



Frequently
Asked
Questions
About
Child Support

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CHILD SUPPORT OVERVIEW

Under Delaware law, both parents have a duty to support their child until the child is 18 years of age, or, if the child is still in high school, until the child graduates or turns 19 years of age, whichever comes first.

A support action begins when one parent files a support petition, requesting the Court to order the other parent to pay child support. After the petition is filed, the Court may order genetic testing to establish paternity, if necessary. Most parents seeking support are represented by the Division of Child Support Enforcement (DCSE). In those cases, DCSE files all actions and pursues administrative remedies also. The Court encourages all parents seeking support to explore the services of DCSE.

After filing a Petition for Child Support, the first time that individuals come to Family Court for a child support order, they must attend a mediation conference, unless it is a petition for child support from an out-of-state agency, which will be scheduled directly with a Commissioner. A Family Court mediator will use the Delaware Child Support Formula to calculate the support amount and try to help the parents reach an agreement as to a support amount. If parents cannot reach an agreement at the mediation conference, a temporary order may issue and a hearing before a Commissioner will occur either on the same day or on a future date.

The amount of child support is set using the Delaware Child Support Formula, sometimes called the "Melson Formula". The formula considers both parents' incomes and the needs of the child in arriving at a monthly figure. The formula is used in every case to ensure that the amount is fair and that children receive enough support.



CHILD SUPPORT OVERVIEW, cont'd

If a parent fails to pay support as ordered, DCSE or the person entitled to receive support may file a petition for “arrears”. At the hearing, an additional amount may be added to the order and remedies such as license suspension or incarceration may be considered. Attachment of wages is the most common remedy and will occur upon identification of an employer. An arrears petition is not required for a wage attachment.

Upon a substantial change in circumstances, either parent may file a Petition for Child Support Modification.

THE CHILD SUPPORT PROCESS

The Petitioner or DCSE starts the Child Support Process by filing a Petition for Support with the Court.



The Respondent **must** be served with the Petition for Support and has the option of filing an Answer within 20 days after service.



The case will be scheduled for Mediation or Commissioner's hearing upon positive service, unless Mediation is prohibited.



The Petitioner and the Respondent reach an agreement at Mediation and a Consent Order is signed.



The Petitioner and the Respondent do **NOT** reach an agreement at Mediation and an Interim Order is entered.



Court hearing before a Commissioner. This may take place directly following mediation, or at a later scheduled date.



Chapter 1: General Information

What is the Delaware law regarding child support?

Both parents have a duty to support a child until the child is 18 years of age; or, if the child is still in high school until the child graduates or attains age 19, whichever occurs first. This is true regardless of whether the parents are, were, or never married.

-The Delaware law regarding support can be found in the Delaware Code, Title 13, Chapter 5.

How is the amount of the support order calculated?

The Delaware Child Support Formula is used to set the amount of the support order. It is based on both parents' incomes and the needs of the child. The Formula calculation must be performed for every case to ensure that the amount will be fair and the children will receive enough support. However, it may be challenged if there are special circumstances, and a different amount may be ordered.

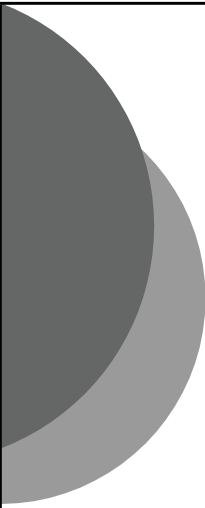
- Specific instructions for child support calculations are found in chapter 9 of this packet and Family Court Civil Rules 500-509.

What factors are taken into consideration in calculating the child support amount?

1. All earnings and income of both parents.
2. Support of other children.
3. The child's health care needs through health insurance or other means.
4. Child care/school expenses (daycare expenses necessary for the parents to work, but private school expenses only under limited circumstances).
5. Whether the child lives with both parents equally or primarily resides with one parent.

Will a wage attachment be ordered?

Yes, in most cases. If the parent is working, a wage attachment must be ordered by law and sent to the employer. DCSE issues all wage attachments. The employer must honor the wage attachment. If the parent changes jobs, the Court must be notified by the parent. The Court will direct DCSE to transfer the wage attachment to the new employer. Wage attachments are the best way to get regular payments for the child since the payments are made on the same schedule that the wages are paid (monthly, weekly, bi-weekly, etc.).



Chapter 1: General Information cont'd

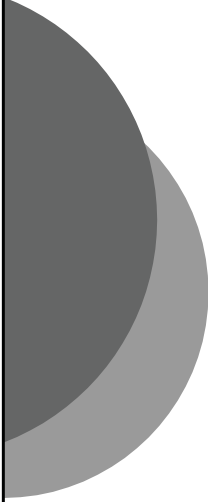
If the parent who pays support is not allowed visitation, must he/she continue to pay support?

Yes, visitation and child support are two separate issues. Support is for the child, and his/her needs do not end if visitation stops. If a Court order for visitation is not followed, the non-custodial parent may file a separate Rule to Show Cause Petition to enforce the order. Similarly, nonpayment of child support is not a justification for withholding visitation.

Where else can I find support regarding child support services? What kind of services would they provide?

The Division of Child Support Enforcement provides a full range of child support services to any individual who applies for services and pays an application fee.

The Division will file petitions in Family Court for child support, modification of support orders, and enforcement of support orders. The Division also may enforce support orders administratively by intercepting tax refunds and suspending licenses.



Division of Child Support Enforcement Information

The Division of Child Support Enforcement provides a full range of child support services to any individual who applies for services and pays an application fee. The Division will file petitions in Family Court for child support, modification of support orders and enforcement of support orders for its clients. The Division may also enforce support orders administratively by intercepting tax refunds and suspending licenses.

Below is contact information for the Division of Child Support Enforcement:

Customer service: Automated Assistance Lines– Toll Free
New Castle County: (302) 577-7171
Kent County: (302) 739-8299
Sussex County: (302) 856-5386

Office Locations

New Castle County	Kent County	Sussex County
Churchman's Corporate Center 84A Christiana Road New Castle, DE 19720	Carroll's Plaza 1114 S. DuPont Hwy. Suite # 101 Dover, DE 19901	9 Academy Street Georgetown, DE 19947

Chapter 2: Petition for Child Support

What do I file to ask for child support?

If the parents are not living together, either parent may ask the Court for a child support order. This is done by filing a Petition for Child Support.

-Sample Petition for Child Support may be found on page 8.

-When filling out the Petition for Support please note the following:

-Only check the first box if you are seeking *spousal* support (support before a divorce is pending).

-Check the second box if you are requesting the Respondent provide medical support (health insurance/out of pocket expenses) for the child(ren).

-Check the third box if you want the child support to be retroactive (you want the court to order child support prior to the date of filing the Petition).

Is there a fee associated with the filing of a petition?

There are no filing fees in cases where either parent is a client of DCSE. In all other cases, the Court charges a fee for filing petitions. However, the fee may be waived if an individual is unable to pay it. To request that the fee be waived, you must complete the Application to Proceed In Forma Pauperis.

What happens after a Petition for Support is filed?

After a Petition for Support is filed, the Respondent will receive a copy of the Petition and has the option of filing an answer within 20 days after being served. Both parties will then receive notice of a scheduling date for a mediation conference or hearing before a Commissioner.

Do I need to attach any evidence to my Petition for Support?

No. Evidence such as pay stubs, child care bills, etc. will be reviewed at the mediation conference and/or hearing, if one is necessary. You do not need to attach any documentation to the Petition for Support.

Do I need to state how much child support I want on my Petition?

No. Child Support is calculated based on a formula that considers many factors including, but not limited to the incomes of both parties and expenses for the child.

The Family Court of the State of Delaware

In and For New Castle Kent Sussex County

File in the county in which you are filing.

PETITION FOR SUPPORT

DCSE # _____

Fill in information about the Petitioner (person requesting support) and Respondent (person being asked to pay support).

Petitioner Name Sarah Smith			Respondent Name Michael Jones			File Number CK04-0221	
Street Address 111 South Oak Street			Street Address 555 Main Street			Petition Number	
Apt. or P.O. Box Number			Apt. or P.O. Box Number				
City	State	Zip Code	City	State	Zip Code		
Dover	DE	19901	Dover	DE	19901		
Social Security Number	Date of Birth		Social Security Number	Date of Birth			
111-22-3333	2/25/1973		444-55-6666	3/14/1977			
Attorney Name and Phone Number			Attorney Name and Phone Number				
n/a			n/a				
Driver's License #:	State:		Driver's License #:	State:			
345678	DE		987654	DE			
Employer: ABC Corporation			Employer: DEF Corporation				
Employer Address: 123 South Street			Employer Address: 456 North Street				
Dover, DE 19901			Dover, DE 19901				

IN THE INTEREST OF the following child(ren):

Name	Date of Birth	Name	Date of Birth
Shawn Jones	5/25/1995		
Social Security Number:		Social Security Number:	
Name	Date of Birth	Name	Date of Birth
Social Security Number:		Social Security Number:	
Name	Date of Birth	Name	Date of Birth
Social Security Number:		Social Security Number:	

Fill in child(ren) information here. If you are asking for support for children with different fathers, you must file a separate petition for each child.

