v. John Doe" or "Orange County, by and through its Child Support Enforcement Agency, on behalf of Jane Doe v. John Doe."

State law, however, may authorize a IV-D agency to initiate IV-D proceedings in its own name, rather than that of the county. As noted above, G.S. 110-130.1(c) requires that IV-D proceedings be brought "in the name of the county or State [IV-D] agency" on behalf of the custodial parent who is receiving services from the agency.[22] So, a county IV-D agency probably has the implicit legal capacity and authority under G.S. 110-130.1 to bring a IV-D proceeding in the agency's name, rather than that of the county.

Who Is the Real Party in Interest in a IV-D Proceeding?

N.C. Civil Procedure Rule 17

North Carolina's Rules of Civil Procedure require that a civil action be "prosecuted in the name of the real party in interest."[23]

The purpose of the real party in interest rule is "to enable the defendant to present his defenses against the proper parties [in order] to avoid subsequent suits [regarding the same claim] and … proceed to finality of judgment."[24] Thus, the real party in interest principle provides "a means to identify the person who possesses the right sought to be enforced" and generally "directs attention to whether [the] plaintiff has a significant interest in [the subject matter of] the particular action he has instituted."[25] "Real party in

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the child and that the assignment does not apply to support that accrues *after* a child ceases to receive assistance *or* to support that accrued *before* a child began to receive assistance and is not collected before the date the child ceases to receive assistance). *See also* State *ex rel.* Crews v. Parker, 319 N.C. 354, 358, 354 S.E.2d 501, 505 (1987).

[17] McPherson v. First and Citizens Nat'l. Bank, 240 N.C. 1, 18, 81 S.E.2d 386, 397 (1954); Revels v. Oxendine, 263 N.C. 510, 512, 139 S.E.2d 727, 738-739 (1964); *In re* Coleman, 11 N.C. App. 124, 127, 180 S.E.2d 439, 442 (1971); Rollins v. Junior Miller Roofing Co., 55 N.C. App. 158, 162, 284 S.E.2d 697, 702 (1981); G.S. 1-75.2(1), (2), (3).

[18] *McIntosh*, §681.

[19] *McIntosh*, §682.

[20] G.S. 153A-11; Johnson v. Marrow, 228 N.C. 58, 44 S.E.2d 468 (1947).

[21] Bourne v. Board of Financial Control for Buncombe County, 207 N.C. 170, 177, 176 S.E. 306, 310 (1934); Revels v. Oxendine, 263 N.C. at 512, 139 S.E.2d at 738-739; Malloy v. Durham County Dep't. of Social Services, 58 N.C. App. 61, 66-68, 293 S.E.2d 285, 287-288 (1982); Craig v. Chatham County, 143 N.C. App. 30, 31, 545 S.E.2d 455, 456 (2001).

[22] G.S. 110-130 is more ambiguous, authorizing the *county* to institute, take up, or pursue paternity and child support proceedings, while providing that such actions be "undertaken" by the county's IV-D agency.

[23] G.S. 1A-1, Rule 17. If a civil action is filed in the name of a plaintiff who is not the real party in interest and is not authorized to bring the action in his or her own name, the court may not dismiss the action in response to an opposing party's objection without allowing a reasonable opportunity for ratification, joinder, or substitution of the real party in interest. G.S. 1A-1, Rule 17(a). *Cf.* Street v. Smart Corp., 157 N.C. App. 303, 309, 578 S.E.2d 695, 700 (2003).

[24] Rackley v. Orangeburg Regional Hospital, 35 F.R.D. 516, 517 (D.S.C. 1964).

[25] Charles A Wright, *Federal Practice and Procedure* §1542 (1969) [hereafter *Federal Practice and Procedure*].

interest," therefore, is closely related, though not identical, to the principle of *standing*.[26]

Some appellate decisions also use "real party in interest" language when determining whether a party is bound by *res judicata* or collateral estoppel or is in privity with a party who is bound by *res judicata* or collateral estoppel.[27] Strictly speaking, though, the concept of "real party in interest" relates primarily to the issue of who has *standing* to commence and prosecute a civil action to enforce a legal claim or right.

In general, the real party in interest in a civil action or proceeding is the person who will be benefited or injured by a judgment in the proceeding.[28] Thus, the person who has the right to receive the "fruits" of the litigation—usually the damages payable in connection with a cause of action—is usually, but not always or necessarily, the real party in interest with respect to that action.[29]

By contrast, the fact that a person has some general interest in the outcome of a lawsuit or might be affected indirectly by the litigation generally isn't sufficient to make the person a real party in interest with respect to a case. Instead, an "interest which warrants making a person a party is not an interest in the action involved merely, but *some interest in the subject matter of the litigation*."[30]

When a cause of action or legal claim has been validly assigned by one person to another, the assignee, rather than the assignor, is the real party in interest in a civil action based on the claim.[31] Similarly, the assignee, rather than the assignor, is the real party in interest in a civil action regarding property that has been transferred by the assignor to the assignee.[32] If, however, an assignor makes a *partial* assignment of her interest in a legal claim or property, the assignor *and* the assignee are both real parties in interest, and may be necessary parties, in a civil action involving the partially assigned claim or interest.[33]

On the other hand, North Carolina's case law has "consistently held that an assignee for purposes of *collection* is not a 'real party in interest.'"[34]

There are, however, instances in which a person is authorized by statute to bring a civil action *on behalf of* another person even though the person on whose behalf the lawsuit is brought, rather than the named plaintiff, ultimately will benefit from any recovery in the litigation.[35] And in these instances, the person "who by substantive law has the legal right to enforce the claim in question," rather than the person who will *benefit* from the fruits of the litigation, is the real party in interest.[36]

Rule 17(a), therefore, expressly authorizes a person to bring a civil action in his or her own name for the benefit of another person and without joining the person for whose benefit the action is brought if a statute authorizes him or her to do so. And in these cases, the named plaintiff who brings a civil action for the benefit of another person, rather than the person for whose benefit the action is brought, is the real party in interest.

Is the IV-D Agency or the Custodial Parent the Real Party in Interest in a IV-D Proceeding?

The Townes, Settle, and Frinzi Cases

Several North Carolina appellate decisions have held that the county or State, rather than the custodial

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[26] *Federal Practice and Procedure* §1542.

[27] King v. Grindstaff, 284 N.C. 348, 357, 200 S.E.2d 799, 806 (1973); Settle v. Beasley, 309 N.C. 616, 619, 308 S.E.2d 288, 289 (1983).

[28] Reliance Ins. Co. v. Walker, 33 N.C. App. 15, 18-19, 234 S.E.2d 206, 209 (1977); Energy Investors Fund, L.P. v. Metric Constructors, Inc., 351 N.C. 331, 337, 525 S.E.2d 441, 445 (2000), citing Choate Rental Co. v. Justice, 311 N.C. 54, 55, 188 S.E. 609, 610 (1936) and Parnell v. Nationwide Mut. Ins. Co., 263 N.C. 445, 448-49, 139 S.E.2d 723, 726 (1965).

[29] Goodrich v. Rice, 75 N.C. App. 530, 537, 331 S.E.2d 195, 199 (1985).

[30] Choate Rental Co. v. Justice, 211 N.C. at 55, 188 S.E. at 610; Energy Investors Fund, L.P. v. Metric Constructors, Inc., 351 N.C. at 337, 525 S.E.2d at 445; Street v. Smart Corp., 157 N.C. App. at 306, 578 S.E.2d at 699.

[31] NCNB National Bank of N.C. v. Western Surety Co., 88 N.C. App. 705, 708, 364 S.E.2d 675, 677 (1988).

[32] Booker v. Everhart, 294 N.C. 146, 155, 240 S.E.2d 360, 365 (1978).

[33] Booker v. Everhart, 294 N.C. at 156, 240 S.E.2d at 366.

[34] Booker v. Everhart, 294 N.C. at 156, 240 S.E.2d at 366 (citing Morton v. Thornton, 259 N.C. 697, 131 S.E.2d 378 (1963); Federal Reserve Bank v. Whitford, 207 N.C. 267, 176 S.E. 584 (1934); First Nat'l Bank v. Rochamora, 193 N.C. 1, 136 S.E. 259 (1927); Third Nat'l Bank v. Exum, 163 N.C. 199, 79 S.E. 498 (1913); Morefield v. Harris, 126 N.C. 626, 36 S.E. 125 (1900); and Abrams v. Cureton, 74 N.C. 523 (1876)).

