

Application by Direct Pay Obligee for Payments Through Probation

Directive #13-89
Issued by:

November 8, 1989
Robert D. Lipscher
Administrative Director

On November 2, 1987, the Supreme Court adopted amendments to *R. 5:7-4*, effective January 1, 1988, to allow a direct pay obligee to make application to the probation department for alimony, maintenance, or child support payments to be paid through that office.

Rule 5:7-4 provides, in part, that: " Alimony, maintenance or child support payments not presently made through the county Probation Office shall be so made upon application of the obligee to the Probation Department unless the obligor upon application to the court shows good cause to the contrary."

Family Division child support staff have inquired as to the appropriate manner for processing these applications. Therefore, after discussion by the Conference of Family Division Presiding Judges, the following procedures have been developed to assist child support enforcement staff in meeting the requirements under the above quoted Rule.

Upon application by a direct pay obligee for alimony, maintenance, or child support to be paid through the probation department, the designated probation official shall review the obligee's request to determine

1. whether good cause was shown in the original order for direct payments; and
2. whether arrearages qualify the case for income withholding.

If good cause was shown in the original order for direct payment, the obligee shall be advised to make a motion to the appropriate court.

If good cause was not established and the amount of arrearages are

1. greater than or equal to 14 days or more, procedures for implementing an income withholding under *N.J.S.A. 2A:17-56.8, et seq.*, shall be used. (See Implementation Procedures dated March 1986); or
2. less than 14 days, the following procedures shall be used:
 - I. Non-AFDC

- A. A non-AFDC obligee who does not receive payments through a probation department may apply for such service by filing an affidavit with the probation department in the obligee's county of residence for each case wherein the support order was entered in New Jersey. The obligee will be required to provide the probation department with a copy of the current support order.

Non-AFDC obligees shall be advised of their right to apply for Title IV-D services or monitoring only services and shall sign a statement indicating the choice made. Non-AFDC or monitoring only fees shall be collected and processed according to existing county procedures.

- B. Upon the signing of said affidavit by the obligee, A Notice to Obligor of Payments to be Made Through Probation - will be prepared and signed by a designated affiant. The affidavit will be attached to the Notice to Obligor of Payments to be Made Through Probation, as well as a proposed form of order. The Notice to Obligor of Payments to be Made Through Probation shall include the following information:
1. that an order for future payments to be made through the probation department shall be submitted to the court 10 days after the postmark date of the notice;
 2. the money will be withheld for current support, arrearages, or paternity testing costs;
 3. the procedures to contest the order, including the time frame during which the probation department must be informed; and
 4. that failure to contest the order through application to the court will result in the order being made payable through the probation department.

The Notice to Obligor of Payments to be Made Through Probation shall be prepared by the probation department and mailed to the obligor at the last known address by certified or registered mail, return receipt requested, within five days of the date of receipt of the signed affidavit and a copy of a current order. Notice may also be sent by regular mail.

- C. If the obligor does not contest future payments being made through the probation department, and does not file a separate motion within 10 days of the postmark date, the probation department shall complete the certification so stating (See Attachment IV). The probation department shall submit an order to the court requiring future payments to be paid through the probation department, establishing arrearages at the amount set in the obligee's affidavit. The order shall be effective on the date the affidavit was signed by the obligee.
- D. If the obligor does contest future payments being made through the probation department, and does file a separate motion, the probation department should schedule the matter for court.

II. Appeal Process

- A. The obligor may contest future payments being made through the probation department only upon application to the court for good cause.
- B. The obligor must notify the probation department within 10 days of the postmarked date of the Notice to

Obligor of Payments to be Made Through Probation of intent to contest payments through that office.

1. Because of the limited time frame, notice by the obligor may be made by telephone or in writing. Each probation department should designate one individual to handle these calls.
 2. If the initial notice is by telephone, the obligor should also be advised to submit a written request.
- C. Within 10 days after the obligor has advised the probation department of his or her intent to contest payments through that office, the probation department shall schedule the matter before a hearing officer or judge for determination.
- III. AFCD Cases
- A. Direct pay AFDC cases will be handled by the welfare agencies pursuant to current procedures. Welfare agencies will file appropriate motions with the court.
- IV. Enforcement Jurisdiction
- A. A form of order shall be prepared requesting that payments be made through the probation department in the obligor's county of residence.

These procedures are to take effect immediately. Any questions or inquiries regarding these procedures should be directed to (609)292-8908.

EDITOR'S NOTE

The final paragraph has been edited to delete the name of the contact person.