

**ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY**

PHILIP S. CARCHMAN, J.A.D.
ACTING ADMINISTRATIVE DIRECTOR
OF THE COURTS



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. Box 037
TRENTON, NEW JERSEY 08625-0037

[Questions or comments may be
directed to 609-633-2390
or 609-984-4853.]

Directive # 16-06

To: Assignment Judges

From: Philip S. Carchman

Subj: Child Support Enforcement -- Calculation of Interest on Child Support Judgments

Date: August 25, 2006

INTRODUCTION

I am issuing this interim directive in response to the Appellate Division's decision in Pryce v. Scharff, 384 N.J.Super. 197 (App. Div. 2006), and the subsequent denial of a stay of that decision. The directive establishes a procedure for the calculation and assessment of post-judgment interest on child support judgments. This interim procedure will remain in place pending the more extended development, review, and formal approval of a permanent post-judgment interest protocol.

Each vicinage shall as soon as practicable implement the procedures established by this interim directive and assess and collect post-judgment interest as part of the process of executing warrants to satisfy child support judgments. Again, this interim directive is intended to achieve immediate compliance with Pryce. We will issue further guidance in the near future.

BACKGROUND

Part A of Title IV-D of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (42 U.S.C.A. §601 et seq.) and subsequent amendments to that act authorize the states that participate in the Title IV-D program to enact legislation to establish support obligations and to effectively enforce and collect those obligations. In accordance with that authority and based on the tenet that the timely payment of child support promotes the best interests of all families with children, New Jersey enacted the Child Support Program Improvement Act, N.J.S.A. 2A:17-56.7a et seq.

These cited statutes provide, in part, that unpaid child support becomes a judgment by operation of law on or after the date it is due and that these judgments are entitled to full faith and credit, to be enforced with the full force, effect, and attributes of a civil money judgment. Additionally, the New Jersey Rules of Court provide for the assessment of post-judgment interest, both generally (R. 4:42-11) and specifically as to child support judgments (R. 5:7-5(g)).

On September 3, 2003, the Division of Family Development (DFD) in the New Jersey Department of Human Services issued Informational Transmittal (IT) No. 58, addressing the charging of interest on child support orders in IV-D cases. As an exercise of its authority under N.J.S.A. 2A:17-56.20, as the designated state IV-D agency, DFD declared that interest was not to be charged on child support orders in IV-D cases. Further, DFD maintained that it had the exclusive authority to set the interest rate in IV-D cases and, as such, it established the interest rate in these cases at zero.

In Pryce, however, the Appellate Division held that the DFD zero-interest policy did not apply to post-judgment interest and did not supersede the general post-judgment interest provisions in the Rules of Court. The court concluded that child support judgments in fact do accrue post-judgment interest, consistent with other civil judgments, with the post-judgment interest in these matters to be calculated when satisfying judgments on behalf of obligees whose child support is paid through Probation. Additionally, when Probation locates and executes on the assets of an obligor, such executions must include the collection of any post-judgment interest that has accrued on the judgment.

POST-JUDGMENT INTEREST PROCEDURE

When a child support obligor seeks a warrant of satisfaction, or when full arrears will be satisfied as a result of the child support lien law, or when the Probation Division locates and executes on assets of an obligor in sufficient amount to satisfy the total arrearage, the collection of post-judgment interest must be addressed.

When the parties are represented by counsel, the attorney for the judgment debtor (the child support obligor) and/or the attorney for the judgment creditor (the child support obligee or the county welfare agency) shall calculate any post-judgment interest. If both parties are unrepresented, the Probation Division, pursuant to R. 5:7-5(g), may assist the judgment creditor in the calculation of any post-judgment interest that may be due. Additionally, when an obligor seeks to pay in full all outstanding arrearages, the obligor shall be informed as to the outstanding judgment. If the obligor advises that he or she is prepared to satisfy the judgment, the obligor shall be instructed to submit a written request to the Probation Division and to remit payment sufficient to cover, at a minimum, those outstanding arrears. The Probation Division shall provide obligor or obligor's representative with a payment history on request.

For all child support cases that are administered by the Probation Division, payments shall be remitted to the specific Probation office responsible for the case.

This will ensure that the child support case system is properly updated to reflect the payment.

