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MAR 25 1994

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

THE FLORIDA BAR,

Complainant,

Case No. 81,903 48/379
[TFB Case No. 92-31,972 (19A)]

v.

PHILLIP H. TAYLOR,

Respondent.

By _____
Chief Deputy Clerk

COMPLAINANT'S AMENDED INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar."

The transcript of the final hearing held on December 13th and 14th, 1993, shall be referred to as "T", followed by the cited page number.

The Report of Referee dated January 4, 1994, will be referred to as "ROR, 81,903," followed by the referenced page number(s) of the Appendix, attached. (ROR-A-____)

The bar's exhibits will be referred to as Bar Ex.____, followed by the exhibit number.

The respondent's exhibits will be referred to as Respondent Ex. _____, followed by the exhibit number.

STATEMENT OF THE CASE

The Nineteenth Judicial Circuit Grievance Committee "A" voted to find probable cause on February 17, 1993. The bar filed its complaint on June 8, 1993. The referee was appointed on June 18, 1993. This case was consolidated with case number 81,379 for purposes of judicial economy.

The final hearing was held on December 12 and December 13, 1993. The referee issued his report on January 5, 1994, in which he recommended the respondent be found not guilty of all charges in both cases. The board considered the report at its February, 1994, meeting and voted to appeal the referee's conclusions of law and recommendation of not guilty only in case number 81,903. The bar served its petition for review on February 22, 1994.

STATEMENT OF THE FACTS

The bar does not take issue with the referee's findings of fact, therefore, unless otherwise noted, the following facts are derived from the report of referee.

The respondent and Margaret Taylor divorced in 1972. At that time they had two minor children. Pursuant to an agreement, the respondent was ordered by the Superior Court of the State of New Hampshire to pay \$450.00 per month in child support and maintain adequate medical insurance. At the time the respondent was a medical doctor. In the ensuing years, the respondent's career and business ventures faltered due to his substance abuse problems. He filed for personal bankruptcy. In 1984, he sought treatment for his addictions. He later entered and graduated from law school and was admitted to The Florida Bar in 1989. At the time he was examined by the Board of Bar Examiners, his child support delinquency was made known to and considered by the board. After his admission, the respondent became employed by a large personal injury law firm as an associate.

On March 1, 1991, Margaret Taylor filed a petition in the New Hampshire court to hold the respondent in contempt for nonpayment of child support. On August 30, 1991, after a hearing on the merits, the court entered an order finding that at times between September, 1982, and June, 1990, the respondent had the

ability to pay the child support but without just cause failed to do so. The court rejected his argument that he and his former wife had orally agreed to a modification. The respondent was found in contempt of court and his former wife was awarded attorney's fees. No further sanctions were imposed. The respondent did not appeal the court's order and it remains outstanding.

SUMMARY OF THE ARGUMENT

The respondent has engaged in the contempt of court for failing to satisfy his personal child support obligations. The respondent continuously has ignored a 1972 court order requiring the payment of child support. In 1991, this finally resulted in his being found in contempt of court.

Rather than seeking modification of the child support order, or appealing the contempt order, the respondent simply has ignored the New Hampshire orders. Clearly, this demonstrates conduct prejudicial to the administration of justice. The referee incorrectly has dismissed this matter as a personal civil matter between the respondent and his ex-wife. An attorney has a duty either to obey orders of a tribunal or to seek appropriate remedies. Ignoring valid court orders is not an alternative for a member of The Florida Bar sworn to uphold the integrity of the judicial system. Whether the orders affect an attorney professionally or personally should not be distinguished.

By imposing discipline, this court will respond to the legislature's request that the Supreme Court of Florida adopt sanctions similar to 61.13015, Fla. Stat. (1993), and demonstrate that this court always has disciplined attorneys who violate orders of the court, whether related to personal child support or otherwise. This court already has in effect measures to impose

discipline on an attorney who engages in any action of contempt of court, including failure to satisfy personal child support obligations. A ninety-one (91) day suspension, requiring proof of rehabilitation from the factors which led to this situation, is appropriate.

ARGUMENT

POINT I

IT IS APPROPRIATE THAT THE SUPREME COURT OF FLORIDA
DISCIPLINE ATTORNEYS WHO FAIL TO OBEY COURT ORDERS.

Ch. 93-208, preamble, Laws of Fla., an act relating to child support, was enacted on July 1, 1993. This act provides for the Department of Professional Regulation to suspend or deny a professional license or certificate due to the licensee's delinquent child support obligations. The act further states that it is "...requesting the Florida Supreme Court to adopt an amendment to the rules regulating The Florida Bar to discipline attorneys who are delinquent or fail to pay child support..."

Ch. 93-208, preamble, Laws of Fla., Section 61.13015 provides that an obligee of child support may petition the court with jurisdiction over the child support order to suspend or deny a professional license of any delinquent obligor, upon exhaustion of all other available remedies.

The legislature has requested that similar sanctions be imposed upon attorneys. Clearly, this case provides this court with the opportunity to demonstrate to the legislature that the Supreme Court of Florida does in fact discipline any attorney who acts in the contempt of court.

The precedent in this state to date is The Florida Bar v.

Langston, 540 So. 2d 118 (Fla. 1989), where an attorney was held in contempt of court during his divorce proceedings due to his failure to pay temporary alimony and child support as ordered by the court. He was jailed for approximately six weeks until he purged himself. In the final judgment of dissolution and various orders pertaining to the contempt, the trial judge found, that despite his ability to do so, the attorney failed to pay his temporary alimony and child support and also engaged in a calculated scheme to defraud his wife of alimony and prevent an equitable distribution of property. This court stated that the attorney's misconduct was neither excused nor satisfactorily explained by virtue of it arising in an acrimonious dissolution proceeding where the wife was represented by counsel. In defense of his position, the attorney pointed out that the misconduct occurred more than six years prior to the bar's case and in the interim he took steps to reestablish his credit and rebuild his business following bankruptcy. This court, however, was unswayed by his arguments and found his contemptuous conduct to be serious and "particularly egregious for a lawyer." The attorney received a ninety-one (91) day suspension.

An attorney was suspended for three years in The Florida Bar v. Wishart, 543 So. 2d 1250 (Fla. 1989), as a result of the attorney's close personal and emotional involvement in the custody proceeding involving his step-granddaughter. The lawyer became involved in the divorce of his son and daughter-in-law.

The court entered a temporary order awarding custody to the daughter-in-law. The presiding judge then entered an order of recusal. Mr. Wishart took possession of the child and refused to return her to her mother, claiming that the recusal order had the effect of voiding the temporary custody order. A subsequent judge entered a temporary restraining order requiring Mr. Wishart to return the child which Mr. Wishart refused to obey. He then refused a direct order of the judge to reveal the child's location and was jailed. He returned the child only after assurances from the court that she would not be returned to her mother. After the final judgment was entered in the dissolution action, the court ordered the parents to share parental responsibility with primary residence being with the mother. Thereafter, Mr. Wishart again took the child and refused to return her to her mother. He refused to obey a writ of habeas corpus issued by the circuit court because he believed it was void. Several appeals followed. Throughout the civil proceedings, the attorney willfully and knowingly disobeyed and counseled others to disobey orders and judgments of the circuit court. He pursued a course of conduct knowingly designed to disrupt the orderly process of the judicial system and to serve his own ends, as he alone defined them. He failed to recognize the adverse impact his course of conduct had on the legal system which he took an oath to uphold. This court stated that if Mr. Wishart doubted the validity of the various court orders, his option was to challenge them legally rather than to ignore them.

The orders were presumed valid and he was obligated to obey them until such time as they were properly and successfully challenged. In mitigation, the court considered Mr. Wishart's close personal and emotional involvement in the custody proceeding.

It is well settled that actions in contempt of court by a member of The Florida Bar will not be tolerated by this court.

Rule 4-8.4(d), with which the respondent was charged, provides: "A lawyer shall not engage in conduct that is prejudicial to the administration of justice." The comment notes: "A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of rule 4-1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law."

In the case at hand, the respondent has made no challenges to the August 30, 1991, order of the New Hampshire court (Bar Ex. 6) and he remains in contempt for noncompliance.

Recently, in The Florida Bar v. Rood, 19 Fla. L. Weekly S51 (Fla. Jan. 20, 1994), this court suspended Mr. Rood for a number of violations where Mr. Rood was held in willful contempt of court. He was found to have violated rule 4-8.4 of the Rules

Regulating The Florida Bar. The court noted, "As to count two, a lawyer should never mislead the court on a proposed course of action or fail to keep a promise made to the court. There is evidence that Rood did both, even though he may not have intended to do so," at page 55.

In The Florida Bar v. McKenzie, 432 So. 2d 566 (Fla. 1983), this court publically reprimanded an attorney where he engaged in the contempt of court for failing to appear on behalf of his client at a hearing. Mr. McKenzie also was found guilty of additional rule violations for other conduct.

In The Florida Bar v. Neely, 417 So. 2d 957 (Fla. 1982), this court disciplined Mr. Neely with a public reprimand and one year probation for his actions in failing to obey orders of the appellate court directing him to proceed in prosecuting his client's criminal appeal which resulted in his being adjudged in contempt.

In The Florida Bar v. Jackson, 494 So. 2d 206 (Fla. 1986), an attorney challenged the referee's recommendation of guilt where he had been found to be in contempt of court for disobeying an order of the trial court requiring his appearance. Mr. Jackson claimed he did not obey the order for his appearance because the date was a religious holiday and the order infringed on his first amendment rights. This court stated:

Under the circumstances, we cannot conclude that Jackson's intentional defiance of the trial court's order to appear was a good faith test of the validity of that ruling. To hold otherwise would extend this exception to all cases in which a recalcitrant attorney claims a sincere belief in the invalidity of a ruling, regardless of the reasonableness of that belief. At page 207.

