

## **Best Practices Model on Child Support in Domestic Violence Cases**

### **Introduction**

As petitioners seek safety for themselves and their children, financial needs are also a concern. At the same time, petitioners sometimes fear that seeking temporary child support will alert the respondent to their address, require physical contact during courtroom proceedings, revive efforts for visitation or child custody, or anger the respondent further. Therefore, while petitioners are aware that child support will help with the care of their children, they are also wary that it may compromise their safety.

This best-practices model serves as suggested guidelines for how child support should be handled in domestic violence cases. Its purpose is to provide guidance on issues related to temporary child support in domestic violence injunction proceedings so petitioners may pursue child support safely and knowledgeably.

### **The Intake Process**

1. Make sure the petitioner understands all parts of the Petition for Injunction for Protection against Domestic Violence. In particular, make sure that the petitioner is aware that he or she may seek temporary child support from the respondent if the respondent is the legal parent, adoptive parent, or guardian by court order of a minor child or children. Find out whether paternity has ever been established and if the petitioner is already receiving child support in another case. Also ask whether the mother was legally married to a man who is not the other party in the current case when the child(ren) was conceived or born. If paternity has never been established, inform the petitioner that initiating a paternity case is one way to have child support established on a permanent basis.
2. If the petitioner fears disclosing his or her address in Section I of the Petition for Injunction for Protection against Domestic Violence, make sure that the petitioner is aware that he or she can keep this information confidential. If desired, have the petitioner write “confidential” in the spaces provided in Section I, number 1 and then have the petitioner complete and file the Florida Supreme Court Approved Form 12.980 (h), Petitioner’s Request for Confidential Filing of Address.
3. If the petitioner wishes to seek child support, make sure that Section VI is filled out completely and accurately. In addition, make sure that the petitioner also completes:
  - a) Family Law Financial Affidavit, Florida Family Law Rules of Procedure Form 12.902(b) or (c);
  - b) Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit, Florida Supreme Court Approved Family Law Form 12.902(d);

- c) Child Support Guidelines Worksheet, Florida Family Law Rules of Procedure Form 12.902(e);
  - d) Notice of Social Security Number, Florida Supreme Court Approved Family Law Form 12.902(j); and
  - e) A Notice of Related Case Form if applicable.
4. In addition to the required forms, it will be helpful for the establishment of temporary child support if the petitioner lists such information as the respondent's place of employment along with the address, phone number, fax number, rate of pay, pay stub information, a W-2 form, or a recent tax return. If the petitioner does not know this information but can obtain it and bring it to the hearing, advise him or her to do so.
  5. Prior to the return hearing, make sure to check for related cases to see if child support has already been established.

### **In Court**

1. If the petitioner requests temporary child support in the petition, the judge must address it in the domestic violence hearing pursuant to section 741.2902 (2) (d), Florida Statutes, regardless of whether other paternity, divorce, or related cases are pending. It is the best practice for the presiding judge to consider and order temporary child support at the injunction hearing to alleviate the need for the petitioner to return to court, prevent additional contacts between the petitioner and the respondent, and to ensure that temporary child support is ordered and hopefully received by the petitioner as soon as possible. Victims of domestic violence are often in need of child support immediately as they may lose their regular means of support when they file a petition for an injunction. Other family court cases may take months to resolve and in the meantime the children of victims of domestic violence still need to be supported. Lastly, an order for temporary child support becomes ineffective upon the entry of an order pertaining to child support in a pending or subsequent civil case pursuant to section 741.30 (6) (a) 4, Florida Statutes, so no two orders will conflict.
2. If the petitioner does not include a request for temporary child support in the Petition for Injunction for Protection against Domestic Violence the judge should not address child support unless the respondent is present and waives notice.
3. While the judge can always calculate temporary child support during the hearing, the following two options can save court time and promote accuracy:
  - a) Financial affidavits are filled out in court or ahead of time by both parties, and child support is calculated on the spot by using FinPlan, Divorce Power Analyzer, or similar software.