[35] *Federal Practice and Procedure* §1543.

[36] Energy Investors Fund, L.P. v. Metric Constructors, Inc., 351 N.C. at 337, 525 S.E.2d at 445.

parent who is receiving IV-D services, is the real party in interest in a IV-D proceeding.

In *Wake County ex rel. Carrington v. Townes*, for example, the North Carolina Court of Appeals concluded that the county was the real party in interest in a IV-D proceeding.[37] It is clear, though, that the court's conclusion in *Townes* was based solely on the fact that the child's right to support had been assigned to the State under G.S. 110-137.[38] The court stated:

> In the case before us, the State, through its subdivision (County), is the real party in interest …. The County's contention that it is not a party … belies the reality of the … situation. By virtue of accepting [public assistance for a dependent child, the custodial parent's] right to bring suit for support from the child's father is automatically assigned to the County. *** The County has a statutory duty to bring paternity proceedings against, and to establish support obligations from, putative fathers. G.S. 110-138, 139 …. The County brings suit in its name, ostensibly on behalf of the mother and child. In actuality, … the payment of [public assistance] creates a debt owing to the State by the responsible parents of the child. *** In short, the State has an active and vested interest in [IV-D proceedings] involving mothers and children receiving [public assistance].[39]

[37] Wake County *ex rel*. Carrington v. Townes, 53 N.C. App. 649, 655, 281 S.E.2d 765, 769 (1981), *modified* 306 N.C. 333, 293 S.E.2d 95 (1982). The issue in *Townes* was whether an indigent putative father has a constitutional right to court-appointed counsel in a civil paternity or child support proceeding that is brought by a county or state IV-D agency on behalf of a minor child or the child's custodial parent. The court's discussion of the county's or State's status as a party occurred in connection with the defendant's argument that his interest in liberty was affected in the pending paternity and child support proceeding because his obligation to support the child could be asserted as *res judicata* or collateral estoppel in a subsequent contempt or nonsupport proceeding that might result in his incarceration for failing to pay court-ordered child support.

[38] The court incorrectly cited G.S. 110-128 and G.S. 110-135, rather than G.S. 110-137, as the source of the county's or State's right to assignment. As noted above, G.S. 110-137 provides that when a child receives public assistance from a county or the State, the child's right to support is assigned to the county or State up to the amount of public assistance paid for or on behalf of the child.

[39] Wake County *ex rel*. Carrington v. Townes, 53 N.C. App. at 655, 281 S.E.2d at 769.

The North Carolina Supreme Court reached the same conclusion two years later in *Settle v. Beasley*.[40] In *Settle*, the Supreme Court held that the doctrines of *res judicata* and collateral estoppel did not bar a minor child from bringing a paternity and child support action against a man after a court had determined, in a prior paternity and child support proceeding brought by a IV-D agency on behalf of the child's mother, that the man was *not* the child's father. Writing for the court, Justice Martin reasoned (a) that, because the child's right to support had been assigned to the county pursuant to G.S. 110-137, the prior IV-D proceeding was for the sole economic benefit of the county, not the child or the child's mother; (b) that the county, *not* the child or the child's mother, was the real party in interest in the prior IV-D proceeding; and (c) that the child was not in privity with the county.[41]

In 1996, the Supreme Court tacitly reaffirmed *Settle* in its decision in *State ex rel. Tucker v. Frinzi*.[42] In *Frinzi*, a county IV-D agency brought a paternity and child support action on behalf of a dependent child and the child's mother against the child's putative father, but dismissed the action with prejudice. Many years later, a state IV-D agency in another county brought a paternity and child support action on behalf of the mother and child against the same putative father. The Supreme Court held that *res judicata* did not bar the second proceeding, concluding, with almost no discussion or analysis, (a) that Forsyth County was the real party in interest in the first IV-D proceeding; (b) that the State of North Carolina was the real party in interest in the second IV-D proceeding; and (c) that, despite the fact that the county's and the State's claims were both based on the assignment of the child's right to support under G.S. 110-137, the State was not in privity with the county.[43]

Analysis of Townes, Settle, and Frinzi

Townes, *Settle*, and *Frinzi* all involved IV-D PA proceedings—paternity and child support proceedings brought on behalf of children who were receiving, or had received, public assistance and whose rights to receive child support had been assigned to the county or State under G.S. 110-137.

[40] Settle v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983).

[41] Settle v. Beasley, 309 N.C. at 618, 308 S.E.2d at 289.

[42] State *ex rel.* Tucker v. Frinzi, 344 N.C. 411, 474 S.E.2d 127 (1996).

[43] Justices Webb and Frye dissented from the court's decision.

And it is clear that their conclusion that the county or State, rather than the child or custodial parent, is the real party in interest in a IV-D paternity or child support proceeding was based on the fact that the child's right to support had been assigned to the county or State under G.S. 110-137. But it is not at all clear that their reasoning applies to IV-D NPA cases, in which a child's right to support is *not* assigned to the county or State, or that questions regarding real party in interest always can be determined by examining who is entitled to the "fruits" of the litigation.

It is clear that when a child's rights with respect to child support have been assigned to the State or a county pursuant to G.S. 110-137, the State or county, as assignee of the child's rights to support, has a direct and tangible economic interest in the "fruits" of a child support proceeding involving the child. And *if* the assignment of child support rights under G.S. 110-137 is a *complete* assignment to the State or county of the child's right to support, there would be no question that the State or county, rather than the custodial parent or child, would be the real party in interest in a proceeding to establish, modify, or enforce an order regarding the child's support.[44]

The *Townes, Settle*, and *Frinzi* decisions, however, all overlooked the fact that an assignment of a child's rights to support under G.S. 110-137 is a *partial*, rather than complete, assignment of the child's right to receive child support, and that the custodial parent or child, as well as the State or county, therefore has legal rights and an economic interest in IV-D PA case.[45]

Moreover, the analysis in *Townes*, *Settle*, and *Frinzi* is completely inapplicable in IV-D proceedings involving children who have never received public assistance and therefore have not had their child support rights assigned to the county or State pursuant to G.S. 110-137. Indeed, in these IV-D NPA cases, the IV-D agency is acting primarily as a *collection agent* for the custodial parent or child, and the county or State has *no* legal claim or interest in the child support payments for the child. Thus, neither the IV-D agency, the county, nor the State would be the real party in interest in a IV-D NPA case *if* "real party in interest" is defined solely as the person who has the right to the "fruits" of a lawsuit.[46]

"Real party in interest," however, is *not* defined solely in terms of whether a person has a legal interest in the subject matter of a proceeding or is entitled to the "fruits" of the litigation.

As discussed above, a person or entity that has the right, under substantive law, to enforce a particular claim is the real party in interest in a lawsuit to enforce that claim, even if the action is brought on behalf of or for the benefit of another person.[47] And because G.S. 110-130 and G.S. 110-

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[44] *See* Booker v. Everhart, 294 N.C. 146, 240 S.E.2d 360 (1978) (holding that an assignee, other than an assignee for the purpose of collection only, is the real party in interest with respect to a cause of action involving the subject of the assignment).

[45] State *ex rel.* Crews v. Parker, 319 N.C. at 358, 354 S.E.2d at 505 (noting that the assignment of child support rights under G.S. 110-137 is a *partial*, rather than complete, assignment of the child's rights with respect to support).

[46] Booker v. Everhart, 294 N.C. at 156, 240 S.E.2d at 366. It can be argued, of course, that even if a child has never received public assistance, the State or a county has *some* interest in ensuring that the child's paternity is established (if paternity is at issue) and that the child receives adequate support from his or her parents. It is not at all clear, though, that the nature of the county's or State's interest is such as to make the county or State the real party in interest in a IV-D NPA child support proceeding. The county's or State's interest in a IV-D NPA proceeding can be characterized broadly as an interest that is based on the role of the county or State as *parens patriae*. In this role, the county or State acts as the "parent" of those citizens who, because of their age, disability, or vulnerability, cannot provide for their own welfare or support. And one way in which a county or the State can assert its *parens patriae* interest with respect to the welfare and support of minor children is to provide services to establish the paternity of children and to establish, enforce, and modify child support orders. The State and counties, however, also have a potential *economic* interest in IV-D NPA cases since the establishment of paternity and the establishment and enforcement of child support orders for minor children relieves the county and State of their financial responsibility for providing public assistance to children who otherwise would be eligible for public assistance if they were not being supported by their noncustodial parents. This interest, however, is merely a *potential* interest and is quite unlike the county's or State's interest as the assignee of child support rights in IV-D cases involving children who receive public assistance. Thus, in IV-D NPA cases, the county or State has some interest in the litigation and its outcome but they do not have a legal interest in the *subject matter* of the litigation itself—that is, the child's paternity or the child support payable on behalf of the child. But a "mere" interest in a pending lawsuit, as opposed to a "real" interest in the *subject matter* of the lawsuit, generally is insufficient to make one the real party in interest with respect to the litigation.