This rationale is directly on point here. The respondent failed to seek to judicially modify the standing obligation of the court which stemmed from 1972. He has failed to seek an appeal of the court's order holding him in contempt, or to take action to purge himself of the contempt. This action clearly demonstrates a disregard for the administration of justice.

Discipline is appropriate for such conduct.

POINT II

THE REFEREE'S CONCLUSION OF LAW THAT AN ATTORNEY SHOULD NOT BE DISCIPLINED FOR BEING HELD IN CONTEMPT OF COURT DUE TO A FAILURE TO PAY CHILD SUPPORT IS ERRONEOUS.

The bar takes no issue with referee's findings of fact because such findings are supported by the evidence, The Florida Bar v. Micks, 628 So. 2d 1104 (Fla. 1993). The referee's legal conclusions, however, are subject to a broader scope of review because the ultimate responsibility for entering the appropriate judgement rests with this court, The Florida Bar in re Inglis, 471 So. 2d 38 (Fla. 1985).

The bar submits the referee's conclusion that the bar is seeking to discipline the respondent for not paying his child support is erroneous. The situation here is that the respondent was found in contempt of court for actions which continued after his admission to The Florida Bar. The order of contempt was not issued until long after the respondent had been admitted to practice and therefore was not considered by the Board of Bar Examiners. As a result, there are no ex post facto considerations presented here.

With respect to the referee's concerns about ex post facto considerations, the misconduct with which the respondent is charged, being held in contempt of court, did not occur until after he was admitted to The Florida Bar and therefore was not

considered by the Board of Bar Examiners. It is true that the respondent's failure to pay his child support arose prior to his admission to the bar and continued thereafter. Simply because an attorney's ongoing activities commenced prior to admission to the bar does not immunize him from professional responsibility. For example, in The Florida Bar v. Pedrero, 538 So. 2d 842 (Fla. 1989), an attorney was disbarred for his involvement in drug importation. His involvement began approximately one year prior to his being admitted to the practice of law in Florida. He arranged for a co-conspirator to obtain false identification so as to acquire credit cards and bank accounts which were used to purchase merchandise and receive cash advancements. These activities continued after the attorney's admission to The Florida Bar.

The bar submits it is appropriate to discipline an attorney for his contempt of court even if it involves a matter unrelated to the practice of law because an attorney is an officer of court and is held to a higher standard of care to avoid bringing the profession and the legal system into scorn and disrepute.

In the case at hand, it is noted that the order holding the respondent in contempt specifically found that respondent had the ability to pay, Bar Ex. 6. Therefore, respondent's attempt to engage the referee in a de novo review of his financial situation was irrelevant and inappropriate. Sanctions are warranted for

respondent's action in failing to obey a valid court order resulting in his being held in contempt.

The respondent has disobeyed an order requiring his payment of child support from 1972 to date, Bar Ex 1; Bar Ex. 2; Bar Ex. 6. He never has sought a modification of the child support order, T. pp. 103-104. He never has appealed the most recent order adjudicating him in contempt (T. pp. 104-105). Such actions are not appropriate to a member of The Florida Bar.

The referee characterizes this as a private civil matter between the respondent and his ex-wife. It is the position of the legislature of this state that nonpayment of child support is a matter which may be addressed, in other regulated professions, by the suspension or denial of professional licenses and certificates. The referee acknowledged this court's ability to make a similar determination in his report, ROR-A-8, Section III. As discussed above, this court clearly has the authority to discipline attorneys who engage in violations of orders of the court.

It is the position of The Florida Bar that the respondent's actions, resulting in his being held in contempt of court, and his continued failure to seek to purge himself of this condition, are grounds for disciplinary action.

POINT III

THE APPROPRIATE LEVEL OF DISCIPLINE FOR BEING HELD IN CONTEMPT OF COURT FOR FAILING TO ABIDE BY A CHILD SUPPORT OBLIGATION IS A NINETY-ONE (91) DAY SUSPENSION AND PAYMENT OF COSTS.

In accordance with the Rules Regulating The Florida Bar and Ch. 93-208, preamble, Laws of Fla., respondent should be suspended for ninety-one (91) days and thereafter until he demonstrates his fitness to practice law by satisfying his child support obligation.

The Florida Standards for Imposing Lawyer Sanctions support a suspension. Standard 6.2, abuse of the legal process, applies in cases where an attorney fails to obey an obligation under the rules of a tribunal. Standard 6.22 calls for a suspension when a lawyer knowingly violates a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. The language of the standard does not require the attorney to be acting in his professional capacity.

A ninety-one day suspension requires the attorney prove rehabilitation in order to gain reinstatement. Rehabilitation has been defined by this court as the attorney's restoration to previous rank, good standing, former rights, privileges or reputation, In re McGregor, 122 So. 2d 7, 9 (Fla. 1960). A

suspension with automatic reinstatement does not impose on the lawyer the responsibility of taking affirmative action during the suspension period to gain reinstatement, The Florida Bar v. Thompson, 500 So. 2d 1335 (Fla. 1986). Therefore, anything less than a ninety-one day suspension would allow the respondent to continue ignoring the New Hampshire court's order as he has done for the past two and one-half years. He would have the freedom to decide when, if ever, to purge himself of contempt. He would continue practicing law, thus demonstrating to the public that a lawyer, unlike other professionals, can continue to enjoy earning a substantial income and not suffer the adverse consequences other professionals face when found in contempt of court due to a failure to pay child support.

The respondent does not appear to appreciate the gravity of being held in contempt of court or his duty either to abide by court orders or seek modification through the appropriate means.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact, conclusions of law and recommendation of not guilty and instead impose a discipline of a ninety-one (91) day suspension, requiring proof of rehabilitation prior to reinstatement and payment of costs, currently totalling \$1,786.11.

Respectfully submitted,

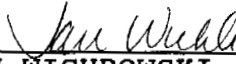
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By:



JAN WICHROWSKI
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing amended initial brief and appendix have been furnished by regular U. S. mail to ✓The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by regular U. S. mail to Mr. Michael Keenan, counsel for respondent, at 325 Clematis Street, Suite A - 2nd Floor, West Palm Beach, Florida 33401; and a copy of the foregoing has been furnished by regular U. S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 23rd day of March, 1994.



JAN WICHROWSKI
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

PHILLIP H. TAYLOR,

Respondent.

Case No. 81,903

[TFB Case No. 92-31,972 (19A)]

APPENDIX TO COMPLAINANT'S AMENDED INITIAL BRIEF

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IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

THE FLORIDA BAR

Case Nos. 81,379
(Fla. Bar Case No. 92-31,232 19A)

Complainant,

v.

PHILLIP H. TAYLOR

81,903
(Florida Bar Case No. 92-31,972 19A)

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein, according to the Rules of Discipline, final hearing was held on December 12 and 13, 1993.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Janice K. Wichrowski, Bar Counsel

For The Respondent: G. Michael Keenan, Esquire

These cases were consolidated for purposes of final hearing, although documentary evidence, testimony and arguments were kept separate.

II. Findings of Fact: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find as follows:

As To Case No. 81-379
(Florida Bar Case No. 92-31,232 (19A))

1. In the fall of 1991, Respondent was employed as an associate in the West Palm Beach, Florida, law firm of Searcy, Denney, Scarola, Barnhardt & Shipley, P.A. ("Searcy firm").

2. Also at that time Respondent continued to be on probationary admission to The Florida Bar, which, in part, required that he practice only with other member(s) of the Florida Bar (Respondents No. 1 in evidence).

3. Respondent's area of practice at the Searcy firm primarily involved medical malpractice cases. This was only natural, since he is also a medical doctor (although he does not have an active license).

4. One of the Searcy firm's clients was Alicia Slagle and her minor daughter, who had a medical negligence claim for brain damage suffered by the child at the time she was born. Respondent was the primary associate at the Searcy firm working on the case and had frequent contact with Ms. Slagle. Apparently such cases involve a great deal of client "hand-holding" due to the complex problems of the children, which was especially true for the Respondent's involvement in light of his medical training and experience.

5. During this period of time Respondent became concerned about the continued viability of his employment with the Searcy firm, in large part, due to its demand that all associates sign an employment contract containing certain provisions with which Respondent disagreed.

6. As a result of such concern and knowing the condition of his admission to The Florida Bar, Respondent contacted attorney Willie E. Gary to inquire about potential employment with his firm. He first spoke with Mr. Gary by telephone on Friday, November 15, 1991, and personally met with him two days later. Respondent did not formally accept employment with Mr. Gary at that time.

7. Also during this same period of time, Respondent continued to have contact with Ms. Slagle and advised her about his possible departure from the Searcy firm.

8. On November 21, 1991, Respondent made his decision to resign from the Searcy firm after first speaking with Mr. Gary to make sure he could be employed by his law firm. Apparently, he first advised Mr. Searcy by telephone and immediately thereafter submitted handwritten and typed letters

of resignation (Respondent's Exhibits 5 & 6 in evidence).

9. On November 27, 1991, the Searcy firm sued the Respondent, Mr. Gary and their law firm in the Circuit Court of Palm Beach County, Florida, and obtained an ex parte injunction prohibiting them from communicating with certain of the Searcy firm's clients, including Ms. Slagle (Bar's Exhibits 1 & 2 in evidence).