RESPONDENT owes legal duty of support to PETITIONER.

Only check this box if you are requesting *spousal* support.

1. PETITIONER requires the sum of \$ _____ per _____ for spousal support.

RESPONDENT owes legal duty of support to Children.

1. PETITIONER requests that the Delaware Child Support Formula be used to determine the appropriate obligation.

PETITIONER requests that the RESPONDENT be ordered to provide Medical Support in the form of health insurance for the child(ren); to provide the PETITIONER with current insurance documents; and to provide unreimbursed health care expenses as required by the Delaware Child Support Formula.

Check this box to request child support.

Check these boxes to tell the court if you want Respondent to be responsible for health insurance

PETITIONER requests that the RESPONDENT be ordered to pay support retroactive to 1/1/2006 (up to a maximum of two years prior to the date of filing), with credit given for support provided, if any.

and/or if you want support ordered to pay support retroactive to

2. PETITIONER alleges the following:

RESPONDENT has refused or failed to comply with said duty without just cause.
 RESPONDENT has been providing some support.

Check one of these boxes to explain to the Court whether Respondent has been paying any support.

WHEREFORE, PETITIONER prays that a Summons be issued to RESPONDENT.

3/1/2008

Date

Sarah Smith

Petitioner/Attorney

Chapter 3: Mediation Conference

What happens at a mediation conference?

The first time parties come to Court for a child support order, they must attend a mediation conference. A Family Court mediator will use the Delaware Child Support Formula to calculate the support amount, and help the parents to come to an agreement.

Do parties have to go to a mediation conference to get a child support order?

Yes, a mediation conference is the first step, unless mediation is prohibited by statute or Court Rule. Most parents reach an agreement during the mediation conference, and a child support consent order is signed. If the parents cannot agree, an interim or temporary order may be issued. Then a hearing before a commissioner will be scheduled to determine the amount of child support and issue a permanent order.

What do I need to bring to the mediation conference?

You must to bring any evidence of your income and expenses for your child(ren).

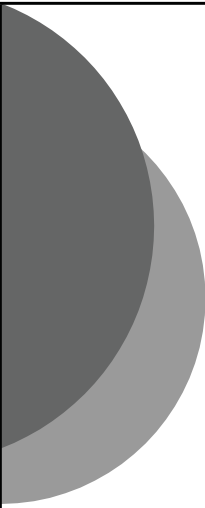
Adequate documentation of income includes, but is not limited to:

- recent tax returns
- W-2 Forms
- a party's three most recent pay stubs
- documentation of payments from Social Security
- documentation of payments from Unemployment Compensation
- documentation of payments from Worker's Compensation
- a recent physician's statement as to any claimed disability

Self-employed individuals must also bring a "Schedule C" tax form and supporting documentation for significant expense categories.

Adequate documentation of child care expenses may include, but is not limited to:

- cancelled checks used as payment for childcare
- childcare contracts
- receipts of payment for childcare



Chapter 3: Mediation Conference cont'd

What happens if a party does not bring documentation of income and expenses to the mediation conference?

Failure to bring documentation of income may result in the Court “attributing income” to that party. This means that the Court will determine how much income the party should be earning based on their education, training and experience and will use that number in the calculation. If this number is more than the party actually makes, it will result in a higher child support payment. Therefore, it is in each party’s best interest to bring documentation of income.

Failure to bring documentation of expenses may result in the dismissal of your petition or a result contrary to your interests.

What happens if the parties cannot agree at mediation?

If the parties cannot agree on a support amount at the mediation conference, an interim or temporary order may be issued. A hearing then will be scheduled before a Commissioner.

Chapter 4: Inter-state registration

If I relocate to another state, do I still have to pay child support orders from the state that originally issued them?

Yes. The Uniform Interstate Family Support Act (“UIFSA”) requires states to enforce child support orders entered by other states.

If I register my out-of-state child support order in Delaware, can it be modified in Delaware?

UIFSA prohibits states from modifying child support orders from other states unless certain jurisdictional requirements are met. Modification of the order can only occur under very strict circumstances. An existing support order can be registered as often as needed when an obligor relocates from state to state.

If I have a support order against me from another state and I move to Delaware, is this order still binding?

Yes. Under UIFSA, a support order or income-withholding order issued by another state may be registered in this State for enforcement.

How do I go about registering a child support order from another state in Delaware?

To register your out-of-state child support order in Delaware, you must complete an Affidavit and Request to Register a Foreign Support Order. You must file this form, along with two copies of the most recent foreign support order, one of which must be certified by the Court that issued it.

-a sample of this form may be found on page 12-13.

What happens after I file the Affidavit and Request to Register the Foreign Support Order?

The Court will register the foreign support order and send a letter to the other party informing them that the order has been registered in Delaware. The other party may oppose the registration within 20 days. The Court will then hold a hearing. If the other party does not oppose the registration of the order, the order will remain registered in Delaware.

It is strongly recommended that anyone seeking to enforce an out of state child support order enlist the services of the Division of Child Support Enforcement.

The Family Court of the State of Delaware

In and For New Castle Kent Sussex County

Check the county in which you are filing.

AFFIDAVIT AND REQUEST TO REGISTER A FOREIGN SUPPORT ORDER

(If the Petitioner is the party requesting the support order to be registered, and Respondent (the other party in the original order).)

Petitioner

Respondent

Name Sarah Smith			Name Michael Jones			File Number CK04-0221	
Street Address 111 South Oak Street			Street Address 555 Main Street			Petition Number	
Apt. or P.O. Box Number			Apt. or P.O. Box Number				
City Dover	State DE	Zip Code 19901	City Dover	State DE	Zip Code 19901		
Social Security Number 111-22-3333	Date of Birth 2/25/1973		Social Security Number 444-55-6666	Date of Birth 3/14/1977			
Attorney Name and Phone Number n/a			Attorney Name and Phone Number n/a				

BE IT REMEMBERED, that on this date, April 17, 2008

Sarah Smith

("Petitioner"), who, being duly sworn by me according to

The law personally appeared before me, a Notary Public for the State and County declared above, did depose and say:

1. I hereby request that the Family Court of the State of Delaware register the attached support order issued by a court of another state.
2. I have attached two (2) copies of said Order, at least one (1) of which is a certified copy.
3. To the best of my knowledge and belief, the arrearages owed are: \$ 2,400.
4. I have provided below the name, address and social security number of the obligor, listed as Respondent, above.
5. The name and address of the obligor's employer is:

Fill in the amount of arrears currently owed.

Name DEF Corporation		
Street Address 456 North Street		
Apt. or P.O. Box Number		
City Dover	State DE	Zip Code 19901

Fill in information about the Respondent's employer.

6. If the obligor owns property in Delaware that is not exempt from execution, that property is located at the following address:

Fill in information about any property that the Respondent owns.

Street Address		
555 Main Street		
Apt. or P.O. Box Number		
City	State	Zip Code
Dover	DE	19901

7. I have simultaneously filed a petition or comparable pleading seeking enforcement of this Order.

In order to request that the Court register your foreign support order, you must also be asking that the Court enforce that support order. Therefore, you must also file a separate pleading requesting enforcement.

Sign in the presence of a notary.

Sarah Smith

Affiant

SWORN TO AND SUBSCRIBED before me this date April 17, 2008

This portion will be completed by a notary/court staff.

Donna King
Notary Public

Chapter 5: Genetic Testing

I am not sure of the paternity of my child. What can be done?

The Court may order genetic testing to establish paternity.

If the father denies paternity, what can be done?

The Court may order genetic testing. An appointment will be made for the man, mother, and child at a laboratory. Samples of blood or other genetic matter will be taken and tested. The tests can prove that the man is not the father, or they can provide evidence that he is the father.

What is the process for genetic testing?

Genetic testing may be ordered by the Court or requested by one or both parties. If a party wishes genetic testing to be performed, the party may file a Petition for Parentage Determination. The case will then be scheduled for a mediation conference where the court mediator will have the parties sign a Consent Order for Genetic Testing, or will be scheduled for a hearing with a Commissioner. The parties will then have 30 days to provide the Court with the genetic testing fee of \$108 for mother, father, and child and an added \$36 for each additional person tested (prices may be subject to change). Once the Court receives payment, an appointment will be made for the parties at Lab-corp.

How long does it take to get results?

Results of genetic testing are usually received by the Court within 30 days of the date that ALL parties are tested.

How will I be notified of the results?

The Court will notify you of the results of the genetic test by mail. Results will not be given over the telephone due to confidentiality.

What will happen after paternity is determined?

After the genetic testing is completed, the parties will be scheduled for their next court proceeding, unless paternity was the only issue.

Chapter 6: License Suspension & Restoration

Who can suspend my license if I don't pay child support?

Both the Division of Child Support Enforcement (DCSE) and the Family Court can suspend your driver's license.

How does DCSE suspend my license?

