IN THE CIRCUIT COURT
_____ JUDICIAL CIRCUIT
_____ COUNTY, FLORIDA

STATE OF FLORIDA
DEPARTMENT OF REVENUE,
CHILD SUPPORT ENFORCEMENT
PROGRAM, on behalf of:
_____,
Petitioner,
v. Case No.: _____

_____,
Respondent.
_____/

MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR ENFORCEMENT OF ADMINISTRATIVE SUPPORT ORDER

COMES NOW the Petitioner, State of Florida Department of Revenue, Child Support Enforcement Program (DOR), on behalf of _____, and submits this Memorandum of Law in support of its Petition for Enforcement of Administrative Support Order.

SUMMARY OF STATUTORY PROCEDURE FOR
ADMINISTRATIVE ESTABLISHMENT OF SUPPORT ORDERS

Because DOR's authority to establish support obligations administratively is relatively new, this section provides an overview of §409.2563, Florida Statutes (F.S.) (All citations to the F.S. herein are to the 2003 edition unless otherwise indicated). In Title IV-D cases[1] in which there is no existing support order and paternity has been established or is presumed by law, DOR is authorized to commence an administrative proceeding and, after notice and an opportunity for hearing, to render in appropriate cases a final order requiring the noncustodial

[1] "Title IV-D case" is defined by §409.2563(1)(f), F.S., as a case or proceeding in which DOR is providing child support services within the scope of Title IV-D of the Social Security Act, 42 U.S.C. §§651-669b. Title IV-D is the regulatory framework that governs federally funded state child support enforcement programs. All states that receive federal funds under Title IV-A (TANF) are required to have an approved Title IV-D state plan and to operate a Title IV-D Agency. *See* 42 U.S.C. §§602(a)(2) and 654(3). As specified by §409.2557(1), F.S., DOR is the state's Title IV-D agency.

parent to contribute to the support of the child or children. Support may be monetary, whether for current or current and retroactive support, and may include health care or other elements of support pursuant to chapter 61, F.S.

Jurisdiction over the noncustodial parent ("NCP") is obtained by serving a Notice of Proceeding to Establish Administrative Support Order by certified mail, return receipt requested, restricted delivery, or by any means permitted for service of process in a civil action.[2] Service of subsequent papers is by regular mail to the last known address.[3] The initial notice discloses the pendency of the proceeding, and informs the NCP that the law requires the NCP to fill out and return a financial affidavit and make additional disclosures under penalties of perjury, and to keep DOR informed of any future changes of address.[4] After considering the financial affidavits of both parents and any other relevant information, DOR computes a proposed order using the state's child support guidelines in §61.30, F.S. Then DOR mails the NCP a Proposed Administrative Support Order, along with copies of any financial affidavits[5] submitted and its child support guidelines worksheet. The NCP is informed that he or she may engage in informal discussions with DOR, request an administrative hearing within 20 days of the mailing of the Proposed Order, or consent to the entry of a final order.[6]

If the NCP files a timely request for hearing, DOR refers the request to the Division of Administrative Hearings (DOAH), which assigns an administrative law judge to conduct further proceedings under chapter 120, F.S., and to issue an appropriate final order after hearing.[7] If the NCP consents, or if no hearing is timely requested, the NCP is deemed to have waived the right to a hearing, and DOR renders a Final Administrative Support Order that incorporates the findings of the proposed order and an Income Deduction Order[8]. Whether a final order is issued by the administrative law judge or by DOR, it is rendered when

[2] §409.2563(4), F.S.
[3] §§409.2563(5)(b); 409.2563(7)(d); 409.2563(9)(c); 409.2563(13)(c), F.S.; Rule 28-106.110, F.A.C.
[4] §409.2563(4), F.S.
[5] §409.2563(5)(a), (b), F.S.
[6] §409.2563(5)(c), F.S.
[7] §409.2563(6), (7)(a), F.S.
[8] §409.2563(4)(i) and (7)(b),(c), F.S.

filed with the agency clerk and served on the NCP.[9] Certified copies of the final orders are filed by DOR with the Clerk of the Circuit Court.[10]

As an alternative to an administrative determination of support issues by DOR, either parent or a caretaker relative may file an action with the circuit court at any time to determine the support obligation, if any.[11] The law even provides that a noncustodial parent may require DOR to file a judicial action for determination of support that results in termination of an ongoing administrative proceeding.[12]

ISSUES and SHORT ANSWERS

Q.I. Is an administrative support order rendered by DOR judicially enforceable?

A.I. Yes. An administrative support order rendered by DOR pursuant to §409.2563(7), Florida Statutes (F.S.), is final agency action[13] under the Administrative Procedure Act (APA), Chapter 120, F.S., and "has the same force and effect as a court order." §409.2563(9)(d), (10)(b) and (11), F.S. Section 409.2563(10)(b), F.S., expressly provides for judicial enforcement of an administrative support order and §409.2563(9)(d)(1) states that an administrative support order "may be enforced in any manner permitted for enforcement of a support order issued by a court of this state, except for contempt."[14] In addition, judicial enforcement of an agency's final order is expressly provided for by §120.69, F.S.

Q.II. In a circuit court proceeding to enforce a DOR administrative support order, is the administrative support order subject to appellate review, *de novo* review, collateral attack, or modification by the circuit court?

A.II. No. The district courts of appeal have exclusive jurisdiction to review final agency action. §120.68(2), F.S.; Rules 9.030(b)(1)(C), 9.110(a)(3) and (c), and 9.190, Fla.

[9] §409.2563(1)(e), (7)(d), F.S.
[10] §409.2563(8), F.S.
[11] §409.2563(2)(d), and (e) F.S.
[12] §409.2563(2)(f) and (4)(m),(n), F.S.
[13] §409.2563(7)(a), F.S.
[14] §409.2563(9)(d), (10)(b) and (11), F.S.

R. App. P. Findings of fact and conclusions of law in an agency's final order that are not appealed are *res judicata*, and may not be relitigated in circuit court. When its jurisdiction is properly invoked, a circuit court may enter an order that prospectively supersedes an administrative support order, but it may not review the administrative support order's findings and conclusions as an appellate court, nor rehear the case, nor vacate the administrative support order, nor modify it.

DISCUSSION

Issue I. Is an administrative support order rendered by DOR judicially enforceable?

1. An administrative support order is a final order under Chapter 120, F.S.

Under the Florida APA, chapter 120, F.S., the Legislature has granted executive agencies quasi-judicial power to adjudicate matters concerning agency action.[15] §§120.569 and 120.57, F.S. In like manner, §409.2563, F.S., authorizes DOR to establish child support obligations in certain Title IV-D cases. An administrative support order that results from a proceeding commenced under §409.2563(4), F.S., is defined as a "final order" by §409.2563(1)(a), F.S. If a hearing is requested, an administrative law judge hears the case under chapter 120, F.S., and the Uniform Rules of Procedure, and the administrative law judge enters an order which constitutes final agency action. §§409.2563(7)(a); 120.80(14)(c) F.S.

2. A DOR administrative support order has the same force and effect as a judicial support order.

A DOR administrative support order is a final order that "has the same force and effect as a court order." §409.2563(9)(d), (10)(b) and (11), F.S. Upon rendering, DOR is required to file a certified copy of the administrative support order with the clerk of the circuit court. §409.2563(8), F.S. The depository operated by the clerk of court pursuant to §61.181, F.S.,[16] must act as official recordkeeper for payments due under the administrative support order,

[15] *See generally* Article V, §1, Florida Constitution; *Department of Agric. & Consumer Svcs. v. Bonanno*, 568 So.2d 24, 28-30 (Fla. 1990).

[16] The clerk of the circuit court operates the depository in each county except for Broward, where the depository is operated by the Broward County Support Enforcement Division.

must establish and maintain the necessary payment accounts, and otherwise must perform the same duties required of a depository with respect to a support order entered by the circuit court. *Id.* In addition, the depository must initiate and perfect judgments by operation of law as provided by §61.14(6), F.S., for delinquencies that accrue under an administrative support order. *Id.* Because an administrative support order has the same force and effect as a court order, the obligee's right to receive the child support ordered by DOR vests at the time the payments are due. *See* Puglia v. Puglia, 600 So.2d 484 (Fla. 3d DCA 1992); Guarino v. Guarino, 431 So.2d 189 (Fla. 2d DCA 1983).

3. Effect of judicial enforcement of an administrative support order.

Judicial enforcement of an administrative support order does not convert, transform or merge an administrative support order into a court order. Section 409.2563, F.S., does not state nor contemplate that the circuit court may ratify, affirm, confirm, adopt, nor register the administrative support order. Chapter 2002-239, §3, Laws of Florida, amended subsections 409.2563(9)(d), (10)(b) and (11), F.S., to clarify that an administrative support order "has the same force and effect as a court order." An administrative support order remains in effect until modified by DOR, vacated on appeal, or superseded by a subsequent circuit court order. §409.2563(9)(d) and (11), F.S. Judicial enforcement of an administrative support order, without any change by the court in the support obligations, does not supersede the administrative support order nor affect DOR's authority to modify it. §409.2563(10)(b), F.S.(2001). In 2002, the Legislature further clarified the issue by providing that if the circuit court enforces an administrative support order by requiring the noncustodial parent to make periodic payments to reduce arrearages, the court's order does not supersede the administrative support order nor affect DOR's authority to modify its administrative support order. Ch. 2002-239, §3, Laws of Florida; §409.2563(10)(b), F.S. (2002).

A circuit court's ability to enforce an administrative support order without adopting it as the court's own order is similar to the enforcement provisions in the federal Full Faith and

Credit for Child Support Orders Act (FFCCSOA),[17] 28 U.S.C. §1738B; the Uniform Interstate Family Support Act (UIFSA);[18] and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).[19] Pursuant to FFCCSOA and UIFSA, all states must give full faith and credit to administrative support orders issued in other states. 28 U.S.C. §1738B(a); §88.6031(3), F.S.

Under FFCCSOA, UIFSA, and UCCJEA, the responding tribunal typically may not modify the order of the issuing tribunal; it may only enforce it.[20] *See* 28 U.S.C. §1738B(a)(2), §§88.2051(2), 88.3051, 61.515-516, 61.526, F.S.; Department of Revenue ex rel. Cascella v. Cascella, 751 So.2d 1273, 1276-77 (Fla. 5th DCA 2000). As for UIFSA, its drafters recognized that "this principle is going to take some getting used to":

> UIFSA introduces the concept to interstate enforcement that State B may register an order of a tribunal of State A and incorporate it into its enforcement system without converting that order into an order of State B**.** From the initial reactions of the observers and advisors to the Drafting Committee, this principle is going to take some getting used to. *Apparently none of the other changes to standard URESA procedure made by UIFSA will be so difficult to understand and to accept by judicial and administrative judges. But it is fundamental to the UIFSA scheme that State B is enforcing State A's order-the one order in effect-and is not enforcing its own duplicate order..."*

Uniform Interstate Family Support Act and Unofficial Annotations, Family Law Quarterly, vol. 27, no. 1, Spring 1993, § 603, comment, n. 128 (emphasis added).

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[17] The FFCCSOA was drafted by the United States Commission on Interstate Child Support, and became effective October 20, 1994. On August 22, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, amended FFCCSOA to comport more fully with UIFSA.

[18] The UIFSA was drafted by the National Conference of Commissioners on Uniform State Laws. Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, §321, all states were required to enact UIFSA. *See* 42 U.S.C. §666(f); chapter 88, F.S., *eff.* July 1, 1997, enacted by Ch. 96-189, §10, Laws of Florida.

[19] Ch. 2002-65, Laws of Florida, chapter 61, Part II, §§61.501 through 61.542, F.S., *eff.* October 1, 2002.

[20] The enforcement provisions of these modern statutes are unlike the procedures previously used under the Florida Enforcement of Foreign Judgment Act, §§55.501 *et seq.*, F.S. (*eff.* Oct. 1, 1984, by Ch. 84-5, Laws of Florida), and the precursor of UIFSA, the Revised Uniform Reciprocal Enforcement of Support Act (*repealed eff.* July 1, 1997, by ch. 96-189, §10, Laws of Florida). *See, e.g., Michael v. Valley Trucking Co.*, 832 So.2d 213 (4th DCA 2002). Under these older procedures, the judgment of another tribunal would become an order of the court where it was registered. §55.503(1), F.S. (2000), §§88.281 and 88.371(1), F.S. (1995).

No case law has been found that suggests a deficiency with existing court rules or procedures that would prevent a Florida circuit court from effectively enforcing a support order issued by another state, as required by §88.6031(2) and (3), F.S. Neither has any Florida case law been found that requires judicial ratification or adoption of an agency final order as a condition precedent to judicial enforcement under §120.69, F.S., which was enacted in 1974. Judicial enforcement of DOR administrative support orders within existing rules

should be equally straightforward and prove no more difficult.

4. Methods of judicial enforcement; available relief

An administrative support order may be enforced judicially.[21] As clarified by Ch. 2002-239, §3, Laws of Florida, a DOR administrative support order "has the same force and effect as a court order." Section 409.2563, F.S., provides two methods for judicial enforcement of an administrative support order. First, a court may enforce an administrative support order in any manner permitted for enforcement of a judicial support order, except for contempt. Secondly, a court may enforce an administrative support order by using the procedure provided under §120.69, F.S. §§409.2563(9)(d), 409.2563(10)(b) and 120.80(14)(c), F.S.

