

**IN THE FAMILY COURT OF THE STATE OF DELAWARE**

**ORDER AMENDING RULES 5, 72 & 302**

**OF THE FAMILY COURT RULES OF CIVIL PROCEDURE**

This 10th day of November, 2016, **IT IS ORDERED THAT:**

1. Rule 5 shall be amended by deleting subsection (a)(2) in its entirety and renumbering subsection (a)(1) to (a).

2. Rule 72 shall be amended as follows:

Rule 72. Appeals from certain boards to Family Court.

(a) Application of rule. -- This rule shall apply to appeals to the Family Court from administrative hearings conducted by the Division of Child Support Services and the Division of Family Services.

3. Rule 302 shall be amended as follows:

Rule 302. Income attachment; operation of law adjustment; change of payee.

(a) Child Support payments shall be payable to the Division of Child Support Services (DCSS) unless an alternative payment arrangement is Ordered by the Court for good cause shown. DCSS is authorized to issue income attachments for any obligation payable to the agency unless specifically stayed by the Court. Income attachment will not be available to enforce a child support obligation unless it is payable through DCSS. A spousal support or alimony obligation may be ordered payable through DCSS but only if there is a concurrent child support obligation.

(b) All Family Court child support orders are subject to the operation of law provisions of sections 516(f) and 517 of Title 13 of the Delaware Code. Whenever DCSS has cause to believe that a current or past due support obligation has terminated or been modified by operation of law, the Court recognizes the authority of DCSS to adjust its accounts and terminate or modify any outstanding income attachment without further Order of the Court. Operation of law adjustments shall include:

(1) Whenever a past due balance arises and no payments are received for at least one calendar month, an arrears payment may be

imposed or, if there already is an arrear payment, increased to an amount equal to 20% of current support (rounded to the nearest dollar) until the past due balance is paid in full.

(2) Whenever past due support has been paid in full and current support continues the periodic payment shall decrease to the amount of current support only.

(3) Upon the termination of a current support obligation pursuant to section 517(a) of Title 13, the total amount previously ordered shall presumptively continue until any past due balance is paid in full.

(4) When current support has terminated and all past due balances have been paid in full, all enforcement shall cease.

(5) When custody of all children who are the subject of a child support order is transferred by Court Order or written agreement to the obligated parent, current support shall terminate. If a past due support balance remains, any previously ordered past due support payment remains in effect or if there is none, 20% of the terminated current support payment will be the periodic payment. This paragraph shall not apply to interim orders incident to pending custody actions except as the Court may by order direct.

(c) The child is the real party in interest in any child support action.

Whenever placement of a child changes to a person or government agency other than the current support recipient and that person or agency has either requested child support collection services or assigned rights of support to the State pursuant to 31 Del. C. § 504(a), DCSS may administratively redirect payments to that person to the extent allowed by applicable federal regulations. A determination that a change of placement has occurred must be supported by a Court order, written agreement signed by the obligated parent or a successful application for government sponsored cash or medical benefits on behalf of the child. Obligations regarding more than one child in more than one home may be subdivided per capita.

(d) Within 120 days prior to or 30 days after adjusting its accounts as described in subsection (b) or (c), DCSS shall file with the Court a Notice of Administrative Adjustment indicating the action taken. The Notice shall be mailed to all parties at their last known address and advise that a Motion to Contest an Administrative Adjustment may be filed with the Court within 30 days of the mailing date of the Notice. Absent a contest, the contents of the notice shall be presumptive in any subsequent proceeding.

(e) Recognition of the termination or modification of a current or past due support obligation by operation of law or a change of payee may also be sought by motion by any party other than DCSS, or by DCSS if relief other than that which is authorized by subparagraphs (b) or (c) is sought. Nothing in this rule shall limit the Court's ability to grant appropriate relief in an action to establish, modify or enforce a support obligation.

4. This amendment shall be effective after 30 days notice to members of the Bar.