If you owe \$1,000 or more in past due child support and have not made a complete payment in the past 30 days, DCSE may send you a notice that it may suspend your driver's license. After you receive the letter, you may avoid suspension by:

- 1) your arrears in full **OR**
- 2) a payment plan agreement* **OR**
- 3) in writing, a DCSE administrative hearing.

** If a consent plan is agreed upon, one missed payment will result in suspension.*

How can I get my license back if it is suspended by DCSE?

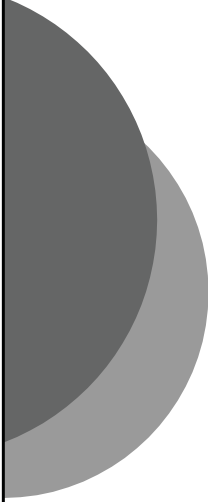
If DCSE suspended your license, you must either pay off your balance or enter into a payment agreement with DCSE.

-If those options are not available and it has been more than 2 ½ years since current support was established or modified, you can file a petition for child support modification. If it has been less than 2 ½ years, your child support modification petition must state a substantial change of circumstances not caused by your own voluntary or wrongful conduct and unrelated to license suspension. During the resulting mediation and hearings, license restoration can be addressed.

When can Family Court suspend my license?

License suspension occurs automatically when Family Court issues a *capias* for failure to appear at any paternity or child support proceeding. Upon resolution of the *capias* you must apply for reinstatement of your license at the Department of Motor Vehicle.

Family Court can suspend your license if it is found that you are in contempt in a child support arrears action. The Court can suspend a license but defer the suspension for six (6) months on condition of regular payments. At any time during the six-month period or within 30 days, DCSE can file a motion to



Chapter 6: License Suspension & Restoration

Cont'd

suspend the license or extend the deferral. DCSE cannot suspend your license during the period of deferral.

How can I get my license back if it is suspended by Family Court?

If you disagree with the Court's decision to suspend your license, you can file either:

- 1) A Motion for Re-argument to be considered by the Commissioner who ordered the suspension **OR**
- 2) A Review of a Commissioner's Order to be reviewed by a Family Court Judge upon payment of a filing fee and the costs associated with preparation of the transcript of the Commissioner's hearing, if any, provided it is filed within 30 days of the Commissioner's Order.

How can I get my license back when I've paid the arrears?

If you do not appeal the decision but believe later that you have done all that the Court required in its order of suspension, then you can file a Motion to Lift the Suspension.

If the Family Court or DCSE directs my license to be restored, can I start driving again?

No. You must go to the Department of Motor Vehicles and pay a reinstatement fee. Additionally, your license may not be reinstated if you have other restrictions unrelated to child support (i.e. unpaid traffic fines, DUI, etc.)

Chapter 7: Arrears & Contempt

What is arrears?

Arrears is the legal term for a type of debt that occurs after missed payments. In the case of child support, arrears refer to the accumulation of missed child support payments by the non-custodial parent.

If the non-custodial parent has accumulated arrears, what may the custodial parent file?

The custodial parent (or DCSE on their behalf) may file a Petition for Child Support Arrears. Respondent will then have the opportunity to file an Answer and a hearing may be held to allow Respondent to explain to the Court why the payments have not been made.

-A sample form may be found on page 19.

If the non-custodial parent has accumulated arrears, what may the Court do?

When arrears have accrued for 90 days under a support order, and the existing support order does not include payment on arrears, the amount of the order may be increased by 10 percent of the current support order or \$5.00, whichever is greater.

The Court may order the defendant to pay such support in accordance with a plan approved by the Court.

When does the obligation for payment of arrears terminate?

Obligation for payment of arrears or past due support shall terminate by operation of law when all arrears or past due support have been paid.

What are the penalties for accumulating and failing to pay arrears?

Any person who owes \$1,000 or more in arrears or retroactive support and is 30 or more days delinquent in payment of a child support order from either Family Court or the Division of Child Support Enforcement may have their license suspended as defined in Title 13 Delaware Code section 516. Additional penalties may include sanctions such as fines and, ultimately, jail.

Chapter 7: Arrears & Contempt

If incarceration is a possibility, will the Respondent be represented by an attorney?

If the possibility for incarceration for failure to pay support exists, the Respondent will receive the paperwork to request the appointment of an attorney. This request may be granted if the Court determines that the Respondent is indigent.

If I do not think that the custodial parent is using the support payments properly, what may I file?

You may file a Petition for Accounting of Support. In this Petition, you must establish good cause for the Court to order an accounting. If the Court finds good cause to believe that the support payments are not being used properly, they may order an accounting. This would require the custodial parent to demonstrate what they are using the support payments for. However, if you ask for an accounting and no good cause is shown, costs and fees will be assessed.

The Family Court of the State of Delaware

In and For New Castle Kent Sussex County

Check the county in which you are filing.

PETITION FOR CHILD SUPPORT ARREARS

Fill in the requested information about yourself (Petitioner) and the Respondent. **FILE NUMBER** CK04-0221 **PETITION NUMBER**

DCSE NUMBER _____

Petitioner

Name		DOB	
Sarah Smith		2/25/1973	
Street Address			
111 South Oak Street			
Apt. or P.O. Box Number			
City	State	Zip Code	
Dover	DE	19901	
Home Phone #	(302) 555-0099		
Work Phone #	(302) 255-0000		
Cell Phone #	(302) 999-9999		
Attorney Name and Phone Number			
n/a			
Employer:	ABC Corporation		
Employer Address:	123 South Street Dover, DE 19901		

Respondent

Name		DOB	
Michael Jones		3/14/1977	
Street Address			
555 Main Street			
Apt. or P.O. Box Number			
City	State	Zip Code	
Dover	DE	19901	
Home Phone #	(302) 467-9908		
Work Phone #	(302) 565-0707		
Cell Phone #	(302) 575-1111		
Attorney Name and Phone Number			
n/a			
Employer:	DEF Corporation		
Employer Address:	456 North Street Dover, DE 19901		

Enter the information about the child support order that Respondent has not made payments on.

The prior Court order dated 4/5/2006 required the respondent to pay \$ 400.00 current support plus \$ 50.00 arrears/back support per month :

The Petitioner seeks the Court to direct the Respondent to appear in this Court to show cause why RESPONDENT should not be held in contempt for the following:

Check the appropriate boxes to explain to the Court why the respondent has not complied with the Court to do.

- RESPONDENT has failed to comply with the Support Order mentioned above and is in arrears as of this date in the amount of \$ 2,400 and is therefore in contempt of said Order. The last payment was received on 10/1/2007.
- RESPONDENT has failed to comply with the medical provisions of this Order.
Basis for medical claim: _____
- Establish arrears and enter a judgment that can be recorded as a lien in the Office of the Prothonotary
- Other _____

Therefore, the Petitioner requests the child support obligation be enforced and that the Court impose such sanctions, penalties or other relief as deemed appropriate.

3/1/2008
Date

Sarah Smith
Petitioner/Attorney

Chapter 8: Calculating Child Support

The instructions found on pages 25-28 for child support calculation are a very detailed explanation of the factors that the Court will consider when determining the appropriate amount of child support to be paid. The following 3 pages offer some key points to remember. For a comprehensive list of factors that can affect your child support calculation, please review section XVII of the Family Court Civil Rules which are available online at <http://courts.delaware.gov/rules/FCSectionXVII2010.pdf>

Page 24 is a blank child support calculation that you may use to estimate the amount of child support that may be owed. An automated version of this calculation is available online at <http://courts.delaware.gov/family/>.

The Family Court of the State of Delaware has established the Delaware Child Support Formula under Family Court Civil Rule 52(c). This formula outlines the procedure for determining a child support obligation in the State of Delaware. The formula is found in the Family Court Rules of Civil Procedure, Rule 500 et seq. The formula is based on the following principles pursuant to 13 Delaware Code §514:

- Each parent is entitled to keep a minimum amount of income for their basic needs.
- Each child's basic needs are taken care of before the parents may retain any additional income.
- If income is available after the primary needs of the parents and each child are met, the child(ren) is (are) entitled to share in any additional income of the parents.

Chapter 8: Calculating Child Support cont'd

Things to keep in mind for child support calculations

The specific instructions for calculating child support are found on pages 25-28. The following are a few key points to remember:

The Melson Formula is a Rebuttable Presumption

-The Delaware Child Support Formula serves as a rebuttable presumption for establishing child support obligations in the State of Delaware. This means that the Court will use the Formula unless it finds that the results would not be in the best interest of the child(ren) or would be unfair to the parties involved.

Income Attribution

- Each party is attributed with their actual income, as shown on pay stubs, tax returns or other similar documents. The Court will attribute income to either party in the following situations:

- voluntary unemployment or unemployment due to misconduct
- underemployment (not working up to one's earning capacity based on training, education and experience)
- failure to provide sufficient evidence of income
- failure to appear at a mediation conference or court hearing

-The Court may use the Department of Labor wage surveys to estimate a party's earning capability.

