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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 91 LCM-68

Date: April 24, 1991

Division: Commissioner's
Office

TO: Local District Commissioners

SUBJECT: Filed Regulation 346.1 & 347.9

ATTACHMENTS: Attachment listed below
(Attachment available on-line)

The following changes to the Official Regulations of the State Department of Social Services have been filed for adoption with the Secretary of State.

18 NYCRR 346.1 & 347.9 relating to issuance of income executions to collect court ordered child support.

The final rule - Filed: 4/17/91 - Effective: 5/8/91.

Michael J. McNaughton
Director, Local District
Policy Communications

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d) and 34(3)(f) of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services do hereby amend Section 347.9 of and add section 346.1(h) to the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective when the Notice of Adoption is published in the New York State Register.

Dated: April 17, 1991

Signed: _____

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on April 17, 1991 amending sections 347.9 of and adding section 346.1(h) to the official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on January 30, 1991.

Dated: April 17, 1991

Signed: _____

Commissioner

Section 346.1 is amended by adding a new subdivision (h) as follows:

(h) The SCU must administer the income execution process in accordance with section 347.9 of this Title.

Section 347.9 is amended to read as follows:

347.9 Enforcement of Support Obligations and Issuance of Income Executions. (a) Immediate issuance of income executions. For any child support or child and spousal support court order issued under the provisions of Article 3-A or Section 236 or 240 of the Domestic Relations Law, or Article 4, 5 or 5-A of the Family Court Act, which directs payments to the Support Collection Unit (SCU), the local child support enforcement unit through its SCU, must:

(1) immediately issue and process an income execution for support enforcement, unless:

(i) the court finds and sets forth in writing the reasons that there is good cause not to require immediate income withholding. For purposes of this paragraph, good cause means substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income execution does not constitute good cause; or

(ii) when the child is not in receipt of public assistance, a written agreement providing for an alternative arrangement has been executed by the parties. A written

agreement may include an oral stipulation made on the record in court which results in a written order.

(2) issue and process an income execution as follows:

(i) use the income execution form developed by the State Office of Child Support Enforcement (OCSE) and provided to the district through the Child Support Management System (CSMS);

(ii) serve the income execution upon the debtor's employer or income payor, and provide a copy of the income execution to the debtor. Service must be by regular mail or in the same manner as a summons may be served; the debtor's copy may be mailed to the debtor's last known residence or such other place where the debtor is likely to receive notice;

(iii) correct any error made in the issuance of an income execution which is to the detriment of the debtor, within 30 days after notification by the debtor of such error; and

(iv) include the following information on the income execution form:

(a) the caption of the order of support;

(b) the date that the order of support was entered;

(c) the court in which the order of support was entered;

(d) the amount of the periodic payments specified in the order of support;

(e) the total amount of any arrears;

(f) the names of the debtor and creditor;

(g) the name and address of the employer or income

payor from whom the debtor is receiving or will receive income;

(h) the amount of the deduction to be made from the debtor's income to satisfy the court-ordered support obligation;

(i) the amount of any additional deduction to be made from the debtor's income, to satisfy any accrued arrears;

(j) a statement that:

(1) the deductions will apply to current and future income;

(2) the income execution will be served upon any current or subsequent employer or income payor; and

(3) the income execution is binding until further notice.

(k) a statement that:

(1) no employer is permitted to discharge, lay off or discipline an employee or refuse to hire a prospective employee because one or more wage assignments or income executions have been served upon such employer or a former employer against the employee's or prospective employee's wages, and that a violation of this provision is punishable as a contempt of court by fine or imprisonment or both;

(2) each payment remitted by an employer or income payor must include, in addition to the identity and social security number of the debtor, the date and amount of each withholding of the debtor's income included in the payment. Date of withholding means the date on which the income would otherwise

have been paid or made available to the debtor if it were not withheld by the employer or income payor.