10. A motion was filed to dissolve the injunction and a hearing was commenced to consider the issue before the Honorable John D. Wessel, Circuit Judge, on December 10, 1991. Both the Respondent and Ms. Slagle testified in that proceeding. The entire transcript of that proceeding was admitted into evidence as Bar's Exhibit No. 5. The motion to dissolve the injunction was ultimately denied (Bar's Exhibit No. 4 in evidence).

11. It is important to keep in mind that The Florida Bar has not charged the Respondent with improperly soliciting the Searcy firm's clients. Rather, he has been charged with testifying falsely to Judge Wessel about the nature and content of his contacts with Ms. Slagle for the purpose of having the injunction vacated or modified.

12. The Florida Bar's burden in this regard is to prove its case by clear and convincing evidence. In my view it has failed to meet its burden.

13. Essentially, the Bar's case is based upon conflicts between the testimony of Respondent and Ms. Slagle.

In some instances I find there was no conflict or that Respondent's testimony was accurate. For example, both Respondent and Ms. Slagle testified that prior to November 21, 1991, Respondent told her about the possibility that he was leaving the Searcy firm. Thus, when he was asked questions which included words connoting certainly of departure he was

truthful in testifying that such conversations did not occur.

In other instances, Ms. Slagle's testimony conflicted with itself. For example, at page 29 of the hearing transcript (first section of Bar's Exhibit No. 5) Ms. Slagle testified that during a conversation which took place prior to November 21, 1991, Respondent asked if she would go with him if he left the Searcy firm. However, she subsequently testified at page 24 of her deposition (second section of Bar's Exhibit No. 5)¹, the Respondent actually told her that clients had a choice.

Finally, Ms. Slagle testified at page 31 of the hearing transcript (first section of Bar's Exhibit No. 5) that Respondent telephoned her and wanted her to sign a contract and dismiss the Searcy firm. However, that took place after Respondent's resignation. Thus, it cannot be considered as a basis to refute Respondent's testimony of what he said to her prior to November 21, 1991.

A total consideration of Ms. Slagle's testimony discloses an individual who had developed a rapport with the Respondent and was concerned about what would happen with her daughter's case if he left the Searcy firm. Undoubtedly, Respondent's possible departure and her possible termination of representation were discussed prior to November 21, 1991. However, there are questions about exactly what was said and when it was said. Such questions preclude a finding of false testimony by Respondent by clear and convincing evidence.

As To Case No. 81,903
(Florida Bar Case No. 92-31, 971(19A))

1. Respondent was formerly married to Margaret Taylor. They were

¹Part of Ms. Slagle's testimony was taken by deposition after Judge Wessel had to adjourn the courtroom proceedings to handle other matters on his docket.

(((

divorced on March 8, 1972, in the Superior Court of the State of New Hampshire, Equity #11,638. At the time of the divorce the parties had two minor children. Pursuant to an agreement, Respondent was ordered to pay \$450.00 per month in child support and maintain adequate medical insurance.

2. After the divorce Respondent became a successful medical doctor and businessman. He ultimately lost everything, including another marriage, due to alcohol and drug addictions, culminating in personal bankruptcy.

3. He began treatment for addictions in 1984. Later he entered, and subsequently graduated from, law school. However, he was also becoming increasingly delinquent in his child support payments to Margaret Taylor. These payments had never been modified or abated by order of the New Hampshire court.

4. When Respondent applied for admission to The Florida Bar in 1988, one of the things disclosed to, and considered by, the Florida Board of Bar Examiners, was his child support problems with Margaret Taylor. Although those problems were not resolved, Respondent was admitted on a probationary status in 1989 and the conditions imposed did not involve the delinquent child support due the former Mrs. Taylor (Respondent's No. 10 in evidence).

5. After his admission, Respondent became an associate in the law firm of Montgomery, Searcy & Denney, P.A. n/k/a Searcy, Denney, Scarola, Barnhart & Shipley, P.A.

6. On March 1, 1991, Margaret Taylor filed a petition to hold Respondent in contempt for nonpayment of child support in the original New Hampshire divorce proceeding.

7. On August 30, 1991, after a hearing on the merits, the New Hampshire court entered its order finding "...that at times..." between "...September, 1982, through June, 1990,..." Respondent had the ability to pay

child support and without just cause failed to do so. The court also rejected Respondent's argument of an oral modification due to lack of consideration, since Respondent failed to comply with its terms. As a consequence, he was found in contempt of court and his former wife was awarded attorneys' fees (Bar No. 6 in evidence). No further sanctions or requirements were imposed by the court. That order was not appealed and remains outstanding.

III. Recommendation As To Whether Or Not The Respondent Should Be Found Guilty:

As to each case I make the following recommendations as to guilt or innocence.

As to Case No. 81-379

I recommend that the Respondent be found not guilty and specifically that he be found not guilty of the following violations charged by The Florida Bar, to wit:

Rule of Discipline 3-4.3 for engaging in conduct that is contrary to honesty and justice; and

The following Rules of Professional Conduct: 4-3.3(a)(1) for knowingly making a false statement of material fact or law to a tribunal; 4-4.1(a) for knowingly making a false statement of material fact or law to a third person; 4-8.4(b) for committing a original act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects; 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

The reason for my recommendation is the failure of The Florida Bar to prove the basis for those charges by clear and convincing evidence.

As to Case No. 81,903

I recommend that the Respondent be found not guilty and specifically

that he be found not guilty of the following violations charged by The Florida Bar, to wit:

Rule of Discipline 3-4.3 for committing an act that is unlawful or contrary to honesty and justice; and

The following Rules of Professional Conduct: 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

The reasons for my recommendation in this particular case do not involve the burden of proof. The material facts are not in dispute. Rather, they are as follows:

1. Neither side has cited a reported Florida case where a lawyer has been sanctioned for failure to pay child support or some other domestic relations debt, except The Florida Bar v. Langston 540 S. 2d 118 (Fla. 1989). However, in Langston the attorney perjured himself and entered into a calculated scheme to defraud his wife and consequently the court. No such egregious facts are present in this case. Nor did the New Hampshire court find that Respondent perjured himself or attempt to commit fraud on the court relative to his defense of oral modification. Rather, it essentially held that any such modification lacked consideration because Respondent failed to fully perform his end of the bargain.

2. This case is more akin to a private civil matter between Respondent and his former wife. The situation has not had an adverse impact on his ability to practice law. Nor does it involve dishonesty, moral turpitude, immorality, deceit or breach of trust. I believe the court's comments in The Florida Bar v. Della-Donna, 583 So. 2d 307, 312 (Fla. 1991), should be seriously considered and that The Florida Bar should not be acting as a de facto collection agent for child support in a civil matter.

3. The actual subject matter of the Complaint in this case was the August 30, 1991, order of the New Hampshire court (Bar's Exhibit No. 6). It was really a civil judgment. Further, The Florida Bar did not formally charge the Respondent with misconduct under the 1972 divorce decree.

4. That same August 30, 1991, order was not specific as to the date of Respondent's contemptuous conduct (it occurred "at times" between September, 1982 and June 1990). That fact, considered with the fact that Respondent's problems with his former wife were considered prior to his probationary admission into The Florida Bar in 1989, make me wonder if this would not amount to something similar to ex post facto punishment.

5. Finally, I do not believe the actions of the Respondent in this case are factually similar to those of any lawyer previously sanctioned on the record in Florida for conduct in his or her personal life. If this Court wishes to make the definitive statement that an attorney, who is found in contempt for failure to pay child support, is subject to sanction, absent some other conduct, such as perjury, dishonesty, deceit, etc., so be it. However, I do not believe the Rules of Discipline or the Rules of Professional Conduct specifically address it at this time.²

IV Recommendation as to Disciplinary Measures to be Applied:

Having found the Respondent not guilty in both cases, no discipline is recommended.

V. Past History and Past Disciplinary Record:

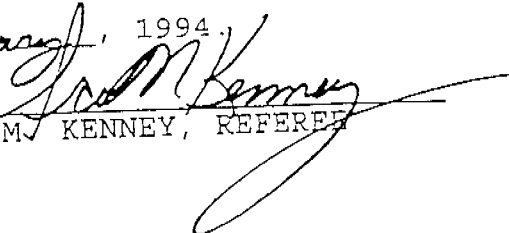
Having found the Respondent not guilty in both cases, this section is not applicable.

VI. Statement of Costs and Manner in Which Costs Should be Taxed.

²I am aware of various legislative proposals to address this particular issue for professional licensees in Florida.

Having found the Respondent not guilty in both cases, I recommend that costs not be charged to the Respondent.

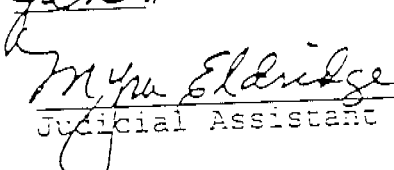
DATED this 4th day of January, 1994.


SCOTT M. KENNEY, REFEREE

Copies To:
SEE ATTACHED MAILING LIST

CERTIFICATE OF SERVICE

I HEREBY CERTIFY and conformed that a copy of the above-report of referee has been served on Janice K. Wichrowski, Bar Counsel at The Florida Bar, 820 North Orange Ave., Suite 200, Orlando, Florida, 328; G. Michael Keenan, Esquire, Suite A, Second Floor, 325 Clematis St., West Palm Beach, Florida 33401; and John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-postage prepaid, via first class mail, postage prepaid, this 3th day of Jan, 1994.


Myra Eldridge
Judicial Assistant

The Florida Bar v Phillip H. Taylor

Case No. 93-30,902 (19A)

MAILING LIST

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Section 76. This act shall take effect upon becoming a law.

Approved by the Governor May 12, 1993.

Filed in Office Secretary of State May 12, 1993.