-Every parent will be presumed to have an earning capacity of at least minimum wage, or \$1,478 per month.

-If a party receives unemployment or disability compensation, they must present evidence of this income at the mediation conference or hearing.

Chapter 8: Calculating Child Support cont'd

Child Care Expenses

The Melson Formula allows for the fair allocation of all expenses for child care required for the parent(s) to work. Child care expenses must be documented and presented at the mediation conference/hearing. Cancelled checks, childcare contracts and receipts are acceptable forms of documentation.

Private School

Private school expenses will only be included as primary expenses where:

- 1) the parties have adequate financial resources
- 2) Consideration of the specific case, including whether:
 - the parents previously agreed to pay for private school
 - the child has special needs that cannot be accommodated in a public school setting
 - immediate family history indicates that the child would likely have attended private school but for the parties' separation.

Shared Equal Placement

Shared equal placement of a child(ren) is determined by the number of annual overnights the child(ren) spends in each household. If the number of overnights is at least 175 per year, the parties are considered to have shared equal placement and each child(ren) will be counted at one-half in each household for purposes of the calculation. Be advised that failure to contribute to shared incidental expenses can lead to denial of shared placement status.

Parenting Time Adjustment

If a child spends an average of more than 109, but less than 175 annual overnights in the household of the parent from whom support is sought, the calculation shall be adjusted to reflect the amount of extra time spent with the parent.

Chapter 8: Calculating Child Support cont'd

Adjustment for Support of Other Children

The child support calculation will consider the number of other children not of this relationship supported by each parent.

Military Allowances

The Formula currently exempts from income cost of living stipends paid to offset assignments to high income locations. Military Housing Allowances (BAH) vary depending upon both rank and location. BAH shall be limited to no more than the entitlement of a service member stationed at Dover Air Force Base. The BAH tables ("with dependents") for Dover AFB will need to be readily available to mediators and Commissioners and linked to the on-line calculation. Additionally, military allowances for clothing shall be excluded from income.

Incarcerated Parents

Service of a term of incarceration that exceeds or is anticipated to exceed one year may be considered as evidence of a diminished earning capacity unless the individual:

- Has independent income, resources or assets with which to pay an obligation of support consistent with their pre-incarceration circumstances; or
- Is incarcerated for the nonpayment of child support or for any offense of which his or her dependent child or a child support recipient was a victim.
- However, incarceration is not a ground for modification of a current support obligation last calculated within the last two and one-half years.

The Family Court of the State of Delaware CHILD SUPPORT CALCULATION

Case Name: _____
Petition #: _____

Calculation Date: _____
Period Covered: _____

		1 Gross Income					Father	Mother
		Wages	2d Job	self	taxable	nontax		
NET INCOME AVAILABLE		Father						
		Mother						
	2	Taxes	Federal	FICA	self	State	local	
		Father						
		Mother						
	3	Deductions	Health	Pension	Union	Disability	other	
		Father						
		Mother						
	4	Self Support Allowance*					\$ 1110	\$ 1110
5	Net Income after Self-Support (Line 1 – Lines 2, 3 & 4)							
6	Number of Children <u>not</u> of this union supported by each party							
7	Adjustment for Support of Dependent children (Table A)							
8	Net Available for Primary Support (Line 5 x Line 7)							
9	Share of Total Net Available (Line 8 ÷ Line 8 Total)							
PRIMARY	10	Number of Children of this union in each household						
	11	Primary Support Allowance (Table B)						
	12	A – Child Care expenses necessary for parent to work						
		B – Health Insurance Allocable to children						
		C - Private School Tuition other primary expenses						
	13	Primary Need (Line 11 Total + Lines 12A & B Totals)						
	14	Primary Support Obligation (Line 9 x Line 13)						
	15	Net Available for SOLA (Line 8 minus Line 14)						
	16	Standard of Living Adjustment Percentage (Table B)						
SOLA	17	A – SOLA Obligation (Line 15 x Line 16)						
		B – SOLA per child (Line 17A Total ÷ Line 10 Total)						
	18	Gross Monthly Obligation (Line 14 + Line 17A)						
CREDITS	19	Primary/SOLA retained (Line 10 x per child SOLA + Line 11)						
	20	Other primary paid by each parent (Lines 12A, B & C)						
	21	A - Parenting Time Percentage (Table C)						
		B – Parenting Time Adjustment (L21A x other party's L19)						
	22	Maximum Allowable Obligation (Line 7 x Line 8) (Line 18 minus Lines 19, 20 & 21B but not more than Line 22)						
23	Net Monthly Obligation							

children	%	children	primary	SOLA	minimum	overnights	%
0	100	1	500	17	130	110 – 132	10
1	82	2	810	24	200	133 – 150	20
2	73	3	1080	29	270	151 – 164	30
3+	67	EA	+250	+4	+60	165 – 174	40

*Effective January 1, 2013 to December 31, 2014.

The Family Court of the State of Delaware

INSTRUCTIONS FOR CHILD SUPPORT CALCULATIONS (2012-2014)

Effective January 1, 2013 the Family Court revised the Delaware Child Support Formula as stated within Family Court Civil Rules 500 through 509. The formula is intended to comply with 13 Delaware Code §514 which states:

- Each parent is entitled to keep a minimum amount of income for their basic needs.
- Each child's basic needs are taken care of before the parents may retain any additional income.
- If income is available after the primary needs of the parents and each child are met, the child(ren) is (are) entitled to share in any additional income of the parents.

All allowances and percentages are indexed to designated elements of the Consumer Expenditure Survey published annually by the U.S. Department of Labor. These values are adjusted every two years based upon the most recent available expenditure information on single parent households for food, clothing, shelter and utilities as the leading indicators of basic household need. The current values apply to both prospective and retroactive calculations and will be updated again in January of 2013. The entire formula will be reviewed again in 2014.

The Delaware Child Support Formula serves as a rebuttable presumption for establishing child support obligations in the State of Delaware. The Court will use the Formula unless it finds that the results would not be in the best interest of the child(ren) or would be inequitable to the parties involved. Dalton v. Clanton, Del. Supr., 55 A.2d 1197 (1989).

An automated version of the Child Support calculation is available online at <http://courts.delaware.gov/family/>.

INCOME ATTRIBUTION

The Court will use each parent's actual income if the parent is fully employed in a manner commensurate with their training and experience. A **Rule 16A Financial Report Form** is required to be submitted with supporting documentation at the mediation and before trial. Adequate supporting documentation usually is the parent's most recent tax returns, W-2 Forms, and three most recent pay stubs but may also include documentation of Social Security, unemployment compensation, workers' compensation, medical disability, child care and medical insurance. Self employed individuals and persons employed through a closely held corporation should be prepared with recent tax returns with all schedules, 1099 forms, documentation of significant expenses categories, and recent bank statements.

Parents who are unemployed or underemployed either voluntarily or due to their own misconduct, and parents who fail to provide adequate documentation or to appear for the hearing or mediation may be "attributed" income. The Court will examine earnings history, employment qualifications and the current job market. Wage surveys for individual occupations compiled by government agencies can be used to estimate earning capacity. Parents who qualify for unemployment compensation will be presumed to have lost their employment by no fault of their own. Qualification for Social Security disability-type benefits is proof that a person has a disability which may impede their ability to work and pay support. A parent receiving Supplemental Security Income (SSI) will not be assessed a child support obligation unless the Court finds the person has additional income or income capacity with which to pay support. Absent adequate information, a parent may be attributed at least as much income as the other party and every parent is presumed to have an earning capacity of no less than \$1,508 per month. Parents who suffer a loss of income due to their own misconduct may have their support obligation calculated upon actual current earnings where over a reasonable period of time they have earnestly sought to achieve maximum income capacity. Additionally, incarceration or anticipated incarceration for more than one year may be considered as evidence of a diminished earning capacity BUT incarceration is not a ground for modification.

NET AVAILABLE INCOME

Net available income is determined by taking gross income and subtracting taxes, other important payroll deductions and a self support allowance. All amounts must be monthly. To convert from weekly, multiply by 52 and then divide by 12. For biweekly, multiply by 26 and then divide by 12. All amounts are rounded to the nearest whole number.

Line 1--Monthly Gross Income--Generally, all income must be included in the child support calculation. The Court can exclude second job income upon consideration of its history, purpose, amount and effect on visitation. Expense reimbursements or in-kind payments received in the course of employment, self-employment, or operation of a business should be counted as income if they are significant and reduce personal living expenses. However, a cost of living stipend paid as compensation for working in a high cost location will not be included as income as long as it is clearly identified on pay documents. **Monthly Gross Income** is the combination of the following:

Wages: This includes salaries, wages, commissions, bonuses and any other income (other than self-employment income) that is subject to Federal Retirement and/or Medicare taxes. For child support purposes, it also includes all income and benefits identified by an employer as “pre-tax”.

Self: All income earned as an independent contractor and subject to federal self-employment tax.

Unearned: All other taxable income including but not limited to dividends, severance pay, pensions, interest, trust income, annuities, capital gains, workers' compensation, unemployment compensation, disability insurance benefits, prizes, and alimony or maintenance received.