Circuit courts routinely enforce judicial support orders by entering judgments for arrearages; ordering payment of arrearages in a lump sum or in installments; placing liens on settlements, workers' compensation claims, or other property; ordering the obligor to seek work; ordering the obligor to purchase or maintain a life insurance policy or bond, or to otherwise secure the child support award with any other assets which may be suitable for that purpose. §§61.12, 61.13(1)(c), 61.14(5)(b), and 409.2564 F.S.; *see also* Puglia and Guarino, *supra*; Roffee v. Roffee, 404 So.2d 1095 (Fla. 3d DCA 1981) (failure to enter judgment for arrearages was error). Because administrative support orders may be enforced in the same manner as judicial support orders, circuit courts may use these same remedies to enforce an administrative support order.

Similarly, in the context of an obligor who does not have the present ability to purge a

[21] Administrative support orders, like court orders of support, also may be enforced by DOR, which has available to it a broad array of administrative remedies under state and federal law, including: income deduction orders, 42 U.S.C. §666(a), §§409.2563(7), 409.2576, F.S.; intercept of IRS income tax refunds, 42 U.S.C. §664, 45 C.F.R. §302.60, §61.17(3), F.S., Rule 12E-1.014, F.A.C.; intercept of lottery winnings, 42 U.S.C. §666(c)(1)(G)(i)(II), §24.115(4), F.S., Rule 12E-1.011, F.A.C; reporting of past due support to consumer reporting agencies, 42 U.S.C. §666(a)(7), §61.1354(2), F.S.; denial of U.S. passports, 42 U.S.C. §652(k), 22 C.F.R. §51.70(a)(8), §409.2564(11), F.S.; personal property liens, 42 U.S.C. §666, §409.2575, F.S., Rule 12E-1.018, F.A.C.; suspension of driver's licenses and motor vehicle registrations, 42 U.S.C. §666(a)(16), §§61.13016, 322.058, and 409.2598, F.S., Rule 12E-1.023 F.A.C.; intercept of claims for abandoned property, 42 U.S.C. §666(c)(1)(G)(ii), §409.25658, F.S., and intercept of state warrants, §409.25656(10), F.S.

finding of contempt, the Florida Supreme Court has stated that a circuit court has numerous means available to it for enforcing a support order other than incarceration:

> Although incarceration cannot be used as a means to seek compliance with the court order when the contemnor does not have the ability to purge himself of contempt, the court does have available other means to obtain compliance. If, for example, the defaulting party has willfully neglected his support obligations but no longer has a present ability to pay because he is unemployed, the court may direct him to seek employment through Florida State Employment Services and to report weekly until employment is secured, in addition to requesting the employment service to periodically report to the court on the status of his job search. If the party is employed but presently lacks funds or assets, the court may issue a writ directing his employer to garnish the party's salary in order to satisfy the alimony or child support obligations in accordance with section 61.12, Florida Statutes (Supp.1984), or may enter an income deduction order for payment of child support or alimony, pursuant to section 61.081 or 61.1301, Florida Statutes (Supp.1984). *These alternatives to incarceration are examples and are not intended to limit the trial judge's discretion in obtaining compliance with a court order.*

Bowen v. Bowen, 471 So.2d 1274, 1279 (Fla. 1985) (emphasis added).

5. Contempt

A circuit court may not use its contempt powers to enforce a willful violation of an administrative support order. §409.2563(10)(b), F.S. Although an administrative support order may not be enforced *directly* by contempt, §409.2563(10)(b) contemplates that contempt will be available as a remedy if prior judicial enforcement of the administrative support order does not result in compliance. In language similar to that found in §120.69(4)(c), F.S., §409.2563(10)(b), F.S., expressly states that if the circuit court issues its own order *enforcing* an administrative support order, the circuit court may enforce its own order by contempt. In 2002, the Legislature clarified the issue by amending §409.2563(10)(b), F.S. (2001), which now also states: "The presumption of ability to pay and purge contempt established in §61.14(5)(a) applies to an administrative support order that includes a finding of present ability to pay."[22] Ch. 2002-239, §3, Laws of Florida. In addition, it has long been the public policy

[22] An administrative support order must provide and state findings, if applicable, concerning the noncustodial parent's duty and ability to provide support. §409.2563(7)(e)(3), F.S.

of the state that the contempt power may be used to enforce child support obligations. *See* §409.2561(1), F.S., as enacted by Ch. 82-140, § 2, Laws of Fla. ("The extraordinary remedy of contempt is applicable in child support enforcement cases because of the public necessity for ensuring that dependent children be maintained from the resources of their parents…"); *see also*, §61.17(3), F.S.; Gibson v. Bennett, 561 So.2d 565, 569-572 (Fla. 1990).

In the context of judicial enforcement of an administrative order, federal jurisprudence has long recognized the distinction between an enforcing order and a contempt order. *See, generally*, Professor Louis L. Jaffe, The Judicial Enforcement of Administrative Orders, 76 Harv. L. Rev. 865, 871 (1963) (once a judicial order enforcing an agency order has been entered, violation of or refusal to perform the judicial order may be the occasion of a judicial contempt procedure).

6. Section 409.2563, F.S., is a remedial statute that should be construed liberally.

Section 409.2563, F.S., is a remedial statute because it does not create or limit a right or duty, but merely provides an alternative procedure for fairly and expeditiously establishing the parental duty of support long recognized by Florida law. *See* §409.2563(2)(a), F.S.; Webb v. Webb, 765 So.2d 220, 221 (Fla. 2d DCA 2000) (procedural or remedial laws merely prescribe the methods by which existing rights or duties will be enforced). Remedial statutes should be construed liberally to effectuate legislative intent. *See* Wattenberger v. Wattenberger, 767 So.2d 1172 (Fla. 2000) (law providing for continuation of support payments while child is still in high school should be construed liberally to provide support and thereby mitigate harm to the child); Golf Channel v. Jenkins, 752 So.2d 561, 565-56 (Fla. 2000) (observing the principle that remedial statutes should be construed liberally); Capps v. Buena Vista Const. Co., 786 So.2d 71, 75 (Fla. 1st DCA 2000). Because §409.2563, F.S., is a remedial statute, its provisions should be construed liberally to effectuate the intent of the Legislature that child support orders are established expeditiously *and* enforced.[23]

[23] *See also* §409.2551, F.S. ("It is declared to be the public policy of this state that this act be construed and administered to the end that children shall be maintained from the resources of their parents…")

Issue II. Is a DOR administrative support order subject to appellate review, *de novo* review, collateral attack, or modification in a circuit court proceeding to enforce the order?

1. Appellate review of an administrative support order is vested in the district court of appeal; an administrative support order is not subject to appellate review by the circuit court.

Section 409.2563(10)(a) specifies that judicial review of an administrative support order is pursuant to 120.68, F.S., which provides for review of an agency final order by the district court of appeal. *See also* §§120.80(14)(c) and 409.2563(7)(d), F.S. (requiring that the noncustodial parent be notified of the right to seek judicial review of the administrative support order in accordance with §120.68, F.S.).

District courts of appeal are vested with the power of direct review of administrative action as prescribed by general law. Art. V, §4(b)(2), Fla. Const. In the APA, the Legislature has granted exclusive power for direct review of agency action to the district courts of appeal, not the circuit courts. §120.68(2)(a), F.S.; Rules 9.030(b)(1)(C), 9.110(a)(3) and (c), and 9.190, Fla.R.App.P.; State ex rel. Dept. of General Services v. Willis, 344 So.2d 580, 589 (Fla. 1st DCA 1977); 2 Fla.Jur.2d, Administrative Law §389. Review in the district court of appeal includes final agency action, which includes agency final orders. *See* §§120.52(2) (defining agency action) and 120.52(7) (defining final order), F.S.; Rules 9.020(a)(1) and 9.190, Fla.R.App.P.; Rowell v. State Dept. of Law Enforcement, 700 So.2d 1242 (Fla. 2d DCA 1997) (quasi-judicial agency decision is subject to direct review in district court). An administrative support order is defined as a final order by §409.2563(1)(a), F.S., and as final agency action by §409.2563(7)(a), F.S.

2. An administrative support order is an agency final order and is not subject to *de novo* review by the circuit court in a judicial proceeding to enforce the order.

The scope of evidentiary issues cognizable by the circuit court in a proceeding to enforce an agency final order is limited. Factual issues that were raised or decided, or could

have been raised or decided, in an administrative proceeding that results in a final order may not be raised, relitigated or redecided in a circuit court proceeding to enforce the agency's final order. As with court orders, findings of fact in an agency's final order are *res judicata* after the appeal period has run. Even an appellate court that is reviewing an agency final order on appeal is restricted to the traditional scope of review, which is a determination of whether there is competent, substantial evidence in the record on appeal to support the agency's findings. Thomson v. D.E.R., 511 So2d 989 (Fla. 1987); Legal Environmental Assistance Foundation v. Clark, 668 So2d 982 (Fla. 1996); §120.68(4) and (7)(b), F.S.

The threshold issues before the circuit court in a proceeding to enforce an administrative support order are whether an administrative support order that obligates the respondent to pay support has been rendered and, if so, whether the respondent has complied with the administrative support order. Similar to enforcement of a foreign order under UIFSA (which provides for judicial enforcement of an administrative support order issued by another state), under the APA, the respondent may raise only certain enumerated defenses in a judicial proceeding to enforce an agency's final order. The APA provides:

> In any enforcement proceeding the respondent may assert as a defense the invalidity of any relevant statute, the inapplicability of the administrative determination to respondent, compliance by the respondent, the inappropriateness of the remedy sought by the agency, or any combination of the foregoing. In addition, if the petition for enforcement is filed during the time within which the respondent could petition for judicial review of the agency action, the respondent may assert the invalidity of the agency action.

§120.69(5), F.S., *see also* §§88.6031(3); 88.6071(1); 88.6081, F.S.

3. An administrative support order may not be collaterally attacked in a circuit court proceeding to enforce the order.

When direct review by a district court of appeal is available under Section 120.68, F.S., Florida courts have consistently held that a party ordinarily may not collaterally attack

final agency action in circuit court.[24] Key Haven Assoc'd Enterprises, Inc. v. Board of Trustees (Key Haven I), 400 So.2d 66, 68 (Fla. 1st DCA 1981), citing to Carrollwood State Bank v. Lewis, 362 So.2d 110, 113-14 (Fla. 1st DCA 1978), *cert. den.*, 372 So.2d 467 (Fla.1979), School Board of Leon County v. Mitchell, 346 So.2d 562, 567-68 (Fla. 1st DCA 1977), *cert. den.*, 358 So.2d 132 (Fla.1978), General Services v. Willis, 344 So.2d at 589-91, and Metro Dade County v. Dept. of Commerce, 365 So.2d 432 (Fla.3d DCA 1978); *see also* Key Haven Assoc' Enters. v. Board of Trustees (Key Haven II), 427 So.2d 153, 157-58 (Fla.1982), *superseded on other grounds as noted in* Bowen v. Florida Dep't of Envtl. Regulation, 448 So.2d 566, 568-69 (Fla. 2d DCA 1984), *approved and adopted*, 472 So.2d 460 (Fla.1985); Art. V, §§5(b) and 20(c)(3), Fla. Const. Therefore, absent extraordinary circumstances, an administrative support order may not be collaterally attacked in a circuit court proceeding to enforce compliance with the order.[25]

4. An administrative support order is not subject to modification in a circuit court proceeding to enforce compliance with the order.

A circuit court is not authorized by §409.2563, F.S., to modify an administrative support order. Section 409.2563(11), F.S., states that an administrative support order remains in effect until modified by DOR, vacated on appeal, or superseded by a subsequent court order. The DOR has the exclusive right to modify, suspend or terminate an administrative support order. §409.2563(12), F.S. Upon a proper pleading, a circuit court may enter a superseding order that prospectively changes an obligor's support obligations, as provided by §409.2563(2)(d) and (10)(c), F.S., but may not modify or vacate an administrative support order. By analogy to the pleading requirement for modification of a judicial support order, a court may only enter a superseding order if the issue has been presented by appropriate pleadings and each party given notice and the opportunity to be heard on the issue. *See* H.R.S. o/b/o

[24] One exception is when a petition for enforcement of a final order is filed before the time to file a notice of appeal for direct review of that order has expired *See* §120.69(5), F.S., quoted above.

[25] Similarly, Virginia law prohibits a collateral attack on an administrative support order entered by its Title IV-D agency. *Commonwealth, Dept. of Social Services, Div. of Child Support Enforcement ex rel. Breakiron v. Farmer*, 528 S.E.2d 183, 187 (Va. App. 2000) (trial court erred in invalidating administrative support order based on obligor's collateral attack in a judicial enforcement action brought by the IV-D agency*); Commonwealth, Dept. of Social Services, Div. of Child Support Enforcement ex rel. Simmons v. Tynes*, 2001 WL 286338t (Va. Cir. Ct. 2001) (absent proof of extrinsic fraud, litigant cannot collaterally attack an administrative support order in defense of an enforcement action).

Newhall v. Smith, 605 So.2d 1335 (Fla. 5th DCA 1992); Hammond v. Hammond, 492 So.2d 837 (Fla. 5th DCA 1986); Sweetland v. Gauntlett, 460 So.2d 570 (Fla. 3d DCA 1984).

