



## NEW JERSEY STATE BAR ASSOCIATION

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December 5, 2023

Hon. Glenn A. Grant  
Administrative Director of the Courts  
Hughes Justice Complex / P.O. Box 037  
Trenton, NJ 08625-0037

Re: Follow-Up on Child Support Issues for Children in Foster Care

Dear Judge Grant:

Thank you for your response dated Sept. 13, 2023, on issues raised by the New Jersey State Bar Association (NJSBA) in connection with the collection of child support from parents who have children placed in foster or out of home care through the Division of Child Protection and Permanency (DCPP). The NJSBA is appreciative of the Judiciary's efforts to consider providing guidance about child support orders in those circumstances.

The NJSBA joins in the recommendations of Legal Services of New Jersey (LSNJ), submitted by letter dated Oct. 10, 2023, that advocate for policy and child support regulation changes. We believe the measures proposed by LSNJ will help to ensure that parents who are working to reunify with their children will not be precluded from achieving the goals of reunification and stabilization due to state imposed child support obligations.

Specifically, the NJSBA joins with LSNJ to recommend the Judiciary issue a directive that clarifies:

(1) Child support is not appropriate and shall not be ordered when collecting child support would directly impede family reunification efforts or the parent's ability to support the child after reunification;

(2) Child support is not appropriate and shall not be ordered where the parent:

(a) Has been deemed financially eligible for appointment of legal representation, such as the Office of Parental Representation, in the New Jersey Office of the Public Defender, or the equivalent in another state, in their Child Protective Services litigation;

(b) Has been deemed eligible for Title IV-E funding; or

(c) Has been deemed eligible for other means-tested public assistance, including, but not limited to General Assistance, Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP f/k/a Food Stamps), and Women, Infants, and Children (WIC);

(3) Where a parent is of sufficient financial ability for their income shares of a sole-parenting award to meet or exceed the full costs of maintenance of the child incurred by the agency, that parent may be ordered to pay support up to the full cost of maintenance of the child incurred by the agency, taking into consideration whether another parent has also been ordered to pay support for the maintenance cost of the same child. All support ordered for a child may not exceed the full cost of maintenance incurred for that child by the agency;

(4) Where a parent is not of sufficient financial ability to pay the full cost of maintenance for the child incurred by the agency, the court may order the parent to pay their income shares of the sole-parenting award to that agency;

(5) Imputation of income for a parent whose child is in foster care shall take into consideration limitations on the parent's time and ability to work due to obligations required by the CPS agency or a court as a condition of or in attempting to achieve family unification (e.g., in-patient treatment, intensive outpatient treatment, parenting-time, counseling, parent education, and related travel time); and

(6) Imputation of income for a parent whose child is in foster care shall take into consideration limitations on the parent's ability to work related to the circumstances that caused the child to be placed in out-of-home care (e.g., parental incarceration, severe mental illness, etc.).

In the Sept. 13 letter, there were questions about streamlining child support proceedings in these situations. The NJSBA offers the following for your consideration: The Judiciary should retain oversight for all DCPD child support referrals to county welfare offices. DCPD should seek permission from the court -- by motion or by way of notice to the parent and parent's attorney -- provided in a court report. Court reports are routinely used to notice the judge and all parties of DCPD's recommendations for a court order. If DCPD's referral request is granted, the court order should also reflect that the child support matter and FN/FG matter be consolidated. The judge presiding over the FN/FG matter will be in the best position to consider income imputation, assertions of a substantial change in circumstances, and consequences for enforcement. These recommendations for judicial oversight will serve the best interests of the state, the parents, the child, and judicial economy.

Furthermore, these recommendations will satisfy the entire controversy doctrine. Child support matters involving DCPD-involved families are typically scheduled before a child support hearing officer or a separate and different judge from the FN/FG matters. The hearing officer or judge who hears the child support matter does not have familiarity with the facts of the DCPD case and may not be familiar with Title 9/Title 30 issues and governing statutory requirements.

Currently, neither the agency attorney, the law guardian nor parental representative are present in child support matters. Indeed, the Office of Parental Representation attorneys are statutorily barred from attending child support hearings unless consolidated with the FN matter. Because these cases are not typical child support matters, it is critical that all representatives involved in the matter also be involved in child support decisions.

To ensure a full appreciation of all issues involved, and that all relevant parties are included in the process, if matters arise involving child support in connection with DCPD-involved families, they should be heard before the FN/FG judge already assigned. To address this, the NJSBA recommends that the AOC direct that all child support assessment and issuances be heard by the judge handling the FN/FG matters.

Thank you for this opportunity to continue to advocate for equity and access to justice. The NJSBA stands ready to assist in implementing these recommendations in whatever way it can.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim McGoughran". The signature is fluid and cursive, with a large loop at the end.

Timothy F. McGoughran, Esq.  
President

cc: William H. Mergner Jr. Esq., NJSBA President-Elect  
Angela C. Scheck, NJSBA Executive Director