Nontax: All other income not subject to income taxation. This includes most Social Security Disability (SSD) or retirement benefits and some private pension/disability benefits. Benefits paid to a child on account of a parent's disability are included in that parent's income but offset the Net Monthly Obligation dollar for dollar. Benefits paid to a child due to the child's own disability are included as income to the household in which it is received. All military allowances (except clothing) are included as nontaxable income. However, no military service member shall be attributed a housing allowance (BAH) that exceeds BAH (with dependents) provided to service members stationed at Dover AFB.

2013 Dover Air Force Base BAH with dependents

Rank	\$	Rank	\$	Rank	\$	Rank	\$
E01	1374	E07	1704	W04	2043	O2	1542
E02	1374	E08	1878	W05	2109	O3	1980
E03	1374	E09	2028	O1E	1737	O4	2133
E04	1374	W01	1548	O2E	1956	O5	2241
E05	1479	W02	1773	O3E	2055	O6	2262
E06	1545	W03	1989	O1	1488	O7	2286

Line 2--Taxes: Utilizing IRS and Delaware Department of Revenue income tax withholding tables or the Family Court tax estimation worksheets, record each parent's income tax liability based upon a single tax status with one (1) exemption. Delaware State income tax shall be utilized for all persons regardless of State of residence.

Line 3--Allowable Deductions (add the following across the line and enter the result in the appropriate column):

Medical Insurance--Monthly medical insurance premiums (including COBRA payments) paid by either parent regardless of persons covered by the policy.

Medical insurance premiums allocable to children can be included as an element of primary support at Line 12B rather than as a deduction from income with adequate documentation. The amount allocable to a child is the difference between the cost for the parent alone and the parent with minor dependents. Where the parent has multiple children in multiple households, the amount allocable to children must be multiplied by the number of children on Line 6 and then divided by the total number of children on Lines 6 and 10. Documentation is **REQUIRED**.

Pension--Mandatory contributions and some voluntary contributions are deductible. If any mandatory amount is less than 3% of gross income, voluntary contributions to a 401(k) or similar IRS approved retirement plan of up to 3% (including mandatory) of gross income may also be deducted.

Union Dues--Enter the average monthly union dues.

Disability Insurance--Enter Disability insurance premiums withheld from pay or purchased privately for purposes of income replacement (but not to cover credit card or mortgage obligations).

Other--Enter the monthly amount of any court ordered alimony payments to the other parent, or other allowable business expenses (such as supplies required by the employer to be purchased). Alimony paid must also be subtracted from taxable income when calculating Federal and State income tax liability (but not “FICA”).

Line 4--Self Support Allowance: The self-support allowance is the minimum amount of income necessary for a parent to remain productive in a workplace. Each parent is given a self support allowance of **\$1110**.

Line 5--Net Income after Self Support: Subtract taxes, deductions & self support from gross income.

Line 6--Number of Children Not of this Union Supported by each Parent: Enter the number of children of other relationships to whom a duty of support is owed either in or out of each parent's household. Children outside a parent's household should only be counted if there is a court order for support or proof of a pattern of support.

Line 7--Adjustment for Support of Other Children: Enter the appropriate percentage as determined by the number of children on Line 6 and the table below (but not less than 67%):

<u>Number of Children</u>	<u>Percentage</u>	<u>Number of Children</u>	<u>Percentage</u>
0	100%	2	73%
1	82%	3 or more	67%

Line 8--Net Available for Primary Support: Multiply each parent's Net Income after Self Support (Line 5) by the Line 7 percentage. Add the figures for Father and Mother to get the total available income. Enter the result in the total column.

Line 9--Share of Total Net Available: Divide the Net Available for Primary Support for each parent (Line 8) by the Total Net Available for Primary Support (Line 8 Total). Enter the result for each parent.

Medical Expenses — The child support recipient is responsible for the first \$350 of unreimbursed medical expenses incurred each calendar year. "Incurred" is when medical services are actually provided except for orthodontic payment plans for which are "incurred" as each payment becomes due. Additional amounts are allocated according to the **Share of Total Net Available** (Line 9). The \$350 threshold does not apply to shared or split placement cases. Parents should attempt to manage medical reimbursement issues privately. A petition for reimbursement should be filed no later than December 31 in the 2nd year after the expense is incurred. Later applications may be considered for good cause shown.

PRIMARY SUPPORT

The Court has established minimum levels of income needed to support one or more children. This primary support allowance is added to any work related child care expenses, medical insurance allocable to the children, private school expenses (under some circumstances), and any other expenses for any ongoing special needs of a child.

Line 10--Number of Children of this Union in each Household: Enter the number of children of this union who reside in each parent's household. If a child resides equally (more than 174 overnights) in both households, assign ½ child or ".5" to each household. Do not include children from other relationships.

Line 11--Primary Support Allowance: Enter the Primary Support Allowance that matches the number of children in Line 10 for each household (see tables below). Add the columns and enter the result in the Total column.

Primary Placement

<u>Number of Children</u>	<u>Primary Support Allowance</u>	<u>Number of Children</u>
1	\$500	.5
2	810	1.5
3	1080	2.5
each additional	+250	each additional ½

Line 12A--Child Care Expenses necessary for parent to work: Enter the actual Monthly Child Care Expenses for the children of this support action required for the parent to work or seek work. No hypothetical or attributed childcare costs are permitted.

Line 12B—Medical Insurance Allocable to Children: As described at Line 3, medical insurance premiums allocable to the children of this union can be an element of primary support. If a parent believes available insurance is not reasonable in cost, the parent will not be compelled to acquire or maintain it if the cost to cover the parent and their children exceeds 10% of the individual parent's gross income OR if the parents' combined net income at Line 8 is insufficient to meet the children's primary needs as included on Lines 11, 12A and 12B. Additionally, Medical insurance acquired through a step-parent's employment can be included on this line if the step-parent has no other dependent children and to the extent the amount allocable to the children can be determined.

Line 12C--Other Primary Expenses: Other necessary monthly expenses incurred due to special needs of the child(ren). Private or parochial school expenses may be included if the parents have adequate financial resources and upon consideration by the Court of all of the equities especially:

- a. Previous agreement to pay for child(ren)s' attendance in private; or
- b. The child has special needs that cannot be accommodated in a public school setting; or
- c. Immediate family history indicates that the child likely would have attended private or parochial school..

Line 13--Total Primary Need: Add the totals from Lines 11, 12A, 12B and 12C.

Line 14--Primary Support Obligation: Multiply Line 9 (Share of Net Available) by Line 13 Total (Total Primary Need).

STANDARD OF LIVING ADJUSTMENT (SOLA)

If there is income available after the parents have met their own and their child(ren)'s primary support needs SOLA is designed to give the child(ren) a share in each parent's economic well being.

Line 15--Net Available for SOLA: Subtract the Primary Support Obligation (Line 14) from the Net Income Available for Primary Support (Line 8) for each parent. Enter the result for each parent (but not less than "0").

Line 16--SOLA Percentage: Enter the SOLA percentage that corresponds to the Number of Children Due Support in this Support Action (Line 10 Total) but not more than 50 percent.

<u>Number of Children</u>	<u>SOLA Percentage</u>	<u>Number of Children</u>	<u>SOLA Percentage</u>
1	17%	3	29%
2	24%	each additional	+4%

Line 17A--SOLA Obligation: Multiply the Net Available for SOLA (Line 15) by the SOLA Percentage (Line 16). Enter the result for each parent, and then combine the parents' individual SOLA obligations for the total.

Line 17B--SOLA per child: Take total SOLA obligation (Line 17A total) and Divide by the Total Number of Children of this Union in each Household (Line 10 Total). Enter the result in the third column as the "per child" SOLA.

Line 18--Gross Monthly Obligation: Line 14 (Primary Support Obligation) plus Line 17A (SOLA Obligation).

CREDITS AND THE NET MONTHLY OBLIGATION

The Net Monthly Obligation is the Primary Support obligation plus the SOLA obligation minus applicable credits and subject to certain limitations. In simple cases, the "custodial" parent merely keeps their own obligation and the obligated parent pays the amount on Line 18. However if the parent from whom support is sought has the children more than 109 overnights per year, has limited income, or incurs daycare or tuition expenses, further adjustments may be necessary.

Line 19--Retained Primary and SOLA: Multiply the number of children in each household (Line 10) by the "per child" SOLA on Line 17. Then add that to the Primary Support Allowance claimed by each party on Line 11.

Line 20--Child Care / tuition paid by each parent: Enter the total of Lines 12A and 12B for each parent.

Line 21--Parenting Time Adjustment: When a court order or written agreement entitles the parent from whom support is sought contact of more than 109 overnights per year, that parent retains a percentage of both the primary support allowance and the parents' combined SOLA. Enter on Line 21A the percentage from the following table corresponding to the number of annual overnights. Then multiply the percentage by Line 19 of THE OTHER PARENT and enter the result on Line 21B. The credit on Line 21B cannot exceed Line 17A.

