

Establishment of Administrative Child Support

October 17, 2024

Presentation



How does DOR have authority to start a child support case Administratively?

- 1. Title IV-D, 1975 Social Security Act
 - Florida is required to establish and enforce child support, the Department of Revenue is the agency assigned to do this (see sec. 409.2557, F.S.)
- 2. **Chapter 409.2563** – Establishes procedures for Administrative Support
 - Purpose and Scope: 409.2563(2) - Gives DOR a "Fair and Expeditious" alternative to Circuit Court Actions
- 3. The statute gives DOR guidelines to follow to establish support, but also gives options for the parties to get to Circuit Court.



What is an Administrative Action to Commence Child Support?

It's NOT a civil action

- Rules of Civil Procedure do not apply (this includes Consolidations which will be referenced later);
- No Circuit Judge is involved
-- Division FM-Q!
- A final order may be obtained without ANY judicial involvement.
- Sections 409.2554-2598 create procedure and rules

First thing the Department must do is provide to the parties a notice of proceeding to establish administrative order (also a blank Financial Affidavit and a Title IV-D standard Parenting Plan);

- Must “provide” the notice to the parent **for** whom support is being sought (Parent A);
- Must “serve” the notice on parent **from** whom support is being sought (Parent B);
- The notices will be the same; and will explain a long list of rights and responsibilities each party would have and how the Department will use available financial information to come up with the child support obligation.

* Serving Parent B means:

- Certified mail, restricted delivery, return receipt requested; or
- Any means permitted in a civil action.



3. Once notice is served, then **parent B may state or request in writing that:**

- I. The Department proceed in Circuit Court to determine his or her support obligations;
- II. That parent intends to address issues concerning custody rights and/or parental contact in circuit court.

III. If **either request is received by the Department within 20 days of the notice being received**, then DOR "shall file" a petition in Circuit Court for the determination of the parent's child support obligations, and shall send Parent B a copy of its petition, a notice of commencement of action, and a request for waiver of service of process as provided in Fl.R.Civ.Pro.



IV. If, **within 10 days after receipt of the Department's petition and waiver of service**, Parent B signs and returns the waiver of service form to the Department, the Department shall terminate its administrative proceeding without prejudice and proceed in Circuit Court.

*****ONLY 10 DAYS*****

DOR will proceed to continue its administrative action if the waiver of service is not returned timely!

HOW TO “NOTIFY” DOR

- If you file an action in circuit court (within the 20 days from the date of service of the Notice of Proceeding to Establish Administrative Support Order) then you must serve DOR at:
- DEPUTY AGENCY CLERK
- Building 2 Suite 2-4220
- 2450 Shumard Oak Boulevard
- Tallahassee, Florida 32300-0001

HOW TO “NOTIFY DOR” – part 2

- If you receive the Department’s Notice of Intent to Proceed and simply want DOR to file an action in Circuit Court then DOR must “receive a written request by mail within 20 days after you receive notice” at:
- Florida Department of Revenue
- Child Support Program
- 921 North Davis Street, Building A
- Jacksonville, Florida 32209-6804



If parent B files an action in Circuit Court within 20 days of being served the initial notice, then the administrative process ends without prejudice and the action must proceed in circuit court;

- DOR will seek to intervene if given proper notice, but should serve.
- DOR should be served prior to scheduling any hearings – Magistrates are very particular about scheduling hearings when DOR hasn't been served.



If the parent files an action in Circuit Court AFTER the 20 days, then the Administrative Action will proceed – concurrent actions are possible and permissible.

Department of Revenue and Cruickshank v Graczyk, 206 So.3d 157 (Fla. 1st DCA 2016).