FAMILY LAW—CHILD SUPPORT

Chapter 93-208

C.S.H.B. No. 707

AN ACT relating to child support; amending s. 61.13, F.S.; providing for child support in accordance with the child support guidelines; providing for apportionment of the costs of health insurance for the minor child; creating s. 61.13015, F.S.; providing for a petition to suspend or deny a professional license or certificate for delinquent child support obligations; amending s. 61.14, F.S.; providing for interest with respect to judgments for child support; providing for equal effect of settlements and court orders on subsequent modifications; amending s. 61.16, F.S.; authorizing the assessment of certain fees against the Department of Health and Rehabilitative Services; amending s. 61.30, F.S.; providing for modifications to the child support guidelines; amending s. 48.001, F.S.; requiring employers to allow access for service of process; creating s. 231.097, F.S.; providing for the denial of teaching certificates for child support delinquencies; amending s. 231.28, F.S.; providing for the suspension of teaching certificates for child support delinquency; providing for reinstatement; limiting liability; creating s. 409.2588, F.S.; providing for the suspension or denial of professional licenses or certifications for child support delinquencies; amending s. 455.203, F.S.; providing for the suspension or denial of professional licenses for child support delinquencies; limiting liability; amending s. 559.79, F.S.; providing for the suspension or denial of licenses for child support delinquencies; limiting liability; creating s. 322.055, F.S.; providing for the suspension of driver licenses and vehicle registration for child support delinquencies; providing for notice; limiting liability; providing for return and seizure of a suspended driver's license and registration; amending s. 61.181, F.S.; extending the period during which an increased fee for receiving, recording, reporting, disbursing, monitoring, and handling child support payments is to be collected; requiring compliance audits; requesting the Florida Supreme Court to adopt an amendment to the rules regulating The Florida Bar to discipline attorneys who are delinquent or fail to pay child support; amending ss. 409.2567, 742.045, and 742.08, F.S.; providing that any costs in Title IV-D cases incurred by the clerk of the circuit court shall be assessed only against the nonprevailing obligor; amending s. 742.10, F.S.; revising language with respect to the establishment of paternity for children born out of wedlock; amending s. 733.707, F.S.; providing for the payment of arrearages from court-ordered child support by the personal representative; amending s. 61.1301, F.S.; revising language with respect to income deduction orders; requiring a report to the Governor and the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (b) of subsection (1) and subsection (5) of section 61.13, Florida Statutes, are amended to read:

61.13. Custody and support of children; visitation rights; power of court in making orders

(1)(a) In a proceeding for dissolution of marriage, the court may at any time order either or both parents who owe a duty of support to a child to pay support in accordance with the guidelines in s. 61.30 as from the circumstances of the parties and the nature of the case is equitable. The court initially entering an order requiring one or both parents to make child support payments shall have continuing jurisdiction after the entry of the initial order to modify the amount and terms and conditions of the child support payments when the modification is found necessary by the court in the best interests of the child, when the child reaches majority, or when there is a substantial change in the circumstances of the parties. The court initially entering a child support order shall also have continuing jurisdiction to

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Additions are indicated by underline; deletions by ~~strikeout~~

REGULAR SESSION

require the obligee to report to the court on terms prescribed by the court regarding the disposition of the child support payments.

(1) Each order for child support shall contain a provision for health insurance for the minor child when the insurance is reasonably available. Insurance is reasonably available if either the obligor or the obligee has access at a reasonable rate to group insurance. The court may require the obligor either to provide health insurance coverage or to reimburse the obligee for the cost of health insurance coverage for the minor child when coverage is provided by the obligee. In either event, the court shall apportion the cost of coverage to both parties by allocating the cost to the basic obligation determined pursuant to s. 61.30(6).

A copy of the court order for insurance coverage shall be served on the obligor's payor union by the obligee or the IV-D agency when the following conditions are met:

- a. The obligor fails to provide written proof to the obligee or the IV-D agency within 30 days of receiving effective notice of the court order, that the insurance has been obtained or that application for insurability has been made;
- b. The obligee or IV-D agency serves written notice of its intent to enforce medical support on the obligor by mail at the obligor's last known address; and
- c. The obligor fails within 15 days after the mailing of the notice to provide written proof to the obligee or the IV-D agency that the insurance coverage existed as of the date of mailing.

(2) The order is binding on the payor or union when service of the notice as provided in paragraph 1. is made. Upon receipt of the order, or upon application of the obligor pursuant to the order, the payor or union shall enroll the minor child as a beneficiary in the group insurance plan and withhold any required premium from the obligor's income. If more than one plan is offered by the payor or union, the child shall be enrolled in the insurance plan in which the obligor is enrolled or the least costly plan otherwise available to the obligor.

(3) The court may make specific orders for the care and custody and support of the minor child from the circumstances of the parties and the nature of the case is equitable and provide for child support in accordance with the guidelines in s. 61.30. An award of shared parental responsibility of a minor child does not preclude the court from entering an order for child support of the child.

Section 2. Section 61.13015, Florida Statutes, is created to read:

61.13015. Petition for suspension or denial of professional licenses and certificates

(1) An obligee may petition the court which entered the support order or the court which is enforcing the support order for an order to suspend or deny the license or certificate issued pursuant to chapters 281, 409, 455, and 559 of any obligor with a delinquent child support obligation. However, no petition may be filed until the obligee has exhausted all other available remedies. The purpose of this section is to promote the public policy of s. 409.2551.

(2) The obligee shall give notice to any obligor when a delinquency exists in the support obligation. The notice shall specify that the obligor has 30 days from the date on which service of the notice is complete to pay the delinquency or to reach an agreement with the obligee to pay the delinquency. The notice shall specify that, if payment is not made or an agreement cannot be reached, the license or certificate may be denied or suspended pursuant to a court order.

(3) If a delinquency exists and the obligor fails to pay the delinquency or to reach an agreement to pay the delinquency within 30 days following completion of service of the notice of the delinquency, the obligee shall send a second notice to the obligor stating that the obligor has 30 days to pay the delinquency or reach an agreement with the obligee to pay the delinquency. If the obligor fails to respond to either notice from the obligee or if the obligor fails to pay the delinquency or to reach an agreement to pay the delinquency after the second notice, the obligee may petition the court to deny the application for the license or certificate or to suspend the license or certificate of the obligor. The court may find that it would be inappropriate to deny or suspend a license or certificate if:

- (a) Denial or suspension would result in irreparable harm to the obligor or employees of the obligor or would not accomplish the objective of collecting the delinquency; or

Additions are indicated by underline; deletions by strikeout

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(b) The obligor demonstrates that he has made a good faith effort to reach an agreement with the obligee.

The court may not deny or suspend a license or certificate if the court determines that an alternative remedy is available to the obligee which is likely to accomplish the objective of collecting the delinquency. If the obligor fails in the defense of a petition for denial or suspension, the court which entered the support order or the court which is enforcing the support order shall enter an order to deny the application for the license or certificate or to suspend the license or certificate of the obligor. In the case of suspension, the court shall order the obligor to surrender the certificate or license to the department or to the licensing board which issued the license or certificate. In the case of denial, the court shall order the appropriate department or licensing board to deny the application.

(4) If the court denies or suspends a license or certificate and the obligor subsequently pays the delinquency or reaches an agreement with the obligee to settle the delinquency and makes the first payment required by the agreement, the license or certificate shall be issued or reinstated upon written proof to the court that the obligor has complied with the court order. Proof of payment shall consist of a certified copy of the payment record issued by the depository. The court shall order the appropriate department or licensing board to issue or reinstate the license or certificate without additional charge to the obligor.

(5) Notice shall be served under this section by mailing it by certified mail, return receipt requested, to the obligor at his last address of record with the local depository. If the obligor has no address of record with the local depository, or if the last address of record with the local depository is incorrect, service shall be by publication as provided in chapter 49. When service of the notice is made by mail, service is complete upon the receipt of the notice by the obligor.

Section 3. Paragraph (d) of subsection (6) of section 61.14, Florida Statutes, 1992 Supplement, is amended, and subsection (7) is added to that section, to read:

61.14. Enforcement and modification of support, maintenance, or alimony agreements or orders

(6)

(d) The court shall hear the obligor's motion to contest the impending judgment within 15 days after the date of the filing of the motion. Upon the court's denial of the obligor's motion, the amount of the delinquency and all other amounts which thereafter become due, together with costs and a fee of \$5, become a final judgment by operation of law against the obligor. The depository shall charge interest at the rate established in s. 55.03 on all judgments for child support.

(7) When modification of an existing order of support is sought, the proof required to modify a settlement agreement and the proof required to modify an award established by court order shall be the same.

Section 4. Subsection (1) of section 61.16, Florida Statutes, 1992 Supplement, is amended to read:

61.16. Attorney's fees, suit money, and costs

(1) The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name. In Title IV-D cases, attorney's fees, suit money, and costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees. The Department of Health and Rehabilitative Services shall not be considered a party for purposes of this section; however, fees may be assessed against the department pursuant to s. 57.105(1).

Section 5. Subsection (1), paragraph (e) of subsection (3), and subsections (6), (7), (8), (9), (10), (11), (12), (13), and (14) of section 61.30, Florida Statutes, 1992 Supplement, are amended to read:

61.30. Child support guidelines

(1)(a) The child support guideline amount as determined by this section presumptively establishes the amount the trier of fact shall order as child support in an initial proceeding for such support or in a proceeding for modification of an existing order for such support, whether the proceeding arises under this or another chapter. The trier of fact may order payment of child support which varies, plus or minus 5 percent, from the guideline amount. The trier of fact may order payment of child support in an amount which varies more than 5 percent ~~different~~ from such guideline amount only upon a written finding, or a specific finding on the record, explaining why ordering payment of such guideline amount would be unjust or inappropriate.