[47] G.S. 1A-1, Rule 17(a).

130.1 expressly authorize IV-D agencies to initiate, institute, take up, or pursue paternity and child support proceedings on behalf of persons who receive IV-D services, it seems clear that a IV-D agency *is* the real party in interest in paternity or child support proceedings that are brought pursuant to G.S. 110-130 and G.S. 110-130.1 on behalf of custodial parents or children in IV-D PA *and* IV-D NPA cases.[48]

What Does It Mean to Bring a IV-D Proceeding "On Behalf of" a Custodial Parent?

As noted above, G.S. 110-130.1(c) requires that IV-D proceedings be brought "in the name of the … [IV-D] agency *on behalf of* the public assistance recipient or nonrecipient client" of the agency.

What, though, does it mean to bring a IV-D proceeding "on behalf of" the custodial parent who is receiving services from the IV-D agency? Does the "on behalf of" language imply that, although the IV-D agency is the real party in interest in a IV-D proceeding, it acts in a *representative* capacity for the use or benefit of the custodial parent or child? Does it require that the custodial parent be named in the title of the action? And, if so, how should IV-D proceedings be titled? Is it really correct to style them as "Orange County *ex rel.* Jane Doe v. John Doe?"

Representative Plaintiffs

Rule 17(a) expressly allows a person to bring a civil action in his or her own name *on behalf of* or for the benefit of another person *if* a statute authorizes the first person to sue in a representative capacity on behalf of the other person.[49]

When a named plaintiff brings a civil action in a *representative* capacity, he or she acts on behalf of the person for whose benefit the action is brought, rather than for his or her own benefit or in his or her personal or individual capacity. Thus, for example, G.S. 28A-18-2 provides that a wrongful death action must be brought by the executor or administrator of a decedent's estate. The executor or administrator is the real party in interest, but acts in a *representative* capacity *on behalf of* the decedent's estate and heirs, who are entitled to the proceeds of the claim.

Because fiduciaries who sue in a representative capacity generally have no personal or individual legal interest in the subject matter of the claim, some case law holds that a fiduciary who sues on behalf of a beneficiary is *not* the real party in interest with respect to the proceeding and that the *beneficiary*—who is not a party to the action—is the real party in interest.[50] It seems clear, though, that

- a named plaintiff who sues in a representative capacity is, nonetheless, a *party* to the proceeding;
- unless properly joined in the pending action, the person for whose benefit an action is brought is *not* a party to the proceeding.[51]

When a named plaintiff sues in a representative, rather than personal or individual, capacity, he or she must "make an affirmative averment showing his capacity and authority to sue" and the title of the action shown in the caption of the complaint should indicate that the plaintiff is bringing the claim in a representative, rather than personal or individual, capacity.[52]

Nominal Parties, Relators, and "Use" Plaintiffs

A "nominal" (or "formal") party generally is defined as a party who is named as a party in a proceeding in order to comply with a legal requirement or avoid a procedural defect, but who has no control over the proceeding and no legal interest in its subject matter or outcome.[53]

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[48] It also follows that a custodial parent is *not* the real party in interest in a paternity or child support proceeding that is commenced by a IV-D agency. But this does not necessarily mean that a custodial parent is not, or may not become, a *party* to a paternity or child support proceeding commenced by a IV-D agency.

[49] Rule 17(a) also allows an executor, administrator, guardian, trustee of an express trust, or a party in whose name a contract has been made for the benefit of another to sue in his or her own name without joining the party for whose benefit the action is brought.

[50] Lawson v. Langley, 211 N.C. 526, 530, 191 S.E. 229, 232 (1937) (citing the code section from which the language of Rule 17(a) was taken); King v. Grindstaff, 284 N.C. at 357, 200 S.E.2d at 806, quoting *In re* Ives, 248 N.C. 176, 181, 102 S.E.2d 807, 811 (1958); Davenport v. Patrick, 227 N.C. 686, 688, 44 S.E.2d 203, 205 (1947).

[51] *See* G.S. 1A-1, Rule 17(a) (allowing a party to prosecute a civil action on behalf of another person as the real party in interest without joining as a party the person for whose benefit the action is brought).

[52] G.S. 1A-1, Rule 9(a). *See also* Graves v. Welborn, 260 N.C. 688, 691, 133 S.E.2d 761, 763 (1963); Westinghouse v. Hair, 107 N.C. App. 106, 109, 418 S.E.2d 532, 534 (1992).

[53] Black's Law Dictionary (8th ed.), 1154.

The State of North Carolina, for example, is a *nominal* party in a civil action that is brought in the State's name "on the relation of" (or "*ex rel.*") a person (the "relator") who has been injured by the act of a public official and seeks to recover damages against the official's bond, which is payable to the State.[54] The *relator* in such a proceeding is "real" party who controls the litigation and benefits from any recovery therein.[55] The State, by contrast, has little or no role in the litigation, but is bound by a judgment therein.

Similarly, in civil actions that are brought in the name of one person (X) "for the use and benefit" of another (Y), the named plaintiff (X) is a *nominal* party only and the "use" plaintiff (Y) is the "real" plaintiff in the action.

In neither case, however, does the nominal party act in a *representative* capacity on behalf of the relator or use plaintiff. So, it isn't legally correct to title an action brought by a *fiduciary* or other representative *on behalf of* a beneficiary as "A *ex rel.* B" or "A for the use and benefit of B," because doing so would imply that the *beneficiary* (B), rather than the fiduciary or representative (A), is the "real" party to the litigation.

Does the IV-D Agency Act in a Representative Capacity?

The fact that a IV-D agency is the real party in interest in a IV-D PA or IV-D NPA case does not determine, by itself, whether the agency acts (a) in its own interest (or, more precisely, in the interest of the State or county), (b) in a *representative capacity* on behalf of the custodial parent who receives IV-D services, or (c) in its own interest *and* in a representative capacity.

It seems clear that in IV-D NPA cases, the IV-D agency that initiates or takes up a paternity or child support proceeding on behalf of a custodial parent does so in a representative capacity on behalf of, and for the benefit of, the custodial parent or child.[56] G.S. 110-130.1(c) expressly provides that when a IV-D agency initiates a paternity or child support proceeding, it does so *on behalf of* the custodial parent who receives IV-D services. And in IV-D NPA cases, the agency, county, or State does not obtain any legal interest in the paternity or child support claim by virtue an assignment under G.S. 110-137.

By contrast, it seems clear that in IV-D PA cases, the IV-D agency sues in the interest of the county or State to the extent that a child's right to support has been assigned to the county or State pursuant to G.S. 110-137. But because the "on behalf of" language in G.S. 110-130.1(c) applies to IV-D PA cases as well as to IV-D NPA cases and the assignment of child support to the county or State under G.S. 110-137 is only a *partial* assignment of the proceeds of a child support proceeding, it seems equally clear that the IV-D agency also acts, at least in part, in a representative capacity on behalf of the custodial parent or child in IV-D PA cases.

How Should Pleadings in IV-D Proceedings Be Titled?

G.S. 1A-1, Rule 10(a) requires that every pleading in a civil action contain a caption setting forth the title of the action. The caption of the complaint in a civil action must include the names of *all* the parties to the action.[57]

Because the IV-D agency that initiates a paternity or child support proceeding on behalf of a custodial parent is the real party in interest in the proceeding, Rule 10(a) clearly requires that the caption of a *complaint* in a IV-D proceeding include the name of the IV-D agency as a party plaintiff. Rule 10(a), however, does *not* require that the complaint's caption include the name of the custodial parent on whose behalf the action is brought unless the custodial parent is a *party* to the action.[58]

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[54] G.S. 58-72-1. *See also* G.S. 1-58.

[55] *See* State ex rel. Warrenton v. Arrington, 101 N.C. 109, 7 S.E. 652 (1888).

