

**ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY**

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**To: Assignment Judges
Trial Court Administrators**

[Questions or comments
may be addressed to
(609) 633-2390]

From: Philip S. Carchman, P.J.A.D.

Subject: Probation Child Support Enforcement - Diligent Efforts Protocol

Date: July 9, 2008

The Judiciary's long-time use of certified mail for notice and service of process for child support enforcement proceedings is costly and not always effective. Individuals obligated to pay child support sometimes seek to evade that obligation by either asserting defect in notice and service or avoiding notice and service altogether. This is to advise you that, effective immediately, the attached Diligent Efforts Protocol (Protocol) provides an alternative method for meeting service of process requirements in child support enforcement matters. The Protocol details how service of process may be documented to the court or hearing officer by demonstrating that Probation Child Support Enforcement (PCSE) staff exercised "diligent efforts" to verify the obligor's address when serving notices by ordinary mail. The Protocol was approved by the Judicial Council on May 24, 2006. Implementation was delayed pending necessary enhancements to the Automated Child Support Enforcement System (ACSES).

History

The federal "Personal Responsibility Work Opportunity Reconciliation Act" (PRWORA), P.L. 104-193 (1996), a comprehensive welfare reform plan, included comprehensive provisions directed to child support enforcement. PRWORA established a legal presumption in child support enforcement actions that service has been effected when a notice is mailed and it is shown that diligent efforts were made to identify the address of the party served. If diligent efforts are made to confirm the obligor's address, then courts may presume that a notice mailed to that address was actually served on the obligor. In 1998, the New Jersey Legislature adopted this principle in the "New

Jersey Child Support Program Improvement Act,” N.J.S.A. 2A:17-56.7a et seq., as did the Supreme Court in Rule 5:4-4(c). While the use of diligent efforts has thus been available for some time, it has been a little-used tool because up to now the effort needed to verify and certify the obligor’s address has been burdensome and time consuming.

Diligent Efforts Protocol

The Diligent Efforts Protocol was developed to provide an alternative method to establish service of process by demonstrating that PSCE staff exercised “diligent efforts” to verify the obligor’s address. ACSES automatically interfaces with a number of external databases and uses information from those databases to update ACSES records, including address information. Because of these automatic updates to ACSES, PCSE staff use ACSES as the primary tool for obtaining address information for child support obligors. A recent enhancement to ACSES now automatically generates a Certification of Diligent Efforts (Form: 11224, CS 195), hereafter referred to as Certification, summarizing the results of these interfaces with external systems, any time the Notice of Motion to Enforce Litigants Rights (Notice) is generated. Along with documentation of other efforts to locate the obligor, the Certification eliminates the need to send a second copy of the Notice by certified mail in addition to the regular mail copy.

Under this Protocol, “diligent efforts” requirements are satisfied when the obligor’s address is searched by ACSES, with any new address having received verification from the U.S. Postal Service, and ACSES thereafter generates the Certification. When an obligor does not appear for a hearing and a judge or child support hearing officer is presented with the Certification, and Probation represents that the notice sent by regular mail has not been returned, the hearing should proceed, as effective service on the obligor is presumed at that point consistent with Rule 5:4-4(c). The court also is authorized to issue a bench warrant for failure to appear if appropriate.

The Probation Child Support Enforcement Operations Manual, Section 1604 – *Court Enforcement Procedures*, will be updated to reflect the new Protocol. Any questions about this memorandum may be directed to Richard R. Narcini, Chief, Child Support Enforcement Services at 609-633-2390.

P.S.C.

Attachments

c: Chief Justice Stuart Rabner
Hon. Glenn A. Grant, Acting Administrative Director Designate
Family Presiding Judges

AOC Directors and Assistant Directors
Richard R. Narcini, Chief, Probation Child Support Enforcement Services
Elidema Mireles, Esq., Chief, Child Support Hearing Officer Program
Vicinage Chief Probation Officers
Family Division Managers
Finance Division Managers
Vicinage Assistant Chief Probation Officers, Child Support
Stephen D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

DILIGENT EFFORTS PROTOCOL

The following protocol sets out the Diligent Efforts to be followed when serving process to enforce orders for child support and spousal support.

Authority

The New Jersey Rules of Court and statutes prescribe the manner of service of process that must be followed when enforcing a support order. Rule 5:4-4(c) and the 1998 “New Jersey Child Support Program Improvement Act,” N.J.S.A. 2A:17-56.7a et seq., provide the authority to use “diligent efforts” when serving process for the enforcement of a support provision in an order or judgment. Rule 5:4-4(c), which tracks the statutory language in N.J.S.A. 2A:17-56.54, specifically states:

For purposes of enforcing a support provision in an order or judgment, the court may deem due process requirements for notice and service of process to have been met with respect to the obligor on delivery of written notice to the most recent residential or employer address. If the obligor fails to respond to the notice and no proof is available that the obligor received the notice, the party bringing the enforcement action must show that diligent efforts have been made to locate the obligor by making inquiries to the U.S. Postal Service, the Division of Motor Vehicles, the Department of Labor, and the Department of Corrections. A certification documenting unsuccessful efforts to locate the obligor shall be provided to the court before any action adverse to the obligor is taken based on failure of the obligor to respond to a notice.