<u>Annual Overnights</u>	<u>Percentage</u>	<u>Annual Overnights</u>	<u>Percentage</u>
110 to 132	10%	151 to 164	30%
133 to 150	20%	165 to 174	40%

Line 22--Maximum Allowable Obligation: Multiply the percentage used on Line 7 by the Net Available for Primary Support on Line 8 and enter the result on Line 22. This represents the maximum support obligation that can be ordered and preserves the self support allowance of individuals with multiple children in multiple households.

Line 23--Net Monthly Obligation: For each parent, subtract Primary/SOLA retained (Line 19), Childcare/tuition retained (Line 20) and the Parenting Time adjustment (Line 21B) from Gross Monthly Obligation (Line 18). Enter the result but not more than the amount on Line 22.

Minimum Orders: Unless the children reside in shared or split placement or the obligated parent is disabled, the Court will not impose an obligation of less than a presumptive minimum order. The obligation, if any, of a disabled person with limited resources will be determined on a case by case basis. The current minimum orders are:

1 child	\$ 130	3 children	\$ 270
2 children	200	each additional	+60

Modification: Petitions for modification filed within two and one-half years of the calculation of a current support obligation must allege "with particularity" a substantial change of circumstances not caused by the Petitioner's voluntary or wrongful conduct. Incarceration is not a ground for modification. Additionally, no modification will be ordered unless the new calculation produces a change of more than 10%. Beyond 2½ years, neither the "particularity" nor the "10%" requirement applies.

Chapter 9: Medical Support

What is a medical support order?

A medical support order requires one or both parents to provide health insurance and requires both parents to pay a portion of medical expenses that is not covered by health insurance for their children.

Which parent will be ordered to provide medical support?

If both parents have affordable health insurance available through employment, the parents will usually agree if one, the other or both should maintain the insurance for the child. If they can't agree a Commissioner will decide after a hearing. Whenever insurance is not in place, both parents have a continuing duty to acquire it if it becomes available at a reasonable cost.

What about expenses not covered by insurance?

Under the child support formula the first \$350 usually of unreimbursed medical expenses incurred each calendar year must be paid by the support recipient. Any additional expenses are divided by percentages found in the child support calculation. Unless reimbursement is requested by December 31 of the second year following the year in which the expense was incurred, reimbursement is presumed to have been waived.

If the children are on Medicaid will the parents be ordered to provide medical support?

Yes. Federal law requires that child support orders include medical support if the children are receiving cash public assistance or Medicaid. When children are receiving Medicaid, the insurer reimburses the Medicaid agency for the cost of medical services provided to the children.

Will wages be attached for medical insurance?

Yes, if the parent is employed. Federal and state laws require a medical support attachment, known as a National Medical Support Notice, unless the Court determines the insurance available through the employer is either inaccessible to the child or unreasonable in cost.

When is insurance accessible and reasonable in cost?

Insurance is accessible to a child if primary medical services are available within a reasonable distance from the child's residence. Generally, cost is reasonable if the premium to cover both the parent and parent's dependant children is less

Chapter 9: Medical Support cont'd

than 10% of a parent's gross income. Cost may also be found "not reasonable" if the Court determines the parents have insufficient net income to cover insurance, day care and the child's primary needs.

Will the wage attachment tell the employer what insurance plan to select?

No. The parent(s) may select an insurance plan if the employer offers more than one. The employer will receive a notice telling him/her to deduct the amount of the insurance premium and send it to the insurance company.

Once the wage attachment for medical support is in place, may the parent/employee terminate medical insurance coverage?

No. State law prohibits an employer from terminating coverage unless the Court order is no longer in effect, or the child is enrolled in comparable coverage that will take effect no later than the date of termination.

Can an employer refuse to deduct health insurance premiums or wait for an open enrollment period?

No. An employer must obey the wage attachment for health insurance premiums and may not wait for open enrollment. He/she may be ordered to pay a fine for refusing to honor the wage attachment.

If the parents are not working will they be ordered to provide health insurance?

If the parents are not employed, they may be ordered to provide health insurance if and when it becomes available at a reasonable cost.

Chapter 10: WAGE ATTACHMENTS

What is a wage attachment?

A wage attachment is an order for an employer to deduct child support payments directly from the wages of an employee and send the payment to the Division of Child Support Enforcement. Wage attachments are sometimes called income withholding orders.

Why are wages attached?

Wage attachments are required by Federal and State law because they are the best way to be sure that child support payments are made in full and on time.

Are wage attachments only for parents who are delinquent in their child support payments?

No. Wage attachments are issued for almost all new child support orders. Wage attachments are also issued when existing child support orders are modified.

If I am ordered to pay child support, will my wages be attached?

Yes, most likely. Both Federal and State law require that a wage attachment must be issued for every child support order. The only exception is when the Court finds that there is good reason not to require immediate wage withholding. For example, a wage attachment may not be issued if there is an alternative payment arrangement outside the control of the obligor.

Can payments from wage attachments be paid directly to the custodial parent?

No. According to Delaware law, all wage attachments must be paid through the Division of Child Support Enforcement. The Division keeps an official accounting of the payments. After the amount is recorded, a check is sent to the parent or deposited in the payee's account. This helps avoid misunderstandings about amounts owed and protects both parents by ensuring that all payments are recorded.

Is there a limit to how much of an employee's pay may be deducted for a child support wage attachment?

Yes. The Federal Consumer Credit Protection Act applies to wage attachments for child support. Instructions on the wage attachment tell the employer the maximum that may be deducted for that employee. The amount deducted may not be more than: 50% if the employee is supporting a second family or 60% if the employee does not support a second family. If the employee owes child support arrears that are 12 weeks or more past due, an additional 5% is added to the limit.

Chapter 10: WAGE ATTACHMENTS cont'd

Can an employer fire an employee because his/her wages are attached?

No. It is against the law for an employer to fire an employee because his/her wages have been attached. In addition, an employer may not refuse to hire an individual because of a wage attachment.

Can an employer refuse to deduct child support payments from an employee's wages?

No. An employer may be fined for refusing to obey an order to attach the wages of an employee.

If I leave my job, do I have to make payments while I am unemployed?

Yes. You are still responsible for paying child support, even though you are unemployed. You may file a petition asking the Court to modify your child support order while you are unemployed. You should make your payments to the Division of Child Support Enforcement. Do not make payments directly to the custodial parent, or you may not get credit for them. As soon as you find another job, you must report the name and address of the new employer to Family Court so that a new wage attachment can be issued.

Chapter 11: Modification

Can the child support payment amount ever be changed?

Yes, either parent can ask the Court to review an order after 2 1/2 years. A parent can ask for a review within 2 years if there is a substantial change in either parent's income or a change in expenses such as day care or medical expenses. The Melson Formula will be used again to determine the amount.

I would like to modify an existing child support order, what do I need to do?

You must file a Petition for Modification (form #342).

-A sample Petition for Modification may be found on page 34.

When is it appropriate to file a Petition for Modification?

- 1) more than 2 ½ years have passed since the current support amount was last determined or calculated.
- 2) less than 2 ½ years have passed since the last support determination and a substantial change in circumstances, through no fault of the Petitioner, has occurred regarding:
 - income
 - health insurance cost or availability
 - daycare or private school tuition
 - number of minor children ordered to support
 - number of other minor children to support
- 3) loss of license and incarceration for nonpayment of child support or incarceration for any reason are not grounds for modification of child support.

Will a modification be granted?

If the order is less than 2 ½ years old, a child support calculation must show a 10% increase or decrease to warrant modification. If the order is greater than 2 ½ years old, the Court will modify the order if warranted.

-If back support or arrears are owed, the modified order may include a reasonable repayment schedule.

Will a modification be retroactive?

The modification may be effective from the date that the other party receives notification of your intent to modify only if you send notice by registered or certified mail. If the petition for Modification is sent by regular mail, the modification will be effective from the date of the new order only.

The Family Court of the State of Delaware

Check the county in which you are filing.

In and For New Castle Kent Sussex County

PETITION FOR CHILD SUPPORT MODIFICATION

DCSE NUMBER _____

Fill in the requested information about yourself (Petitioner) and the Respondent.

FILE NUMBER CK04-0221

PETITION NUMBER _____

Petitioner

Respondent

Name		DOB	
Sarah Smith		2/25/1973	
Street Address			
111 South Oak Street			
Apt. or P.O. Box Number			
City		State	Zip Code
Dover		DE	19901
Home Phone #	(302) 555-0099		
Work Phone #	(302) 255-0000		
Cell Phone #	(302) 999-9999		
Attorney Name and Phone Number			
n/a			
Employer:	ABC Corporation		
Employer Address:	123 South Street		
	Dover, DE 19901		

Name		DOB	
Michael Jones		3/14/1977	
Street Address			
555 Main Street			
Apt. or P.O. Box Number			
City		State	Zip Code
Dover		DE	19901
Home Phone #	(302) 467-9908		
Work Phone #	(302) 565-0707		
Cell Phone #	(302) 575-1111		
Attorney Name and Phone Number			
n/a			
Employer:	DEF Corporation		
Employer Address:	555 North Street		
	Dover, DE 19901		

IN THE INTEREST OF: (Include last name.)

