

## FLORIDA'S DEPENDENCY BENCHBOOK - CHILD SUPPORT IN DEPENDENCY

This model serves as suggested guidelines for how child support should be handled in dependency cases. Its purpose is to provide guidance on issues related to child support in dependency proceedings so that Florida's children receive the financial support they need. According to the principles of family court as described in In re Report of Family Court Steering Committee, 794 So. 2d 518 (Fla. 2001), the best practice is to handle the child support matter before the same judge hearing the dependency case to avoid conflicting orders and multiple court appearances by the parties, as well as to increase efficiency and wisely utilize court resources. Please note:

Section 39.521(1)(d)(7) states: "The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including health insurance, of the child's parents or guardian, and shall enforce the financial obligation as provided in chapter 61."

### The process.

Initial hearing: At the shelter hearing (or the arraignment hearing if there is not a shelter hearing), the court should:

- Determine whether or not paternity has ever been established for the child. Methods for determining paternity: (Chapters 742, 382)
  - The parent has voluntarily signed a sworn paternity affidavit. § 742.10(4). Other forms of voluntary acknowledgement are permitted under § 742.10(1). Also, paternity may have been established judicially or voluntarily in another state. *See* § 742.105.
  - The father is named on the child's birth certificate. The father must have signed a paternity affidavit before his name was put on the birth certificate. § 382.013(2)(c).
  - If the mother was married when the child was conceived and born, the husband is considered the legal father of the child. §§ 742.11, 382.013(2)(a).
  - The putative father is found to be the biological father through genetic testing. § 742.12.
  - Paternity is established by a court of competent jurisdiction under § 382.015 or determined through administrative proceedings under § 409.256. The judge may access the JIS system to verify previous court orders.
  - If paternity has not been established, have parent swear under oath that he/she is the parent of the child and adjudicate him/her as the parent, or order a DNA test for the father if he is contesting paternity. §§ 742.10(4), 742.12(1). Payment for the DNA testing is governed by §§ 742.12(7), 742.18(7)(c).
- Verify whether or not child support has already been established in another court or under the Title IV-D process in which the Department of Revenue (DOR) is a party. If it has, transfer the case to the dependency court. Rule 8.205(a) allows child support cases to be transferred and handled in dependency court. If it has not, proceed with ordering child support in current case.  
§ 39.402(11)(a).

- A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement. § 80.6011.
- Set the next child support hearing in conjunction with the next regularly scheduled dependency hearing. § 39.402(16).
- The initial shelter order should:
  - Give the putative father and all other parties notice of the proceeding to establish paternity and child support at the next hearing. §§ 409.256(4), 742.021.
  - Require the parents to provide to DCF and the court the financial information necessary to accurately calculate child support within 28 days. § 39.402(11)(a). The court should require that the all parties fill out the financial affidavits and other forms before the next hearing to save time. (See below.)
  - Order a DNA test to establish paternity, if needed. § 742.12(1). Payment for the DNA testing is governed by §§ 742.12(7), 742.18(7)(c).
- Forms parent must fill out to receive child support (courts could request that the clerk have these forms and any DOR application forms available for the litigants):
  - Family Law Financial Affidavit, Florida Family Law Rules of Procedure Form 12.902(b) or (c).
  - Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit, Florida Supreme Court Approved Family Law Form 12.902(d).
  - Child Support Guidelines Worksheet, Florida Family Law Rules of Procedure Form 12.902(e).
  - Notice of Social Security Number, Florida Supreme Court Approved Family Law Form 12.902(j).
  - Notice of Related Case Form. Florida Rule of Judicial Administration 2.085(d).
  - In addition to the required forms, it will be helpful if the parent lists information such as the other parent’s place of employment, pay stub information, a W-2 form, or a recent tax return. If the parent does not know this information but can obtain it and bring it to the hearing, advise him or her to do so.

At the paternity/child support hearing.

- Establish paternity, if not already done, and adjudicate the father/mother as the parent of the child. Fla.R.Juv.P. Rule 8.226(a) states: “The court must determine the identity of all parents and prospective parents at the initial hearing in proceedings under chapter 39, Florida Statutes, as provided by law.” Once paternity is established, the birth record needs to be updated at the Office of Vital Statistics to appropriately record the establishment of paternity. The CLS attorney should complete the top portion of the Department of Health form DH673 using information from the birth record. Next, a certified copy of the paternity adjudication with the father's name should be provided to the clerk of the court, who then submits the record to the Office of Vital Statistics. A separate paternity order should be used for this purpose to ensure dependency information is kept confidential. The birth record is then updated with the father's name, and the official record shows that paternity is no longer an issue. Fla. Supreme Ct.

Approved Family Law Form 12.983(g) Final Judgment of Paternity can be used for this purpose.