(b) The guidelines may provide the basis for proving a substantial change in circumstances upon which a modification of an existing order may be granted. However, the difference between the existing order and the amount provided for under the guidelines shall be at least 15 percent or \$50, whichever amount is greater, before the court may find that the guidelines provide a substantial change in circumstances.

(3) Allowable deductions from gross income shall include:

(e) Health insurance payments, excluding payments for coverage of the minor child.
~~(Substantial rewording of subsection. See s. 61.30(6), F.S., 1992 Supplement, for present text.)~~

(3) The following schedule shall be applied to the combined net income to determine the minimum child support need:

Combined Monthly Available Income	Child or Children					
	One	Two	Three	Four	Five	Six
650.00	74	75	75	76	77	78
700.00	119	120	121	123	124	125
750.00	154	166	167	169	171	173
800.00	190	211	213	216	218	220
850.00	222	257	259	262	265	268
900.00	253	302	305	309	312	315
950.00	284	347	351	355	359	363
1000.00	315	385	397	402	406	410
1050.00	346	432	443	448	453	458
1100.00	377	480	489	495	500	505
1150.00	408	527	522	541	547	553
1200.00	439	575	544	583	594	600
1250.00	470	622	565	634	641	648
1300.00	501	670	584	659	688	695
1350.00	532	717	603	681	735	743
1400.00	563	765	623	702	765	780
1450.00	594	812	642	724	789	838
1500.00	625	860	662	746	813	869
1550.00	656	907	681	768	836	895
1600.00	687	955	701	790	860	920
1650.00	718	1002	720	812	884	945
1700.00	749	1050	740	833	907	971
1750.00	780	1097	759	855	931	996
1800.00	811	1145	779	877	955	1022
1850.00	842	1192	798	900	979	1048
1900.00	873	1240	818	923	1004	1074
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Additions are indicated by underline; deletions by ~~strikeout~~

Combined Monthly Available Income	Child or Children					
	One	Two	Three	Four	Five	Six
1950.00	431	670	839	946	1029	1101
2000.00	442	686	859	968	1054	1128
2050.00	452	702	879	991	1079	1154
2100.00	463	718	899	1014	1104	1181
2150.00	473	734	919	1037	1129	1207
2200.00	484	751	940	1060	1154	1234
2250.00	494	767	960	1082	1179	1261
2300.00	505	783	980	1105	1204	1287
2350.00	515	799	1000	1128	1229	1314
2400.00	526	815	1020	1151	1254	1340
2450.00	536	831	1041	1174	1279	1367
2500.00	547	847	1061	1196	1304	1394
2550.00	557	864	1081	1219	1329	1420
2600.00	568	880	1101	1242	1354	1447
2650.00	578	896	1121	1265	1379	1473
2700.00	588	912	1141	1287	1403	1500
2750.00	597	927	1160	1308	1428	1524
2800.00	607	941	1178	1328	1448	1549
2850.00	617	956	1197	1348	1471	1573
2900.00	627	971	1215	1370	1494	1598
2950.00	637	986	1234	1391	1517	1622
3000.00	644	1001	1252	1412	1540	1647
3050.00	654	1016	1271	1433	1563	1671
3100.00	663	1031	1289	1453	1585	1695
3150.00	673	1045	1308	1474	1608	1720
3200.00	682	1060	1327	1495	1631	1744
3250.00	691	1075	1345	1515	1654	1769
3300.00	701	1090	1364	1537	1677	1793
3350.00	710	1105	1382	1558	1700	1818
3400.00	720	1120	1401	1579	1723	1842
3450.00	729	1135	1419	1599	1745	1867
3500.00	738	1149	1438	1620	1768	1891
3550.00	748	1164	1456	1641	1791	1915
3600.00	757	1179	1475	1662	1814	1940
3650.00	767	1194	1493	1683	1837	1964
3700.00	776	1208	1503	1702	1857	1987
3750.00	784	1221	1520	1721	1878	2009
3800.00	793	1234	1536	1740	1899	2031
3850.00	802	1248	1553	1759	1920	2053
3900.00	811	1261	1570	1778	1940	2075
3950.00	819	1275	1587	1797	1961	2097
4000.00	828	1288	1603	1816	1982	2119
4050.00	837	1302	1620	1835	2002	2141
4100.00	846	1315	1637	1854	2023	2163
4150.00	854	1329	1654	1873	2044	2185
4200.00	863	1342	1670	1892	2064	2207
4250.00	872	1355	1687	1911	2085	2229
4300.00	881	1369	1704	1930	2105	2251
4350.00	889	1382	1721	1949	2127	2273
4400.00	898	1396	1737	1968	2147	2295
4450.00	907	1409	1754	1987	2168	2317
4500.00	915	1423	1771	2006	2189	2339
4550.00	924	1436	1788	2024	2209	2361
4600.00	933	1450	1804	2043	2230	2384
4650.00	942	1463	1821	2062	2251	2406
4700.00	951	1477	1838	2081	2271	2428
4750.00	959	1490	1855	2100	2292	2450

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Additions are indicated by underline; deletions by ~~striched~~

Combined Monthly Available Income	Child or Children					
	One	Two	Three	Four	Five	Six
4800.00	968	1503	1871	2119	2313	2472
4850.00	977	1517	1888	2138	2334	2494
4900.00	986	1530	1905	2157	2354	2516
4950.00	993	1542	1927	2174	2372	2535
5000.00	1000	1551	1939	2188	2387	2551
5050.00	1006	1561	1952	2202	2402	2567
5100.00	1013	1571	1964	2215	2417	2583
5150.00	1019	1580	1975	2229	2432	2599
5200.00	1025	1590	1988	2243	2447	2615
5250.00	1032	1599	2000	2256	2462	2631
5300.00	1038	1609	2012	2270	2477	2647
5350.00	1045	1619	2024	2283	2492	2663
5400.00	1051	1619	2024	2297	2507	2679
5450.00	1057	1628	2027	2311	2522	2695
5500.00	1064	1638	2049	2324	2537	2711
5550.00	1070	1647	2061	2338	2552	2727
5600.00	1077	1657	2073	2352	2567	2743
5650.00	1083	1667	2085	2365	2582	2759
5700.00	1089	1676	2097	2379	2597	2775
5750.00	1095	1686	2109	2393	2612	2791
5800.00	1102	1695	2121	2407	2627	2807
5850.00	1107	1705	2133	2421	2642	2823
5900.00	1114	1718	2144	2435	2657	2839
5950.00	1119	1721	2155	2449	2672	2855
6000.00	1126	1729	2165	2463	2687	2871
6050.00	1131	1737	2175	2477	2702	2887
6100.00	1138	1748	2185	2491	2717	2903
6150.00	1141	1754	2195	2505	2732	2919
6200.00	1145	1762	2206	2519	2747	2935
6250.00	1149	1770	2216	2533	2762	2951
6300.00	1153	1778	2227	2547	2777	2967
6350.00	1155	1786	2237	2561	2792	2983
6400.00	1159	1795	2247	2575	2807	2999
6450.00	1163	1803	2258	2589	2822	3015
6500.00	1165	1811	2268	2603	2837	3031
6550.00	1170	1819	2278	2617	2852	3047
6600.00	1173	1827	2288	2631	2867	3063
6650.00	1179	1835	2299	2645	2882	3079
6700.00	1184	1843	2309	2659	2897	3095
6750.00	1189	1850	2317	2673	2912	3111
6800.00	1193	1856	2325	2687	2927	3127
6850.00	1196	1862	2332	2701	2942	3143
6900.00	1200	1868	2340	2715	2957	3159
6950.00	1204	1873	2347	2729	2972	3175
7000.00	1208	1879	2355	2743	2987	3191
7050.00	1212	1885	2362	2757	3002	3207
7100.00	1216	1891	2370	2771	3017	3223
7150.00	1220	1897	2378	2785	3032	3239
7200.00	1224	1903	2385	2799	3047	3255
7250.00	1228	1909	2393	2813	3062	3271
7300.00	1232	1915	2400	2827	3077	3287
7350.00	1235	1921	2408	2841	3092	3303
7400.00	1239	1927	2415	2855	3107	3319
7450.00	1243	1933	2423	2869	3122	3335
7500.00	1247	1939	2430	2883	3137	3351
7550.00	1251	1945	2438	2897	3152	3367
7600.00	1255	1951	2446	2911	3167	3383
7650.00	1259	1957	2453	2925	3182	3399