4. The **PROPOSED ADMINISTRATIVE SUPPORT ORDER**

- a. The Department calculates CS based on Financial Affidavits or “information available from any source” 409.2563(5)(a)
- b. Then Department shall send a proposed administrative order to both parents, as well as a copy of the Title IV-D Standard Parenting Time Plan, its guidelines worksheet, and the FA’s it relied upon.
- c. A notice of rights also is sent with proposed order, and says:
 1. Parent B may, within 20 days after the date of mailing, request a hearing by filing a written request for hearing;
 2. If timely filed, case is transferred to DOAH for a further proceedings (Administrative Law Judge may enter final order);
 3. If not timely filed, DOR may render Final Order; (the local supervisor at DOR signs order)
 4. Parent B may consent in writing to the entry of the proposed order;
 5. Parent B may contact DOR within 10 days and informally discuss the proposed administrative order. Then DOR must extend the time for requesting a hearing for 10 more days after it notifies Parent B that the informal discussions have concluded.

- d. If Administrative Law Judge issues a final order, it must include a parenting plan or Title IV-D Standard Parenting Plan agreed to and signed by both parties.
- e. If Parent B doesn't timely request a hearing with DOAH, and/or consents to the proposed order, then DOR may render an administrative support order (and must include parenting plan or Standard Title IV-D Parenting plan signed by BOTH).
- f. Then DOR shall send a copy of the final order to BOTH.
- g. Either parent may seek judicial review of the final administrative order in accordance with 120.68, F.S.
 - i. Judicial review must be sought in the appellate district court where the agency maintains its headquarters or where a party resides.
 - ii. A notice of appeal must be filed within 30 days after the rendition of the order being appealed.

***** Department of Revenue obo Chevor v Mohomed, 996 So.2d 900 (Fla. 5th DCA 2008).
Sections 120.68, and 409.2563, Florida Statutes, do not authorize the trial court to enter an order
vacating or retroactively affecting a final administrative child support order.***

Practical issues – setting up collections using clerk of court and subsequent enforcement

- a. Once an Administrative Support Order is rendered, the department “shall file with the clerk of circuit court” a certified copy of that order.
- b. The result is that the Clerk will assign the order to a case number, just like any circuit court order, so that the Domestic Relations Depository can set up its account and collect payments made pursuant to the Administrative Order.
- c. Department retains jurisdiction to modify its own order until such time as a Circuit Court case “Supersedes” the Administrative Order. See 409.2563(12)
 - i. Things that **do not count as a “superseding order:”**
 - 1. Any enforcement order by the Court;
 - 2. An order by the Court that requires a parent to make periodic payments on arrearages is not a change in support obligations – thus not superseding.
 - ii. Things that **do count as a “superseding order:”**
 - 1. An order from the Circuit Court that modifies the amount of child support for any reason; and it also must
 - 2. Recognize and transfer the arrearage balance from the administrative case number into the new circuit court case.

d. If any party files any motion for enforcement or modification (asking for a superseding order) then the Clerk shall assign a new case number to the new request:

- The clerk, in the past, automatically assigned a division to each administrative action (assigned a judge);
- New administrative rule 2019-06 directs the Clerk to assign any Administrative Order to division Q (as of August 1, 2019)
 - *No judge or division assigned until a new pleading filed to enforce or modify the Admin Order*

*** Even with a new case number, jurisdiction is still retained by the Department to modify its own order so long as the new case number does not enter a “superseding order.”**

- **EXAMPLE SCENARIOS:**

- ADMINISTRATIVE ORDER assigned case number 16-2019-DR-15000 – DOR and DRD use this account number for the purpose of collecting and distributing child support. There is no need to assign the action to a Circuit Judge, so clerk will assign Division Q (per Local Administrative Rule 2019-06):
 - Scenario 1 – After establishment of the Administrative Order, Parent B files an action in Circuit Court to establish time-sharing and to modify the child support accordingly. This case number is 16-2019-DR-20000 and the clerk will assign to a regular division (e.g. FM-C).
 - If Parent B obtains the new time-sharing plan and the Court modifies the child support, AND if the new final judgment recognizes the arrearage balance from 2019-DR-15000, then this is a valid superseding order and the Division Q action is effectively eliminated.
 - Circuit Court now has jurisdiction to enforce and modify (prospectively) all aspects of the child support issues between the parties.
 - There is no “consolidation” of actions.
 - If Parent B fails to obtain the relief being sought, then the Administrative Action remains and DOR /DOAH retain jurisdiction to modify the Final Support Order.
 - There is no consolidation of case numbers.