CONCLUSION

Section 409.2563, F.S., provides an administrative procedure for establishing child support obligations and expressly provides that administrative support orders rendered by DOR are judicially enforceable. The court should liberally construe §409.2563, F.S., so as to give full effect to the Legislature's intent that child support obligations be expeditiously established and enforced in all Title IV-D cases. If, after notice and an opportunity for hearing, DOR proves at a judicial enforcement proceeding that the respondent is subject to a valid administrative support order and has not complied with it, DOR is entitled to judicial relief, including a court order that requires the respondent to comply with the terms of the administrative support order. Because the exclusive means for obtaining judicial review of an administrative support order is by appealing to the district court of appeal, an administrative support order is not subject to appellate review, de novo review, collateral attack, nor modification in a circuit court proceeding to enforce compliance with the order.

DEPARTMENT OF REVENUE and STEVEN McLEOD, Petitioners,
v.
MARIANNE McLEOD, Respondent.
CASE NO. 1D11-1124
DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA
Opinion filed June 18, 2012

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

Petition for Writ of Certiorari - original jurisdiction

Pamela Jo Bondi, Attorney General, William H. Branch, Assistant Attorney General, Tallahassee, for Petitioner Department of Revenue.

Rhonda S. Clyatt, Panama City, for Respondent.

THOMAS, J.

Petitioner, the Department of Revenue (DOR), seeks a writ of certiorari to quash a non-final order dismissing DOR's petition for modification of child support, filed on behalf of co-Petitioner, Steven McLeod, Respondent's former husband and the non-custodial parent.[1] DOR challenges the trial court's ruling that DOR could not

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represent the non-custodial obligor parent, because the child was not receiving public assistance, and DOR sought to lower the obligor's payments. Although we agree that the trial court's basis for dismissing the petition was erroneous, we also find that court reached the right result. We hold that DOR does not have standing to seek a modification of child support on behalf of a non-custodial parent obligated to pay support, unless either party or the child is receiving public assistance, or when the obligor has failed to make support payments and DOR is called upon by the custodial parent to assist in enforcing a child support order. Thus, because the challenged ruling was not incorrect, DOR has failed to establish that the trial court departed from the essential requirements of law; therefore, we deny the petition.

Procedural Background

Co-Petitioner Steven McLeod and Respondent were divorced in 2006. Under the final dissolution judgment, Mr. McLeod was the non-custodial parent and was required to pay child support "through the Florida Disbursement Unit." In 2007, Mr. McLeod filed a petition for modification of his child support obligation, which was followed by Respondent's counter-petition. That year, the trial court entered two contempt orders against Mr. McLeod for child support arrearages. In September 2008, Mr. McLeod voluntarily dismissed his petition. Mr. McLeod apparently proceeded pro se in these post-dissolution proceedings, whereas Respondent was represented by

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counsel.

In November 2009, DOR, "on behalf of" Mr. McLeod, filed a "Supplemental Petition for Modification of Support," stating, inter alia, that Mr. McLeod and the child "are eligible for child support services of [DOR] pursuant to chapter 409, Florida Statutes." The petition also stated: "DOR's participation and the undersigned attorney's representation are limited in scope as set forth in Section 409.2564(5), Florida Statutes." The trial court conducted a hearing and entered a written order dismissing DOR's supplemental petition.

In its order, the trial court relied on Department of Health and Rehabilitative Services v. Heffler, 382 So. 2d 301 (Fla. 1980), and explained that "the Florida Supreme Court addressed the constitutionality of a statute allowing the Department of Health and

Rehabilitative Services to bring a paternity action. In holding the statute constitutional, the Supreme Court addressed the fact that children should be maintained from resources of the parents, not the citizens of the State of Florida." The trial court then found:

> Here, DOR is representing a non-custodial parent whose child does not receive public assistance in a proceeding to lower child support. Obviously, if child support was lowered, the child would be harmed. This is contrary to the rationale of Heffler whereby responsible parents should maintain their children. The funds and resources of this State should not be utilized by bringing court actions on behalf of a non-custodial parent, whose child is not receiving public assistance, when such action would be to the detriment of the child. Accordingly, the Court finds that the statutes, as applied in this case, [do] not allow representation of Former Husband by DOR.

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(Emphasis in original.)

Analysis

"It is an established principle of law in this jurisdiction that common law certiorari is not a permissible vehicle for seeking review of an interlocutory order rendered in a law action unless it is clearly established that (1) the ruling, if erroneous, constitutes a departure from the essential requirements of law; and (2) it will cause material injury to the petitioner throughout the remainder of the proceedings; and (3) the injury is one for which there will be no adequate remedy by appeal after final judgment." Dairyland Ins. Co. v. McKenzie, 251 So. 2d 887, 888 (Fla. 1st DCA 1971). Here, DOR fails to satisfy the first prong of this tripartite test.

DOR contends that the trial court's ruling that DOR lacks standing to seek a downward modification of child support, when neither the parent nor the child have received public assistance, is contrary to DOR's federal and state mandates and established precedent. We disagree.

The statutory requirement that DOR review child support orders on a periodic basis, and if necessary, seek a modification, exists only with respect to "child support orders in Federal Title IV-D cases at least once every 3 years when requested by either party, or when support rights are assigned to the state under s. 414.095(7) . . . ."[2]

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§ 409.2564(11). As discussed below, however, based on the relevant statutes, there is no Title IV-D case unless either or both parents, or the dependent child, are receiving public assistance, or if the custodial parent has requested DOR's assistance in enforcing a child support order. Based on the record, there is no evidence that either situation exists here.

As DOR itself notes in its petition to this court: "To be eligible for a federal Temporary Assistance for Needy Families (TANF) welfare block grant under Title IV-A of the Social Security Act, states must operate a child support enforcement program in accordance with an approved state plan under Title IV-D of the Act." (Emphasis added.) DOR also states that "the Title IV-D program required the states to provide custodial parents with legal assistance in collecting child support from noncustodial parents." See also 42 U.S.C. § 602(a)(2) (providing that for a state to be eligible for the program's block grants, it must submit, inter alia, "[a] certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D of this subchapter.") (emphasis added).

To this end, 42 U.S.C. section 651 provides:

> For the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living, . . . obtaining child and spousal support, and assuring that assistance in obtaining support will be

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> available under this part to all children (whether or not eligible for assistance under a state program funded under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

(Emphasis added.)

Pursuant to 42 U.S.C. section 654(3), participating states must "provide for the establishment or designation of a single and separate organizational unit . . . within the State to administer the plan" for enforcing child support orders and obtaining support. In Florida, DOR is the agency charged with performing these statutorily-required tasks. See § 409.2557(1), Fla. Stat.

Subsection 654(4) provides that a participating State must also agree that it will:

> **(A)** provide services relating to the . . . modification, or enforcement of child support obligations, as appropriate, under the plan with respect to --
>
> **(i)** each child for whom (I) assistance is provided under the State program funded under part A of this subchapter, (II) benefits or services for foster care maintenance are provided under the State program funded under part E of this subchapter, (III) medical assistance is provided under the State plan approved under subchapter XIX of this chapter, or (IV) cooperation is required pursuant to section 2015(l)(1) of Title 7, unless, in accordance with paragraph (29), good cause or other exceptions exist; **(ii)** any other child, if an individual applies for such services with respect to the child; and
>
> **(B)** enforce any support obligation established with respect to--
>
> **(i)** a child with respect to whom the State provides services under the plan; or

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> **(ii)** the custodial parent of such a child; . . . .

42 U.S.C. § 654(4) (emphasis added).

DOR contends that the italicized language gives it standing in this case.[3] However, this provision must be read in conjunction with 42 U.S.C. section 666, entitled "Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement." (Emphasis added.) Subsection (10)(A) of this statute provides that a state's plan must include:

> (i) . . . Procedures under which every 3 years (or such shorter cycle as the State may determine), upon the request of either parent or if there is an assignment under part A of this

> subchapter, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved--
>
> **(I)** review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title if the amount of the child support award under the order differs from the amount that would be awarded in accordance

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> with the guidelines;[4]] . . . Procedures which provide that any adjustment under clause (i) shall be made without a requirement for proof or showing of a change in circumstances.
>
> (B) Proof of substantial change in circumstances necessary in request for review outside 3-year cycle Procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under clause (i), the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title.

42 U.S.C. § 666(10)(A) (emphasis added).

Based on the foregoing, a non-custodial parent may seek DOR's assistance to modify a child support order, but only "with respect to a support order being enforced" under Title IV-D. This interpretation is further supported by several Florida Statutes enacted to implement the federal requirements and our decision in Florida Department of Revenue, Child Support Enforcement v. Baker, 24 So. 3d 1254, 1257 (Fla. 1st DCA 2009) (holding trial court erred by prohibiting DOR from intercepting tax refund, noting this court's agreement that state courts may not interfere with a "comprehensive child support enforcement scheme.") (emphasis added).

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As noted, section 409.2557(1), Florida Statutes, designates DOR "as the state agency responsible for the administration of the child support enforcement program, Title IV-D of the Social Security Act." (Emphasis added.) Subsection (2) of this statute provides: "The department's authority shall include, but not be limited to, the establishment of . . . support obligations, as well as the modification, enforcement, and collection of support obligations." Section 409.2558(1) provides: "The department shall distribute and disburse support payments collected in Title IV-D cases in accordance with 42 U.S.C. s. 657 and regulations adopted thereunder . . . ."

Section 409.2564, Florida Statutes, addresses "Actions for support." Subsection 409.2564(1) provides: "In each case in which regular support payments are not being made as provided herein, the department shall institute, within 30 days after determination of the obligor's reasonable ability to pay, action as is necessary to secure the obligor's payment of current support and any arrearage which may have accrued under an existing order of support." Subsection (2) provides: "The order

for support entered pursuant to an action instituted by the department under the provisions of subsection (1) shall require that the support payments be made periodically to the department through the depository." It is in this context that this statute also addresses DOR's obligation to periodically review support orders to determine if modification is warranted, either on its own or at a party's request. See § 409.2564(11), (12), Fla. Stat.

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Based on the foregoing, DOR's authority to seek modification to a child support order exists only when either party or the child is receiving public assistance, or when the obligor has failed to make support payments and DOR is called upon by the custodial parent to assist in enforcing a child support order. Here, although Mr. McLeod was required to make his child support payments through DOR's disbursement unit under the divorce decree, and the trial court entered two contempt orders related to child support, Respondent never enlisted DOR's assistance in her child support enforcement action, and DOR never instituted such an action. Instead, Respondent retained her own attorney. Although both parties sought modification of the child support order, by the time DOR appeared in November 2009, no enforcement action was pending then or when DOR filed an amended petition in 2010.

Before DOR first appeared in the case, this was a private post-dissolution dispute between former spouses concerning whether either party was entitled to modification of a child support order. Although our decision in Florida Department of Revenue v. Collingwood, 43 So. 3d 952 (Fla. 1st DCA 2010), supports DOR's position that it has standing to seek a downward modification of a child support order, even if neither party nor the child has received public assistance, our decision there does not support DOR's reasoning here that a child support obligor can convert a private legal dispute into a Title IV-D matter by enlisting DOR's assistance. This is especially true where none of the parties concerned is receiving or had been receiving public

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assistance; the payor is current on his obligations or no enforcement action is pending; or, as here, the custodial parent has never sought DOR's assistance in enforcing a child support order.

DOR also contends that it had standing, because it was providing the periodic review of support orders described above to Mr. McLeod "through the child support modification proceeding below." This is a variation of the argument that DOR has standing simply by virtue of filing a petition. Either way, neither the case law nor any of the statutes relied upon by DOR support this expansive interpretation of DOR's standing. Nor was standing conferred simply because the divorce decree ordered the non-custodial parent to make his child support payments through the State's disbursement unit.

Consequently, the trial court's dismissal of the modification action brought by DOR based on DOR's lack of standing was not a departure from the essential requirements of law, even if the court's reasoning was flawed. See D. R. Horton, Inc. - Jacksonville v. Peyton, 959 So. 2d 390, 397-98 (Fla. 1st DCA 2007) (holding under "tipsy coachman" rule, when trial court reaches right result, but for wrong reasons, that decision will be upheld on appeal if there is any basis which would support judgment in record). This, in turn, obviates the necessity of addressing DOR's contention that the court's order also will result in irreparable harm that cannot be rectified on direct appeal.

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Petition for Writ of Certiorari is DENIED.

BENTON, C.J., and SWANSON, J., CONCUR.

Notes:

[1.] We have jurisdiction pursuant to Article V, section 4(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(b)(2)(A). The order under review is non-final, because the trial court has not yet disposed of Respondent's petition seeking modification of child support.

[2.] Section 409.2563(1)(f), Florida Statutes, defines a "Title IV-D case" as "a case or proceeding in which the department is providing child support services within the scope of Title IV-D of the Social Security Act."

[3.] DOR also points to 42 U.S.C. section 654(25) in support of its position. This subsection requires that a state's plan

> provide that if a family with respect to which services are provided under the plan ceases to receive assistance under the State program funded under part A of this subchapter, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under the plan, except that an application or other request to continue services shall not be required of such a family and paragraph (6)(B) shall not apply to the family; . . . .

According to our review of the record, however, this subsection is not implicated in this case, because there is no evidence anyone involved here received public assistance.

[4.] 42 U.S.C. section 677(a) addresses state support guidelines.

TONI BAULER, Appellant,
v.
DEPARTMENT OF REVENUE, Child Support Enforcement, Appellee.
No. 4D11-4341
DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT
July Term 2012
September 5, 2012

CIKLIN, J.

Toni Bauler, the mother and custodial parent of two minor children, appeals a final administrative support order in which the Department of Revenue determined that Michael Wormley, the father and non-custodial parent of the children, had no child support obligations. Because we find that the Department's exercise of discretion was in violation of a statutory provision, we reverse the final administrative support order and remand the case to the Department for further administrative proceedings.