Shawn Jones 5/25/1995

Name DOB Name DOB Name DOB

Name DOB Name DOB Name DOB

The Petitioner seeks a modification of the Child Support Order dated 4/5/2006

Fill in the date of the support order that you wish to modify.

- More than 2 ½ years have passed since the current support amount was last determined or calculated.
- Less than 2 ½ years have passed since the last support determination and a substantial change of circumstance, through no fault of the Petitioner, has occurred regarding (check all that apply):
 - Income or deductions
 - Health insurance cost or availability
 - Daycare or private school tuition
 - Number of minor children on this Order to support
 - Number of other minor children to support
 - Other _____

Shawn has started at a new high school and his tuition has increased by \$10,000 per year.

In particular (required if less than 2 ½ years)

Indicate the grounds for your request to modify child support.

3. Petitioner acknowledges the following:

- If the petition was filed within 2 ½ years of the last calculation of current support, only modifications of greater than 10% will be imposed.
- Whenever a modification petition is filed, the result may increase or decrease the obligation without regard to who filed the petition.
- If back support or arrears are owed the modified Order should include a reasonable repayment schedule.
- Loss of license and incarceration for nonpayment of child support are not grounds for modification of child support.
- If a Petitioner sends a copy of the Petition to the Respondent by certified mail, the Order may be effective the date of receipt. Otherwise modification Petitions are sent by regular mail and any modification will be from the date of the new Order only.

Therefore, the Petitioner requests the child support obligation be recalculated pursuant to the Delaware Child Support Formula.

3/1/2008

Date

Sarah Smith

Petitioner/Attorney

Chapter 12: Administrative Adjustments & Decisions

What is an administrative adjustment?

An administrative adjustment is a change in child support that is done by the Division of Child Support Enforcement, rather than the Court. Administrative adjustments occur when the change can be made “by operation of law”. This means that the change occurs because the law says that it must.

-For example, the law says that a child support obligation ends when a child turns 18, or, if the child is still in high school, when the child graduates or turns 19, whichever comes first. Therefore, if a child has graduated high school and turns 18, the child support obligation ends “by operation of law” and the Division of Child Support Enforcement may enter an administrative adjustment terminating child support (unless there are other children on the Order).

What are some things that occur by administrative adjustment?

- Termination of support
- Repayment of past due support (arrearages)
- Change of payee
- Date of change of payee

How will I know if the Division of Child Support Enforcement has entered an administrative adjustment?

Within 120 days prior to or 30 days after adjusting its accounts, the Division of Child Support Enforcement files a Notice of Administrative Adjustment with the Court, explaining the action taken. This Notice is also sent to both parties.

What do I file if I disagree with an administrative adjustment?

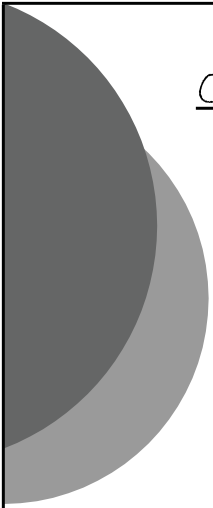
You may file a Motion to Contest an Administrative Adjustment. In this Motion, you must explain to the Court why you disagree with the administrative adjustment. You must send the other party a copy of this Motion. The other party then has 10 days in which to respond before the Court will make its decision.

-A sample Motion to Contest Administrative Adjustment may be found on page 37.

What is an administrative decision and order?

An administrative decision and order is one entered by the Division of Child Support Enforcement due to lack of child support payment and resulting arrearages. The administrative decision and order imposes sanctions on the payor for failure to pay child support.

-An administrative decision and order are only entered after the payor has been notified of the arrearages, has had the opportunity to pay and has requested and received an administrative hearing.



Chapter 12: Administrative Adjustments & Decisions
cont'd

What types of sanctions may be imposed by an administrative decision and order?

The Division of Child Support Enforcement may suspend the payor's driver's license, deny application to receive a driver's license, place an administrative lien upon property owned by the payor, intercept the payor's income taxes or impose other reasonable sanctions.

What do I file if I disagree with an administrative decision and order?

You may file an Appeal of Child Support Administrative Decision and Order. In this Appeal, you must explain to the Court why you disagree with the administrative adjustment. You must attach a copy of the administrative decision and send a copy of the Appeal to the Division of Child Support Enforcement. The Division will then have 10 days in which to file a response. The Court will then either make a decision or hold a hearing on the matter.

-A sample Appeal of Child Support Administrative Decision and Order may be found on page 38.

The Family Court of the State of Delaware

FOR NEW CASTLE KENT SUSSEX COUNTY

MOTION TO CONTEST AN ADMINISTRATIVE ADJUSTMENT

Check the county in which you are filing.

Child Support Recipient

Sarah Smith	
111 South Oak Street	
Dover, DE 19901	
Attorney	Date of Birth
n/a	2/25/1973

Fill in the child support recipient's information here.

Child Support Payor

Michael Jones	
555 Main Street	
Dover, DE 19901	
Attorney	Date of Birth
n/a	3/14/1977

Fill in the child support payor's information here.

Family Ct File No.
CK04-0221
Petition No.
DCSE Account No.
55562

Michael Jones (the "Movant") has received a Notice of Administrative Adjustment filed with the Family Court by the Division of Child Support Enforcement (DCSE). The Movant DISAGREES with the:

- Date of Termination of Current Support
- Balance (amount) of past due child support (back support / arrears).
- Monthly amount ordered to repay past due child support (back support / arrears).
- Change of Payee (The person alleged does not have placement of the child(ren)).
- Date of Change of Payee (Movant disagrees with the date alleged for the change in placement)

The movant is the person who believes the administrative adjustment is incorrect.

Explain to the Court here why you believe the administrative adjustment is incorrect.

Because: The balance of back due support does not include the amount that Payor sent to Payee by personal check. This money was not sent through the Division of Child Support Enforcement, however, Payor has copies of all of the cleared checks. This amount totals \$2,400 and should be deducted from the amount of arrears owed.

MOVANT AFFIRMS that the above information is true and correct and that a copy of this motion was deposited in the U.S. Mail on April 7, 2008 with sufficient postage and addressed to: You must mail a copy of this Motion to the opposing party and DCSE.

- the Division of Child Support Enforcement (appropriate county address on reverse of form) and
- the opposing party at 111 South Oak Street Dover, DE 19901

SWORN TO AND SUBSCRIBED before me this 7th day of April, 2008

Sign in the presence of a notary or court staff. April, 2008

Michael Jones
Movant / Attorney

4/7/2008
Date

Donna King
NOTARY PUBLIC

NOTICE: RESPONDENT HAS THE RIGHT TO FILE A RESPONSE WITHIN TEN (10) DAYS OF THE SERVICE OF THIS MOTION. IF NO RESPONSE IS TIMELY FILED, THE MOTION MAY BE DECIDED WITHOUT OTHER OPPORTUNITY TO BE HEARD.

Upon consideration of the Motion, the Notice of Administrative Adjustment and the response (or) no response, the Court ORDERS the following:

- The motion is DENIED. The Administrative Adjustment was correct and authorized by Family Court Civil Rule 302.
- The motion is GRANTED and:
 - Current Support terminated (or shall presumptively terminate) on _____.
 - The correct arrears balance is \$ _____ as of _____.
 - Arrears shall be repaid at the rate of \$ _____ per month.
 - The correct payee is _____ effective _____.
- A hearing will occur on ___/___/___ at ___ am/pm to consider this motion (date/time TBD).
- Other: _____

COMMISSIONER _____ Date Written Order Issued: _____

PARTIES may appeal a final order of a Commissioner by filing and serving written objection to such Order within ten (10) days of the Order, in accordance with 10 Del. C. § 915 (d) and Family Court Civil Rule 53.1 (b).

CC: FILE PARTIES DCSE Counsel DCSE Accounting DCSE Operations Reciprocal Agency _____

Check the county in which you are filing.

The Family Court of the State of Delaware

For New Castle Kent Sussex County

APPEAL OF CHILD SUPPORT ADMINISTRATIVE DECISION AND ORDER

DCSE # 7559

APPELLANT <u>Michael Jones</u> Address <u>555 Main Street</u>		vs	APPELLEE <u>Sarah Smith</u> Address <u>111 South Oak Street</u>		File Number(s) <u>CK04-0221</u> Petition Number Reciprocal #
Attorney <u>N/A</u>	Employer Name & Address <u>DEF CORPORATION</u> <u>456 NORTH STREET</u> <u>DOVER, DE 19901</u>		Attorney <u>N/A</u>	Employer Name & Address <u>ABC CORPORATION</u> <u>123 SOUTH STREET</u> <u>DOVER, DE 19901</u>	
Hm Ph# (302) 555-0099 Wk Ph# (302) 255-0000 DOB <u>2/25/1973</u>	PH#	Hm Ph# (302) 467-9908 Wk Ph# (302) 565-0707 DOB <u>3/14/1977</u>	PH#		
Driver License # <u>35769</u>	State <u>DE</u>	Driver License # <u>65995</u>	State <u>DE</u>		

The Appellant is the person filing the appeal.