Additions are indicated by underline; deletions by ~~strout~~

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Combined Monthly Available Income	Child or Children					
	One	Two	Three	Four	Five	Six
7650.00	1263	1963	2461	2767	3020	3230
7700.00	1267	1969	2468	2775	3030	3240
7750.00	1271	1975	2476	2784	3039	3250
7800.00	1274	1981	2483	2792	3048	3259
7850.00	1278	1987	2491	2801	3057	3269
7900.00	1282	1992	2498	2810	3067	3279
7950.00	1286	1998	2506	2818	3076	3289
8000.00	1290	2004	2513	2827	3085	3298
8050.00	1294	2010	2521	2835	3094	3308
8100.00	1298	2016	2529	2844	3104	3318
8150.00	1302	2022	2536	2852	3113	3328
8200.00	1306	2028	2544	2861	3122	3337
8250.00	1310	2034	2551	2869	3131	3347
8300.00	1313	2040	2558	2878	3141	3357
8350.00	1317	2046	2566	2887	3150	3367
8400.00	1321	2052	2574	2896	3159	3376
8450.00	1325	2058	2581	2904	3168	3386
8500.00	1329	2064	2589	2912	3178	3396
8550.00	1333	2070	2597	2921	3187	3406
8600.00	1337	2076	2604	2929	3196	3415
8650.00	1341	2082	2612	2938	3205	3425
8700.00	1345	2088	2619	2946	3215	3435
8750.00	1349	2094	2627	2955	3224	3445
8800.00	1352	2100	2634	2963	3233	3454
8850.00	1356	2106	2642	2972	3242	3464
8900.00	1359	2111	2649	2981	3252	3474
8950.00	1364	2117	2657	2989	3261	3484
9000.00	1368	2123	2664	2998	3270	3493
9050.00	1372	2129	2672	3006	3279	3503
9100.00	1376	2135	2680	3015	3289	3513
9150.00	1380	2141	2687	3023	3298	3523
9200.00	1384	2147	2695	3032	3307	3532
9250.00	1388	2153	2702	3040	3316	3542
9300.00	1391	2159	2710	3049	3325	3552
9350.00	1395	2165	2717	3058	3335	3562
9400.00	1399	2171	2725	3066	3344	3571
9450.00	1403	2177	2732	3075	3353	3581
9500.00	1407	2183	2740	3083	3363	3591
9550.00	1411	2189	2748	3092	3372	3601
9600.00	1415	2195	2755	3100	3381	3610
9650.00	1419	2201	2763	3109	3390	3620
9700.00	1422	2206	2767	3115	3396	3628
9750.00	1425	2210	2772	3121	3402	3634
9800.00	1427	2213	2776	3126	3408	3641
9850.00	1430	2217	2781	3132	3414	3647
9900.00	1432	2221	2786	3137	3420	3653
9950.00	1435	2225	2791	3143	3426	3659
10000.00	1437	2228	2795	3148	3432	3666

For combined monthly available income less than the amount set out on the above schedules, the parent should be ordered to pay a child support amount, determined on a case-by-case basis, to establish the principle of payment and lay the basis for increased orders should the parent's income increase in the future. For combined monthly available income greater than the amount set out in the above schedules, the obligation shall be the minimum amount of

support provided by the guidelines plus the following percentages multiplied by the amount of income over \$10,000:

	Child or Children				
One	Two	Three	Four	Five	Six
5.0%	7.5%	9.5%	11.0%	12.0%	12.5%

(7) Child care costs incurred on behalf of the children due to employment, or job search, or education calculated to result in employment or to enhance income of current employment of either parent shall be reduced by 25 percent and then shall be added to the basic obligation. Child care costs shall not exceed the level required to provide quality care from a licensed source for the children.

(S) Health insurance costs resulting from coverage ordered pursuant to s. 61.13(1)(b) shall be added to the basic obligation.

(9)(S) Each parent's percentage share of the child support need shall be determined by dividing each parent's net income by the combined net income.

(10)(S) Each parent's actual dollar share of the child support need shall be determined by multiplying the minimum child support need by each parent's percentage share.

(11)(S) The court may adjust the minimum child support award, or either or both parent's share of the minimum child support award, based upon the following considerations:

(a) Extraordinary medical, psychological, educational, or dental expenses.

(b) Independent income of the child.

(c) The payment of both child support and spousal support to the obligee or the payment of support for a parent which regularly has been paid and for which there is a demonstrated need.

(d) Seasonal variations in one or both parents' incomes or expenses.

(e) The age of the child, taking into account the greater needs of older children.

(f) Special needs that have traditionally been met within the family budget even though the fulfilling of those needs will cause the support to exceed the proposed guidelines.

(g) The particular shared parental arrangement, such as where the children spend a substantial amount of their time with the secondary residential parent ~~spends a great deal of time with the children~~ thereby reducing the financial expenditures incurred by the primary residential parent, or the refusal of the secondary residential parent to become involved in the activities of the child, or giving due consideration to the primary residential parent's homemaking services. If a child has visitation with a noncustodial parent for more than 25 consecutive days the court may reduce the amount of support paid to the custodial parent during the time of visitation not to exceed 50 percent of the amount awarded.

(h) Total available assets of the obligee, obligor, and the child.

(i) The impact of the Internal Revenue Service dependency exemption and waiver of that exemption. The court may order the primary residential parent to execute a waiver of the Internal Revenue Service dependency exemption if the noncustodial parent is current in support payments.

(j) When application of the child support guidelines requires a person to pay another person more than 55 percent of his gross income for a child support obligation for current support resulting from a single support order.

(k)(i) Any other adjustment which is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt. Such expense or debt may include, but is not limited to, a reasonable and necessary expense or debt which the parties jointly incurred during the marriage.

(12) A parent with a support obligation may have other children living with him or her who were born or adopted after the support obligation arose. The existence of such subsequent children should not as a general rule be considered by the court as a basis for disregarding the amount provided in the guidelines. The parent with a support obligation for subsequent children may raise the existence of such subsequent children as a justification for deviation

from the guidelines. However, if the existence of such subsequent children is raised, the income of the other parent of the subsequent children shall be considered by the court in determining whether or not there is a basis for deviation from the guideline amount. The issue of subsequent children may only be raised in a proceeding for an upward modification of an existing award and may not be applied to justify a decrease in an existing award.

(13)(14) If the recurring income is not sufficient to meet the needs of the child, the court may order child support to be paid from nonrecurring income or assets.

(14)(12) Every petition for child support or for modification of child support shall be accompanied by an affidavit which shows the party's income, allowable deductions, and net income computed in accordance with this section. The affidavit shall be served at the same time that the petition is served. The respondent, whether or not a stipulation is entered, shall make an affidavit which shows the party's income, allowable deductions, and net income computed in accordance with this section. The respondent shall include his affidavit with the answer to the petition or as soon thereafter as is practicable, but in any case at least 72 hours prior to any hearing on the finances of either party.

(15)(13) For purposes of establishing an obligation for support in accordance with this section, if a person who is receiving public assistance is found to be noncooperative as defined in s. 409.2572, the IV-D agency is authorized to submit to the court an affidavit attesting to the income of the custodial parent based upon information available to the IV-D agency.

(16)(14) The Legislature shall review the guidelines established in this section at least every 4 years, and shall review the guidelines in 1997 beginning in 1993.

Section 6. Subsection (1) of section 45.031, Florida Statutes, is amended to read:

45.031. Service of process generally; service of witness subpoenas

(1)(a) Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. Minors who are or have been married shall be served as provided in this section.

(b) Employers, when contacted by an individual authorized to make service of process, shall permit the authorized individual to make service on employees in a private area designated by the employer.

Section 7. Section 231.097, Florida Statutes, is created to read:

231.097. Suspension or denial of teaching certificate due to child support delinquency

The department shall allow applicants for new or renewal certificates and renewal certificateholders to be screened by the Title IV-D child support agency pursuant to s. 409.2593 to assure compliance with a support obligation. The purpose of this section is to promote the public policy of this state as established in s. 409.2551. The department shall, when directed by the court, deny the application of any applicant found to have a delinquent support obligation. The department shall issue or reinstate the certificate without additional charge to the certificateholder when notified by the court that the certificateholder has complied with the terms of the court order. The department shall not be held liable for any certificate denial or suspension resulting from the discharge of its duties under this section.

Section 8. Subsection (1) and paragraph (a) of subsection (4) of section 231.28, Florida Statutes, are amended to read:

231.28. Education Practices Commission; authority to discipline

(1) The Education Practices Commission shall have authority to suspend the teaching certificate of any person as defined in s. 22S.041(9) or (10) for a period of time not to exceed 3 years, thereby denying that person the right to teach for that period of time, after which the holder may return to teaching as provided in subsection (4); to revoke the teaching certificate of any person, thereby denying that person the right to teach for a period of time not to exceed 10 years, with reinstatement subject to the provisions of subsection (4); to revoke permanently the teaching certificate of any person; to suspend the teaching certificate, upon

order of the court, of any person found to have a delinquent child support obligation; or to impose any other penalty provided by law, provided it can be shown that such person:

- (a) Obtained the teaching certificate by fraudulent means;
 - (b) Has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school;
 - (c) Has been guilty of gross immorality or an act involving moral turpitude;
 - (d) Has had a teaching certificate revoked in another state;
 - (e) Has been convicted of a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation;
 - (f) Upon investigation, has been found guilty of personal conduct which seriously reduces that person's effectiveness as an employee of the school board;
 - (g) Has breached a contract, as provided in s. 231.36(2); or
 - (h) Has been the subject of a court order directing the Education Practices Commission to suspend the certificate as a result of a delinquent child support obligation.
- ~~(i) Has otherwise violated the provisions of law or rules of the State Board of Education, the penalty for which is the revocation of the teaching certificate.~~

(4)(a) A teaching certificate which has been suspended under this section is automatically reinstated at the end of the suspension period, provided such certificate did not expire during the period of suspension. If the certificate expired during the period of suspension, the holder of the former certificate may secure a new certificate by making application therefor and by meeting the certification requirements of the state board current at the time of the application for the new certificate. A teaching certificate suspended pursuant to a court order for a delinquent child support obligation may only be reinstated upon notice from the court that the party has complied with the terms of the court order.

Section 9. Section 409.2595, Florida Statutes, is created to read:

409.2595. Suspension or denial of new or renewal licenses; certifications

(1) The Title IV-D agency may petition the court which entered the support order or the court which is enforcing the support order to deny the license or certificate issued pursuant to chapters 231, 409, 455, and 559 of any obligor with a delinquent child support obligation. However, no petition may be filed until the Title IV-D agency has exhausted all other available remedies. The purpose of this section is to promote the public policy of the state as established in s. 409.2551.