[56] Several North Carolina cases have held that a parent or custodian who files an action seeking support for a minor child acts in a representative capacity as trustee for the minor child and not for the parent's or custodian's own benefit. Richardson v. Richardson, 261 N.C. 521, 527, 135 S.E.2d 532, 537 (1964); Goodyear v. Goodyear, 257 N.C. 374, 379, 126 S.E.2d 113, 117 (1962). *See also* G.S. 50-13.4(d), which provides that in non-IV-D child support proceedings, "payments for the support of a minor child shall be ordered to be paid to the person having custody of the child or any other proper person, agency, organization or institution, or to the State Child Support Collection and Disbursement Unit, *for the benefit of the child*."

[57] G.S. 1A-1, Rule 10(a). The caption and title of pleadings other than the complaint may indicate "the name of the first party on each side with an appropriate indication of other parties" (such as "*et al.*").

[58] As noted above, G.S. 1A-1, Rule 17 allows a party to sue in his or her own name on behalf of another person

As noted above, G.S. 110-130.1(c) expressly provides that paternity and child support proceedings initiated by IV-D agencies under G.S. Ch. 110 must "be brought in the name of the … [IV-D] agency *on behalf of* the … [IV-D] client." But does G.S. 110-130.1(c) *require* that the title of a IV-D proceeding include the name of the custodial parent on whose behalf the action is brought? The answer is not entirely clear.

Reading the provisions of Rule 10(a), Rule 17(a), and G.S. 110-130.1(c) together, however, suggests that that paternity and child support proceedings that are commenced by IV-D agencies should be titled: "Orange County Child Support Enforcement Agency [or North Carolina Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section] *on behalf of* Jane Doe, Plaintiff, v. John Doe, Defendant."[59]

Are Custodial Parents or Children Proper or Necessary Parties in IV-D Proceedings?

North Carolina's Rules of Civil Procedure

- require that all persons who are "united in interest" must be joined as plaintiffs or defendants in a pending civil action; and
- allow the court to dismiss an action for failure to join a "necessary" party.[60]

A "proper" party, "is one whose interest may be affected by a decree, but whose presence is not essential in order for the court to adjudicate the rights of others."[61]

> A necessary party is one who is so vitally interested in the controversy that a valid judgment cannot be rendered in the action completely and finally determining the controversy without his presence.[62]

Upon motion by a party, a court must join a person to a pending civil action if the court determines that the person is a necessary party to the action and the court has jurisdiction over the person. If a necessary party cannot be joined to a pending action, the action may be dismissed without prejudice.[63]

If a court determines that a person who has not been joined as a party in a pending civil action is a proper, but not a necessary, party to the action, the court *may* order that the person be joined as a party in the pending action if the court has jurisdiction over the person.[64]

North Carolina's case law has never expressly addressed the question whether a custodial parent is a proper or necessary party in a paternity or child support proceeding initiated by a IV-D agency on behalf of the custodial parent. The North Carolina Supreme Court, however, has held that the nonparent custodian of a child may have standing to intervene as a party in a pending IV-D child support proceeding involving the child.[65] And, if a nonparent custodian of a child has *standing* to intervene in a pending IV-D child support proceeding involving the child, it would seem to follow that a custodial parent or child may be a *proper* party in a IV-D paternity or child support proceeding.

On the other hand, it seems quite unlikely that a custodial parent or child would be considered to be a *necessary* party in a IV-D proceeding. Under North Carolina case law, a minor child is *not* a necessary party to a paternity or child support proceeding that is brought by the child's parent.[66] And while a custodial parent or child may be "interested" in and affected by the outcome of a IV-D paternity or child

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without joining the party for whose benefit the action is brought if a statute authorizes him or her to do so.

[59] As noted above, IV-D proceedings often are titled "Orange County [or State of North Carolina] *ex rel.* Jane Doe, Plaintiff, v. John Doe, Defendant." IV-D proceedings, however, are not, in a strict legal sense, "*ex rel.*" actions, and the use of "*ex rel.*" in the title of IV-D proceedings is legally incorrect and potentially misleading with respect to the identity, capacity, and role of the parties in IV-D proceedings.

[60] G.S. 1A-1, Rules 12(b)(7) and 19.

[61] Crosrol Carding Developments, Inc. v. Gunter & Cooke, 12 N.C. App. at 452, 183 S.E.2d at 837. *See also* G.S. 1A-1, Rule 20 (governing permissive joinder of parties).

[62] Crosrol Carding Developments, Inc. v. Gunter & Cooke, 12 N.C. App. 448, 451-452, 183 S.E.2d 834, 837 (1971).

[63] Crosrol Carding Developments, Inc. v. Gunter & Cooke, 12 N.C. App. at 453-454, 183 S.E.2d at 838.

[64] Crosrol Carding Developments, Inc. v. Gunter & Cooke, 12 N.C. App. at 451, 183 S.E.2d at 837. The decision to join or not join a proper party in a pending civil proceeding rests in the sound discretion of the trial court. Crosrol Carding Developments, Inc. v. Gunter & Cooke, 12 N.C. App. at 453, 183 S.E.2d at 838.

[65] State *ex rel.* Parker v. Crews, 319 N.C. 354, 354 S.E.2d 501 (1987).

[66] Smith v. Bumgarner, 115 N.C. App. 149, 443 S.E.2d 744 (1994); Appert v. Appert, 80 N.C. App. 27, 341 S.E.2d 342 (1986).

support proceeding, it seems clear that, given the IV-D agency's representation of their interests and their ability to intervene, if necessary, in the proceeding, a valid judgment can be rendered *without* joining them as parties.

So, a IV-D agency *may* join a custodial parent or child as a party when it brings a paternity or child support proceeding on behalf of the custodial parent or child, but it is not required to do so and the defendant has no right to require the joinder of the custodial parent or child as a necessary party in a pending IV-D proceeding.[67] Conversely, a custodial parent or child is *not* a party to a IV-D proceeding unless the custodial parent or child has been joined as a party to the proceeding, intervenes in the pending proceeding, or was a party to a paternity or child support proceeding that has been "taken up" by a IV-D agency.[68]

Who May Intervene in a IV-D Proceeding?

N.C. Civil Procedure Rules 24 and 25

Rule 24 of North Carolina's Rules of Civil Procedure allows a person to intervene as a party in a pending civil proceeding if he or she files a timely motion to do so and

1. a statute gives the person an unconditional right to intervene in the proceeding;
2. the person (a) is not adequately represented by the existing parties to the proceeding, (b) has an interest relating to the property or transaction that is the subject of the proceeding, and (c) is so situated that disposition of the action may, as a practical matter, impair or impede his or her ability to protect that interest;
3. a statute gives the person a conditional right to intervene in the proceeding; or
4. the person's claim or defense and the pending action share a common question of law or fact.

In the first two instances cited above, the person has a right to intervene in the pending proceeding. In the last two instances, the court has discretion to allow or not allow the person to intervene in the pending action.

In order to intervene in a pending action, an intervenor must file a "timely" motion to intervene and serve the motion on all parties affected thereby.[69] The "motion must state the grounds [for intervention] and be accompanied by a pleading setting forth the claim or defense for which intervention is sought."[70] If the motion is granted, the intervenor is joined as a party to the pending proceeding and, thereafter, has the same rights and obligations as the other parties to the proceeding.[71]

Rule 25 of North Carolina's Rules of Civil Procedure addresses the substitution of a new party for a party following the original party's death, separation from office, or incompetency.[72] When a party's interest in the subject matter of a pending civil action is transferred to another person by reason other than death after the action is filed, Rule 25 provides that the action is continued in the name of the original party but, upon motion by any party, the court may allow the transferee to be joined with the original party as a party to the pending proceeding.

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[67] *But see* G.S. 1A-1, Rule 21 (allowing the court to add or drop parties in a civil action on "such terms as are just"). *See also* Corbett v. Corbett, 249 N.C. 585, 589, 107 S.E.2d 165, 168 (1959) (holding that the joinder of a proper, but not a necessary, party is within the court's discretion); Henredon Furniture Industries, Inc. v. Southern Railway Co., 27 N.C. App. 331, 332, 219 S.E.2d 238, 239 (1975).