On June 30, 2011, the Department accepted the mother's application for an administrative support order and commenced an administrative proceeding against the father pursuant to section 409.2563, Florida Statutes. Both parents submitted financial affidavit forms to the Department. See § 409.2563(13), Fla. Stat. (2011). The mother's form indicated that she had no current income. As required by the Department if one is unemployed, the mother listed her former employer and former rate of pay. The father's affidavit was completely blank as to his income, assets, and liabilities. Furthermore, the father failed to identify his last job and rate of pay.

The Department obtained information on the father's unemployment compensation benefits which showed that he had lost his previous job in February 2010 and had collected unemployment benefits from February 2010 through March 2011, when he exhausted his benefits. The Department did not obtain any information regarding unemployment claims made by the mother, but it did obtain other information on her

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employment history which was consistent with her assertion regarding her former employment.

On November 11, 2011, the Department rendered its final administrative support order. In that order, the Department imputed federal minimum wage to the mother, but found that the father was involuntarily unemployed with no net monthly income. Based on that determination, the father's child support obligation calculated under the child support guidelines was $0 per month. Therefore, no support was ordered.

Pursuant to section 409.2563(5)(a), Florida Statutes, the Department is required to "calculate [a] parent's child support obligation under the child support guidelines schedule as provided by s[ection] 61.30, based on any timely financial affidavits received and other information available to the department." § 409.2563(5)(a). "If there is a lack of sufficient reliable information concerning a parent's actual earnings for a current or past period, it shall be presumed for the purpose of establishing a support obligation that the parent had an earning capacity equal to the federal minimum wage during the applicable period." Id.

The Department found that there was "a lack of sufficient, reliable information concerning the [mother]'s actual earnings" and presumed that the mother's earning capacity was equal to the federal minimum wage. The Department, however, did not equally presume that the father had an earning capacity equal to the federal minimum wage, even though it had less substantial and less reliable information concerning the father's actual current income than it did concerning the mother's income. Therefore, we find that the Department's failure

to impute income based on the federal minimum wage to the father was in violation of section 409.2563(5)(a), Florida Statutes.

Accordingly, we reverse the final administrative support order and remand the case to the Department for further administrative proceedings. See § 120.68(7)(e)4., Fla. Stat. (2011) (requiring this court to "remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that . . . [t]he agency's discretion was . . . in violation of a . . . statutory provision . . . .").

On remand, the Department can either impute an earning capacity equal to the federal minimum wage to both parents, or alternatively, the Department can refer the proceedings to the Division of Administrative Hearings to determine if either parent is voluntarily unemployed. See §

409.2563(6) ("If . . . the department determines that an evidentiary hearing is appropriate, the department shall refer the proceeding to the Division of Administrative Hearings.").

Reversed and remanded for further proceedings.

GERBER and LEVINE, JJ., concur.

*** * ***

Appeal from the State of Florida, Department of Revenue, Child Support Enforcement Program; L.T. Case No. 1301074179.

Toni Bauler, Dania, pro se.

Pamela Jo Bondi, Attorney General, and Toni C. Bernstein, Senior Assistant Attorney General, Child Support Enforcement, Tallahassee, for appellee.

Not final until disposition of timely filed motion for rehearing.

What a child support hearing officer can and can't hear?

Rule 12.491
Applies to proceedings for establishment, enforcement or modification of child support or enforcement of any support order for the parent or other person entitled to receive child support in conjunction with an ongoing child support or child support arrearage order when a party seeking support is receiving services pursuant to Title IV-D of the Social Security and non-Title IV-D proceedings upon administrative order of the chief Judge.

Only issues related to child support... and alimony enforcement issues

A child support hearing officer is able to
1. conduct hearings for taking evidence
2. administer oaths
3. require production of documents
4. take testimony
5. make recommended order to the court

A child support hearing officer cannot
1. hear contested paternity cases
2. Hear alimony enforcement unless it is connected to child support
3. Hear non-Title IV-D cases without both parties consent

Hearing officers provide a useful case flow management tool in non-Title IV-D support proceedings

QUESTIONS

Can a child support hearing officer hear a modification of child support case when the basis for the modification is fraud in a parties' financial affidavit?
--> Yes. Child support hearing officers are fully able to conduct an examination into the intent or state of mind of the alleged perpetrator when fraud is alleged. (Worrell v. Worell, 23 So.3d 199 (Fla. 4th DCA 2009).

In a contempt proceeding for failure to comply with final decree on child support, what does a Child support hearing officer have to set out in their recommendations
1. detailed, specific findings of fact to support the present ability to pay and willful refusal to pay
2. Has to have present ability to purge
(Gregory v. Rice, 727 So.2d 251 (Fla. 1999).

Does a child support hearing officer have any authority to hear disputed paternity actions?
-->No. Bernardo v. Dep't of Revenue, 819 So.2d 161 (Fla. 4th DCA 2002).

Are Child Support hearing officers authorized to accept voluntary acknowledgment of paternity?
--> Yes. Bernardo v. Dep't of Revenue, 819 So.2d 161 (Fla. 4th DCA 2002).

Can a child support enforcement officer consider issues of alimony enforcement?
--> Yes, only when they are related to an ongoing child support matter. Amendments to the Fla. Family Law Rules of Procedure, 723 So.2d 208 (Fla. 1998).

*** Statutes and Constitution are updated through the 2012 Regular Session and 2012 Special Session B. ***
*** Annotations are current through September 7, 2012 ***

TITLE 30. SOCIAL WELFARE (Chs. 409-430)
CHAPTER 409. SOCIAL AND ECONOMIC ASSISTANCE
PART I. SOCIAL AND ECONOMIC ASSISTANCE

GO TO FLORIDA STATUTES ARCHIVE DIRECTORY

Fla. Stat. § 409.256 (2012)

§ 409.256. Administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing

(1) *Definitions.*. --As used in this section, the term:

(a) "Another state" or "other state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

1. An Indian tribe.

2. A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, as determined by the Attorney General.

(b) "Caregiver" means a person, other than the mother, father, or a putative father, who has physical custody of a child or with whom the child primarily resides. References in this section to the obligation of a caregiver to submit to genetic testing mean that the caregiver is obligated to submit the child for genetic testing, not that the caregiver must submit to genetic testing.

(c) "Filed" means a document has been received and accepted for filing at the offices of the Department of Revenue by the clerk or an authorized deputy clerk designated by the department.

(d) "Genetic testing" means a scientific analysis of genetic markers which is performed by a qualified technical laboratory only to exclude an individual as the parent of a child or to show a probability of paternity.

(e) "Paternity and child support proceeding" means an administrative action commenced by the Department of Revenue to order genetic testing, establish paternity, and establish an administrative support order pursuant to this section.

(f) "Paternity proceeding" means an administrative action commenced by the Department of Revenue to order genetic testing and establish paternity pursuant to this section.

(g) "Putative father" means an individual who is or may be the biological father of a child whose paternity has not been established and whose mother was unmarried when the child was conceived and born.

(h) "Qualified technical laboratory" means a genetic-testing laboratory that may be under contract with the Department of Revenue, that uses tests and methods of a type generally acknowledged as reliable by accreditation organizations recognized by the United States Department of Health and Human Services, and that is approved by such

an accreditation organization. The term includes a genetic-testing laboratory used by another state, if the laboratory has comparable qualifications.

(i) "Rendered" means that a signed written order is filed with the clerk or a deputy clerk of the Department of Revenue and served on the respondent. The date of filing must be indicated on the face of the order at the time of rendition.

(j) "Respondent" means the person or persons served by the Department of Revenue with a notice of proceeding pursuant to subsection (4). The term includes the putative father and may include the mother or the caregiver of the child.

(k) "This state" or "the state" means the State of Florida.

(2) *Jurisdiction; location of hearings; right of access to the courts..*

(a) The department may commence a paternity proceeding or a paternity and child support proceeding as provided in subsection (4) if:

1. The child's paternity has not been established.

2. No one is named as the father on the child's birth certificate or the person named as the father is the putative father named in an affidavit or a written declaration as provided in subparagraph 5.

3. The child's mother was unmarried when the child was conceived and born.

4. The department is providing services under Title IV-D.

5. The child's mother or a putative father has stated in an affidavit, or in a written declaration as provided in *s. 92.525(2)*, that the putative father is or may be the child's biological father. The affidavit or written declaration must set forth the factual basis for the allegation of paternity as provided in *s. 742.12(2)*.

(b) If the department receives a request from another state to assist in the establishment of paternity, the department may serve an order to appear for genetic testing on a person who resides in this state and transmit the test results to the other state without commencing a paternity proceeding in this state.

(c) The department may use the procedures authorized by this section against a nonresident over whom this state may assert personal jurisdiction under chapter 48 or chapter 88.

(d) If a putative father, mother, or caregiver in a Title IV-D case voluntarily submits to genetic testing, the department may schedule that individual or the child for genetic testing without serving that individual with an order to appear for genetic testing. A respondent or other person who is subject to an order to appear for genetic testing may waive, in writing or on the record at an administrative hearing, formal service of notices or orders or waive any other rights or time periods prescribed by this section.

(e) Whenever practicable, hearings held by the Division of Administrative Hearings pursuant to this section shall be held in the judicial circuit where the person receiving services under Title IV-D resides or, if the person receiving services under Title IV-D does not reside in this state, in the judicial circuit where the respondent resides. If the department and the respondent agree, the hearing may be held in another location. If ordered by the administrative law judge, the hearing may be conducted telephonically or by videoconference.

(f) The Legislature does not intend to limit the jurisdiction of the circuit courts to hear and determine issues regarding establishment of paternity. This section is intended to provide the department with an alternative procedure for establishing paternity and child support obligations in Title IV-D cases. This section does not prohibit a person who has standing from filing a civil action in circuit court for a determination of paternity or of child support obligations.

(g) Section 409.2563(2)(e), (f), and (g) apply to a proceeding under this section.

(3) *Multiple putative fathers; multiple children..* --If more than one putative father has been named, the department may proceed under this section against a single putative father or may proceed simultaneously against more than one putative father. If a putative father has been named as a possible father of more than one child born to the same mother, the department may proceed to establish the paternity of each child in the same proceeding.

(4) *Notice of proceeding to establish paternity or paternity and child support; order to appear for genetic testing; manner of service; contents..* --The Department of Revenue shall commence a proceeding to determine paternity, or a proceeding to determine both paternity and child support, by serving the respondent with a notice as provided in this

section. An order to appear for genetic testing may be served at the same time as a notice of the proceeding or may be served separately. A copy of the affidavit or written declaration upon which the proceeding is based shall be provided to the respondent when notice is served. A notice or order to appear for genetic testing shall be served by certified mail, restricted delivery, return receipt requested, or in accordance with the requirements for service of process in a civil action. Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. For purposes of this section, an employee or an authorized agent of the department may serve the notice or order to appear for genetic testing and execute an affidavit of service. The department may serve an order to appear for genetic testing on a caregiver. The department shall provide a copy of the notice or order to appear by regular mail to the mother and caregiver, if they are not respondents.

(a) A notice of proceeding to establish paternity must state:

1. That the department has commenced an administrative proceeding to establish whether the putative father is the biological father of the child named in the notice.

2. The name and date of birth of the child and the name of the child's mother.

3. That the putative father has been named in an affidavit or written declaration that states the putative father is or may be the child's biological father.

4. That the respondent is required to submit to genetic testing.

5. That genetic testing will establish either a high degree of probability that the putative father is the biological father of the child or that the putative father cannot be the biological father of the child.

6. That if the results of the genetic test do not indicate a statistical probability of paternity that equals or exceeds 99 percent, the paternity proceeding in connection with that child shall cease unless a second or subsequent test is required.

7. That if the results of the genetic test indicate a statistical probability of paternity that equals or exceeds 99 percent, the department may:

a. Issue a proposed order of paternity that the respondent may consent to or contest at an administrative hearing; or

b. Commence a proceeding, as provided in *s. 409.2563*, to establish an administrative support order for the child. Notice of the proceeding shall be provided to the respondent by regular mail.

8. That, if the genetic test results indicate a statistical probability of paternity that equals or exceeds 99 percent and a proceeding to establish an administrative support order is commenced, the department shall issue a proposed order that addresses paternity and child support. The respondent may consent to or contest the proposed order at an administrative hearing.

9. That if a proposed order of paternity or proposed order of both paternity and child support is not contested, the department shall adopt the proposed order and render a final order that establishes paternity and, if appropriate, an administrative support order for the child.

10. That, until the proceeding is ended, the respondent shall notify the department in writing of any change in the respondent's mailing address and that the respondent shall be deemed to have received any subsequent order, notice, or other paper mailed to the most recent address provided or, if a more recent address is not provided, to the address at which the respondent was served, and that this requirement continues if the department renders a final order that establishes paternity and a support order for the child.

11. That the respondent may file an action in circuit court for a determination of paternity, child support obligations, or both.

12. That if the respondent files an action in circuit court and serves the department with a copy of the petition or complaint within 20 days after being served notice under this subsection, the administrative process ends without prejudice and the action must proceed in circuit court.

13. That, if paternity is established, the putative father may file a petition in circuit court for a determination of matters relating to custody and rights of parental contact.

A notice under this paragraph must also notify the respondent of the provisions in *s. 409.2563(4)(m)* and (o).

(b) A notice of proceeding to establish paternity and child support must state the requirements of paragraph (a), except for subparagraph (a)7., and must state the requirements of *s. 409.2563(4)*, to the extent that the requirements of *s. 409.2563(4)* are not already required by and do not conflict with this subsection. This section and *s. 409.2563* apply to a proceeding commenced under this subsection.