When the obligor pays the full arrears, such payment shall be accepted and posted immediately. After receipt of the obligor's full arrears payment and request for a warrant of satisfaction, the warrant of satisfaction shall be provided to the judgment creditor(s), or mailed to the judgment creditor's address of record, and the judgment creditor shall be informed of the right to post-judgment interest. The parties may agree upon an interest calculation or may agree to waive or compromise such interest in a warrant of satisfaction. Unrepresented obligees may seek the assistance of the Probation Division in accordance with R. 5:7-5(g) in calculating the amount of post-judgment interest.

Once a determination has been made as to the amount of post-judgment interest, the obligor or the obligor's representative shall be instructed to remit the interest payment in order to receive a signed warrant of satisfaction. Once the post-judgment interest payment has been made and the warrant of satisfaction executed, the interest amount shall be added to the Automated Child Support Enforcement System (ACSES) as both a charge and a payment to ensure that the child support account is properly credited. This will serve to preserve the integrity of the ACSES arrears balance until such time as that system, or its successor system, is able to account for interest balances.

In those instances in which the Probation Division executes on the assets of an obligor, including child support lien law cases, and where the net proceeds are sufficient to pay the full arrears but the interest has not yet been determined, Probation shall accept the full arrears payment. As set forth above, the obligor or the obligor's representative shall be advised of the possibility of post-judgment interest to permit the obligor to satisfy the judgment fully.

The amount of post-judgment interest shall be calculated in accordance with the approved interest rates for judgments in effect during the periods in which the judgment was open. Such post-judgment interest rates are set on an annual basis pursuant to R. 4:42-11 and are promulgated by the Administrative Director of the Courts by notices to the bar. When requested by the obligee (the judgment creditor), as described above, the Probation Division shall calculate simple interest using a spreadsheet that has been developed for that purpose by the Administrative Office of the Courts. This spreadsheet provides for an automatic computation of the interest amount, but requires the manual entry of any account payments and adjustments made since the inception of the judgment. Additional staff training on these procedures will be provided in September 2006. In the most complex cases, the Vicinage Finance Division shall assist in the calculation of the post-judgment interest, as with child support audits.

When the calculation of an interest amount is a matter of urgency – e.g., the information is needed for a real estate closing – the Probation Division shall endeavor to accommodate the request as quickly as practicable. This may include rapid contact

with the obligee (the judgment creditor). However, since under this interim protocol the interest rate calculation requires manual entry, attorneys and title companies shall be encouraged to provide adequate time for such computations or, in the alternative, to arrive at a negotiated and agreed upon interest amount.

I am directing the Probation Services Division of the Administrative Office of the Courts (AOC) to collaborate with DFD to ensure that its Notice of Motion to Enforce Litigants' Rights serves to provide the obligor with notice that the obligor's failure to remit timely payment has resulted or will result in the entry of a judgment and that post-judgment interest shall be charged. In addition, the Family Practice Division of the AOC similarly shall review all applicable court notices to ensure that all such notices include language notifying the parties that failure to remit timely payment has resulted or will result in the entry of a judgment and that post-judgment interest shall be charged. Further, I am referring to the Supreme Court Family Practice Committee a review of both the Temporary Support Order (R. 5:7-4; Rules Appendix XVII) and the Uniform Summary Support Order (R. 5:7-4; Rules Appendix XVI) to recommend any changes in language that may be necessary to ensure that the parties are provided such notice.

The provisions of this directive are to be implemented immediately on an interim basis, pending development, review, and formal approval of a permanent post-judgment interest protocol for child support cases. Questions concerning this directive and the interim protocol that it promulgates may be directed to Robert Sebastian, Probation Services Assistant Director (609-984-5022), Shelley Webster, Management Services Assistant Director (609-292-0499), or Richard Narcini, Chief, Child Support Enforcement Services in the Probation Services Division (609-633-2390).

P.S.C.

cc: Chief Justice Deborah T. Poritz
Family Presiding Judges
James W. Smith, Jr., Acting Commissioner, DHS
Jennifer Velez, Deputy Commissioner, DHS
Jeanette Page-Hawkins, Director, DFD
Theodore J. Fetter, Deputy Admin. Dir.
AOC Directors and Assistant Directors
Trial Court Administrators
Richard Narcini, Chief, CSE Services
Eli Mireles, Chief, CSHO Program
Family Division Managers
Finance Division Managers
Vicinage Chief Probation Officers
Vicinage Assistant Chief Probation
Officers – Child Support
Child Support Hearing Officers
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant