

Income Withholding for Child Support - Order to Show Cause

Directive #5-95
Issued by:

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Administrative Director

On October 7, 1991, this office issued Administrative Directive 8-91 regarding procedures for the use of income withholding in child support cases. One item in this process required that Probation Divisions seek the assistance of county counsel in requesting legal action against non-cooperative employers. County counsel's availability to assist Probation child support staff in these matters varied creating a lack of uniform enforcement.

Effective September 1, 1994, the New Jersey Court Rules were amended to permit Probation to apply for orders to show cause without the necessity of counsel appearing. *Rule 5:7-5 (d)* provides:

If an employer or other source of income fails to comply with the terms of this paragraph, the court may, upon application of the Probation Division, issue an Order to Show Cause for Contempt against the payor and proceed with contempt proceedings under *Rule 1:10-5* [now *Rule 1:10-3*].

This revision requires minor changes to the income withholding procedures under the section **Enforcing Payor Compliance**, items 2c(1) and 2c(2), in the manual entitled *Income Withholding for Child Support*. Enclosed is the new process for enforcing payor compliance. Please replace pages III-9 and III-10 with the new inserts.

A new Order of Contempt will eventually replace attachment XIII, Judgment of Contempt at page A-60. The sample Order to Show Cause and Verified Statement at pages A-57 and A-58, as well as the new Order of Contempt, will be available on ACSES. Probation child support staff may use the current forms until ACSES is modified to generate those documents. Please refer any questions concerning this memorandum to the Probation Child Support Policy and Planning Unit at (609) 292-8908.

EDITOR=S NOTE

No change has been made to the original text.

3. If a payor fails to withhold the amount of the order, the payor is liable for amounts up to the accumulated amount the payor should have withheld. Procedures for enforcing payor compliance are outlined in Part III, paragraph P.

Q. Monitoring Income Withholding Payments

1. Once a *Notice to Payor of Income Withholding* is issued to a verified in-state payor, payor compliance is monitored on the *Report to Monitor Compliance with Income Withholding* (ACSES Report CS195; see Attachment X).
2. A case is listed on the *Report to Monitor Compliance* if:
 - a. a *Notice to Payor of Income Withholding* has been generated; and
 - b. an arrearage equal to at least 30 days has accrued since the date the *Notice to Payor of Income Withholding* was generated.
3. If a case appears on the *Report to Monitor Compliance*, Probation must initiate enforcement procedures against the payor within five working days. For enforcement procedures, see Part III, paragraph Q.

R. Enforcing Payor Compliance

1. The payor must begin withholding the first pay period that ends after the date the *Notice to Payor of Income Withholding* is postmarked. The payor must send the withheld amount to Probation at the same time the obligor is paid. In some cases the payor will not comply. This may be due to the fact that the payor did not receive the *Notice*, the fact that the obligor no longer receives income from the payor, inadvertent processing errors, the payor's negligence or fraud. In any case, Probation must take prompt action to ensure that withholding is initiated and that the payments are forwarded as required in the *Notice*.
2. If Probation has not received a payment within 30 calendar days of the postmark date of the *Notice* or if the case appears on the *Report to Monitor Compliance*, it must:
 - a. Make a telephone call to the payor to determine why the payments have not been transmitted. During the contact, verify that the payor received the *Notice* and that the obligor still derives income (i.e., is employed) from the payor.
 - b. If the payor cannot be contacted or is uncooperative, prepare and send the *Notice to Employer of Non-Compliance of Income Withholding* (ACSES Document CS025; see Attachment XI). This document is available from ACSES by user request (see ACSES Case Management Manual section VI, pp. 65-66.)
 - c. If no payments are received within 15 calendar days of the date the *Notice to Employer of Non-Compliance* is postmarked, Probation must initiate contempt proceedings as prescribed under *Rule 5:7-5* (d) by:
 - (1) completing the *Order to Show Cause for Contempt, Verified Statement* (Attachment XII) and the *Order of Contempt* (Attachment XIII).
 - (2) forwarding the completed documents with a cover letter to the court requesting legal action against the payor.

S. Terminating an Income Withholding

1. An income withholding must be terminated if there is no longer a current support order (i.e., the court has dismissed the order) and all arrearages are paid in full.

2. In immediate withholding cases, the court may terminate an immediate withholding under the following conditions:
 - a. the obligor request termination; and
 - b. the withholding was not previously terminated; and
 - c. the parties meet all the conditions for alternative arrangements listed in Part V. paragraph C, subparagraph 2.
3. Probation must send a *Notice to Terminate Income Withholding* (ACSES Document CS047; see Attachment VIII) to the payor(s) by certified or registered mail, return receipt requested, within five days of becoming aware of either of these circumstances.
 - a. ACSES will generate the *Notice to Terminate Income Withholding* if the code and date associated with the WAGE EX field on the UOBL function are deleted.
 - b. Since most employers require a Social Security Number to identify an employee, Probation must review the *Notice to Terminate* to ensure that the obligor's correct social security number is provided.
4. If a withholding is or was previously in effect against New Jersey unemployment compensation, a *Notice to Terminate Income Withholding* must be sent to the Division of Family Development so that it can take action to terminate the withholding with the Department of Labor. The Department of Labor maintains withholding notices in its records indefinitely, thus, if it not terminated properly, an income withholding will be initiated each time the obligor receives benefits regardless of whether a withholding is actually in effect. Probation must review the *Notice to Terminate* to ensure that the obligor's social security number is provided.