

## FCA ARTICLE 4: SUPPORT.

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Any time during the course of a support proceeding, the Court can on it's own motion direct the filing of a neglect petition; if the support case is ultimately dismissed, the neglect may nevertheless remain.

Married individuals are responsible for the support of their spouses. Parents are responsible for their children until 21, unless emancipated earlier. Married person is NOT responsible for the child a spouse adopts after legal separation. *Step-Parents* must also support children on Public Assistance or under care of Mental Hygiene.

The standard child support for one dependant is 17% of income; 2 = 25; 3 = 29; 4 = 31; 5 or more = at least 35%. These percentages are computed against the *combined* parental income up to \$80,000.00, and pro-rated for the payer's share.

Resp is also responsible for child care if the custodial parent is working, or being educated so as to work. Resp MAY be so responsible if the custodial parent is currently *seeking* employment.

Income includes: Worker's Comp; Disability; Unemployment; Social Security; Veterans' benefits; Pension and Retirement fund payments; Annuities; as well as Stipends and Fellowships. The Court MAY include non-income producing assets; perqs and fringe benefits; as well as money or services received from family and friends. The Court can also "impute" an estimated appropriate level of income for a person otherwise not receiving actual remuneration.

The following is NOT income: unreimbursed business expenses; child support/alimony/maintenance actually *paid*; Public Assistance; Supplemental Security Income; FICA; and NYC/Yonkers taxes actually paid.

"Self-Support Reserve" = 135% of Federal single person poverty level as determined each March 1st. If the deduction of standard child support from a Resp's income would reduce him/her below the reserve: minimum support order shall be \$50; or the difference between income and reserve, if grater. If child support would bring the Resp below federal poverty level: \$25 (or difference, if greater); and arrears capped at \$500. Support can never be less than \$25!

Orders of Support may also include specific provisions requiring food, shelter, clothing, education, funeral, and "confinement" (child-birth) expenses. Resp can be ordered to maintain life insurance for benefit of child during pendency of order; as well as health insurance where available. If custodial party already pays for health insurance, pro-rate share can be added on to child support; else if Resp pays, it's deducted. Party wilfully failing to insure child's health as ordered is thereafter responsible for ALL medical expenses.

If the Court shall opt to set an amount other than the standard - such as where based upon the parties' disparate financial resource including one's income grossly higher than other's; special needs/education/health of child; child's standard of living if parents weren't separated; or where Resp is paying excessively to visit non-Public Assistance child - must first calculate what standard would be, and make written findings; parties CANNOT waive! Until an un-represented Resp has been given a copy of the published standards, Court can only make temporary order. Parties may also agree to a support amount in writing.

If an existing support order is payable to Public Assistance, and/or through the Support Collection Unit: anytime the Consumer Price Index - Urban - increases by an annual average greater than 10% the SCU can file a Cost of Living Adjustment (COLA) Order with the Court, and mail copies to parties. Parties or SCU can object to the amount within 35 days of mailing, else it is final. Objections shall be in writing, and served upon other parties; SCU is necessary party in any such case.

Timely objection: hearing and decision within 45 days, no change in circumstances need be proven. Court can issue an order of "no adjustment"; or a new order, effective the *earlier* of what would have been the effective date of the proposed adjustment, or else the date of the Court's decision thereupon. COLA determinations do NOT affect arrears!

Child(ren) born of parents married ceremonially either before or afterwards - even if such be invalid - are presumed legitimate. Unless so presumed - or *res judicata* (issue already legally decided); or estoppel (Resp precluded from now raising issue) - Court shall order DNA testing on its own motion, or that of any party contesting paternity, except upon written decision that it not be in the child's best interests. Cost of DNA is payable in the first instance by the moving party; although Court can charge the non-prevailing party if so able to pay, or apportion it among the parties commensurate with their ability to pay, or else charge it to Social Services. DNA results are admitted as evidence if no party objects timely; 95% or higher match is rebuttable presumption of parentage.