Scenario 2 – After the Establishment of the Administrative Order, one party or the other seeks some sort of enforcement of relief from enforcement of the Administrative Order (16-2019-DR-15000 -- Division Q):

By Payor:

- * Seeks relief from DL suspension or Professional License suspension or Hunting/Fishing License suspension;
- * Seeks to stop enforcement due to medical condition (temporary);

By Department of Revenue

- * Motion to Enforce Administrative Order
- * Motion for contempt

In any of these situations, the filing party must obtain a NEW case number from the clerk. The clerk is not allowed to accept filings in the Division Q action. The new case number will be 16-2019-DR-25000 and the Circuit Court (Support Enforcement Hearing Officer) will have ability to hear all enforcement issues in that case number.

The Administrative Action would remain the controlling order and DOR/DOAH retain power to modify .

Priority of Enforcement

- DOR does not arbitrarily enforce child support obligations
- Several factors are considered to determine both the priority of enforcement actions and the method of enforcement
 - Ability to pay and source of income (employment, disability, unemployment, institutionalization, incarceration, etc.)
 - Compliance history (full payment, partial payment, non-payment)
 - Type of enforcement (current obligation vs. arrears vs. both)
- No enforcement action is initiated in cases in which the criteria is not met
- Authority provided by law
 - §409.2557, Florida Statutes
 - 45 CFR 303.6





Child Support Program

Title IV-D Standard Parenting Time Plan

State of Florida Department of Revenue
Child Support Program and

Petitioners,

vs.

Child Support Case Number: _____

Respondent.

This Title IV-D Standard Parenting Time Plan is for the following child(ren) of the parents named above:

Name of Child(ren)

Child(ren)'s Date of Birth

By signing this Title IV-D Standard Parenting Time Plan, the parties agree that _____
_____ is entitled to parenting time as follows:

1. Every other weekend — the second and fourth full weekend of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The weekends may begin upon the child(ren)'s release from school on Friday and end on Sunday at 6 p.m., or when the child(ren) returns to school on Monday morning. The weekend time may be extended by holidays that fall on Friday or Monday.
2. One evening per week — one weekday beginning at 6 p.m. and ending at 8 p.m. or, if both parents agree, from when the child(ren) is released from school until 8 p.m.
3. Thanksgiving break — in even-numbered years, the Thanksgiving break from 6 p.m. on the Wednesday before Thanksgiving until 6 p.m. on the Sunday following Thanksgiving. If both parents agree, the Thanksgiving break parenting time may begin upon the child(ren)'s release from school, and end upon the child(ren)'s return to school the following Monday.
4. Winter break — in odd-numbered years, the first half of winter break, from the child(ren)'s release from school, beginning at 6 p.m. or, if both parents agree, upon the child(ren)'s release from school, until noon on December 26. In even-numbered years, the second half of winter break from noon December 26 until 6 p.m. on the day before school resumes or, if both parents agree, upon the child(ren)'s return to school.

5. Spring break — in even-numbered years, the week of spring break from 6 p.m. the day the child(ren) is released from school until 6 p.m. the night before school resumes. If both parents agree, the spring break parenting time may begin upon the child(ren)'s release from school and end upon the child(ren)'s return to school the following Monday; and
6. Summer break — for 2 weeks in the summer beginning at 6 p.m. the first Sunday following the last day of school.

If you agree to this Title IV-D Standard Parenting Time Plan and intend to be bound by it, print your full name below, sign, and date where indicated.

This form only becomes effective if agreed to and signed by both parents. If both parents agree to, sign, and return the Title IV-D Standard Parenting Time Plan to the Department before an administrative Final Order is entered, the Title IV-D Standard Parenting Time Plan will become a part of the Final Order. The parties do not need to sign the same form.