(c) The order to appear for genetic testing shall inform the person ordered to appear:

1. That the department has commenced an administrative proceeding to establish whether the putative father is the biological father of the child.

2. The name and date of birth of the child and the name of the child's mother.

3. That the putative father has been named in an affidavit or written declaration that states the putative father is or may be the child's biological father.

4. The date, time, and place that the person ordered to appear must appear to provide a sample for genetic testing.

5. That if the person has custody of the child whose paternity is the subject of the proceeding, the person must submit the child for genetic testing.

6. That when the samples are provided, the person ordered to appear shall verify his or her identity and the identity of the child, if applicable, by presenting a form of identification as prescribed by *s. 117.05(5)(b)*2. which bears the photograph of the person who is providing the sample or other form of verification approved by the department.

7. That if the person ordered to appear submits to genetic testing, the department shall pay the cost of the genetic testing and shall provide the person ordered to appear with a copy of any test results obtained.

8. That if the person ordered to appear does not appear as ordered or refuses to submit to genetic testing without good cause, the department may take one or more of the following actions:

a. Commence proceedings to suspend the driver's license and motor vehicle registration of the person ordered to appear, as provided in *s. 61.13016*;

b. Impose an administrative fine against the person ordered to appear in the amount of $ 500; or

c. File a petition in circuit court to establish paternity and obtain a support order for the child and an order for costs against the person ordered to appear, including costs for genetic testing.

9. That the person ordered to appear may contest the order by filing a written request for informal review within 15 days after the date of service of the order, with further rights to an administrative hearing following the informal review.

(d) If the putative father is incarcerated, the correctional facility shall assist the putative father in complying with an administrative order to appear for genetic testing issued under this section.

(e) An administrative order to appear for genetic testing has the same force and effect as a court order.

(5) *Right to contest order to appear for genetic testing.*.

(a) The person ordered to appear may contest an order to appear for genetic testing by filing a written request for informal review with the department within 15 days after the date of service of the order. The purpose of the informal review is to provide the person ordered to appear with an opportunity to discuss the proceedings and the basis of the order. At the conclusion of the informal review, the department shall notify the person ordered to appear, in writing, whether it intends to proceed with the order to appear. If the department notifies the person ordered to appear of its intent to proceed, the notice must inform the person ordered to appear of the right to contest the order at an administrative hearing.

(b) Following an informal review, within 15 days after the mailing date of the department's notification that the department shall proceed with an order to appear for genetic testing, the person ordered to appear may file a request for an administrative hearing to contest whether the person should be required to submit to genetic testing. A request for an

administrative hearing must state the specific reasons why the person ordered to appear believes he or she should not be required to submit to genetic testing as ordered. If the person ordered to appear files a timely request for a hearing, the department shall refer the hearing request to the Division of Administrative Hearings. Unless otherwise provided in this section, administrative hearings are governed by chapter 120 and the uniform rules of procedure. The administrative law judge assigned to the case shall issue an order as to whether the person must submit to genetic testing in accordance with the order to appear. The department or the person ordered to appear may seek immediate judicial review under *s. 120.68* of an order issued by an administrative law judge pursuant to this paragraph.

(c) If a timely request for an informal review or an administrative hearing is filed, the department may not proceed under the order to appear for genetic testing and may not impose sanctions for failure or refusal to submit to genetic testing until:

1. The department has notified the person of its intent to proceed after informal review, and a timely request for hearing is not filed;

2. The person ordered to appear withdraws the request for hearing or informal review; or

3. The Division of Administrative Hearings issues an order that the person must submit to genetic testing, or issues an order closing the division's file, and that an order has become final.

(d) If a request for an informal review or administrative hearing is not timely filed, the person ordered to appear is deemed to have waived the right to a hearing, and the department may proceed under the order to appear for genetic testing.

(6) *Scheduling of genetic testing.*.

(a) The department shall notify, in writing, the person ordered to appear of the date, time, and location of the appointment for genetic testing and of the requirement to verify his or her identity and the identity of the child, if applicable, when the samples are provided by presenting a form of identification as prescribed in *s. 117.05(5)(b)*2. which bears the photograph of the person who is providing the sample or other form of verification approved by the department. If the person ordered to appear is the putative father or the mother, that person shall appear and submit to genetic testing. If the person ordered to appear is a caregiver, or if the putative father or the mother has custody of the child, that person must submit the child for genetic testing.

(b) The department shall reschedule genetic testing:

1. One time without cause if, in advance of the initial test date, the person ordered to appear requests the department to reschedule the test.

2. One time if the person ordered to appear shows good cause for failure to appear for a scheduled test.

3. One time upon request of a person ordered to appear against whom sanctions have been imposed as provided in subsection (7).

A claim of good cause for failure to appear shall be filed with the department within 10 days after the scheduled test date and must state the facts and circumstances supporting the claim. The department shall notify the person ordered to appear, in writing, whether it accepts or rejects the person's claim of good cause. There is not a separate right to a hearing on the department's decision to accept or reject the claim of good cause because the person ordered to appear may raise good cause as a defense to any proceeding initiated by the department under subsection (7).

(c) A person ordered to appear may obtain a second genetic test by filing a written request for a second test with the department within 15 days after the date of mailing of the initial genetic testing results and by paying the department in advance for the full cost of the second test.

(d) The department may schedule and require a subsequent genetic test if it has reason to believe the results of the preceding genetic test may not be reliable.

(e) Except as provided in paragraph (c) and subsection (7), the department shall pay for the cost of genetic testing ordered under this section.

(7) *Failure or refusal to submit to genetic testing.*.

(a) Commence a proceeding to suspend the driver's license and motor vehicle registration of the person ordered to appear, as provided in *s. 61.13016*;

(b) Impose an administrative fine against the person ordered to appear in the amount of $ 500; or

(c) File a petition in circuit court to establish paternity, obtain a support order for the child, and seek reimbursement from the person ordered to appear for the full cost of genetic testing incurred by the department.

As provided in *s. 322.058(2)*, a suspended driver's license and motor vehicle registration may be reinstated when the person ordered to appear complies with the order to appear for genetic testing. The department may collect an administrative fine imposed under this subsection by using civil remedies or other statutory means available to the department for collecting support.

(8) *Genetic-testing results.*. --The department shall send a copy of the genetic-testing results to the putative father, to the mother, to the caregiver, and to the other state, if applicable. If the genetic-testing results, including second or subsequent genetic-testing results, do not indicate a statistical probability of paternity that equals or exceeds 99 percent, the paternity proceeding in connection with that child shall cease.

(9) *Proposed order of paternity; commencement of proceeding to establish administrative support order; proposed order of paternity and child support.*.

(a) If a paternity proceeding has been commenced under this section and the results of genetic testing indicate a statistical probability of paternity that equals or exceeds 99 percent, the department may:

1. Issue a proposed order of paternity as provided in paragraph (b); or

2. If appropriate, delay issuing a proposed order of paternity and commence, by regular mail, an administrative proceeding to establish a support order for the child pursuant to *s. 409.2563* and issue a single proposed order that addresses paternity and child support.

(b) A proposed order of paternity must:

1. State proposed findings of fact and conclusions of law.

2. Include a copy of the results of genetic testing.

3. Include notice of the respondent's right to informal review and to contest the proposed order of paternity at an administrative hearing.

(c) If a paternity and child support proceeding has been commenced under this section and the results of genetic testing indicate a statistical probability of paternity that equals or exceeds 99 percent, the department may issue a single proposed order that addresses paternity as provided in this section and child support as provided in *s. 409.2563*.

(d) The department shall serve a proposed order issued under this section on the respondent by regular mail and shall provide a copy by regular mail to the mother or caregiver if they are not respondents.

(10) *Informal review; administrative hearing; presumption of paternity.*.

(a) Within 10 days after the date of mailing or other service of a proposed order of paternity, the respondent may contact a representative of the department at the address or telephone number provided to request an informal review of the proposed order. If an informal review is timely requested, the time for requesting a hearing is extended until 10 days after the department mails notice to the respondent that the informal review has been concluded.

(b) Within 20 days after the mailing date of the proposed order or within 10 days after the mailing date of notice that an informal review has been concluded, whichever is later, the respondent may request an administrative hearing by filing a written request for a hearing with the department. A request for a hearing must state the specific objections to the proposed order, the specific objections to the genetic testing results, or both. A respondent who fails to file a timely request for a hearing is deemed to have waived the right to a hearing.

(c) If the respondent files a timely request for a hearing, the department shall refer the hearing request to the Division of Administrative Hearings. Unless otherwise provided in this section or in *s. 409.2563*, chapter 120 and the uniform rules of procedure govern the conduct of the proceedings.

(d) The genetic-testing results shall be admitted into evidence and made a part of the hearing record. For purposes of this section, a statistical probability of paternity that equals or exceeds 99 percent creates a presumption, as defined in *s. 90.304*, that the putative father is the biological father of the child. The presumption may be overcome only by clear and convincing evidence. The respondent or the department may call an expert witness to refute or support the testing

procedure or results or the mathematical theory on which they are based. Verified documentation of the chain of custody of the samples tested is competent evidence to establish the chain of custody.

(11) *Final order establishing paternity or paternity and child support; consent order; notice to office of vital statistics.*.

(a) If a hearing is held, the administrative law judge of the Division of Administrative Hearings shall issue a final order that adjudicates paternity or, if appropriate, paternity and child support. A final order of the administrative law judge constitutes final agency action by the Department of Revenue. The Division of Administrative Hearings shall transmit any such order to the department for filing and rendering.

(b) If the respondent does not file a timely request for a hearing or consents in writing to entry of a final order without a hearing, the department may render a final order of paternity or a final order of paternity and child support, as appropriate.

(c) The department shall mail a copy of the final order to the putative father, the mother, and the caregiver, if any. The department shall notify the respondent of the right to seek judicial review of a final order in accordance with *s. 120.68*.

(d) Upon rendering a final order of paternity or a final order of paternity and child support, the department shall notify the Office of Vital Statistics of the Department of Health that the paternity of the child has been established.

HISTORY: S. 24, ch. 2005-39; s. 5, ch. 2008-92, eff. May 28, 2008; s. 7, ch. 2010-187, eff. June 3, 2010; s. 93, ch. 2012-184, eff. Apr. 27, 2012.

NOTES:

AMENDMENTS

The 2008 amendment by s. 5, ch. 2008-92, effective May 28, 2008, added (4)(d) and (e).

The 2010 amendment substituted "caregiver" for "custodian" throughout the section; substituted "department" for "department of Revenue" or variants throughout the section; added "father" in the first sentence of (1)(b); added "of paternity" in the first sentence of (10)(a); and made stylistic changes.

The 2012 amendment substituted "Office of Vital Statistics" for "Division of Vital Statistics" in (11)(d).

FLORIDA STATUTES REFERENCES

Chapter 61. Dissolution of Marriage; Support; Time-Sharing, *F.S. § 61.1814*. Child Support Enforcement Application and Program Revenue Trust Fund.

Chapter 120. Administrative Procedure Act, *F.S. § 120.80*. Exceptions and special requirements; agencies.

Chapter 382. Vital Statistics, *F.S. § 382.013*. Birth registration.

Chapter 409. Social and Economic Assistance, *F.S. § 409.2563*. Administrative establishment of child support obligations.

Chapter 742. Determination of Parentage, *F.S. § 742.10*. Establishment of paternity for children born out of wedlock.

Chapter 760. Discrimination in the Treatment of Persons; Minority Representation, *F.S. § 760.40*. Genetic testing; informed consent; confidentiality; penalties; notice of use of results.

FLORIDA ADMINISTRATIVE CODE REFERENCES

Chapter 12-2 Organization and General Information, *F.A.C. 12-2.023* Final Orders Required to be Indexed.

Chapter 64V-1 Vital Statistics -- Birth, Death, and Fetal Death Certificates, *F.A.C. 64V-1.0032* Birth Certificate Amendments by Paternity Establishment/Disestablishment; Judicial and Administrative Process.

LexisNexis (R) Notes:

CASE NOTES

1. Legal father is an indispensable party in an action to determine paternity and to place support obligations on another man unless it is conclusively established that the legal father's rights to the child have been divested by some earlier judgment. *Fla. Dep't of Revenue v. Cummings, 930 So. 2d 604, 2006 Fla. LEXIS 808 (Fla. 2006).*

2. Complaints filed by the Florida Department of Revenue to determine paternity and establish child support were properly dismissed; though each complaint acknowledged that the mother was married to a man other than the putative father when the child was born, only the putative father was named as respondent, and the legal father was an indispensable party to such proceedings. *Fla. Dep't of Revenue v. Cummings, 930 So. 2d 604, 2006 Fla. LEXIS 808 (Fla. 2006).*

3. Order requiring DNA paternity testing in a proceeding seeking enforcement of a final administrative support order, issued on the recommendation of a child support enforcement hearing officer, was error because, inter alia, the putative father presented no proof of fraud, duress, material mistake of fact, or newly discovered evidence that would have disestablished paternity under *Fla. Stat. § 742.10(4)*; the putative father neither provided a copy of the birth certificate to show that he did not sign it, nor provided any other evidence. Similarly, the letter to the trial court did not present sufficient grounds to disestablish paternity under *Fla. Stat. § 742.18(1)*, Fla. Stat. as it did not include the two required affidavits and did not contain the results of a paternity test, which was required by § 742.18(1)(b). *Dep't of Revenue ex rel. Carnley v. Lynch, 53 So. 3d 1154, 2011 Fla. App. LEXIS 1440 (Fla. 1st DCA 2011).*

4. Order requiring DNA paternity testing in a proceeding seeking enforcement of a final administrative support order, issued on the recommendation of a child support enforcement hearing officer, was error because, inter alia, the putative father presented no proof of fraud, duress, material mistake of fact, or newly discovered evidence that would have disestablished paternity under *Fla. Stat. § 742.10(4)*; the putative father neither provided a copy of the birth certificate to show that he did not sign it, nor provided any other evidence. Similarly, the letter to the trial court did not present sufficient grounds to disestablish paternity under *Fla. Stat. § 742.18(1)*, Fla. Stat. as it did not include the two required affidavits and did not contain the results of a paternity test, which was required by § 742.18(1)(b). *Dep't of Revenue ex rel. Carnley v. Lynch, 53 So. 3d 1154, 2011 Fla. App. LEXIS 1440 (Fla. 1st DCA 2011).*

TREATISES AND ANALYTICAL MATERIALS

1. *Florida Family Law, Division IV Dissolution of Marriage, Chapter 33 Child Support, Part I. Legal Background, § 33.08* Administrative Orders Establishing Child Support.