- If a party still disputes paternity, he/she may request a jury trial. B.J.Y. v. M.A., 617 So. 2d 1061 (Fla. 1993).
- Set child support.
  - Child support is based on the parent's net monthly income. The child support guideline amount chart is found in § 61.30. The court can vary from the amount prescribed in this chart by 5% after considering all relevant factors including the needs of the child, age, station in life, standard of living, and financial status and ability of each parent. If the court does vary the amount by more than 5%, the court must include a written finding justifying the variance in the order. § 61.30(1)(a).
  - If the child will spend a substantial amount of time with each parent, the amount of child support should be adjusted accordingly. See § 61.30(1)(a) and § 61.30(11)(b). If financial affidavits are filled out before court by both parties, it will save court time. Child support can be calculated by using FinPlan, Divorce Power Analyzer, or similar software. The amount can also be calculated manually by using the Child Support Guidelines Worksheet, Florida Family Law Rules of Procedure 12.902(e).
- The judge should explain the following to both parties when ordering child support:
  - This is permanent child support. The order for child support will end only when the child turns 18 or if it is modified by the court. § 61.14. (Exception: § 743.07(2) provides that dependent children can continue to receive support when the dependency is based upon mental or physical incapacity which began prior to the child reaching the age of majority or if the person is between ages 18-19 and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.)
  - It is the parent's/guardian's responsibility to notify his/her attorney or case worker if payments are not made. The attorney or case worker must report this information to the court.
  - The court's options for enforcing the child support order (order to show cause, contempt. See generally §§ 61.16, 61.17, Rule 8.285, and section 2(c) below of this document).
  - The responsibilities of the petitioner and respondent to notify the court if the award needs to be modified due to a change in circumstance. § 61.14(1)(a).
- An order separate from the dependency hearing order should be written by the parent's attorney or the Children's Legal Services attorney, once paternity is established and should include:
  - The amount of child support to be paid and to whom.
  - A provision for health care coverage when coverage is reasonably available. The court may also order retroactive child support. See § 61.30(17).
  - Income Deduction Orders are the preferred method for collecting child support payments and should be ordered whenever possible. § 61.1301. The obligee or his/her agent should serve the Income Deduction Order on the obligor's employer within two business days by certified mail. § 61.1301(2)(b)(2). 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.

- In cases in which support has already been established under Title IV-D where DOR is a party, and in all cases utilizing an income deduction order, the judge shall order child support payments to be made through the State Disbursement Unit pursuant to § 61.181. Income deduction orders should be used whenever possible; however, if payments are not being made by income deduction order, the judge shall order that 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 § 61.13(1)(d). Direct payments to the parent or caretaker should be avoided as this may increase the likelihood of disputes as to what was or was not actually paid.
- In non IV-E cases, the child support money should be sent to DCF at the following address:

Department of Children and Families,  
Cash Receipt Section,  
1317 Winewood Blvd., Building 1, Room 403  
Tallahassee, Florida 32399

- The full name and date of birth of each minor child who is the subject of the child support order must be included in the order. The parent 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 if the following information was included as standard language on notices of hearings: “The first child support payment shall be due on (date) and is payable to the State of Florida Disbursement Unit, P.O. Box 8500, Tallahassee, Florida 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 or caregiver.”
- If the child is in licensed care, the parent can be ordered to pay child support to the Department of Children and Families to reimburse the department for costs associated with the child’s care. §§ 39.0135, 984.22(3).
- Before leaving court, both parents should receive documentation showing the judge’s decision on child support, and the parent payor should receive information on how payments should be made. If income deduction is being used, both parents should receive information on when payment will begin and how payments will be made until the Income Deduction Order takes effect.
- If a change of placement is done during a dependency case, the order should contain specific language that states the date the payments should stop to the previous payee, the new payee’s full name, the amount of the payment, and the date the payments should start to the new payee. A better practice would be to do an entirely separate order that redirects payment as of the date of the change of placement so that the clerk knows where to direct the money. If the clerk doesn’t have an order specifying

not only the change in placement but also the change in payee, it could significantly delay the money reaching the new caretaker of the child.

- In termination of parental rights cases for which child support has been previously ordered, the court should address child support in the final order, notify DOR, and specify:
  - The date the parent is to stop paying child support.
  - Whether the parent should continue to pay arrearages.

### **Follow-up and compliance.**

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

Tickler system. DCF case workers could use a tickler system that initiates compliance checks at key points in time. The tickler system should be used in the following manner:

- The system may be set up as either an automated electronic system or a manual case file system.
- The tickler system should alert the case worker to the timeframe or deadline contained in the child support order. Many times, child support is an integral part of the case plan and the case worker must monitor compliance along with the other case plan tasks.
- After the deadline passes, if the respondent has not produced documentation of payment, the case worker should alert the court and proceed according to circuit procedures.

Contempt proceedings. The obligee or his/her attorney may initiate contempt proceedings if he/she is not receiving support pursuant to the court order.