Support proceedings are brought where any party resides or is domiciled at the time of filing. No prior demand for support need have been made. Proper petitioner is: spouse; authorized Social Services official; Commissioner of Mental Health (if party under such care); child's parent, guardian, or person *in loco parentis* (standing in place of parent); representative of charitable organization having a legitimate interest; or Guardian ad litem/Conservator/Committee of incapacitated person otherwise authorized to petition, or else their "next friend" or person whom the Court shall direct. ANY party to a divorce may file to modify or enforce it's terms regarding support.

Summons shall include requirement that parties provide financial proofs; as well as notice that an order of support (at least temporary) will be issued on adjourn date, including on Resp's default; and that failure to appear may result in license suspension.

Summons is served by personal delivery to Resp at least 8 days before hearing; or else upon a person of "Suitable Age and Discretion" - together with mailing on Resp - also at least 8 days before. Court may allow other method if such cannot be effectuated despite reasonable efforts. Party can also mail service directly to Resp at last known address; but must still prove notice (e.g. signing for certified mailing).

Court may issue a warrant if: Resp did not obey summons; Resp in bail/parole has not appeared; summons could not be served, or would be ineffectual; Resp likely to leave jurisdiction; or where Petitioner is in danger from Resp. Petr may not serve warrant unless Court allows. Certificate of Warrant expires 90 days after issuance, but Clerk can extend. Court shall keep records and periodically report regarding open warrants.

Court can issue ex-parte temporary order of protection. Court may order Resp's in-State property sequestered if Resp is out-State, or in hiding.

If arrested in NYC on NYC warrant: brought to issuing court; all other cases = bring to local family court. Family Court JUDGE may keep Resp in custody pending hearing, or may direct undertaking. Resp shall be informed of petition, and advised of right to counsel (not necessarily free); Court shall then enter temporary order of support and refer to Support Magistrate.

All parties *except* DSS must provide financial statements with sworn net worth, - including all transfers of assets within last 3 years (or term of marriage, if less) - as well as recent pay stub and tax return. Such to be given to the Clerk on or before the date designated by the Court, which shall not be later than 10 days following return date of petition process. If Resp fails to do so without good cause: shall be precluded from offering evidence of inability to pay; and Court shall compute either child's needs, or what standard of living would be absent parties' separation, whichever is greater. Upon Petitioner's failure, Court can issue temporary support, but must then adjourn unless the proceeding is for enforcement.

Court may exclude general public from support hearings.

Electronic Testimony is available for: inmates (if will not soon be released); parties not residing in county or contiguous county (NYC deemed 1 county); or if Court determines for any other individual that coming to court poses an undue hardship. Documents may then be faxed. Testimony must be recorded and transcribed pursuant to rules of Chief Administrator.

Court **MUST** issue temporary order of child support. If the Court has information allowing it to calculate child support standards, may so base temporary support thereon; else shall determine child's needs. Court **MAY** issue temporary order of spousal support.

Probation can provide Court with confidential reports once Resp is found liable for support in principle; JUDGE can direct withholding or disclosure to: Support

Magistrate, Law Guardian, and parties.

Support hearings are without a jury. Court can adjourn, and may order undertaking. Only JUDGE can commit Resp; but support magistrate can only determine that such is necessary, subject to Judge's confirmation.

Evidence must be competent; spouses are competent to testify against each other.

Court MAY direct Resp to pay Petr's counsel fees; MUST upon finding of willful violation.

Support Magistrates cannot decide: equitable estoppel; custody/visitation; or Order of Protection, but must refer to Judge. In any case except equitable estoppel paternity issue, Magistrate shall first issue temporary order of support. Judge can decide issues, enter Order of Filiation if necessary, and refer back to Magistrate solely to determine support.

Support Magistrates can: issue subpoenas (including for prisoners); take evidence; administer oaths; handle disclosure; and make *determinations* of willful violation, however only JUDGE can punish after confirmation. Support Magistrate proceedings can be manually recorded pursuant to Chief Administrator's rules.

Support Magistrates are appointed for initial 3 year terms, may then be re-appointed for 5. They can be part-timers, or multiple counties may split a full-timer between them.