2. *Florida Family Law, Division V Parent-Child Relationships, Chapter 90 Paternity, Part I. Legal Background, A. Paternity and the Parent-Child Relationship, § 90.04* Father's Support Duties.

3. *Florida Family Law, Division V Parent-Child Relationships, Chapter 90 Paternity, Part I. Legal Background, B. Establishing Paternity in Paternity Proceeding, § 90.29* Finality of Paternity Determination.

4. *Southeast Transaction Guide, Unit V. Personal Transactions, Division 1. Personal Affairs, § 320.21* Vital Statistics.

5. *Southeast Transaction Guide, Unit V. Personal Transactions, Division 2. Family Affairs, § 340.02* Research Guide.

STATE BAR PUBLICATION

1. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, I. Introduction, B. [§4.2] Historical Background.

2. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, III. Determination of Paternity, B. Administrative Proceedings, 1. [§4.23] In General.

3. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, III. Determination of Paternity, B. Administrative Proceedings, 2. [§4.24] Notice of Proceedings.

4. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, III. Determination of Paternity, B. Administrative Proceedings, 3. Genetic Testing, a. [§4.25] Order to Appear.

5. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, III. Determination of Paternity, B. Administrative Proceedings, 3. Genetic Testing, b. [§4.26] Scheduling Testing.

6. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, III. Determination of Paternity, B. Administrative Proceedings, 3. Genetic Testing, c. [§4.27] Failure to Appear or Submit to Testing.

7. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, III. Determination of Paternity, B. Administrative Proceedings, 3. Genetic Testing, d. [§4.28] Test Results.

8. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, III. Determination of Paternity, B. Administrative Proceedings, 4. Paternity Proceedings, a. [§4.29] In General.

9. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, III. Determination of Paternity, B. Administrative Proceedings, 4. Paternity Proceedings, b. [§4.30] Informal Review or Administrative Hearing.

10. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, III. Determination of Paternity, B. Administrative Proceedings, 5. [§4.31] Final Order.

11. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, III. Determination of Paternity, B. Administrative Proceedings, 6. [§4.32] Judicial Review.

12. Adoption, Paternity, And Other Florida Family Practice, Chapter 5. Birth Establishment, II. General Records, B. [§5.3] Surname of Child; Listing of Father.

13. Adoption, Paternity, And Other Florida Family Practice, Chapter 12. Legal Effects of Cohabitation, V. Other Issues, D. [§12.57] Paternity Proceedings.

14. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, V. Types of Services Provided, A. Establishment Services, 1. Paternity, c. [§10.10] Genetic Testing.

LAW REVIEWS

1. Gay And Lesbian Parenting in Florida: Family Creation Around The Law, Rebecca Mae Salokar, Spring 2009, *4 FIU L. Rev. 473.*

*** Statutes and Constitution are updated through the 2012 Regular Session and 2012 Special Session B. ***
*** Annotations are current through September 7, 2012 ***

TITLE 30. SOCIAL WELFARE (Chs. 409-430)
CHAPTER 409. SOCIAL AND ECONOMIC ASSISTANCE
PART I. SOCIAL AND ECONOMIC ASSISTANCE

GO TO FLORIDA STATUTES ARCHIVE DIRECTORY

Fla. Stat. § 409.2563 (2012)

§ 409.2563. Administrative establishment of child support obligations

(1) *Definitions.*. --As used in this section, the term:

(a) "Administrative support order" means a final order rendered by or on behalf of the department pursuant to this section establishing or modifying the obligation of a parent to contribute to the support and maintenance of his or her child or children, which may include provisions for monetary support, retroactive support, health care, and other elements of support pursuant to chapter 61.

(b) "Caregiver" means a person, other than the mother, father, or putative father, who has physical custody of the child or with whom the child primarily resides.

(c) "Filed" means a document has been received and accepted for filing at the offices of the department by the clerk or any authorized deputy clerk of the department. The date of filing must be indicated on the face of the document by the clerk or deputy clerk.

(d) "Financial affidavit" means an affidavit or written declaration as provided by *s. 92.525(2)* which shows an individual's income, allowable deductions, net income, and other information needed to calculate the child support guideline amount under *s. 61.30*.

(e) "Rendered" means that a signed written order is filed with the clerk or any deputy clerk of the department and served on the respondent. The date of filing must be indicated on the face of the order at the time of rendition.

(f) "Title IV-D case" means a case or proceeding in which the department is providing child support services within the scope of Title IV-D of the Social Security Act, *42 U.S.C. ss. 651* et seq.

(g) "Retroactive support" means a child support obligation established pursuant to *s. 61.30(17)*.

Other terms used in this section have the meanings ascribed in *ss. 61.046* and *409.2554*.

(2) *Purpose and scope.*.

(a) It is not the Legislature's intent to limit the jurisdiction of the circuit courts to hear and determine issues regarding child support. This section is intended to provide the department with an alternative procedure for establishing child support obligations in Title IV-D cases in a fair and expeditious manner when there is no court order of support. The procedures in this section are effective throughout the state and shall be implemented statewide.

(b) The administrative procedure set forth in this section concerns only the establishment of child support obligations. This section does not grant jurisdiction to the department or the Division of Administrative Hearings to hear or determine issues of dissolution of marriage, separation, alimony or spousal support, termination of parental rights,

dependency, disputed paternity, except for a determination of paternity as provided in *s. 409.256*, or award of or change of time-sharing. This paragraph notwithstanding, the department and the Division of Administrative Hearings may make findings of fact that are necessary for a proper determination of a parent's support obligation as authorized by this section.

(c) If there is no support order for a child in a Title IV-D case whose paternity has been established or is presumed by law, or whose paternity is the subject of a proceeding under *s. 409.256*, the department may establish a parent's child support obligation pursuant to this section, *s. 61.30*, and other relevant provisions of state law. The parent's obligation determined by the department may include any obligation to pay retroactive support and any obligation to provide for health care for a child, whether through insurance coverage, reimbursement of expenses, or both. The department may proceed on behalf of:

1. An applicant or recipient of public assistance, as provided by *ss. 409.2561* and *409.2567*;

2. A former recipient of public assistance, as provided by *s. 409.2569*;

3. An individual who has applied for services as provided by *s. 409.2567*;

4. Itself or the child, as provided by *s. 409.2561*; or

5. A state or local government of another state, as provided by chapter 88.

(d) Either parent, or a caregiver if applicable, may at any time file a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any. A support order issued by a circuit court prospectively supersedes an administrative support order rendered by the department.

(e) Pursuant to paragraph (b), neither the department nor the Division of Administrative Hearings has jurisdiction to award or change child custody or rights of parental contact. Either parent may at any time file a civil action in a circuit having jurisdiction and proper venue for a determination of child custody and rights of parental contact.

(f) The department shall terminate the administrative proceeding and file an action in circuit court to determine support if within 20 days after receipt of the initial notice the parent from whom support is being sought requests in writing that the department proceed in circuit court or states in writing his or her intention to address issues concerning time-sharing or rights to parental contact in court and if within 10 days after receipt of the department's petition and waiver of service the parent from whom support is being sought signs and returns the waiver of service form to the department.

(g) The notices and orders issued by the department under this section shall be written clearly and plainly.

(3) *Jurisdiction over nonresidents.* --The department may use the procedures authorized by this section to establish a child support obligation against a nonresident over whom the state may assert personal jurisdiction under chapter 48 or chapter 88.

(4) *Notice of proceeding to establish administrative support order..* --To commence a proceeding under this section, the department shall provide to the parent from whom support is not being sought and serve the parent from whom support is being sought with a notice of proceeding to establish administrative support order and a blank financial affidavit form. The notice must state:

(a) The names of both parents, the name of the caregiver, if any, and the name and date of birth of the child or children;

(b) That the department intends to establish an administrative support order as defined in this section;

(c) That both parents must submit a completed financial affidavit to the department within 20 days after receiving the notice, as provided by paragraph (13)(a);

(d) That both parents, or parent and caregiver if applicable, are required to furnish to the department information regarding their identities and locations, as provided by paragraph (13)(b);

(e) That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses to ensure receipt of all subsequent pleadings, notices, and orders, as provided by paragraph (13)(c);

(f) That the department will calculate support obligations based on the child support guidelines schedule in *s. 61.30* and using all available information, as provided by paragraph (5)(a), and will incorporate such obligations into a proposed administrative support order;

(g) That the department will send by regular mail to both parents, or parent and caregiver if applicable, a copy of the proposed administrative support order, the department's child support worksheet, and any financial affidavits submitted by a parent or prepared by the department;

(h) That the parent from whom support is being sought may file a request for a hearing in writing within 20 days after the date of mailing or other service of the proposed administrative support order or will be deemed to have waived the right to request a hearing;

(i) That if the parent from whom support is being sought does not file a timely request for hearing after service of the proposed administrative support order, the department will issue an administrative support order that incorporates the findings of the proposed administrative support order, and will send by regular mail a copy of the administrative support order to both parents, or parent and caregiver if applicable;

(j) That after an administrative support order is rendered, the department will file a copy of the order with the clerk of the circuit court;

(k) That after an administrative support order is rendered, the department may enforce the administrative support order by any lawful means;

(l) That either parent, or caregiver if applicable, may file at any time a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any, and that a support order issued by a circuit court supersedes an administrative support order rendered by the department;

(m) That neither the department nor the Division of Administrative Hearings has jurisdiction to award or change child custody or rights of parental contact or time-sharing, and these issues may be addressed only in circuit court.

1. The parent from whom support is being sought may request in writing that the department proceed in circuit court to determine his or her support obligations.

2. The parent from whom support is being sought may state in writing to the department his or her intention to address issues concerning custody or rights to parental contact in circuit court.

3. If the parent from whom support is being sought submits the request authorized in subparagraph 1., or the statement authorized in subparagraph 2. to the department within 20 days after the receipt of the initial notice, the department shall file a petition in circuit court for the determination of the parent's child support obligations, and shall send to the parent from whom support is being sought a copy of its petition, a notice of commencement of action, and a request for waiver of service of process as provided in the Florida Rules of Civil Procedure.

4. If, within 10 days after receipt of the department's petition and waiver of service, the parent from whom support is being sought signs and returns the waiver of service form to the department, the department shall terminate the administrative proceeding without prejudice and proceed in circuit court.

5. In any circuit court action filed by the department pursuant to this paragraph or filed by a parent from whom support is being sought or other person pursuant to paragraph *l*or paragraph (n), the department shall be a party only with respect to those issues of support allowed and reimbursable under Title IV-D of the Social Security Act. It is the responsibility of the parent from whom support is being sought or other person to take the necessary steps to present other issues for the court to consider.

(n) That if the parent from whom support is being sought files an action in circuit court and serves the department with a copy of the petition within 20 days after being served notice under this subsection, the administrative process ends without prejudice and the action must proceed in circuit court;

(o) Information provided by the Office of State Courts Administrator concerning the availability and location of self-help programs for those who wish to file an action in circuit court but who cannot afford an attorney.

The department may serve the notice of proceeding to establish administrative support order by certified mail, restricted delivery, return receipt requested. Alternatively, the department may serve the notice by any means permitted for service of process in a civil action. For purposes of this section, an authorized employee of the department may serve the notice and execute an affidavit of service. Service by certified mail is completed when the certified mail is received

or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. The department shall provide the parent from whom support is not being sought or the caregiver with a copy of the notice by regular mail to the last known address of the parent from whom support is not being sought or caregiver.

(5) *Proposed administrative support order.*.

(a) After serving notice upon a parent in accordance with subsection (4), the department shall calculate that parent's child support obligation under the child support guidelines schedule as provided by *s. 61.30*, based on any timely financial affidavits received and other information available to the department. If either parent fails to comply with the requirement to furnish a financial affidavit, the department may proceed on the basis of information available from any source, if such information is sufficiently reliable and detailed to allow calculation of guideline schedule amounts under *s. 61.30*. If a parent receives public assistance and fails to submit a financial affidavit, the department may submit a financial affidavit or written declaration for that parent pursuant to *s. 61.30(15)*. If there is a lack of sufficient reliable information concerning a parent's actual earnings for a current or past period, it shall be presumed for the purpose of establishing a support obligation that the parent had an earning capacity equal to the federal minimum wage during the applicable period.