(3) an employer or income payor served with an income execution is required to commence deductions from income due or thereafter due to the debtor no later than the first pay period that occurs 14 days after service of the execution, and is required to remit payments to the creditor within 10 days of the date that the debtor is paid;

(4) an employer or income payor is liable to the creditor for failure to deduct the amounts specified; provided, however, that deduction of the amounts specified by the employer or income payor does not relieve the debtor of the underlying obligation of support;

(5) if the employer or income payor fails to pay the creditor, the creditor may commence a proceeding against such person for accrued deductions, together with interest and reasonable attorney's fees;

(6) if the money due to the debtor consists of salary or wages and the debtor's employment is terminated by resignation or dismissal at any time after service of the execution, the levy will thereafter be ineffective and the execution will be returned, unless the debtor is reinstated or reemployed within 90 days after such termination;

(7) an employer must notify the issuer promptly when the debtor terminates employment and provide the debtor's last known home address and the name and address of the new employer, if known; and

(8) where the income is compensation paid or payable to the debtor for personal services, the amount of the deductions to be withheld are not permitted to exceed the following:

(i) where a debtor is currently supporting a spouse or dependent child other than the creditor, the amount of the deductions to be withheld may not exceed 50 percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld (hereinafter referred to as disposable earnings), except that if any part of such deduction is to be applied to the reduction of arrears which have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction cannot exceed 55 percent of disposable earnings:

(ii) where a debtor is not currently supporting a spouse or dependent child other than the creditor, the amount of the deduction to be withheld may not exceed 60 percent of the disposable earnings, except that if any part of such deductions is to be applied to the reduction of arrears which have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction cannot exceed 65 percent of disposable earnings.

[(a)] (b) Issuance of Income Executions Upon Default. For any child support or child and spousal support court order issued prior to November 1, 1990, [The] the local child support enforcement unit, through its support collection unit (SCU), [shall] must maintain an effective system for identifying

those debtors who become delinquent in meeting their court-ordered support obligation(s). The following action [shall] must be taken against those respondents who have been identified as being delinquent:

(1) For those debtors who have failed to pay up to two required weekly court-ordered support payments or one biweekly court-ordered support payment, [local] districts should attempt to obtain voluntary resumption of support payments.

(2) For those debtors who have failed to remit three payments when due in the full amount directed by an order of support, or if the accumulation of arrears is equal to or greater than the amount directed to be paid for one month, local [districts shall] district SCUs must issue and process an income execution [in the following manner] as follows:

(i) [Districts in which the statewide Child Support Management System (CSMS) has been fully implemented shall use] Use the income execution form developed by [the State Office of Child Support Enforcement (OCSE)] OCSE and [generated by] provided through [the Automated Support Collection Unit (ASCU), and the fiscal module of] CSMS.

[(ii) Districts in which the CSMS has not been fully implemented shall use the income execution form provided by the State OCSE. That form must be reproduced locally.]

[[iii]] (ii) [A] Serve a copy of the income execution [shall be served] upon the debtor, by regular mail or in the same manner as a summons may be served, at the debtor's last

known residence or such other place where the debtor is likely to receive notice.

(iii) If a mistake of fact is alleged by the debtor, determine the validity of such claim and provide written notice of such determination within 45 days after notice to the debtor of the intent to serve the income execution on the employer or income payor. If the mistake of fact is disallowed, the written notice must state that the income execution will be served on the employer or income payor, and the time that deductions will begin.

(iv) If no mistake of fact is alleged by the debtor, or if a determination is made by the SCU that the alleged mistake of fact is not valid, [the SCU shall] proceed with the expeditious implementation of the income execution by serving the income execution upon the debtor's employer or income payor.

(v) [All] Include the following information on the income execution [forms must contain the following information.] form:

- (a) the caption of the order of support;
- (b) the date that the order of support was entered;
- (c) the court in which the order of support was entered;
- (d) the amount of the periodic payments specified in the order of support;
- (e) the total amount of the arrears that gave rise to the implementation of the income execution;
- (f) the nature of the default;

(g) the names of the debtor and creditor;

(h) the name and address of the employer or income payor from whom the debtor is receiving or will receive income;

(i) the amount of the deduction to be made from the debtor's income to satisfy the court-ordered support obligation;

(j) the amount of the additional deduction to be made from the debtor's income, that is to be applied to the reduction of the arrears that gave rise to the income execution;

(k) a statement of the manner in which a mistake of fact may be asserted;

(l) a statement that:

(1) the deductions will apply to current and future income;

(2) the income execution will be served upon any current or subsequent employer or income payor, unless a mistake of fact is asserted within 15 days; and