Support Magistrate's shall issue written findings. Parties can object within 30 days of personal delivery; else 35 from mailing. Objections are in writing, and served on other party. Rebuttals must served and filed within 13 days after receipt of objection. All filings must be accompanied by proof of service. 15 days after receiving rebuttal (or when time to do so expires): JUDGE must decide either to remand case back to Magistrate, to deny objection, or to issue new order with or without a hearing. All orders remain in effect during objection process; but if a new order results in a lower amount, Resp shall be credited for excess payments against future obligation. Parties may also appeal Support Magistrate's or Judge's order.

Counties with population greater than 400,000 souls MUST have expedited support process. Smaller counties may be exempted from such federal requirements; Chief Administrator shall request of Commissioner of Social Services to present case on behalf of particular county.

Final Orders of Support are effective as of the date of petition filing; or date of Public Assistance eligibility, if earlier. Retroactive monies are considered arrears; if order is payable to Public Assistance or SCU: Court merely sets amount, and agency determines payment schedule. Else for direct-pay orders Court decides whether lump-sum or periodic payments.

If a support proceeding is brought on the basis of an Acknowledgement of Paternity which was never filed: Court directs Clerk to file within 5 days.

Any person chargeable with support must provide SSN; as well as name/address of employer, and any change thereto.

Support Orders shall include a notice in a bold font of at least 8 point size that violation may result in commitment to jail for up to 6 months. Any final order of support/custody/visitation made herein expires upon issuance Supreme Court order unless specifically continued.

Court can also issue Order of Protection: stay away from home/school/business/job of party/parent/child; permit visitation; allow reentry into residence to get belongings; refrain from family offense; don't kill companion animal; pay medical expenses resultant from particular incident; attend education program.

Court has continuing jurisdiction, and can terminate/modify/vacate orders upon showing of good cause; except NOT arrears accruing prior to application, and thereafter only upon good cause for failure to make previously request relief. No hearing is required however; unless party first makes prima facie case by affidavit or other proof.

Violation petition can be filed by: original petitioner; order payee; SCU; or anyone otherwise entitled to file initial petition. Violation summons shall have 8 point bold font notice that Resp entitled to free counsel if indigent; and that failure to appear may result in arrest and/or 6 months incarceration for contempt. However Resp shall not be committed of service was solely by mail, even if Petr proves such notice was actually received.

Upon finding violation: Court SHALL issue money judgment; MAY require undertaking [up to 3 year period/support]; issue Income Deduction Order; direct Resp participate in work activity; and/or suspend licenses. WILLFUL Violation: may commit to 6 months, including revocable intermittent sentence; rehab; or Probation up to term of any other final order. Violation petitions shall not be denied except in writing.

The Office of Temporary and Disability Assistance has the authority under Social Services Law to notify the Department of Motor Vehicles that a Respondent's driving privileges should be suspended. Respondent may file a formal challenge with SCU. If SCU denies the challenge, Respondent then has 35 days from mailing to file objection with Family Court, and must also serve SCU. SCU has 10 days to re-but. Family Court then must either affirm or deny objection within 45 days.

Court can direct suspensions of license for non-payment arrears equal to 4 months support (Court may only so direct where Resp not on Public Assistance, or below federal poverty level); or for failure to obey summons. Despite the fact that the Court has not suspended a Resp's license, independent agencies may still do so.

All money judgments set the amount of arrears, Petr is thereafter precluded from seeking any prior arrears not covered. Certified money judgments are filed with local County Clerk in manner of transcripts, to same effect as local Supreme Court order. Undertaking cash is filed with Clerk, or SCU if Court so directs; real estate undertaking is filed with County Clerk as lien.

Separation/Divorce does not eliminate support obligation; if no order exists, Family Court can issue one, including if case is ongoing with no "Pendente Lite" (temporary) order. Family Court can enforce Supreme Court orders, may also modify on substantial change in circumstances as long as Supreme Court has not retained exclusive continuing jurisdiction. Supreme Court may refer a case to Family Court, to decide issues including distribution of martial property.