(b) The department shall send by regular mail to both parents, or to a parent and caregiver if applicable, copies of the proposed administrative support order, its completed child support worksheet, and any financial affidavits submitted by a parent or prepared by the department. The proposed administrative support order must contain the same elements as required for an administrative support order under paragraph (7)(e).

(c) The department shall provide a notice of rights with the proposed administrative support order, which notice must inform the parent from whom support is being sought that:

1. The parent from whom support is being sought may, within 20 days after the date of mailing or other service of the proposed administrative support order, request a hearing by filing a written request for hearing in a form and manner specified by the department;

2. If the parent from whom support is being sought files a timely request for a hearing, the case shall be transferred to the Division of Administrative Hearings, which shall conduct further proceedings and may enter an administrative support order;

3. A parent from whom support is being sought who fails to file a timely request for a hearing shall be deemed to have waived the right to a hearing, and the department may render an administrative support order pursuant to paragraph (7)(b);

4. The parent from whom support is being sought may consent in writing to entry of an administrative support order without a hearing;

5. The parent from whom support is being sought may, within 10 days after the date of mailing or other service of the proposed administrative support order, contact a department representative, at the address or telephone number specified in the notice, to informally discuss the proposed administrative support order and, if informal discussions are requested timely, the time for requesting a hearing will be extended until 10 days after the department notifies the parent that the informal discussions have been concluded; and

6. If an administrative support order that establishes a parent's support obligation is rendered, whether after a hearing or without a hearing, the department may enforce the administrative support order by any lawful means.

(d) If, after serving the proposed administrative support order but before a final administrative support order is rendered, the department receives additional information that makes it necessary to amend the proposed administrative support order, it shall prepare an amended proposed administrative support order, with accompanying amended child support worksheets and other material necessary to explain the changes, and follow the same procedures set forth in paragraphs (b) and (c).

(6) *Hearing.*. --If the parent from whom support is being sought files a timely request for hearing or the department determines that an evidentiary hearing is appropriate, the department shall refer the proceeding to the

Division of Administrative Hearings. Unless otherwise provided by this section, chapter 120 and the Uniform Rules of Procedure shall govern the conduct of the proceedings. The administrative law judge shall consider all available and admissible information and any presumptions that apply as provided by paragraph (5)(a).

(7) *Administrative support order.*.

(a) If a hearing is held, the administrative law judge of the Division of Administrative Hearings shall issue an administrative support order, or a final order denying an administrative support order, which constitutes final agency action by the department. The Division of Administrative Hearings shall transmit any such order to the department for filing and rendering.

(b) If the parent from whom support is being sought does not file a timely request for a hearing, the parent will be deemed to have waived the right to request a hearing.

(c) If the parent from whom support is being sought waives the right to a hearing, or consents in writing to the entry of an order without a hearing, the department may render an administrative support order.

(d) The department shall send by regular mail a copy of the administrative support order, or the final order denying an administrative support order, to both parents, or a parent and caregiver if applicable. The parent from whom support is being sought shall be notified of the right to seek judicial review of the administrative support order in accordance with *s. 120.68*.

(e) An administrative support order must comply with *ss. 61.13(1)* and *61.30*. The department shall develop a standard form or forms for administrative support orders. An administrative support order must provide and state findings, if applicable, concerning:

1. The full name and date of birth of the child or children;

2. The name of the parent from whom support is being sought and the other parent or caregiver;

3. The parent's duty and ability to provide support;

4. The amount of the parent's monthly support obligation;

5. Any obligation to pay retroactive support;

6. The parent's obligation to provide for the health care needs of each child, whether through health insurance, contribution toward the cost of health insurance, payment or reimbursement of health care expenses for the child, or any combination thereof;

7. The beginning date of any required monthly payments and health insurance;

8. That all support payments ordered must be paid to the Florida State Disbursement Unit as provided by *s. 61.1824*;

9. That the parents, or caregiver if applicable, must file with the department when the administrative support order is rendered, if they have not already done so, and update as appropriate the information required pursuant to paragraph (13)(b);

10. That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses pursuant to paragraph (13)(c); and

11. That if the parent ordered to pay support receives reemployment assistance or unemployment compensation benefits, the payor shall withhold, and transmit to the department, 40 percent of the benefits for payment of support, not to exceed the amount owed.

An income deduction order as provided by *s. 61.1301* must be incorporated into the administrative support order or, if not incorporated into the administrative support order, the department or the Division of Administrative Hearings shall render a separate income deduction order.

(8) *Filing with the clerk of the circuit court; official payment record; judgment by operation of law.* --The department shall file with the clerk of the circuit court a certified copy of an administrative support order rendered under this section. The depository operated pursuant to *s. 61.181* for the county where the administrative support order has been filed shall:

(a) Act as the official recordkeeper for payments required under the administrative support order;

(b) Establish and maintain the necessary payment accounts;

(c) Upon a delinquency, initiate the judgment by operation of law procedure as provided by *s. 61.14(6)*; and

(d) Perform all other duties required of a depository with respect to a support order entered by a court of this state.

When a proceeding to establish an administrative support order is commenced under subsection (4), the department shall file a copy of the initial notice with the depository. The depository shall assign an account number and provide the account number to the department within 4 business days after the initial notice is filed.

(9) *Collection action; enforcement.*

(a) The department may implement an income deduction notice immediately upon rendition of an income deduction order, whether it is incorporated in the administrative support order or rendered separately.

(b) The department may initiate other collection action 15 days after the date an administrative support order is rendered under this section.

(c) In a subsequent proceeding to enforce an administrative support order, notice of the proceeding that is sent by regular mail to the person's address of record furnished to the department constitutes adequate notice of the proceeding pursuant to paragraph (13)(c).

(d) An administrative support order rendered under this section has the same force and effect as a court order and, until modified by the department or superseded by a court order, may be enforced:

1. In any manner permitted for enforcement of a support order issued by a court of this state, except for contempt; or

2. Pursuant to *s. 120.69*.

(10) *Judicial review, enforcement, or court order superseding administrative support order.*

(a) The obligor has the right to seek judicial review of an administrative support order or a final order denying an administrative support order in accordance with *s. 120.68*. The department has the right to seek judicial review, in accordance with *s. 120.68*, of an administrative support order or a final order denying an administrative support order entered by an administrative law judge of the Division of Administrative Hearings.

(b) An administrative support order rendered under this section has the same force and effect as a court order and may be enforced by any circuit court in the same manner as a support order issued by the court, except for contempt. If the circuit court issues its own order enforcing the administrative support order, the circuit court may enforce its own order by contempt. The presumption of ability to pay and purge contempt established in *s. 61.14(5)(a)* applies to an administrative support order that includes a finding of present ability to pay. Enforcement by the court, without any change by the court in the support obligations established in the administrative support order, does not supersede the administrative support order or affect the department's authority to modify the administrative support order as provided by subsection (12). An order by the court that requires a parent to make periodic payments on arrearages does not constitute a change in the support obligations established in the administrative support order and does not supersede the administrative order.

(c) A circuit court of this state, where venue is proper and the court has jurisdiction of the parties, may enter an order prospectively changing the support obligations established in an administrative support order, in which case the administrative support order is superseded and the court's order shall govern future proceedings in the case. Any unpaid support owed under the superseded administrative support order may not be retroactively modified by the circuit court, except as provided by *s. 61.14(1)(a)*, and remains enforceable by the department, by the obligee, or by the court. In all cases in which an administrative support order is superseded, the court shall determine the amount of any unpaid support owed under the administrative support order and shall include the amount as arrearage in its superseding order.

(11) *Effectiveness of administrative support order.* --An administrative support order rendered under this section has the same force and effect as a court order and remains in effect until modified by the department, vacated on appeal, or superseded by a subsequent court order. If the department closes a Title IV-D case in which an administrative support order has been rendered:

(a) The department shall take no further action to enforce or modify the administrative support order;

(b) The administrative support order remains effective until superseded by a subsequent court order; and

(c) The administrative support order may be enforced by the obligee by any means provided by law.

(12) *Modification of administrative support order.* --If it has not been superseded by a subsequent court order, the department may modify, suspend, or terminate an administrative support order in a Title IV-D case prospectively, subject to the requirements for modifications of judicial support orders established in chapters 61 and 409, by following the same procedures set forth in this section for establishing an administrative support order, as applicable.

(13) *Required disclosures; presumptions; notice sent to address of record..* --In all proceedings pursuant to this section:

(a) Each parent must execute and furnish to the department, no later than 20 days after receipt of the notice of proceeding to establish administrative support order, a financial affidavit in the form prescribed by the department. An updated financial affidavit must be executed and furnished to the department at the inception of each proceeding to modify an administrative support order. A caregiver is not required to furnish a financial affidavit.

(b) Each parent and caregiver, if applicable, shall disclose to the department, no later than 20 days after receipt of the notice of proceeding to establish administrative support order, and update as appropriate, information regarding his or her identity and location, including names he or she is known by; social security number; residential and mailing addresses; telephone numbers; driver's license numbers; and names, addresses, and telephone numbers of employers. Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each person must provide his or her social security number in accordance with this section. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement.

(c) Each parent and caregiver, if applicable, has a continuing obligation to promptly inform the department in writing of any change in his or her mailing address to ensure receipt of all subsequent pleadings, notices, payments, statements, and orders, and receipt is presumed if sent by regular mail to the most recent address furnished by the person.

(14) *Judicial pleadings and motions.* --A party to any subsequent judicial proceeding concerning the support of the same child or children shall affirmatively plead the existence of, and furnish the court with a correct copy of, an administrative support order rendered under this section, and shall provide the department with a copy of the initial pleading. The department may intervene as a matter of right in any such judicial proceeding involving issues within the scope of the Title IV-D case.

(15) *Provisions supplemental to existing law.* --This section does not limit or negate the department's authority to seek establishment of child support obligations under any other applicable law.

(16) *Rulemaking authority.* --The department may adopt rules to administer this section.

HISTORY: S. 30, ch. 2001-158; s. 10, ch. 2002-173; s. 3, ch. 2002-239; s. 12, ch. 2004-334; s. 65, ch. 2005-2; s. 26, ch. 2005-39; s. 21, ch. 2008-61, eff. Oct. 1, 2008; s. 56, ch. 2009-21, eff. July 7, 2009; s. 6, ch. 2009-90, eff. May 27, 2009; s. 8, ch. 2010-187, eff. June 3, 2010; s. 62, ch. 2012-30, eff. July 1, 2012.

NOTES:

AMENDMENTS

The 2004 amendment by s. 12, ch. 2004-334, effective June 18, 2004, rewrote (4)(m); added the paragraph following (8)(d); and in (17)(b), substituted "June 30, 2006" for "January 31, 2005."

The 2005 amendment by s. 65, ch. 2005-2, effective July 5, 2005, inserted "Florida" preceding "Rules of Civil Procedure" in (4)(m)3.; and deleted (17)(a), an obsolete provision relating to establishment and evaluation of a study area.

The 2005 amendment by s. 26, ch. 2005-39, effective January 1, 2006, inserted "except for a determination of paternity as provided in *s. 409.256*," following "disputed paternity" in (2)(b); and in (2)(c) inserted "or whose paternity is the subject of a proceeding under *s. 409.256*," preceding "the department may establish."

The 2008 amendment by s. 21, ch. 2008-61, effective October 1, 2008, throughout the section deleted the terms "noncustodial parent" and "custodial parent," and substituted the terms "parent from whom support is being sought" or "obligor," and "parent from whom support is not being sought," respectively, as appropriate; substituted "time-sharing"

for references to custody and/or visitation; inserted "schedule" following references to the child support guidelines; deleted former (17), relating to an evaluation of the implementation of the administrative process for establishing child support, to be conducted by the Office of Program Policy Analysis and Government Accountability by June 30, 2006; and made minor stylistic changes throughout.

The 2009 by s. 56, ch. 2009-21, amendment made a stylistic change.

The 2009 amendment by s. 6, ch. 2009-90, substituted "*ss. 61.13(1)* and *61.30*" for "*s. 61.30*" in the introductory language of (7)(e); substituted "health insurance" for "insurance coverage" twice in (7)(e)6.; and substituted "insurance" for "care coverage" in (7)(e)7.

The 2010 amendment rewrote (1)(b), which formerly read: ""caretaker relative' has the same meaning ascribed in *s. 414.0252(11)*"; substituted "caregiver" for "caretaker relative" throughout the section; substituted "caregiver" for "caretaker" at the end of the last sentence of the last paragraph of (4); added "or written declaration" in the third sentence of (5)(a); in the first sentence of (6), added "or the department determines that an evidentiary hearing is appropriate" and substituted "proceeding" for "hearing request"; and made stylistic changes.

The 2012 amendment added "reemployment assistance or" in (7)(e)11.

NOTE.--

Section 93, ch. 2012-30 provides: "If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provision of the act are severable."

FLORIDA STATUTES REFERENCES

Chapter 61. Dissolution of Marriage; Support; Time-Sharing, *F.S. § 61.1301*. Income deduction orders.

Chapter 120. Administrative Procedure Act, *F.S. § 120.80*. Exceptions and special requirements; agencies.

Chapter 409. Social and Economic Assistance, *F.S. § 409.256*. Administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing.

Chapter 409. Social and Economic Assistance, *F.S. § 409.2561*. Support obligations when public assistance is paid; assignment of rights; subrogation; medical and health insurance information.

FLORIDA ADMINISTRATIVE CODE REFERENCES

Chapter 12-2 Organization and General Information, *F.A.C. 12-2.023* Final Orders Required to be Indexed.