(3) if the debtor claims a mistake of fact, a determination of the validity of such claim will be made within 45 days after notice to the debtor is provided [; (4)] and the debtor will receive written notice of:

(i) whether or not the income execution will be served; and

[(5)] (ii) the date when [such deduction] deductions will begin;

[(6)] (4) the income execution is binding until further notice; and

(m) [a statement that:

(1) no employer shall discharge, lay off or discipline an employee or refuse to hire a prospective employee because one or more wage assignments or income executions have been served upon such employer or a former employer against the employee's or prospective employee's wages or because of the pendency of any action or judgment against such employee or prospective employee for nonpayment of any alleged contractual obligation;

(2) an employee or prospective employee may institute a civil action for damages for wages lost as a result of a violation of subclause (1) of this clause within 90 days after such violation and damages recoverable shall not exceed lost wages for six weeks and in such action the court also may order the reinstatement of such discharged employee or the hiring of such prospective employee;

(3) except as provided for in clause (n) of this subparagraph not more than 10 per centum of the damages recovered in such action shall be subject to any claims, attachments or executions by any creditors, judgment creditors or assignees of such employee or prospective employee; and

(4) a violation of subclause (1) may also be punished as a contempt of court by fine or imprisonment or both;]

the statements set forth in clause (k) of subparagraph (a)(2)(iv) of this section.

[(n) a statement that:

(1) an employer or income payor served with an

income execution is required to commence deductions from income due or thereafter due to the debtor no later than the first pay period that occurs 14 days after service of the execution, and is required to remit payments to the creditor within ten days of the date that the debtor is paid;

(2) an employer or income payor shall be liable to the creditor for failure to deduct the amount specified; provided, however, that deduction of the amounts specified by the employer or income payor shall not relieve the debtor of the underlying obligation of support;

(3) if the employer or income payor fails to so pay the creditor, the creditor may commence a proceeding against such person for accrued deductions, together with interest and reasonable attorney's fees;

(4) if the money due to the debtor consists of salary or wages and the debtors's employment is terminated by resignation or dismissal at any time after service of the execution, the levy shall thereafter be ineffective and execution shall be returned, unless the debtor is reinstated or reemployed within 90 days after such termination;

(5) an employer must notify the issuer promptly when the debtor terminates employment and provide the debtor's last known home address and the name and address of the new employer, if known, and

(6) where the income is compensation paid or payable to the debtor for personal services, the amount of the

deductions to be withheld shall not exceed the following:

(i) where a debtor is currently supporting a spouse or dependent child other than the creditor, the amount of the deductions to be withheld may not exceed 50 percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld (disposable earnings), except that if any part of such deduction is to be applied to the reduction of arrears which shall have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction shall not exceed 55 percent of disposable earnings;

(ii) where a debtor is not currently supporting a spouse or dependent child other than the creditor, the amount of the deduction to be withheld may not exceed 60 percent of the disposable earnings, except that if any part of such deduction is to be applied to the reduction of arrears which shall have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction shall not exceed 65 percent of disposable earnings.]

(3) with regard to debtors who have defaulted on their court-ordered support obligations and who are unemployed, [local] social services districts should proceed as follows:

(i) If the amount in default is not sufficient for the implementation of an income execution, an attempt should be made to obtain a written voluntary agreement to support, whereby the Department of Labor would be authorized to withhold the amount

agreed upon from the debtor's unemployment insurance benefits and remit such amount to the SCU.

(ii) If the amount in default is sufficient for the implementation of an income execution, action should be taken as set forth in paragraph (2) of this subdivision.

(c) Issuance of Income Executions Upon Request. Upon request of the debtor, the [Support Collection Unit (SCU)] SCU must issue an income execution pursuant to subdivision (a) of this section [, except the following paragraphs of such subdivision will not apply in such cases: (d)(2)(iii), (iv)(e)-(f), (k)-(l); and (3)]. Upon receipt of a written revocation of the debtor's request for an income execution, the SCU must notify the employer or income payor that the income execution is no longer effective and that it must be returned to the SCU.

[(b)] (d) Additional Enforcement Actions. The local child support enforcement unit, in addition to following the procedures set forth in [subdivision] subdivisions (a) and (b) of this section, [shall] must employ all available statutory support enforcement remedies, as appropriate in a particular case.

(Deleted material [bracketed] ; new material underlined.)