Compliance review hearings. Compliance review hearings should be conducted in the following manner:

- The court can review compliance with child support payments at the same time the court is conducting its judicial review, permanency review hearings, or other dependency hearings if the hearing is properly noticed. If compliance is not occurring, the court can set a separate compliance hearing with the respondent being the only person required to attend.
- 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 child support order or that he or she lacks the ability to pay. § 61.14(5)(a). If the respondent fails to provide proof of child support payments or other requirements at or before the scheduled review hearings, the court can:
  - Order the parent to seek employment or job training. § 61.14(5)(b).
  - Issue an Order to Show Cause, and a hearing date should be set before the court for no later than two weeks. The offending parent can be found in civil contempt, and jail time of up to 179 days may be ordered. Payor should be able to make full payment to purge the contempt. §§ 61.14(5)(a), 38.22. [Note: The contemnor must have the present ability to pay a monetary purge under Bowen v. Bowen, 471 So. 2d 1274, 1279 (Fla. 1985) and Gregory v. Rice, 727 So. 2d 251 (Fla. 1999). See also Family Law Rule of Procedure 12.615.]
  - Issue a writ of attachment. § 61.11.

- Garnish the salary of the parent. § 61.12.
  - The driver's license and motor vehicle registration of a support obligor may be suspended if the obligor is delinquent in payment or has failed to comply with subpoenas or a similar order to appear or show cause relating to paternity or support proceedings. § 61.13016(1).
  - Allow DOR, the state's child support enforcement agency, to enforce the child support order. § 39.521(d)(7). The parent must be directed to apply for help through the DOR and file the necessary petition. (Although this is an option, best practice would be for the court to handle enforcement during the dependency proceedings unless enforcement becomes extremely difficult. DOR, however, can collect in ways that the court can't, i.e., intercepting IRS refunds and unemployment benefits.)
- The respondent should have the opportunity to provide proof of compliance either to 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.

#### **Modifications and termination.**

Child support payments can be modified when:

- the modification is found necessary by the court and is in the best interests of the child,
- when the child reaches 18 years of age, and
- when there is a substantial change in the circumstances of the parties § 61.13(1)(a).

When there is a modification or termination of 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.

Upon closure of the dependency case, the court should advise that parents that if they require help with enforcement or other issues, the case can be transferred to family court and will receive a new case number. Filing fees may be assessed. The court should collaborate with the clerk's office when establishing the transfer to determine the best transfer procedure. Once the procedure is determined, the court should provide a handout to the parents that outlines the process and directions the parents need to follow.

## Child Support Considerations

### At the initial dependency hearing.

Determine whether or not paternity has been previously established. Methods for determining paternity include:

- The parent has voluntarily signed a sworn paternity affidavit,
- The father is named on the child's birth certificate,
- The child was conceived and born while the mother was married,
- The putative father is discovered through DNA testing, and/or
- Paternity is established by a court or by administrative proceedings.
- If paternity has not been established:
  - Have the parent swear under oath that he/she is the parent and adjudicate him/her as the parent, or
  - Order a DNA test.

Verify whether or not child support has already been established.

- If it has, transfer it to the dependency court for enforcement and compliance monitoring.
- If it has not, proceed with ordering child support in the current case.

Set the paternity/child support hearing in conjunction with the next dependency hearing.

Confirm the order includes:

- Notice that paternity and child support will be established at the next hearing,
- A requirement that the parents provide the financial information needed to determine child support within 28 days to the court and to DCF, and
- An order for a DNA test, if necessary.

### At the subsequent paternity/child support hearing (ideally in conjunction with the subsequent dependency hearing).

Establish paternity, if not already done, and adjudicate the mother/father as the parent of the child.

Determine and set child support.

Include the following in the child support order:

- Amount of child support to be paid and to whom.
- A provision for health care coverage.
- Income deduction and State Disbursement Unit information.
- The full name and date of birth of each minor child.
- When the first payment is due and where it should be sent.

### Follow-up and compliance options.

The obligee or his/her attorney may initiate contempt

The court can hold a compliance review hearing:

- Review hearings can occur in conjunction with judicial review or other regularly scheduled dependency hearings, if properly noticed.
- Respondent must provide proof of payment or proof that he/she lacks the ability to pay.

If the respondent fails to provide proof of payment, the court can:

- Order the parent to seek employment or job training.
- Issue an order to show cause. Offending parent can be found in civil contempt and jailed up to 179 days.
- Issue a contempt order but it must contain a purge amount and the contemnor must have the ability to pay the purge amount.
- Issue a writ of attachment.
- Garnish the salary of the parent.
- Suspend the driver's license and motor vehicle registration, and/or
- Allow the Department of Revenue to seek other enforcement options.

**Modification and termination.**

Child support payments can be modified when:

- The modification is found necessary by the court and is in the best interests of the child,
- When the child reaches 18 years of age, or
- When there is a substantial change in the circumstances of the parties.

If modifications occur, the court should require the clerk's office to notify the State Disbursement Unit of the changes.

If an Income Deduction Order is facilitating payment, the court should enter an Order to Vacate and require that a copy be sent by the clerk to the employer and the State Disbursement Unit.

Upon closure of the dependency case, advise the parents that:

- If they need help with enforcement, the case can be transferred to family court and they or counsel can proceed with enforcement, but the case will receive a new case number, and
- Filing fees may be assessed.