LexisNexis (R) Notes:

CASE NOTES

1. Department of Revenue (DOR) lacked authority to bring an action to modify child support because neither parent nor the child were receiving public assistance, the mother never enlisted the DOR's assistance in her child support enforcement action, and the DOR never instituted such an action; the trial court's dismissal of the modification action brought by the DOR based on the DOR's lack of standing was not a departure from the essential requirements of law, even if the court's reasoning was flawed, and certiorari was unavailable. *Dep't of Revenue v. McLeod, 2012 Fla. App. LEXIS 9750* (Fla. 1st DCA June 18, 2012), opinion withdrawn by, substituted opinion at *2012 Fla. App. LEXIS 13717* (Fla. Dist. Ct. App. 1st Dist. Aug. 17, 2012).

2. Where father timely requested paternity determination, a proceeding to establish an administrative support order should have been considered by a circuit court because neither the Florida Department of Revenue not Division of Administrative Hearings had jurisdiction under *Fla. Stat. § 409.2563* to consider disputed paternity. *Mendez v. Dep't of Revenue, 898 So. 2d 1060, 2005 Fla. App. LEXIS 3521 (Fla. 2nd DCA 2005).*

3. Circuit court's order directing a father, as well as the mother and child, to submit to DNA testing to establish paternity, even though the father previously signed an acknowledgment of paternity, amounted to a clear departure from the essential requirements of law, as: (1) the Department was not required to halt the administrative process and continue in circuit court once the request for paternity testing was made; and (2) neither the Department nor the Division of Administrative Hearing had jurisdiction over paternity issues under *Fla. Stat. § 409.2563(2)(b). Dep't of Revenue, Child Support Enforcement Program ex rel. Gardner v. Long, 937 So. 2d 1235, 2006 Fla. App. LEXIS 15806 (Fla. 1st DCA 2006).*

4. Order requiring DNA paternity testing in a proceeding seeking enforcement of a final administrative support order, issued on the recommendation of a child support enforcement hearing officer, was error because, inter alia, the putative father presented no proof of fraud, duress, material mistake of fact, or newly discovered evidence that would have disestablished paternity under *Fla. Stat. § 742.10(4)*; the putative father neither provided a copy of the birth certificate to show that he did not sign it, nor provided any other evidence. Similarly, the letter to the trial court did not present sufficient grounds to disestablish paternity under *Fla. Stat. § 742.18(1)*, Fla. Stat. as it did not include the two required affidavits and did not contain the results of a paternity test, which was required by § 742.18(1)(b). *Dep't of Revenue ex rel. Carnley v. Lynch, 53 So. 3d 1154, 2011 Fla. App. LEXIS 1440 (Fla. 1st DCA 2011).*

5. Administrative order that a mother pay a grandmother child support was error because the mother was not the parent from whom support was being sought within the meaning of *Fla. Stat. § 409.2563*, and the statute did not authorize a child support order against the parent from whom support was not being sought; however, the order requiring the father to pay support to the grandmother was proper because *Fla. Stat. § 409.2558(8)* allowed redirection of payments from the person obligated for child support to the person with whom the child resided. *Dep't of Revenue ex rel. Smith v. Selles, 47 So. 3d 916, 2010 Fla. App. LEXIS 17143 (Fla. 1st DCA 2010).*

6. Circuit court erred in vacating the Florida Department of Revenue's administrative child support order because the circuit court lacked jurisdiction to vacate the administrative support order. *Fla. Stat. §§ 409.2563(10)(a)*, *120.68(2)(a)*, and *409.2563(10)(c) (2006)* authorize a circuit court to supersede the entry of an administrative support order by entering only a prospective order modifying the child support award; these provisions clearly do not authorize the trial court to enter an order expressly vacating, or retroactively affecting, the administrative support order. *Dep't of Revenue v. Manasala, 982 So. 2d 1257, 2008 Fla. App. LEXIS 8098 (Fla. 1st DCA 2008).*

7. Circuit court erred in vacating the Florida Department of Revenue's administrative child support order because the circuit court lacked jurisdiction to vacate the administrative support order. *Fla. Stat. §§ 409.2563(10)(a)*, *120.68(2)(a)*, and *409.2563(10)(c) (2006)* authorize a circuit court to supersede the entry of an administrative support order by entering only a prospective order modifying the child support award; these provisions clearly do not authorize the trial court to enter an order expressly vacating, or retroactively affecting, the administrative support order. *Dep't of Revenue v. Manasala, 982 So. 2d 1257, 2008 Fla. App. LEXIS 8098 (Fla. 1st DCA 2008).*

8. Determination of father's child support obligation based on the income of the child's maternal grandmother, with whom the child resided, rather than on the mother's income was error; only the child's parents were required to submit financial affidavits and the support obligation was to be determined under the child support guidelines bases on those affidavits. *Dep't of Revenue ex rel. Roberson v. Chaney, 90 So. 3d 883, 2012 Fla. App. LEXIS 9184 (Fla. 1st DCA 2012).*

9. Petition for a writ of certiorari filed by the Department of Revenue (DOR) to quash an order dismissing its application for modification of a father's child support was denied because the mother never enlisted DOR's assistance in her child support enforcement action, and DOR never instituted such an action; the authority of the Department of Revenue (DOR) to seek modification to a child support order exists only when either party or the child is receiving public assistance, or when the obligor has failed to make support payments and DOR is called upon by the custodial parent to assist in enforcing a child support order. *Dep't of Revenue v. McLeod, 2012 Fla. App. LEXIS 13717* (Fla. 1st DCA Aug. 17, 2012).

10. Department of Revenue (DOR) does not have standing to seek a modification of child support on behalf of a non-custodial parent obligated to pay support, unless either party or the child is receiving public assistance, or when the obligor has failed to make support payments and DOR is called upon by the custodial parent to assist in enforcing a child support order; non-custodial parent may seek the assistance of the Department of Revenue to modify a child support order, but only with respect to a support order being enforced under *Federal Title IV-D Dep't of Revenue v. McLeod, 2012 Fla. App. LEXIS 13717* (Fla. 1st DCA Aug. 17, 2012).

11. Department of Revenue (DOR) lacked authority to bring an action to modify child support because neither parent nor the child were receiving public assistance, the mother never enlisted the DOR's assistance in her child support enforcement action, and the DOR never instituted such an action; the trial court's dismissal of the modification action brought by the DOR based on the DOR's lack of standing was not a departure from the essential requirements of law, even if the court's reasoning was flawed, and certiorari was unavailable. *Dep't of Revenue v. McLeod, 2012 Fla. App. LEXIS 9750* (Fla. 1st DCA June 18, 2012), opinion withdrawn by, substituted opinion at *2012 Fla. App. LEXIS 13717* (Fla. Dist. Ct. App. 1st Dist. Aug. 17, 2012).

12. Court order was not a superseding order under *Fla. Stat. § 409.2563(10)(c)* because it did not prospectively change a child support obligation; rather, it was an enforcement order and did not divest the Department of Revenue of jurisdiction to enter an administrative modification order. The trial court's order vacating the Department's modification order was in essence an order vacating or retroactively affecting an administrative child support order, which the trial court lacked authority to do. *Dep't of Revenue ex rel. Gauthier v. Hoover, 40 So. 3d 99, 2010 Fla. App. LEXIS 10456 (Fla. 5th DCA 2010).*

13. Administrative order that a mother pay a grandmother child support was error because the mother was not the parent from whom support was being sought within the meaning of *Fla. Stat. § 409.2563*, and the statute did not authorize a child support order against the parent from whom support was not being sought; however, the order requiring the father to pay support to the grandmother was proper because *Fla. Stat. § 409.2558(8)* allowed redirection of payments from the person obligated for child support to the person with whom the child resided. *Dep't of Revenue ex rel. Smith v. Selles, 47 So. 3d 916, 2010 Fla. App. LEXIS 17143 (Fla. 1st DCA 2010).*

14. Where father timely requested paternity determination, a proceeding to establish an administrative support order should have been considered by a circuit court because neither the Florida Department of Revenue not Division of Administrative Hearings had jurisdiction under *Fla. Stat. § 409.2563* to consider disputed paternity. *Mendez v. Dep't of Revenue, 898 So. 2d 1060, 2005 Fla. App. LEXIS 3521 (Fla. 2nd DCA 2005).*

15. Because both *Fla. Stat. §§ 742.18* and § 742.10(4) provided that a father who acknowledged paternity remained responsible for child support until he established good cause or prevailed in his own action in court to disestablish paternity and terminate the payment obligations, and neither of those circumstances occurred, the child support order was proper; however, the father was still allowed to commence an action to disestablish paternity. *Fernandez v. Dep't of Revenue, 971 So. 2d 875, 2007 Fla. App. LEXIS 18550 (Fla. 3rd DCA 2007).*

16. Order requiring DNA paternity testing in a proceeding seeking enforcement of a final administrative support order, issued on the recommendation of a child support enforcement hearing officer, was error because, inter alia, the putative father presented no proof of fraud, duress, material mistake of fact, or newly discovered evidence that would have disestablished paternity under *Fla. Stat. § 742.10(4)*; the putative father neither provided a copy of the birth certificate to show that he did not sign it, nor provided any other evidence. Similarly, the letter to the trial court did not present sufficient grounds to disestablish paternity under *Fla. Stat. § 742.18(1)*, Fla. Stat. as it did not include the two required affidavits and did not contain the results of a paternity test, which was required by § 742.18(1)(b). *Dep't of Revenue ex rel. Carnley v. Lynch, 53 So. 3d 1154, 2011 Fla. App. LEXIS 1440 (Fla. 1st DCA 2011).*

17. Petition for a writ of certiorari filed by the Department of Revenue (DOR) to quash an order dismissing its application for modification of a father's child support was denied because the mother never enlisted DOR's assistance in her child support enforcement action, and DOR never instituted such an action; the authority of the Department of Revenue (DOR) to seek modification to a child support order exists only when either party or the child is receiving public assistance, or when the obligor has failed to make support payments and DOR is called upon by the custodial parent to assist in enforcing a child support order. *Dep't of Revenue v. McLeod, 2012 Fla. App. LEXIS 13717* (Fla. 1st DCA Aug. 17, 2012).

18. Department of Revenue (DOR) does not have standing to seek a modification of child support on behalf of a non-custodial parent obligated to pay support, unless either party or the child is receiving public assistance, or when the obligor has failed to make support payments and DOR is called upon by the custodial parent to assist in enforcing a child support order; non-custodial parent may seek the assistance of the Department of Revenue to modify a child support order, but only with respect to a support order being enforced under *Federal Title IV-D Dep't of Revenue v. McLeod, 2012 Fla. App. LEXIS 13717* (Fla. 1st DCA Aug. 17, 2012).

TREATISES AND ANALYTICAL MATERIALS

1. *Florida Family Law, Division IV Dissolution of Marriage, Chapter 33 Child Support, Part I. Legal Background, § 33.08* Administrative Orders Establishing Child Support.

STATE BAR PUBLICATION

1. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, III. Determination of Paternity, B. Administrative Proceedings, 4. Paternity Proceedings, a. [§4.29] In General.

2. Adoption, Paternity, And Other Florida Family Practice, Chapter 4. Paternity, III. Determination of Paternity, B. Administrative Proceedings, 5. [§4.31] Final Order.

3. Florida Dissolution of Marriage, 12 Child Support, II. Establishment of Support, H. [§ 12.28] Administrative Establishment of Support.

4. Florida Proceedings After Dissolution of Marriage, Chapter 3 Enforcement, 3-B Enforcement of Support, VII. Other Remedies for Support Enforcement, A. [§3.79] Child Support Enforcement.

5. Florida Proceedings After Dissolution of Marriage, Chapter 8 Uniform Interstate Family Support Act, I. Introduction, C. [§8.3] Definitions.

6. Florida Proceedings After Dissolution of Marriage, Chapter 8 Uniform Interstate Family Support Act, II. Practice and Procedure, C. Florida as Responding State, 7. [§8.23] Enforcement.

7. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, I. [§10.1] Introduction.

8. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, II. [§10.2] Title IV-D Terminology.

9. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, V. Types of Services Provided, B. Enforcement Services, 1. [§10.17] Civil and Criminal Contempt Proceedings.

10. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, VII. Expedited Processes, C. Administrative Support Orders, 1. [§10.54] In General.

11. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, VII. Expedited Processes, C. Administrative Support Orders, 2. Administrative Support Proceedings, a. [§10.55] Notice.

12. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, VII. Expedited Processes, C. Administrative Support Orders, 2. Administrative Support Proceedings, b. [§10.56] Action in Circuit Court.

13. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, VII. Expedited Processes, C. Administrative Support Orders, 2. Administrative Support Proceedings, c. [§10.57] Proposed Administrative Order.

14. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, VII. Expedited Processes, C. Administrative Support Orders, 2. Administrative Support Proceedings, d. [§10.58] Contesting Order.

15. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, VII. Expedited Processes, C. Administrative Support Orders, 2. Administrative Support Proceedings, e. [§10.59] Amendment of Order.

16. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, VII. Expedited Processes, C. Administrative Support Orders, 2. Administrative Support Proceedings, f. [§10.60] Final Order.

17. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, VII. Expedited Processes, C. Administrative Support Orders, 2. Administrative Support Proceedings, g. [§10.61] Enforcement and Modification of Administrative Support Orders.

18. Florida Proceedings After Dissolution of Marriage, Chapter 10 The Child Support Enforcement Program, VII. Expedited Processes, C. Administrative Support Orders, 2. Administrative Support Proceedings, h. [§10.62] Judicial Review.