Moreover, the federal Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) provides that there is a presumption of notice on a showing of diligent efforts to locate a party in any subsequent child support enforcement action involving the same parties. Under PRWORA, when notice is sent to the most recent address filed with the State, that notice shall be deemed to constitute sufficient service. See 42 U.S.C. § 666(c)(2)(A)(ii) (Supp. V 1999).

Rule 5:7-4(f)(8) requires the parties to provide changes of address to the Probation Child Support Enforcement (PCSE) unit administering the case. Despite that requirement, parties do not always provide this information on a timely basis. Use of standardized “diligent efforts” allows alternative methods for establishing service of process on delinquent obligors when enforcement of the judgment or order becomes necessary and no alternative addresses for the obligor are known or provided.

Diligent Efforts Protocol

The Automatic Child Support Enforcement System (ACSES) automatically interfaces with a number of external databases in order to update its records. When new addresses are identified and verified, they are used to update the obligor record on ACSES. Because of these periodic automatic updates to ACSES, PCSE staff use ACSES as its primary tool for obtaining address information for child support obligors. External automated systems that regularly interface with ACSES include those administered by the New Jersey Motor Vehicle Commission, New Jersey Department of Labor, New Jersey Department of Corrections, New Jersey Department of Taxation, Federal Parent Locator Service (includes National Directory of New Hires, Social Security Administration, Internal Revenue Service and Federal Case Registry data), and the New Jersey Department of Human Services New Hire Database. Verified mailing address information received from these sources as well as the sources themselves are automatically indicated on the Certification. Based on the approval of this Protocol by the Judicial Council, the Department of Human Services, Division of Family Development enhanced the ACSES system to automatically generate this Certification. A sample of the Certification is attached. Other supporting documents, e.g., letters of inquiry, additional automated locate results and/or verification of mail delivery by the Postal Service, are indicated and/or summarized on the Certification by staff.

The Certification is automatically generated when PCSE staff schedule Enforcement of Litigants Rights (ELR) cases via the ACSES UCRT screen. The Certification is produced along with the Notice of Motion to Enforce Litigants Rights (CS040) and the Certification in Support of the Motion (CS041) documents. The Notice of Motion to Enforce Litigants Rights (CS040) and the Certification in Support of the Motion (CS041) are sent by regular mail to the obligor at the verified mailing address and the Certification of Diligent Efforts is placed in the PCSE file. PCSE staff must also note on the Certification of Diligent Efforts any additional address information obtained from sources external to ACSES, such as the approved locate vendor or the obligee. PCSE staff may also note on the Certification that the Notice of Motion to Enforce Litigants Rights (CS040) and the Certification in Support of the Motion (CS041) were sent to a second address, if applicable. The Certification may also be generated using the ACSES UDOC or MDOC transaction in situations where the Certification via the ACSES UCRT screen failed to print or a more current Certification may be needed for the pending ELR hearing.

Should the obligor fail to appear at the scheduled ELR hearing, PCSE staff will present the Certification of Diligent Efforts to the judge or the Child Support Hearing Officer (CSHO). The Certification of Diligent Efforts will demonstrate that PCSE has exercised "diligent efforts" to verify the obligor's address. The CSHO or judge may infer service from the mailing to the verified mailing address noted on the Certification and proceed with the granting of relief, as appropriate. In the event service is not successful, i.e., regular mail is returned by the Postal Service, PCSE still has the option of seeking a

bench warrant so that the obligor might be taken into custody and brought before the court for an enforcement proceeding.

Questions regarding this protocol may be addressed to Richard R. Narcini, Chief, Child Support Enforcement Services at (609) 633-2390.

PLAINTIFF/ OBLIGEE

vs.

DEFENDANT/ OBLIGOR

SUPERIOR COURT OF NEW JERSEY
PROBATION DIVISION
COUNTY OF ESSEX
DOCKET NO.:
PROBATION ACCOUNT NO.:

CIVIL ACTION

Certification of Diligent Efforts

I am **F. CHRISTOPHER STANECKI** for **ESSEX** Probation Division and make this Certification pursuant to N.J.S.A. 2A:17-56.54 and R. 5:4-4(c). Utilizing the various locate sources set forth below, automated interfaces have been searched and the potential addresses obtained have been investigated and, if not verified by the United States Postal Service, eliminated:

- United States Postal Service - attached
- Motor Vehicle Commission - **MAY 30, 2008**
- Department of Labor - **MAY 08, 1999**
- Department of Corrections - **JUNE 04, 2008**
- Department of Taxation -
- Federal Parent Locator Service - **MAY 17, 2008**
- State New Hire Database -
- Other - Specify Manual locate attempts

I have determined that the address for the Obligor is:

This is the address used for serving the obligor on **JUNE 09, 2008** by regular mail of a Enforcement of Litigants Rights motion scheduled for a hearing on **AUGUST 11, 2008**

Additional service was attempted on motion scheduled for a hearing on **AUGUST 11, 2008** by regular mail of the Enforcement of Litigants Rights at the following addresses:

XX The obligor has not properly advised Probation of a change of employer or an address in accordance with Rule 5:7-4(b).

Based on the foregoing statements, Probation is requesting that the obligor be deemed served at the address of record and requests enforcement by all available means.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____

F. CHRISTOPHER STANECKI