(2) The Title IV-D agency is authorized to screen all applicants for new or renewal licenses or certificates and current licensees and certificateholders of all licenses and certificates issued pursuant to chapters 231, 409, 455, and 559 to ensure compliance with any child support obligation. If the Title IV-D agency determines that an applicant, licensee, or certificateholder is an obligor who is delinquent on a support obligation, the Title IV-D agency shall certify the delinquency pursuant to s. 61.14.

(3) The Title IV-D agency shall give notice to any obligor who is an applicant for a new or renewal license or certificate or the holder of a current license or certificate when a delinquency exists in the support obligation. The notice shall specify that the obligor has 30 days from the date on which service of the notice is complete to pay the delinquency or to reach an agreement to pay the delinquency with the Title IV-D agency. The notice shall specify that, if payment is not made or an agreement cannot be reached, the application may be denied or the license or certification may be suspended pursuant to a court order.

(4) If the obligor fails to pay the delinquency or reach an agreeable payment arrangement within 30 days following completion of service of the notice of the delinquency, the Title IV-D agency shall send a second notice to the obligor stating that the obligor has 30 days to pay the delinquency or reach an agreement to pay the delinquency with the Title IV-D agency. If the obligor fails to respond to either notice from the Title IV-D agency or if the obligor fails to pay the delinquency or reach an agreement to pay the delinquency after the second notice, the Title IV-D agency may petition the court which entered the support order or the court which is enforcing the support order to deny the application for the license or certificate or to

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suspend the license or certificate of the obligor. However, no petition may be filed until the Title IV-D agency has exhausted all other available remedies. The court may find that it would be inappropriate to deny a license or suspend a license or certificate if:

(a) Denial or suspension would result in irreparable harm to the obligor or employees of the obligor or would not accomplish the objective of collecting the delinquency; or

(b) The obligor demonstrates that he has made a good faith effort to reach an agreement with the Title IV-D agency.

The court may not deny or suspend a license or certificate if the court determines that an alternative remedy is available to the Title IV-D agency which is likely to accomplish the objective of collecting the delinquency. If the obligor fails in the defense of a petition for denial or suspension, the court which entered the support order or the court which is enforcing the support order shall enter an order to deny the application for the license or certification or to suspend the license or certification of the obligor. The court shall order the obligor to surrender the license or certification to the Title IV-D agency, which will return the license or certification and a copy of the order of suspension to the appropriate department or licensing entity.

(5) If the court denies or suspends a license or certification and the obligor subsequently pays the delinquency or reaches an agreement with the Title IV-D agency to settle the delinquency and makes the first payment required by the agreement, the license or certificate shall be issued or reinstated upon written proof to the court that the obligor has complied with the terms of the court order. Proof of payment shall consist of a certified copy of the payment record issued by the depository. The court shall order the appropriate department or license board to issue or reinstate the license or certificate without additional charge to the obligor.

(6) The department shall, when directed by the court, suspend or deny the license or certificate of any licensee or certificateholder under its jurisdiction found to have a delinquent support obligation. The department shall issue or reinstate the license or certificate without additional charge to the licensee or certificateholder when notified by the court that the licensee or certificateholder has complied with the terms of the court order.

(7) Notice shall be served under this section by mailing it by certified mail, return receipt requested, to the obligor at his last address of record with the local depository. If the obligor has no address of record with the local depository, or if the last address of record with the local depository is incorrect, service shall be by publication as provided in chapter 49. When service of the notice is made by mail, service is complete upon the receipt of the notice by the obligor.

Section 10. Subsection (9) is added to section 455.203, Florida Statutes, 1992 Supplement, as amended by chapter 92-373, Laws of Florida, to read:

455.203. Department of Professional Regulation; Agency for Health Care Administration; powers and duties

The Department of Professional Regulation and the Agency for Health Care Administration, for the boards under their respective jurisdictions, shall:

(9) Allow applicants for new or renewal licenses and current licensees to be screened by the Title IV-D child support agency pursuant to s. 409.2598 to assure compliance with a support obligation. The purpose of this subsection is to promote the public policy of this state as established in s. 409.2551. The department shall, when directed by the court, suspend or deny the license of any licensee found to have a delinquent support obligation. The department shall issue or reinstate the license without additional charge to the licensee when notified by the court that the licensee has complied with the terms of the court order. The department shall not be held liable for any license denial or suspension resulting from the discharge of its duties under this subsection.

Section 11. Section 559.79, Florida Statutes, is amended to read:

559.79. Applications for license or renewal

(1) Each application for a license issued by the Department of Business Regulation shall include a statement showing the name, and address, and social security number of each person who owns 10 percent or more of the outstanding stock or equity interest in the licensed activity and the name, and address, and social security number of each officer, director, chief executive, or other person who, in accordance with the rules of the issuing agency, is determined to be able directly or indirectly to control the operation of the business of the licensed entity, and each application for renewal of such a license shall set out any changes in the required names and addresses which have occurred since the license was issued or last renewed.

(2) Each application for a license or renewal of a license issued by the Department of Business Regulation shall be signed under oath or affirmation by the applicant, or owner or chief executive of the applicant, without the need for witnesses unless otherwise required by law.

(3) The department shall allow the Title IV-D child support agency to screen all applicants for new or renewal licenses and current licensees pursuant to s. 409.2598 to assure compliance with a support obligation. The purpose of this subsection is to promote the public policy of this state as established in s. 409.2551. The department shall, when directed by the court, suspend or deny the license of any licensee found to have a delinquent support obligation. The department shall issue or reinstate the license without additional charge to the licensee when notified by the court that the licensee has complied with the terms of the court order. The department shall not be liable for any license denial or suspension resulting from the discharge of its duties under this subsection.

Section 12. Section 322.058, Florida Statutes, is created to read:

322.058. Suspension of driving privileges due to child support delinquency

When the department receives notice from the Title IV-D agency that any person licensed to operate a motor vehicle in the State of Florida under the provisions of this chapter has a delinquent child support obligation, the department shall suspend such license or driving privilege and the registration of all motor vehicles owned by that person. The Title IV-D agency shall give notice to the licensee that a delinquency exists in the support obligation. The notice shall specify that the licensee has 15 days from the date on which service of the notice is complete to pay the delinquency or reach an agreement to pay the delinquency with the Title IV-D agency. The notice shall specify that, if an agreement cannot be reached, the driving privilege and vehicle registration of the licensee shall be suspended. If the licensee fails to respond to the notice from the Title IV-D agency and a delinquency still exists, the Title IV-D agency shall send a second notice to the licensee stating that the licensee has 15 days from the date on which service of the notice is complete to pay the delinquency or reach an agreement to pay the delinquency with the Title IV-D agency. If the licensee fails to respond to either notice from the Title IV-D agency or if the licensee fails to pay the delinquency or reach an agreement to pay the delinquency, the Title IV-D agency shall petition the court which entered the support orders or the court which is enforcing the support order to suspend the driving privilege and vehicle registration of the licensee. The department shall reinstate the driving privilege and allow registration of a motor vehicle only if the Title IV-D agency provides to the department written notice stating that the person has paid the delinquency or has reached an agreement for payment with the Title IV-D agency. Any non-IV-D obligee may petition the court for an order to suspend the license or driving privilege of, and the registration of all motor vehicles owned by, a person with a delinquent child support obligation, provided that the non-IV-D obligee complies with the notice provisions of this section. The court may act upon the petition of the non-IV-D obligee in the same manner provided in this section. The department shall not be held liable for any license or vehicle registration suspension resulting from the discharge of its duties under this section. Notice shall be served under this section by mailing it by certified mail, return receipt requested, to the obligor at his last address of record with the local depository. If the obligor has no address of record with the local depository, or if the last address of record with the local depository is incorrect, service shall be by publication as provided in chapter 49.

When service of the notice is made by mail, service is complete upon the receipt of the notice by the obligor.

Section 13.¹ Any person whose driver's license or registration has been suspended as provided in section 322.058 must immediately return his driver's license and registration to the Department of Highway Safety and Motor Vehicles. If such person fails to return his driver's license or registration, any law enforcement agent may seize the license or registration while the driver's license or registration is suspended.

Section 14. Subsections (2) and (4) of section 61.181, Florida Statutes, 1992 Supplement, are amended, and subsection (10) is added to said section, to read:

61.181. Central depository for receiving, recording, reporting, monitoring, and disbursing alimony, support, maintenance, and child support payments; fees

(2)(a) The depository shall impose and collect a fee on each payment made for receiving, recording, reporting, disbursing, monitoring, or handling alimony or child support payments as required under this section, which fee shall be a flat fee based, to the extent practicable, upon estimated reasonable costs of operation. The fee shall be reduced in any case in which the fixed fee results in a charge to any party of an amount greater than 3 percent of the amount of any support payment made in satisfaction of the amount payments which the party is obligated to pay, except that no fee shall be less than \$1 nor more than \$5 per payment made. The fee shall be considered by the court in determining the amount of support that the obligor is, or may be, required to pay.

(b)1. For the period of July 1, 1992, through June 30, 1997 1995, the fee imposed in paragraph (a) shall be increased to 4 percent of the support payments which the party is obligated to pay, except that no fee shall be less than \$1.25 nor more than \$5.25. The fee shall be considered by the court in determining the amount of support that the obligor is, or may be, required to pay. Notwithstanding the provisions of s. 145.022, 75 percent of the additional revenues generated by this paragraph shall be remitted monthly to the Clerk of the Court Child Support Enforcement Collection System Trust Fund administered by the department as provided in subparagraph 2. These funds shall be used exclusively for the development, implementation, and operation of an automated child support enforcement collections system to be operated by the depositories. The department shall contract with the Florida Association of Court Clerks and Comptrollers and the depositories to design, establish, operate, upgrade, and maintain the automation of the depositories to include, but not be limited to, the provision of on-line electronic transfer of information to the IV-D agency as otherwise required by this chapter.