[68] The North Carolina Supreme Court's decision in *State ex rel. Parker v. Crews* strongly suggests that the custodial parent or child on whose behalf a IV-D proceeding is brought is *not* a party to the proceeding unless the parent or child intervenes or is otherwise joined as a party therein. State *ex rel.* Parker v. Crews, 319 N.C. 354, 354 S.E.2d 501 (1987). The mere fact that the caption of a IV-D proceeding includes the name of the custodial parent or child is *not* sufficient to make the custodial parent or child a party to the proceeding. 59 Am.Jur.2d Parties §6, citing S.O.V. v. People in Interest of M.C., 914 P.2d 355 (Colo. 1996).

[69] G.S. 1A-1, Rule 24(c). The motion and pleading are served pursuant to G.S. 1A-1, Rule 5, rather than Rule 4. *In re* Shamp, 82 N.C. App. 606, 347 S.E.2d 848 (1986). The timeliness of a motion to intervene depends on the circumstances of the case. G.S. 1A-1, Rule 24 (Official Comment). *See also* Procter v. City of Raleigh Board of Adjustment, 133 N.C. App. 181, 514 S.E.2d 745 (1999).

[70] G.S. 1A-1, Rule 24(c).

[71] Harrington v. Overcash, 61 N.C. App. 742, 301 S.E.2d 538 (1983); Leonard E. Warner, Inc. v. Nissan Motor Corp., 66 N.C. App. 73, 311 S.E.2d 1 (1984). The granting or denial of a motion to intervene is interlocutory and therefore is not immediately appealable unless the order adversely affects a substantial right. Wood v. City of Fayetteville, 35 N.C. App. 738, 242 S.E.2d 640 (1978); Stockton v. Estate of Thompson, 165 N.C. App. 899, 600 S.E.2d 13 (2004).

[72] *See also* G.S. 1A-1, Rule 21 (allowing parties to be "dropped or added by order of the court on motion of any party or on its own initiative").

May a Custodial Parent Intervene in a Pending IV-D Proceeding?

In *State ex rel. Parker v. Crews*, the North Carolina Supreme Court held that the custodian of a child who received public assistance had the *right* to intervene under G.S. 1A-1, Rule 24(a)(2) as a party in a pending IV-D child support proceeding in order to assert her residual rights with respect to the child's support.[73]

The *Crews* case involved a seventeen-year-old child who had lived since birth with her grandmother. The grandmother received public assistance on behalf of the child. After the IV-D agency filed a child support action against the child's father, the agency and the child's father filed a proposed consent order under which the father would pay $125 per month in child support beginning on the date the child support action was commenced and would reimburse the State $900 for public assistance paid prior to that date. The proposed consent order, however, did not reimburse the grandmother for the expenses that she had incurred for the child's care before the date the action was filed. The child's grandmother, therefore, filed a motion to intervene, claiming that the State had failed to assist her in obtaining reimbursement with respect to her claim for "prior maintenance."

Writing for the court, Justice Martin first noted that the assignment of child support under G.S. 110-137 is an assignment of the child's right to support *up to the amount of public assistance paid*.[74] He then concluded (a) that the assignment of child support under G.S. 110-137 "does not utterly destroy any interest [a] custodial parent [has] in the other parent's duty" to pay child support; (b) that public assistance recipients "retain some active and continuous interest in support rights" that have been assigned to the State; and (c) that the State *and* a dependent child or the child's custodial parent or other custodian "have *concurrent* interests in [a noncustodial parent's child] support obligation."[75] The Supreme Court therefore held that the grandmother's interest in child support payments for the child in her custody was sufficient, notwithstanding the partial assignment of child support to the State under G.S. 110-137, to provide a basis for her intervention in the pending IV-D proceeding.

[73] State *ex rel.* Parker v. Crews, 319 N.C. 354, 354 S.E.2d 501 (1987).

[74] *See also* 42 U.S.C. §608(a)(3).

[75] State *ex rel.* Crews v. Parker, 319 N.C. at 358, 360, 354 S.E.2d at 504, 505.

May the IV-D Agency Intervene in a Pending Paternity or Child Support Proceeding?

Although G.S. 110-130 authorizes a IV-D agency to "take up and pursue" a paternity or child support proceeding that has been commenced by the child's mother, custodian, or guardian, it does not specify the procedure by which a IV-D agency "takes up" a pending paternity or child support proceeding.

In some cases, a IV-D agency may "take up" or pursue a proceeding to *modify* or *enforce* a child support order as an "interested" person *without* intervening in the pending proceeding.[76] It seems clear, though, that a IV-D agency also may "take up" or pursue a pending paternity or child support proceeding by filing a motion to intervene pursuant to Rule 24 and alleging that it has a unconditional right to intervene in the pending action pursuant to G.S. 110-130.[77] If the agency's motion to intervene is granted, the agency should be joined as a party to the pending action.

Intervention by a IV-D agency under Rule 24, however, does not *substitute* the IV-D agency for the child's mother, custodian, or guardian in the pending paternity or child support action. It merely *adds* the IV-D agency as a party to the pending proceeding.[78] Nor does the agency's intervention in a pending paternity or child support proceeding require that the title of subsequent pleadings substitute the agency's name for that of the custodial parent.[79]

Other Issues Involving Practice, and Procedure in IV-D Proceedings

Payment of Filing Fees

State law generally requires a plaintiff to pay the facilities fee, the General Court of Justice fee, and the fee for service of process (a total of at least $95.00 in paternity and child support actions in district court) to

[76] *See* Tate v. Tate, 95 N.C. App. 774, 384 S.E.2d 48 (1989).

[77] *See* Hill v. Hill, 121 N.C. App. 510, 466 S.E.2d 322 (1996).

[78] G.S. 1A-1, Rule 25(d) (providing that in the case of a transfer of a party's interest in a pending action by means other than the party's death, the action is continued in the original party's name but, upon motion of a party, the court may allow the transferee to be joined with the original party in the proceeding).

[79] *See* G.S. 1A-1, Rule 10.

the Clerk of Superior Court when the action is commenced.[80]

State law, however, also provides that when a county is the plaintiff in a civil action, the county is not required to pay these court fees in advance.[81] A county IV-D agency, therefore, is not required to pay the filing and service fees in advance when it commences a civil paternity or child support proceeding on behalf of a custodial parent.[82]

State IV-D agencies that commence civil paternity or child support proceedings on behalf of custodial parents, by contrast, are required to pay the filing and service fees unless the custodial parent or child on whose behalf the action is brought is indigent *and* is a plaintiff to the pending action.[83]

Attorney-Client Relationship and Privilege

G.S. 110-130.1(c) expressly provides that an attorney's representation of a IV-D agency in a paternity or child support proceeding that is initiated or taken up on behalf of a custodial parent does not create an attorney-client relationship between the agency's attorney and the custodial parent.

Thus, in the absence of an express agreement or other circumstances sufficient to establish an attorney-client relationship between the attorney who is employed or retained by the IV-D agency and the custodial parent who is the agency's client, a IV-D attorney represents the IV-D *agency—not* the agency's *client*—in a IV-D proceeding.[84] In these cases, it follows that

- the attorney who represents a IV-D agency in a IV-D proceeding is not counsel of record for the custodial parent on whose behalf the proceeding is brought and may not accept service of process, notice, or a subpoena directed to the custodial parent;
- the attorney who represents a IV-D agency in a IV-D proceeding does not represent the custodial parent in any "collateral" proceedings involving child custody or other issues;
- the attorney who represents the IV-D agency in a IV-D proceeding generally should inform the agency's client that he or she represents the agency and does not represent the agency's client in the pending action or collateral proceedings;[85]
- communications between an attorney who represents a IV-D agency in a IV-D proceeding and the custodial parent on whose behalf the proceeding is brought are not protected by the attorney-client privilege;
- information obtained by the IV-D attorney from the IV-D agency's client or about the IV-D agency's client is confidential and may be disclosed only if the *agency* consents, the disclosure is impliedly authorized in order to carry out representation of the agency, or the disclosure is required by the State Bar's Revised Rules of Professional Conduct;[86]
- a IV-D attorney should not provide legal advice, other than advice to consult or retain independent counsel, to an unrepresented custodial parent who is the client of a IV-D agency if the parent's interests may conflict with the agency's interests.[87]

Counterclaims and Collateral Proceedings

A counterclaim in a pending civil action may not be asserted against a person or entity unless the person or entity is a *party* to the pending action.[88]

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[80] G.S. 7A-305(a); G.S. 7A-311(a)(1). The filing fee to initiate a paternity or child support action through execution of a voluntary paternity acknowledgement or voluntary support agreement is only $4.00. G.S. 110-134.

[81] G.S. 7A-317.