- b) Financial affidavits are filled out in court or ahead of time by both parties, and the domestic violence case manager calculates the guidelines amount of child support manually using Form 12.902 (e), Child Support Guidelines Worksheet.
4. In Title IV-D cases and in all cases utilizing an income deduction order the judge shall order temporary child support payments to be made through the State Disbursement Unit pursuant to section 61.181, Florida Statutes. Income deduction orders should be used whenever possible, however, if payments are not being made by income deduction order, the judge shall order that temporary child support be paid through the depository unless both parties request and the court finds that direct payments are in the best interest of the child pursuant to section 61.13(1)(d), Florida Statutes. Direct payments to the petitioner should be avoided as this may increase the likelihood of contact between the petitioner and the respondent or disputes as to what was or was not actually paid.
  5. Each child support order shall provide the full name and date of birth of each minor child who is the subject of the child support order. The respondent should be notified when his or her first payment is due and where the check should be sent. In addition the court case number, the name of the person obligated to pay, and the name of the person to whom the payment is being made must be included with payments. It would be helpful after each hearing for the respondent to receive a paper reminding him or her of this information. An example of this is:

The first payment shall be due on     (date)     and is payable to the State of Florida Disbursement Unit, PO Box 8500 Tallahassee, FL 32314-8500. Include the COUNTY, COURT CASE NUMBER, and NAME of the person to whom the payment is being made, and your NAME, on each payment. No credit for payment will be given to you for any payment given directly to the custodial parent.

6. Income Deduction Orders are the preferred method for collecting child support payments and should be ordered whenever possible. The deputy clerk or other designee should mail or fax the Income Deduction Order to the obligor's employer within two business days. The amount of time it takes for the obligee to receive payment varies greatly depending on the employer and payroll procedures, therefore, the judge should consider alternative payment methods for the initial payment or payments.
7. When ordering temporary child support the judge should explain the following to both parties:
  - a) This is temporary child support. The order for temporary child support will end when the injunction expires, or when a child support order is entered in another case;

- b) The options for securing long-term child support, such as a paternity hearing;
  - c) That it is the petitioner's responsibility to notify the court if payments are not made;
  - d) The court's options for enforcing the child support order; and
  - e) The responsibilities of the petitioner and respondent to notify the court if the award needs to be modified due to a change in circumstance.
8. Before leaving court, both parties should receive documentation showing the judge's decision on temporary child support, and the respondent should receive information on how payments should be made. If income deduction is being used, both the respondent and petitioner should receive information on when payment will begin and how payments will be made until the Income Deduction Order takes effect.

### **Follow-Up and Compliance**

Follow-up and compliance with temporary child support can be done in several different ways:

1. One such method is the use of a tickler system that initiates compliance checks at key points in time. The tickler system should be used in the following manner:
  - a) The system may be set up as either an automated electronic system or a manual case file system.
  - b) The tickler system should alert the case manager to the timeframe or deadline contained in the injunction order for temporary child support payments.
  - c) After the deadline passes, if the respondent has not produced documentation of payment, the case manager should alert the court and proceed according to circuit procedures.
2. A second method is the use of compliance review hearings. These hearings should be conducted in the following manner:
  - a) An order setting review hearings for compliance with temporary child support and all other conditions of the injunction - such as batterers intervention participation - should be issued at the final hearing. Compliance hearings should be set for 30 days and 60 days after issuance

of the final judgment with the respondent being the only person required to attend.

- b) At the compliance hearing the respondent must provide proof and documentation that child support is being paid as ordered by the court and that he or she is complying with all the requirements of the final judgment.
- c) If the respondent fails to provide proof of child support payments or other requirements at or before the scheduled review hearings, an Order to Show Cause should be issued and a hearing date should be set before the court for no later than two weeks.
- d) The respondent should have the opportunity to provide proof of compliance to either the clerk or designee prior to the scheduled review hearing. If proof is provided early, the respondent should then be excused from attending the hearing and should be provided with a document indicating that he or she was excused.
- e) If there is nonpayment of child support after the completion of the compliance review hearings, the petitioner should file a Motion for Enforcement with the clerk or obtain the services of the Department of Revenue Child Support Enforcement Unit to enforce compliance. The petitioner should be made aware of this responsibility in writing by the court at the end of the final hearing.

### **Modifications and Termination**

1. The petitioner or the respondent may request a modification of an injunction or a dismissal of an injunction using the appropriate Florida Supreme Court approved Family Law Form.
2. If requested, domestic violence coordinators should provide information and referrals to both the petitioner and the respondent regarding changes to or termination of the injunction.
3. Upon filing, the motion to modify or terminate the injunction will be sent to the signing judge for review and a hearing will be scheduled if necessary.
4. When there is a modification or termination of an injunction requiring temporary child support payments made to the State Disbursement Unit, the clerk's office must notify the State Disbursement Unit of the changes. In addition, if an Income Deduction Order is facilitating payment, an Order to Vacate should be sent by the clerk to the employer and the State Disbursement Unit when a modification or termination is entered.