2. The moneys remitted to the department by the depository shall be calculated as follows:

- a. For each support payment of less than \$33, 18.75 cents.
- b. For each support payment between \$33 and \$140, an amount equal to 18.75 percent of the fee charged.
- c. For each support payment in excess of \$140, 18.75 cents.

3. Prior to June 30, 1995, the depositories and the department shall provide the Legislature with estimates of the cost of continuing the collection and maintenance of information required by this act.

(4) The depository shall provide to the IV-D agency, at least once a month weekly, a listing of IV-D accounts which identifies all delinquent accounts, the period of delinquency, and total amount of delinquency. The list shall be in alphabetical order by name of obligor, shall include the obligee's name and case number, and shall be provided at no cost to the IV-D agency.

(10) Compliance with the requirements of this section shall be included as part of the annual county audit required pursuant to s. 11.45.

¹Tentative assignment as 322.059.

Section 15. The Legislature hereby requests that the Florida Supreme Court adopt an amendment to the rules regulating The Florida Bar which would provide for the discipline of attorneys who are delinquent in or fail to pay their child support obligations.

Section 16. Section 409.2567, Florida Statutes, 1992 Supplement, is amended to read:

409.2567. Services to individuals not otherwise eligible

All support and paternity determination services provided by the department shall be made available on behalf of all dependent children. Services shall be provided upon acceptance of public assistance or upon proper application filed with the department. The department shall adopt rules to provide for the payment of a \$25 application fee from each applicant who is not a public assistance recipient and payment of a \$25 annual user fee from the obligor. The application fee and the user fee shall be deposited in the Child Support Enforcement Application and User Fee Trust Fund to be used for the Child Support Enforcement Program. The obligor is responsible for all administrative costs, as defined in s. 409.2554. The court shall order payment of administrative costs without requiring the department to have a member of the bar testify or submit an affidavit as to the reasonableness of the costs. An attorney-client relationship exists only between the department and the legal services providers in Title IV-D cases. The attorney shall advise the obligee in Title IV-D cases that the attorney represents the agency and not the obligee. In Title IV-D cases, any costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees. The Department of Health and Rehabilitative Services shall not be considered a party for purposes of this section; however, fees may be assessed against the department pursuant to s. 57.105(1).

Section 17. Section 742.045, Florida Statutes, is amended to read:

742.045. Attorney's fees, suit money, and costs

The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name. In Title IV-D cases, any costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees. The Department of Health and Rehabilitative Services shall not be considered a party for purposes of this section; however, fees may be assessed against the department pursuant to s. 57.105(1).

Section 18. Section 742.08, Florida Statutes, 1992 Supplement, is amended to read:

742.08. Default of support payments

Upon default in payment of any moneys ordered by the court to be paid, the court may enter a judgment for the amount in default, plus interest, administrative costs, filing fees, and other expenses incurred by the clerk of the circuit court which shall be a lien upon all property of the defendant both real and personal. Costs and fees shall be assessed only after the court makes a determination of the nonprevailing party's ability to pay such costs and fees. In Title IV-D cases, any costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees. The Department of Health and Rehabilitative Services shall not be considered a party for purposes of this section; however, fees may be assessed against the department pursuant to s. 57.105(1). Willful failure to comply with an order of the court shall be deemed a contempt of the court entering the order and shall be punished as such. The court may require bond of the defendant for the faithful

Additions are indicated by underline; deletions by strikeout

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performance of his obligation under the order of the court in such amount and upon such conditions as the court shall direct.

Section 19. Paragraph (b) of subsection (1) and paragraphs (c) and (d) of subsection (2) of section 61.1301, Florida Statutes, 1992 Supplement, are amended to read:

61.1301. Income deduction orders

(1) Issuance in conjunction with an alimony or child support order or modification.—

(b) The income deduction order shall:

1. Direct a payor to deduct from all income due and payable to an obligor the amount required by the court to meet the obligor's support obligation including any attorney's fees or costs owed;

2. State the amount of arrearage owed, if any, and direct a payor to withhold an additional 20 percent or more of the periodic amount specified in the support order, until full payment is made of any arrearage, attorney's fees and costs owed, provided no deduction shall be applied to attorney's fees and costs until the full amount of any arrearage is paid;

3. Direct a payor not to deduct in excess of the amounts allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b), as amended;

4. Direct whether a payor shall deduct all, a specified portion, or no income which is paid in the form of a bonus or other similar one-time payment, up to the amount of arrearage reported in the income deduction notice or the remaining balance thereof, and forward the payment to the governmental depository. For purposes of this subparagraph, "bonus" means a payment in addition to an obligor's usual compensation and which is in addition to any amounts contracted for or otherwise legally due and shall not include any commission payments due an obligor; and

5. In Title IV-D cases, direct a payor to provide to the court depository the date on which each deduction is made.

(2) Enforcement of income deduction orders.—

(c) 1. ~~The obligor, within 15 days after having an income deduction order entered against him or~~ within 15 days after service of a notice of delinquency, may apply for a hearing to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of support owed pursuant to a support order, the amount of arrearage of support, or the identity of the obligor. The obligor shall send a copy of the pleading to the obligee and, if the obligee is receiving IV-D services, to the IV-D agency. The timely filing of the pleading shall stay the service of an income deduction order on all payors of the obligor until a hearing is held and a determination is made as to whether the enforcement of the income deduction order is proper. The payment of delinquent support by an obligor upon entry of an income deduction order shall not preclude service of the income deduction order on the obligor's payor.

2. When an obligor timely requests a hearing to contest enforcement of an income deduction order, the court, after due notice to all parties and the IV-D agency if the obligee is receiving IV-D services, shall hear the matter within 20 days after the application is filed. The court shall enter an order resolving the matter within 10 days after the hearing. A copy of this order shall be served on the parties and the IV-D agency if the obligee is receiving IV-D services. If the court determines that service of an income deduction order is proper, it shall specify the date the income deduction order must be served on the obligor's payor.

(d) When a court determines that an income deduction order is proper pursuant to paragraph (c), the obligee or his agent shall cause a copy of the ~~income deduction order and a notice to payor, and in the case of a delinquency a notice of delinquency,~~ to be served on the obligor's payors. A copy of the notice to the payor, and in the case of a delinquency a notice of delinquency, shall also be furnished to the obligor.

Section 20. Subsection (1) of section 733.707, Florida Statutes, is amended to read:

733.707. Order of payment of expenses and obligations

(1) The personal representative shall pay the expenses of the administration and obligations of the estate in the following order:

(a) *Class 1.*—Costs, expenses of administration, and compensation of personal representatives and their attorneys' fees.

(b) *Class 2.*—Reasonable funeral, interment, and grave-marker expenses, whether paid by a guardian under s. 744.441(16), the personal representative, or any other person, not to exceed the aggregate of \$3,000.

(c) *Class 3.*—Debts and taxes with preference under federal law.

(d) *Class 4.*—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending him.

(e) *Class 5.*—Family allowance.

(f) *Class 6.*—Arrearage from court-ordered child support.

~~(g) Class 7.~~ *Class 7.*—Debts acquired after death by the continuation of the decedent's business, in accordance with s. 733.612(22), but only to the extent of the assets of that business.

~~(h) Class 8.~~ *Class 8.*—All other claims, including those founded on judgments or decrees rendered against the decedent during his lifetime, and any excess over the sums allowed in paragraphs (b) and (d).

(2) After paying any preceding class, if the estate is insufficient to pay all of the next succeeding class, the creditors of the latter class shall be paid ratably in proportion to their respective claims.

Section 21. Section 742.10, Florida Statutes, 1992 Supplement, is amended to read:

742.10. Establishment of paternity for children born out of wedlock

This chapter provides the primary jurisdiction and procedures for the determination of paternity for children born out of wedlock. When the establishment of paternity has been raised and determined within an adjudicatory hearing brought under the statutes governing inheritance, dependency under workers' compensation or similar compensation programs, or vital statistics, or when an affidavit acknowledging paternity or a stipulation of paternity is executed by both parties and filed with the clerk of the court, or when a consenting affidavit as provided for in s. 382.013(6)(b) is executed by both parties, it shall constitute the establishment of paternity for purposes of this chapter. If no adjudicatory proceeding was held, a determination of paternity shall create a rebuttable presumption, as defined by s. 90.304, of paternity. The Bureau of Vital Statistics shall provide certified copies of consenting affidavits to the Title IV-D agency upon request.

Section 22. On or before September 1, 1995, the Title IV-D agency shall file a report with the Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives containing the following for the period July 1, 1993, through July 1, 1995:

(1) The number of delinquent obligors, categorized by delinquencies of 3 months, 6 months, and 1 year.

(2) The number of cases in which the license suspension provisions contained in sections 409.259S and 322.05S, Florida Statutes, were used to attempt to collect child support, including the number of agreements reached and the number of obligors who continued to pay 3 months after the agreement was reached.

(3) The number of licenses or motor vehicle registrations actually suspended, listed by type of license suspended.

Section 23. This act shall take effect July 1, 1993.

Approved by the Governor May 12, 1993.

Filed in Office Secretary of State May 12, 1993.

Additions are indicated by underline; deletions by ~~strikeout~~