[82] The county, however, may be ultimately responsible for paying these fees unless they are taxed as costs to the defendant pursuant to G.S. 6-20 or G.S. 6-21.

[83] The Administrative Office of the Courts has taken the position that a state IV-D agency is *not* required to pay the facilities fee, General Court of Justice fee, or service of process fee in a paternity or child support proceeding that is brought on behalf of an *indigent* parent or child. Memorandum to Clerks of Superior Court from Thomas J. Andrews and Pamela W. Best regarding Collection of Filing Fees in IV-D Cases dated April 6, 2001. The provisions of G.S. 1-110, however, apply only to indigent *parties*—specifically, indigent plaintiffs—who bring civil actions and do not apply to an indigent person who is not a party to a civil proceeding that is brought by another person on his or her behalf.

[84] *See generally*, Barbara Glesner Fines, "From Representing 'Clients' to Serving 'Recipients': Transforming the Role of the IV-D Child Support Enforcement Attorney," 67 Fordham L.Rev. 2155 (1999).

[85] 27 N.C. Admin. Code 02 Rule 4.3(b).

[86] 27 N.C. Admin. Code 02 Rule 1.06.

[87] 27 N.C. Admin. Code 02 Rule 4.3(a).

[88] G.S. 1A-1, Rule 13.

Thus, a parent against whom a IV-D child support proceeding has been brought may not assert a counterclaim (for example, a claim for child custody or visitation) against the custodial parent on whose behalf the IV-D proceeding is being prosecuted *unless* the custodial parent against whom the counterclaim would be asserted is a *party* to the pending action or is joined as a party to the pending action.

Moreover, even when a custodial parent is, or is joined as, a party in a IV-D paternity or child support proceeding, G.S. 110-130.1(c) requires that a counterclaim against the custodial parent that involves a "collateral dispute" regarding child custody, visitation, or similar matters be considered only in a proceeding that is separated from the issues of paternity or child support matter that are the subject of the IV-D proceeding.[89]

Discovery in IV-D Proceedings

Discovery by the IV-D Agency

If a IV-D agency files a civil action for paternity or child support on behalf of a custodial parent or child or intervenes in a pending paternity or child support proceeding, the IV-D agency is a party to the pending action or proceeding and, as a party, may obtain discovery from

- the putative father, noncustodial parent, or obligor who is a party to the proceeding pursuant to Rules 26 through 37 and Rule 45 of North Carolina's Rules of Civil Procedure;
- nonparties pursuant to G.S. 1A-1, Rules 30, 31, and 45.[90]

Obtaining Discovery From the IV-D Agency

A putative father, noncustodial parent, or obligor who is a party to a IV-D proceeding may obtain discovery from the IV-D agency pursuant to Rules 26 through 37 and Rule 45 of the Rules of Civil Procedure if the IV-D agency is a party to the proceeding.[91]

G.S. 1A-1, Rule 45 allows a party to serve a subpoena for the production of documents in a pending civil action. The subpoena may be served on a party to the pending proceeding or on any other person who is subject to the court's jurisdiction. A person who is properly served with a subpoena under Rule 45 generally must produce and permit inspection and copying of the designated records or documents if they (a) are not privileged and (b) are "in the possession, custody, or control" of the subpoenaed party or person.[92]

Similarly, G.S. 1A-1, Rule 34 allows a party to serve on another party a request for production of documents that (a) contain information that is otherwise subject to discovery under Rule 26(b) and (b) are "in the possession, custody, or control" of the party to whom the request is directed.[93]

Thus, a IV-D agency that is properly served with a subpoena or request for the production of documents under Rules 45 or 34 in a IV-D proceeding generally must respond to the subpoena or request by producing all designated records or documents that are in the agency's possession or custody, including any nonprivileged information, records, or documents that were provided to the agency by the custodial parent who is the agency's client or by agencies or persons other than the agency's client.

Rules 45 and 34, however, also apply to records or documents that are in the "control," but not the "possession or custody," of a party. And given the fact that custodial parents who receive IV-D services generally are required to cooperate with the IV-D

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[89] G.S. 1A-1, Rule 42(b)(1) also allows the court to order separate trials or proceedings involving "collateral disputes" between the custodial parent and the noncustodial parent when a IV-D agency takes up a pending civil action that includes claims regarding child custody or visitation as well as child support.

[90] G.S. 1A-1, Rule 26(a).

[91] If a IV-D agency "takes up" a pending paternity or child support proceeding as an "interested" person without intervening or being joined as a party to the pending proceeding, parties to the proceeding may obtain discovery from the IV-D agency pursuant to Rules 30, 31, and 45 of North Carolina's Rules of Civil Procedure.

[92] A party who is the subject of a subpoena may object to or file a motion to quash or modify the subpoena. G.S. 1A-1, Rule 45(c). A party who fails, without adequate excuse, to comply with a subpoena may be held in civil contempt, sanctioned under Rule 37(d) of the Rules of Civil Procedure, and ordered to pay the moving party's costs and reasonable attorneys fees incurred in enforcing the subpoena. G.S. 1A-1, Rule 45(e).

[93] A party upon whom a request for production of documents is served generally must serve a written response to the request on the requesting party within 30 days. If the party upon whom the request is served objects to the production of any or all of the designated documents, the moving party may file a motion seeking a court order to compel discovery and to impose sanctions for failure to provide discovery pursuant to Rule 37 of the Rules of Civil Procedure. G.S. 1A-1, Rule 34(b).

agency in establishing and enforcing child support orders, it seems clear that otherwise discoverable information, records, or documents that are in the possession of a IV-D client are in the "control" of the IV-D agency and therefore are subject to production and discovery in response to a subpoena or request for production of documents served on the IV-D agency.

Likewise, G.S. 1A-1, Rule 33 generally requires a party to respond to interrogatories by furnishing any otherwise discoverable information that "is available to the party."[94] A IV-D agency's obligation to respond to interrogatories, therefore, clearly extends to nonprivileged, discoverable information that is contained in the agency's records or known to the agency's employees, and probably extends to information that is within the possession or knowledge of the custodial parent who is the agency's client, regardless of whether the custodial parent is a party to the IV-D proceeding.

Similarly, G.S. 1A-1, Rule 36, provides that a party upon whom requests for admission have been served "may not give lack of information or knowledge as a reason for failure to admit or deny [a request to admit] unless [the answering party] states that [the party] has made *reasonable inquiry* and that the information known or *readily obtainable* by [the party] is insufficient to enable [the party] to admit or deny [the requested admission]."[95] A IV-D agency's response to a request for admissions under Rule 36, therefore, clearly must be based on information that is contained in the agency's records or known to the agency's employees, and probably requires the agency to make reasonable inquiries of, or obtain information from, the custodial parent who is the agency's client.

[94] In lieu of answering an interrogatory, a party may object to the interrogatory. If a party fails to answer an interrogatory, the moving party may file a motion seeking a court order to compel discovery and to impose sanctions for failure to provide discovery pursuant to Rule 37 of the Rules of Civil Procedure. G.S. 1A-1, Rule 33(a).

[95] If a party objects to a request for admissions or fails to provide a sufficient answer in response to a request for admissions, the moving party may file a motion seeking a court order to compel discovery and to impose sanctions for failure to provide discovery pursuant to Rule 37 of the Rules of Civil Procedure. G.S. 1A-1, Rule 36(a).

Obtaining Discovery From the Custodial Parent in a IV-D Proceeding

When and how may a putative father, noncustodial parent, or obligor obtain discovery *directly* from a custodial parent in a pending IV-D proceeding?

Some discovery tools—specifically, depositions and subpoenas—may be used to obtain discovery from any person who is subject to the court's jurisdiction, regardless of whether that person is a party to a pending civil action. Therefore, a putative father, noncustodial parent, or obligor who is a party to a IV-D proceeding may obtain discovery from a custodial parent by serving a subpoena for the production of documents on the custodial parent pursuant to G.S. 1A-1, Rule 45, or by deposing the custodial parent pursuant to G.S. 1A-1, Rules 30 and 31, regardless of whether the custodial parent is a party to the pending proceeding. The party seeking discovery from the custodial parent, however, must serve notice of the deposition or subpoena on the IV-D agency and any other party to the proceeding.