Mother

Signature _____ Date _____

Print Your Full Name _____

Father

Signature _____ Date _____

Print Your Full Name _____

Return signed form to:

Florida Department of Revenue
Child Support Program
PO Box 5330
Tallahassee, FL 32314-5330

TOP 10 THINGS TO KNOW ABOUT DOR CHILD SUPPORT PROGRAM

1. **BURDEN OF PROOF FOR MODIFICATION OF CHILD SUPPORT:** DOR is not required to prove a substantial change in circumstances to modify child support. See Fla. Stat. 61.30(1)(c) (2019)
2. **MODIFICATION OF CHILD SUPPORT:** When modifying through a DOR review pursuant to 409.2564(11), the change in amount need only be 10% (instead of 15% normally), but not less than \$25.00 from original amount. See Fla. Stat. 61.30(1)(c) (2019)
3. **SMITH/SPEED CREDIT:** When establishing child support, a Payor is entitled to a credit for any children living in his/her home for whom he/she is obligated to support. If there isn't a Court order, then pursuant to SMITH/SPEED, a Child Support Guidelines Worksheet is prepared AS IF the Payor is paying for the children in home. See DOR v. Smith, 716 So.2d 333 (Fla. 2nd DCA 1998) and DOR v. Speed, 749 So.2d 510 (Fla. 2nd DCA 1999) Cases attached.
4. **TEMPORARY CASH ASSISTANCE:** Pursuant to Fla. Stat. 409.2561(2)(a) (2019), by accepting temporary cash assistance, the recipient assigns his or her rights to the Department as to any right, title, or interest to support; (b) The recipient appoints the Department as his or her attorney-in-fact for establishment/modification/enforcement of child support.
5. **SUSPENSION OF DRIVER'S LICENSE:** Pursuant to Fla. Stat. 409.2598 (2019), if a Payor is behind by more than 30 days in child support, the Department begins its procedures to suspend Payor's driver's license.
6. **STANDING TO PURSUE AN ACTION:** DOR has standing to pursue an action only if either party (or child) is currently receiving public assistance benefits (Medicaid, Food-stamps, TANF), or if the custodial parent requests the Department to assist in enforcement or modification. See DOR v. McLeod, 96 So.2d 443 (Fla. 1st DCA 2012)
7. **REPRESENTATION OF NON-CUSTODIAL PARENT:** DOR is allowed to represent a non-custodial parent (even if it has previously represented the custodial parent) if either party is receiving benefits or if custodial parent is currently seeking enforcement. See DOR v. Collingwood, 43 So.3d 952, (Fla. 1st DCA 2010)
8. **EMANCIPATION OF OLDEST CHILD IN TITLE IV-D CASES AND DELINQUENCY:** In Title IV-D cases, in orders with multiple children, when the oldest child emancipates, and there is a step-down provision in the order, and there is also a delinquency, then the Obligor shall continue to pay at the same rate as previously ordered (the difference is applied to the arrearage). See Fla. Stat. 61.14(10)(a), (b) (2019).
9. **ENFORCEMENT OF CHILD SUPPORT:** Measures to enforce child support include suspension of the Payor's driver's license, hunting and/or fishing license, professional and/or business license, garnishing the Obligor's bank account, sending withholding orders to Payor's employer, deducting amounts from state benefits such as worker's compensation, See Fla. Stat. 409.2598 (a), Fla. Stat. 409.25656 (2019), Fla. Stat. 409.2563(7) (2019) and Fla. Stat. 61.30(2)(a)5-6.
10. **PASSPORT ISSUES:** The Department of Revenue is required to report Child Support delinquencies quarterly to the Federal Government. This information will lead to a suspension or denial of renewal of a passport for an Obligor who owes more than \$2,500.00. The Circuit Court has no authority to direct the reinstatement of a Passport. The only remedy is to somehow get the balance down below \$2,500.00 or to have Obligor demonstrate to the Department (in person) that a passport is required in order to obtain employment and that support will be paid timely if reinstated. DOR o/b/o JACKSON v. NESBITT, 975 So.2d 549 (Fla. 4th DCA 2008).