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DIRECTIVE #02-23

**TO: Assignment Judges
Trial Court Administrators**

Questions or comments may
be directed to 609-815-3810

FROM: Glenn A. Grant, Administrative Director

**SUBJECT: Policy Regarding Support Orders Monitored or Enforced by
Probation**

DATE: January 30, 2023

This Directive, effective immediately, sets forth the policy for support orders monitored or enforced by the Probation Division and specifies which court ordered payments may be enforced by Probation, as approved by the Judicial Council.

New Jersey courts must comply with federal regulations and state laws when handling support cases. See Personal Responsibility and Work Reconciliation Opportunity Act (PRWORA) of 1996 (Pub.L. 104-193, 110 Stat. 2105, enacted August 22, 1996) and N.J.S.A. 2A:17-56.7a et seq.

Generally, court-ordered costs and fees related to the support and maintenance of a child fall within the statutory definition of child support; however, costs that do not contribute to the support of the child may not. Pursuant to N.J.S.A. 2A:17-56.52, child support is defined as:

the amount required to be paid under a judgment, decree, or order, whether temporary, final or subject to modification, issued by the Superior Court, Chancery Division, Family Part or a court or administrative agency of competent jurisdiction of another state, for the support and maintenance of a child, or the support and maintenance of a child and the parent with whom the child is living, which provides monetary support, health care coverage, any arrearage or reimbursement, and which may include other related costs and fees,

interest and penalties, income withholding, attorney's fees and other relief.

I. Reliefs payable through Probation

The court may order support-related costs and fees which are payable to the obligee to be monitored or enforced by the Probation Division. Certain costs, such as attorney fees, may also be ordered apart from the child support, payable directly between the parties or through one of the attorneys. Each relief must specify if it is to be monitored or enforced by the Probation Division (if allowable as set forth in this directive) or payable directly between the parties. Costs that do not contribute directly towards the support of the child, e.g., attorney's fees and expert fees related to custody and parenting time determinations, are not child support payable through Probation. See Bricker v. Korbrin et al., No. A-1597-08T1 (App. Div. May 21, 2010) (slip op. at 18), an unpublished Appellate Division opinion.

There are expenses that contribute towards the support of the child and that, if the court deems it appropriate, may be included in the court order as a deviation from the child support guidelines and be monitored by Probation. Examples include, but are not limited to:

- Attorney's fees (related to child support reliefs and payable to the obligee)
- Childcare (day care)
- Summer camp
- Athletic activities
- Recurring medical expenses (example braces)
- Educational Expenses (example private schools/colleges)

If expenses, including one-time or irregular expenses and payments contingent on external events (e.g., visitation that impacts child support), have already been incurred, the court may set them as arrears and make them payable to the obligee. The effective date of the arrears must be specified in the order. It may also be appropriate to establish an arrears payback obligation to facilitate the repayment of arrears over time. Until fully paid, the arrears will be instantly carried as a past due debt, potentially subjecting the obligor to administrative enforcement remedies such as tax offset and credit bureau reporting. A judgment may also be entered against the payor as applicable.

Probation can only direct current support and arrears to the obligee. The obligee is solely responsible for making payments to any third party. Probation cannot direct any payments from any support types (alimony, spousal, and/or child support) to any third party or creditor of the obligee. This includes, but is not limited to, attorneys/law firms, and any other type of potential creditors.

II. Reliefs that may be appropriate but cannot be monitored or enforced by the Probation Division

The court may order various reliefs that are related to the support order but cannot be monitored or enforced by Probation. Probation is not responsible for collecting third-party debts.

Examples of such reliefs that cannot be monitored or enforced by Probation include, but are not limited to:

- Redirecting support ordered payments to satisfy financial liabilities of the obligee such as attorney's fees, or any other debts owed to creditors.
- Monetary sanctions payable to a party for failure to comply with terms of an order, must be paid directly between the parties.
- Monetary sanctions ordered to be payable to the court, must be paid directly to the Treasurer, State of New Jersey, as required by R. 1:13-10.
- Equitable distribution payments must be paid directly between the parties.

III. Reliefs concerning overpayments by the obligor

Any applications by an obligor for recovery of an overpayment must be filed in the Family Part. The court should not enter a support order payable through Probation for the obligee to pay back the obligor. Those orders must be directly payable between the parties without the involvement of Probation. The court may also choose to enter a judgment against the obligee for the amount of the overpayment by the obligor.

If there are any monies currently on hold in NJKiDS, those monies may be ordered to be refunded to the obligor. Probation cannot stop payment to or cause a reversal of the funds previously deposited in the obligee's bank account.

This policy will be included in training programs for judges, hearing officers, Child Support staff, and law clerks.

Questions regarding this Directive may be directed to Larry Ashbridge, Assistant Director of Probation Services, at 609-815-3810 ext. 16274 or by email.

cc: Chief Justice Stuart Rabner
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