Other discovery tools—for example, interrogatories, requests for production of documents, and requests for admissions—may only be used to obtain discovery only from a person who is a *party* to a pending civil action. So, unless a custodial parent is, or is joined as, a *party* in a pending IV-D action, a putative father or noncustodial parent may not obtain discovery *directly* from the custodial parent in a IV-D proceeding by serving interrogatories, a request for production of documents, or a request for admissions on the custodial parent pursuant to Rules 33, 34, or 36.[96]

Modification of Child Support Orders

G.S. 50-13.7 allows a court to modify a child support order "upon motion in the cause and a showing of changed circumstances by either party or *anyone interested*…." Thus, a *nonparty* who is "interested" in modifying a child support order has standing to file a proceeding seeking modification of the order.

Only one reported appellate decision has addressed the question of who has standing, as an "interested" person who is *not* a party to a pending

[96] As discussed above, a party may obtain discovery *indirectly* from a custodial parent who is a client of a IV-D agency if a request for discovery is properly served on the IV-D agency and the requested information, records, or documents are in the possession of the custodial parent but under the "control" of the IV-D agency or readily obtainable by the agency from the custodial parent.

child support proceeding, to file a motion to modify a child support order. In that case, the court held that when a county department of social services provides public assistance on behalf of a minor child, the agency is an "interested" person that has standing to file a motion to modify a court order that provides for the child's support.[97]

It seems clear, therefore, that, given the authority of IV-D agencies to initiate, take up, and pursue actions on behalf of IV-D clients to establish or *modify* child support orders, a IV-D agency has a sufficient interest to file a motion on behalf of a IV-D client to modify a child support order regardless of whether the IV-D agency is a party, or intervenes as a party, in the proceeding in which the order was entered. And conversely, it also seems clear that the interest of a custodial parent is sufficient to give the parent standing to file a motion to modify a child support order entered in a IV-D proceeding even if the custodial parent is *not* a party to the proceeding and is not seeking to intervene as a party in the proceeding.

Enforcement of Child Support Orders

As a general rule, only a *party* has standing to seek judicial enforcement of a child support order.[98]

There are, however, exceptions to this rule. G.S. 5A-23(a), for example, allows "one with an interest in enforcing" a child support order to file a motion seeking the issuance of a show cause order to enforce a child support order through proceedings for civil contempt.

Given the authority of IV-D agencies to initiate, take up, and pursue actions to establish or *enforce* child support orders on behalf of IV-D clients, it seems clear that a IV-D agency has standing to ask a court to initiate civil contempt proceedings to enforce a child support order on behalf of a IV-D client even if the IV-D agency is *not* a party to the proceeding in which the order was entered. And similarly, a custodial parent almost certainly has standing to ask a court to enforce a child support order through civil contempt in a pending IV-D proceeding even if the custodial parent is not a party in the IV-D proceeding.

Res Judicata and Collateral Estoppel

Issues involving application of the doctrines of *res judicata* and collateral estoppel arise in IV-D proceedings when the issue of paternity has been determined in a paternity or child support proceeding brought by a IV-D agency, custodial parent, or child and a party attempts to relitigate the issue of paternity in the same proceeding or in a subsequent paternity or child support proceeding brought by the custodial parent, child, or another IV-D agency.

Briefly stated, the doctrines of *res judicata* (claim preclusion) and collateral estoppel (issue preclusion) generally prevent a party from litigating a claim or issue if that claim or issue has been previously litigated and a final judgment has been entered against that party, or a person in privity with that party, with respect to the claim or issue.[99]

Application of the doctrines of *res judicata* and collateral estoppel often requires courts to look beyond the identity of the named parties to determine not only whether a person is, or was, a *party* to a lawsuit, but whether that person, even if he or she isn't, or wasn't, a party to a lawsuit, is in *privity* with a party in another legal proceeding. As noted above, a party is in privity with a party in a prior legal proceeding if the parties share a "mutual or successive right or legal interest in the property or claim" that was the subject of the prior proceeding and the rights or interests of the party in the pending proceeding were adequately represented by the party in the prior proceeding.[100]

Thus, the mere fact that a IV-D agency, custodial parent, or child is or isn't a party to, or even the real party in interest in, a paternity or child support proceeding that failed to establish a man's paternity of a child may not be sufficient to determine whether a subsequent paternity or child support action brought by

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[97] Cox v. Cox, 44 N.C. App. 339, 260 S.E.2d 812 (1979). An "interested" person who files a motion to modify a child support order but who is not a party to the pending child support proceeding, however, does not become a party to the pending proceeding unless he or she is joined as a party pursuant to the Rules of Civil Procedure. Cox v. Cox, 44 N.C. App. at 342, 260 S.E.2d at 813.

[98] A IV-D agency's authority to take action on behalf of a IV-D client to enforce a child support order through *administrative* or *nonjudicial* means—for example, by filing a lien against insurance benefits under G.S. 58-3-185 or administratively garnishing a delinquent obligor's federal or state income tax refund—is not affected by the agency's status as a party or nonparty in the judicial proceeding in which the order was entered.

[99] King v. Grindstaff, 284 N.C. 348, 356, 200 S.E.2d 799, 805 (1973); Thomas M. McInnis & Associates, Inc. v. Hall, 318 N.C. 421, 429, 349 S.E.2d 552, 557 (1986).

[100] Masters v. Dunstan, 356 N.C. 520, 526, 124 S.E.2d 574, 578 (1962).

a IV-D agency against that man is barred by *res judicata* or collateral estoppel. Instead, the fundamental question in these IV-D proceedings is *not* whether the IV-D agency, the custodial parent, or the child is the "real party in interest" in the pending paternity or child support proceeding or in a prior paternity or child support proceeding, but whether the parties in the two proceedings are in *privity* with each other.

Thus, if a court has entered a final judgment determining that a man is *not* the father of a child and a IV-D agency, custodial parent, or child subsequently brings a second paternity or child support proceeding against the man, *res judicata* or collateral estoppel generally should bar the subsequent action if the party that brings the subsequent action was a party to the first proceeding *or* is in *privity* with a party to the first proceeding.[101]

The Settle and Frinzi Cases

Is a IV-D agency that brings a paternity or child support proceeding on behalf of a custodial parent in privity with the custodial parent or another IV-D agency that previously brought a paternity or child support action on behalf of the custodial parent or child? According to two decisions by the North Carolina Supreme Court, the answer is "no."[102]

In *Settle v. Beasley*, a county IV-D agency brought a paternity and child support proceeding against a man (Mr. Beasley) on behalf the mother of a minor child. The district court held that, as a matter of law, Mr. Beasley was not the child's father. No appeal was taken. Several years later, the minor child, acting though a guardian ad litem, brought a civil action for paternity and child support against Beasley. Beasley filed a motion to dismiss the proceeding based on *res judicata* or collateral estoppel. The Supreme Court held that *res judicata* did not bar the child's paternity and child support action because the child was not a party in the prior IV-D proceeding and was not in privity with the county IV-D agency that brought the prior paternity and child support proceeding.

Writing for the court, Justice Martin first noted that, for the purpose of determining whether the doctrine of *res judicata* is applicable, courts must "look beyond the *nominal* party whose name appears or record and consider the legal questions raised as they may affect the *real* party in interest."[103] He then went on to conclude that because the child's right to support had been assigned to the county pursuant to G.S. 110-137, the prior IV-D proceeding was for the sole economic benefit of the county, not the child or the child's mother, and that the county, *not* the child or the child's mother, was therefore the real party in interest in the prior IV-D proceeding.[104] And, finally, he reasoned that the child was not in privity with the county IV-D agency because the child's interest in the pending paternity and child support proceeding was different from the county's interest in the prior proceeding.[105]

In *State ex rel. Tucker v. Frinzi*, a county IV-D agency brought a paternity and child support action on behalf of a dependent child and the child's mother against the child's putative father (Mr. Frinzi) but dismissed the action with prejudice. Many years later, a state IV-D agency in another county brought a second action against Frinzi to establish his paternity of the same child and require him to support the child. Mr. Frinzi argued that *res judicata* barred the second action. The Supreme Court held that *res judicata* did not apply, concluding that (a) Forsyth County was the real party in interest in the first IV-D proceeding; (b) that the State of North Carolina was the real party in interest in the second IV-D proceeding; and (c) that, despite the fact that the county's and the State's claims were both based on the assignment of the child's right to support under G.S. 110-137, the State was not in privity with the county because the State had no control over the prior IV-D proceeding brought by the county.