Check which type of proceeding you are appealing.
 License Suspension/Denial
 Income Tax Offset
 Administrative Lien
 Other

Nature of Proceeding: License Suspension/Denial

PLEASE TAKE NOTICE THAT Michael Jones does appeal to the Family Court of the State of Delaware from an administrative decision entered by Commissioner Jackson and dated 3/6/2007 which affirmed the above noted sanction(s). Reasons for the appeal are:

- The appellant is not the person named in the underlying child support order.
- The appellant does not owe the amount of child support arrears required for the sanction imposed in the administrative decision and order.
- Other _____

Check why you believe the administrative decision and order is incorrect.

A COPY OF THE ADMINISTRATIVE DECISION MUST BE ATTACHED TO THE APPEAL

APPELLANT AFFIRMS that the above statements are true and that a copy of this appeal was deposited in the U.S. Mail on 4/10/2008 with sufficient postage and addressed to the Division of Child Support Enforcement, P.O. Box 12831, Wilmington, DE 19850 and/or Sarah Smith, at 111 South Oak Street Dover, DE 19901. **BY COPY OF THIS APPEAL, APPELLEE IS NOTIFIED OF THE RIGHT TO FILE A RESPONSE WITHIN TEN (10) DAYS OF THE FILING OF THIS APPEAL.**

4/10/2008 Date
Sign in the presence of a notary. Michael Jones Appellant/Attorney

SWORN TO AND SUBSCRIBED before me

This date 4/10/2008
Donna King Notary Public

AFTER HEARING UPON CONSIDERATION OF THE APPEAL AND THE RECORD OF THE ADMINISTRATIVE HEARING NO RECORD OF ADMINISTRATIVE HEARING FILED BY DCSE, the administrative decision is affirmed reversed. IT IS SO ORDERED. See discussion attached.

COMMISSIONER _____ Date _____

Parties may appeal a final Order of a Commissioner by filing and serving written objections of such Order within ten (10) days of the Order.

Cc: File Parties DCSE Counsel DCSE Reciprocal Agency

Chapter 13: Termination of Support

When does child support terminate?

An order of current child support entered by the Court or a court of competent jurisdiction in Delaware shall terminate by operation of law when all minor children subject to said order have reached 18 years of age and graduated from high school.

If the child is over 18 and is still enrolled in high school, then support shall terminate when the child receives a high school diploma or turns 19, whichever event first occurs.

Support can also terminate if custody of all the child(ren) on the support order is transferred to the obligated parent pursuant to an order of a court of competent jurisdiction or the written voluntary agreement of the parents.

Do I need to file something to terminate child support?

Usually, if you fall into any of the three above categories, your child support obligation terminates by operation of law and you do not need to file anything. When this occurs, the parties may receive a Notice of Administrative Adjustment. If you do not receive a Notice of Administrative Adjustment and you believe that your child support obligation should have terminated, you may file a Notice and Motion to revoke Child Support. By filing this Motion, you are explaining the change in circumstances to the Court.

-a Motion to Revoke may only be filed where current support has terminated by operation of law for all children included on the support order or where arrears have been paid in full. Any other modification of a support order must be addressed with a Petition to Modify a Child Support Order.

-a sample Notice and Motion to Revoke Child Support may be found on page 40.

What if custody of the child(ren) changes?

If the Court orders a change of primary residential placement, the parent must provide a copy of the Court Order to DCSE in order for an administrative adjustment to be performed.

The Family Court of the State of Delaware

In and For New Castle Kent Sussex County

Check the county in which you are filing.

NOTICE AND MOTION TO REVOKE CHILD SUPPORT

Movant

Fill in information about the person requesting the termination of support.

Michael Jones

Address
555 Main Street

Dover, DE 19901

DOB
3/14/1977

Attorney
N/A

Respondent

Fill in information about the party currently receiving support.

Sarah Smith

Address
111 South Oak Street

Dover, DE 19901

DOB
2/25/1973

Attorney
N/A

File Number CK04-0221
CPI Number
DCSE Number 55527
Other State Number
IV-D STATUS <input type="checkbox"/> IV-D <input type="checkbox"/> NON IV-D

MOVANT ASSERTS that Michael Jones is under an Order to pay current support in the amount of \$ 500 per month and/or arrears/back support/fees in the amount of \$ 50 per month, and that:

- all arrears/back support/fees are paid
- the youngest child on the Order is 19 or 18 and : was graduated from high school stopped attending high school on _____ (Documentation attached)
- all the children on the Order moved from the home of _____ on _____ . (See custody Order of _____ or See Documentation Attached)

Check the box that explains to the Court why your support obligation should be terminated.

WHEREFORE, MOVANT SEEKS an Order terminating the current support arrears/back support obligation and modifying any Income Withholding Order accordingly. Employer: DEF Corporation

Address 456 North Street Dover, DE 19901

- Obligor also wishes payment on arrears/back support to be increased to \$ _____ per _____.
- Other: _____

MOVANT AFFIRMS that the above statements are true and that a copy of this motion was deposited in the U.S. Mail on 4/17/2008 with sufficient postage and addressed to the Division of Child Support Enforcement (appropriate county address on reverse of form) and/or Sarah Smith at 111 South Oak Street Dover, DE 19901.

4/17/2008 DATE | Sign in the presence of a notary. | Michael Jones MOVANT/ATTORNEY

SWORN TO AND SUBSCRIBED before me

this date, 4/17/2008

Donna King
NOTARY PUBLIC

NOTICE: RESPONDENT HAS THE RIGHT TO FILE A RESPONSE WITHIN TEN (10) DAYS OF THE SERVICE OF THIS MOTION. IF NO RESPONSE IS TIMELY FILED, THE MOTION MAY BE DECIDED WITHOUT OTHER OPPORTUNITY TO BE HEARD.

PURSUANT TO 13 Del.Code §517, UPON CONSIDERATION OF THE MOTION AND DCSE account statement The response No response

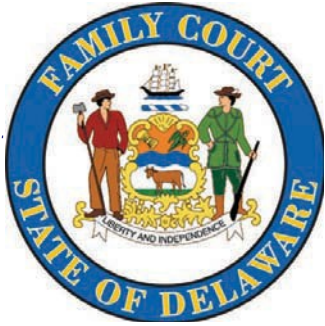
IT IS ORDERED that:

- Current Support Order is REVOKED effective _____ Back Support/Arrears Order is REVOKED.
- Income Attachment is Cancelled Modified to \$ _____ /mo.
Continued at \$ _____ /mo. on all arrears.
- RESPONDENT DCSE REFUND any OVERPAYMENT DCSE apply any later payments to arrears.
- The motion is denied OTHER: _____

COMMISSIONER _____

Date Written Order Issued: _____

PARTIES may appeal a final order of a Commissioner by filing and serving written objection to such Order within ten (10) days of the Order, in accordance with 10 De. C. Sec. 915 (d) and Family Court Rule 53.1 (b).



Service on Non-Delaware Residents

In Support and Paternity Proceedings

FAMILY COURT OF THE STATE OF DELAWARE

<http://courts.state.de.us/family>

When a Respondent in a Support or Paternity Proceeding lives out of state, it is the responsibility of the Petitioner to make sure the Respondent is served with the petition. The law relating to service of a non-Delaware resident can be found at Title 10 of the Delaware Code, Section 3104(d).

What do I file?

Along with your Petition, you must file an Affidavit in Support of Jurisdiction Over a Non-Delaware Resident (form #391). On this form, you are explaining to the Court why it is that the Respondent has enough contact with Delaware that the Delaware Family Court would have the right to hear the petition.

How do I serve the Respondent?

The Court will contact you when your “service packet” is ready. This will include the paperwork that you need to serve on the Respondent. You may serve these documents by the following methods:

- 1) By personal delivery in the manner prescribed for service in Delaware**
- 2) In the manner provided by law in the state where the Respondent shall be served.**
- 3) By any form of mail addressed to the person to be served and requiring a receipt (certified mail, registered mail, FedEx, DHL, etc.)**

What happens after I serve the Respondent?

After successful service, you must complete and file an Affidavit of Service (form #277). If you served the Respondent by mail, you must attached the receipt showing proof of service. You must also file an Amended Petition (form #—)

When will my case be scheduled?

Your case will not be scheduled until you successfully serve the Respondent and file the Affidavit of Service along with the Amended Petition.

How long do I have to serve the Respondent?

You have 90 days from the date that you receive the service packet to serve the Respondent. If you do not complete service within 90 days, the Court may dismiss your Petition. After return of receipt of service, you have 10 days in which to file the affidavit of service. If you do not file within 10 days of receipt, the Court may dismiss your Petition.

What if the Respondent will not accept service?

If using a mail service, a receipt marked received or refused will constitute service. A receipt marked unclaimed is not valid service.