



## Child Support Bulletin – October 2019

### Reserving Child Support or Staying the Accrual of Child Support Obligations

A new subsection to N.D.C.C. § 14-09-09.32 that took effect on July 1, 2019, puts limits on reserving child support and sets conditions for staying the accrual of an obligation:

2. In a judgment for divorce or other relief under this title in any matter in which the child and both of the child's parents do not reside together, a court shall establish a child support obligation unless the child support agency requests the issue of child support be reserved. Notwithstanding subsection 1, the court may issue a stay of any further accruals under a child support order if the court finds the stay would be in the best interests of the child. Avoidance of income withholding or the requirement to make any child support payment through the state disbursement unit is not a proper basis to stay a child support obligation under this subsection. A child support obligation that is stayed under this subsection may be reinstated on a prospective basis as provided under the terms of the stay or at any time by order of the court or upon affidavit of any party. The party filing the affidavit shall provide a copy of the affidavit to any other party to the action and to the state disbursement unit.

The child support agency typically will ask the court to reserve child support when a Medicaid recipient who has been referred to the agency elects to “opt out” of receiving child support as authorized under federal regulations. The agency will ask the court to adjudicate paternity (if applicable) and medical support and reserve child support for the present time. Later, if opting out of child support services is no longer authorized, the agency will ask the court to adjudicate child support on a prospective basis.

In all other order-establishment cases, such as divorce actions, the court must establish a child support obligation but can stay the accrual of the obligation upon finding that a stay is in the best interests of the child. A stayed obligation can be reinstated on a prospective basis. The conditions for reinstatement can be spelled out in the order for the stay, which is likely the best practice. Otherwise, reinstatement can occur at any time by court order or upon affidavit of a party.

The reference in the new law to income withholding and the State Disbursement Unit is very important. By law, any obligation to pay child support is subject to immediate income withholding, and payments toward that obligation must be made through the State Disbursement Unit as the state’s official record of child support due and paid. If the parents intend for a specific amount to be owed each month and enforceable as an

arrearage if unpaid, it is inappropriate to use the new law as a way to facilitate direct payments from the obligor to the obligee. Under the new law, a child support obligation may only be reinstated on a prospective basis, and would not cover amounts that the obligee expected to receive from the obligor for periods prior to reinstatement of the obligation.

Example/Sample Language:

Mom and Dad are getting divorced. They have one minor child. They have agreed that Mom will have primary residential responsibility and that Dad will have a child support obligation of \$780 based on monthly net income of \$4,200. For financial reasons, after the divorce is final, they will continue to live in the same house, on separate floors, until they are able to sell a family-owned business and divide the proceeds. Thus, they have also agreed to a stay of Dad's obligation for the present time.

The stipulation and concluding documents include the following language:

Based on monthly net income of \$4,200, Dad's child support obligation for one child is \$780 per month. It is in the best interests of the child that accrual of this obligation be stayed while Mom and Dad continue to live in the same house with the child and work toward selling their joint business. Dad's stayed obligation will be prospectively reinstated when Mom files an affidavit with the court attesting that the parties and child are no longer all living in the same house, or by order of the court, whichever occurs first. If reinstatement occurs as a result of Mom's affidavit, Mom must provide a copy of her affidavit to Dad and to the State Disbursement Unit.

The example above is admittedly narrow and is for purposes of illustration only. Under the new law, the court is able to stay the accrual of an obligation in any instance when the stay would be in the best interests of the child.

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