Analysis of Settle and Frinzi

It is not at all clear, however, that the reasoning in the *Settle* and *Frinzi* cases has any application in IV-D NPA cases. Moreover, it can be argued that, even in the context of IV-D PA cases, the reasoning in *Settle* and *Frinzi* is inconsistent with general legal

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[101] By contrast, when a court has entered a final judgment determining that a man is the father of a child, that judgment generally is conclusive and binding against the man in subsequent proceedings in the same case or in any subsequent proceedings in another case in which the issue of the child's paternity arises, regardless of whether the party invoking *res judicata* or collateral estoppel in the subsequent proceeding was a party to the proceeding in which the judgment was entered or in privity with a party to the prior proceeding.

[102] Settle v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983); State *ex rel.* Tucker v. Frinzi, 344 N.C. 411, 474 S.E.2d 127 (1996).

[103] Settle v. Beasley, 309 N.C. at 618, 308 S.E.2d at 289.

[104] Settle v. Beasley, 309 N.C. at 618, 308 S.E.2d at 289.

[105] Settle v. Beasley, 309 N.C. at 620-632, 308 S.E.2d at 290-291.

principles governing *res judicata*, collateral estoppel, and privity, and is based on a misunderstanding of the state and federal laws governing assignment of child support and enforcement of child support through the IV-D system.

When a party brings a claim, a judgment is entered against that party, and the party subsequently assigns his or her rights with respect to the claim, the judgment against that party is conclusive not only against that party but also against that party's assignee if the assignee brings subsequent legal proceeding based on the assigned claim.

> The general rule is that … one to whom an assignment is made … by a party to an action … is regarded as in privity with such party. Where a person having a cause of action assigns his or her claim for the purpose of an action thereon by the assignee, the judgment in such an action is as binding on [the assignee] as if [the assignee] had been a party of record, and [the assignee] is estopped from litigating the same claim against the same defendant.[106]

So, if (a) a custodial parent or child has brought a paternity and child support action against a man who is alleged to be the child's father, (b) a final judgment has been entered against the custodial parent or child determining that the defendant is not the child's father, *and* (c) the child's right to support is assigned thereafter to the county or State under G.S. 110-137, the prior judgment generally should be binding against the IV-D agency (or, more accurately, the county or State), the custodial parent, and the child if the agency brings a paternity or child support action on behalf of the county, State, custodial parent, or child.

The same conclusion also should follow in IV-D NPA cases in which the child's right to support has not been assigned to the county or State pursuant to G.S. 110-137. When a party is authorized by law to sue in a representative capacity on behalf of another person, the person whose interests or rights are represented in the lawsuit generally is considered to be in privity with the party who sues on the other person's behalf, and the person on whose behalf the lawsuit is brought generally is bound by a judgment entered therein even though he or she is not an actual party to the lawsuit.[107]

Similarly, if a IV-D agency brings a paternity and child support action on behalf of a custodial parent or child against the child's putative father (X) and a final judgment is entered determining that X is not the child's father, X generally *should* be able to assert that judgment as *res judicata* on the issue of paternity in a subsequent civil action for paternity and child support brought by the custodial parent or child.[108] And the same conclusion *should* follow when

- a custodial parent or child brings a paternity and child support action against the child's putative father (X), a final judgment is entered determining that X was not the child's father, and a subsequent paternity and child support proceeding is brought against X by a IV-D agency on behalf of the custodial parent or child;[109] *or*
- a IV-D agency brings a paternity and child support action against the child's putative father (X), a final judgment is entered determining that X was not the child's father, and a subsequent paternity and child support action is brought against X by a different IV-D agency on behalf of the custodial parent or child.[110]

Claims to Recover Public Assistance Debts Under G.S. 110-135

G.S. 110-135 creates a cause of action by the State against the parent of a dependent child to recover the cost of public assistance that the State or a county has paid on behalf of the child.

Claims for reimbursement of public assistance under G.S. 110-135 are related, indirectly, to child support claims under G.S. 50-13.4 and to the State's rights with respect to the assignment of child support under G.S. 110-137. The amount of a parent's debt under G.S. 110-135, for example, may not exceed the amount that the parent was required to pay under a child support order for the time during which the child received public assistance.

Claims under G.S. 110-135, however, are legally separate and distinct from child support claims under G.S. 50-13.4 and from the State's claim, under G.S.

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[106] 47 Am.Jur.2d Judgments §§591, 592. *See also* Smith v. Smith, 334 N.C. 81, 84, 431 S.E.2d 196, 198 (1993).

[107] 47 Am.Jur.2d Judgments §595. *See also* Hayes v. Ricard, 251 N.C. 485, 492, 112 S.E.2d 123, 128 (1960).

[108] Opinion of the Justices, 558 A.2d 454, 458 (N.H. 1989); Bradley v. Division of Child Support Enforcement *ex rel.* Patterson, 582 A.2d 478 (Del. 1990). *Cf.* Settle v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983); Hall v. Lalli, 977 P.2d 776 (Az. 1999).

[109] T.R. v. A.W., by Pearson, 470 N.E.2d 95 (Ind. App. 1984).

[110] *Cf.* State *ex rel.* Tucker v. Frinzi, 344 N.C. 411, 474 S.E.2d 127 (1996).

110-137, as the assignee of child support when a child receives public assistance.[111] And while claims under G.S. 110-135 sometimes are joined in IV-D paternity and child support proceedings involving children who receive public assistance, the issue of who is and isn't a party with respect to a paternity or child support claim in a IV-D proceeding is distinct from the issue of who is and isn't a party with respect to a claim for reimbursement of public assistance under G.S. 110-135.

There are no reported appellate decisions that directly address issues involving real, proper, and necessary parties in actions under G.S. 110-135. It seems clear, though, that

1. the State of North Carolina is the real party in interest in an action under G.S. 110-135;
2. an action under G.S. 110-135 should be brought in the name of the State against the parent of a dependent child;[112] and
3. neither the child who received public assistance nor the child's custodial parent is a proper or necessary party in an action under G.S. 110-135.

Conclusion

Despite the statutory provisions of G.S. 110-130 and G.S. 110-130.1(c) and more than thirty years of experience with IV-D paternity and child support proceedings, there is a surprising amount of ambiguity and confusion regarding the identity and status of parties in IV-D proceedings. And, too often, this ambiguity and confusion raise real questions, issues, and problems regarding practice and procedure in IV-D proceedings.

A careful examination of the question "who is and who isn't a party in IV-D proceedings," however, suggests that:

1. a IV-D agency that initiates a paternity or child support proceeding pursuant to G.S. Ch. 110 is a party to the action;
2. a IV-D agency that initiates a paternity or child support proceeding pursuant to G.S. Ch. 110 is the real party in interest in the proceeding;
3. a IV-D agency that "takes up" a paternity or child support proceeding by intervening in the pending proceeding becomes a party to the proceeding;
4. a custodial parent who has brought a paternity or child support proceeding remains a party to the proceeding after a IV-D agency "takes up" the proceeding;
5. a IV-D agency that initiates a paternity or child support proceeding under G.S. 110-130 and G.S. 110-130.1 may do so in the agency's own name without joining the custodial parent as a party in the proceeding;
6. a IV-D agency that initiates or "takes up" a paternity or child support proceeding acts, at least in part, in a representative capacity on behalf of, and for the benefit of, the custodial parent or child, regardless of whether the custodial parent or child is a party to the action;
7. a custodial parent who receives IV-D services is not a necessary party in a IV-D proceeding; and
8. a custodial parent who receives IV-D services may be a proper party in a IV-D proceeding and may have standing to intervene therein.

And these conclusions regarding who is and isn't a party in IV-D cases may provide a useful starting point in addressing some of the other questions, issues, and problems involving pleading, practice, and procedure in IV-D proceedings.

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[111] One example of this distinction may be seen in the fact that an action for child support may be brought at any time before the child's emancipation or 18th birthday, while an action to recover public assistance under G.S. 110-135 must be brought within five years of the date of the last payment of public assistance on behalf of the child.

[112] In at least some cases, however, actions under G.S. 110-135 have been brought in the name of a county, rather than in the State's name, and claims under G.S. 110-135 frequently are joined with paternity or child support claims that are initiated or taken up by state or county IV-D agencies. *See* Moore County v. Brown, 147 N.C. App. 692, 543 S.E.2d 529 (2001); State *ex rel.* Terry v. Marrow, 71 N.C. App. 170, 321 S.E.2d 575 (1984); State *ex rel.* Parker v. Crews, 319 N.C. 354, 354 S.E.2d 501 (1987).