STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814

May 25, 1994

ALL-COUNTY LETTER NO. 94-41

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS

REASON FOR THIS TRANSMITTAL

[ ] State Law Change
[ ] Federal Law or Regulation Change
[X] Court Order or Settlement Agreement
[ ] Clarification Requested by One or More Counties
[ ] Initiated by CDSS

SUBJECT: AID TO FAMILIES WITH DEPENDENT CHILDREN-FOSTER CARE (AFDC-FC) PROGRAM - NORMAN v. MCMAHON COURT CASE

References: Eligibility and Assistance Standards (EAS) Section 45-101(ee)

In December 1990, the State Court of Appeals issued a ruling in the Norman v. McMahon court case. The Court found that the portion of EAS section 45-101(ee) which provided that former step-parents are relatives for purposes of State AFDC-FC is void. This ruling has been interpreted to mean that a step-relationship exists only during the time of the marriage and that a former step-parent no longer meets the definition of a relative for State AFDC-FC purposes.

Specifically, the Court held that EAS section 45-101.1(ee)(1)(c) was void because it departed from the definition of relative contained in applicable State statute. Relative is defined in Welfare and Institutions Code (WIC) section 11400(m) as a person who can be a caretaker relative of a dependent child under section 406 of the Social Security Act (SSA). This section of the Act identifies a relative as a father/mother, grandfather/mother, brother/sister, uncle/aunt, first cousin, nephew/niece, step-father/mother/brother/sister. However, the Act does not include former step-parents within the definition of relative. While federal regulations expand this definition to include former step-parents, the Court held that because EAS section 45-101.1(ee) enlarged the scope of WIC 11400(m), in that it included parties not mentioned in section 406 of the SSA, that section 45-101.1(ee)(1)(c) was void for State AFDC-FC purposes.

As a result of this Court decision, a former step-parent no longer meets the definition of relative for State AFDC-FC purposes. Therefore, a former step-parent is eligible for State foster care benefits only if they are a non-related legal guardian for the child or are appropriately licensed as a foster care provider. However, it should be noted that a former step-parent will continue to meet the definition of relative for federal AFDC-FC program purposes.

The Norman v. McMahon court ruling applies to cases initiated after December 1990. The California Department of Social Services is currently reviewing both State statute and regulations for potential modification and will notify counties when changes are adopted.

If you have any questions about the Norman v. McMahon ruling or its implementation, please call the Foster Care Policy Bureau at 445-0813.

Sincerely,

Marjorie Kelly

MARJORIE KELLY
Deputy Director
Children and Family Services

c: County Welfare Directors Association