NYC CIVIL COURT COMMUNITY SEMINAR SERIES

Paternity & Child Support

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MR. JOHN CAIRNS: Good afternoon. My name is Cairns, C-A-I-R-N-S. I am an assistant to the Deputy Chief Administrative Judge for the New York City Courts, the Honorable Fern Fisher, who is also the director of the Access to Justice program. And that's why we're here today. We are opening the door, reaching out to the public in a less formal way to try to get information out to you. We will be talking very quickly this afternoon about three topics, paternity, child support, and custody / visitation together. These are family court matters and they're all dealt with in family court. Family court exists in each of the 62 counties throughout New York State and is available to you here in New York City, Monday through Friday, 9:00 to 5:00, and we do have night court hours here in the city also on Tuesdays, Wednesdays, and

Thursdays. Check with the county where you reside to get further information on that.

We will start out, the articles that cover these particular topics are Article 4 for child support, Article 5 for paternity, and Article 6 for custody / visitation, for those of you who want to do some research there. We're going to take them out of order a little bit because Article 5, which is the paternity article is a doorway to Article 4. In order for someone to get child support they must establish paternity so we will touch base on the paternity stuff first.

You can come to the court, pick up paper at the courthouse, particularly outside New York City, or you can come to the courthouse in New York City, to the Office of the Self-Represented, and a court employee will assist you in the entire process of filing your petition.

Family court is a civil court. We don’t file complaints here. We file petitions. The statute says that that's the form that's used in order to proceed in family court.

The petition asks you certain questions including the date of birth of the child, including your relationship with the alleged father of the child, or the mother of the child if you are the father filing because the father can also file this petition. You would file it in the county where you reside with the child or you can go to the county where the father resides and file there. You will need a copy of the birth certificate. That must be provided to the court. You file your petition, you serve your papers, the respondent is given an opportunity to appear. If he does not appear a default order can be entered. If he does appear and he denies paternity, the court will

order blood tests to be taken and DNA samples will be taken to determine whether or not the individual is the father of the child, biologically. Once the determination is made, attached to that, and this is what I was talking about, the doorway, is now the obligation for support of that child. Although you may not be married to the mother, the statute says that you have an obligation to raise that child, support that child, in whatever means you are capable of doing so. If you have one child and you proceed into the court, that basic obligation of support is 17 percent of your gross salary. When we talk about support a little more we'll determine all of the percentages according to the number of children. Once the determination is made, as I said, the DNA samples, the proof is given, now you proceed to the child support issue. One other point on the paternity side of it,

the child's birth certificate can be changed to reflect the father of the child if he is not on there. The mother has the option today in the modern world, whether or not to change the child's name. That's an option given to the mother only. It is not automatic with the father's name, will now go on that birth certificate.

Once you have determined that you move into the realm of child support. Child support also is filed where you reside, where the child resides, or where the respondent father resides. New York State family court is a civil court, as I said, you file a petition, you make an allegation. You must serve the other side with the child support petition, return to court, prove service. If the person doesn't show up a default order can be entered. If you have one child, as I said, 17 percent of your gross salary will be used to determine your child support

obligation. The statute also allows for multiple children. If you have two children, 25 percent, three children, 29, four children 31 percent, and five children or more than four children, 35 percent. And that is only a base. That is only a base to be used to determine the salary. The court will first issue to the people that come to court forms to determine what their income is. Both parties will be required to file financial affidavit forms which ask about all of their income coming in, salary, bonds, dividends, whatever they have. All of that money goes into a calculation, combine to the other, with the other parent's income if they have one, and the percentage of each of their salaries that make up that new total are used to determine each parent's obligation for support. It's a complicated process. I just gave you an equation but

unfortunately there are add-ons to that. There are things that may be added on, that must be added on, and the court will use all of those additional add-ons to determine the amount of support that each parent is obligated to pay.

If you come to family court there are ways--there are three ways in which you can file your petition or obtain your petition. You can come to the courthouse, pick up a form. If you are outside of New York City that's generally the way that it happens. You pick up the form. You go home or you sit down in the courthouse and you fill out your form and submit it for filing. Or you can electronically go on your computer. OCA has a web site where you can obtain copies of the forms. It identifies family court, it identifies the type of proceeding in the family court, and you can fill out that form and submit that to the court. If you are in New York

City and a few of the other counties around the state, you can come to the court, to the Office of the Self-Represented. As I indicated with paternity, you can do the same thing with child support. You come in, a clerk will sit down with you, and I failed to introduce my colleague here, Mr. Michael Williams, who will be speaking to you in a couple of minutes. Mike Williams is the head of the Kings County Office of Self-Represented. Each county in New York City has one of those, except for Richmond, where you can come in and court staff will sit down with you, ask you questions that make up your petition, prepare the petition for you, give you instruction on how to serve those papers on the other party, when to return to court, what to bring with you. You will be bringing that financial affidavit, you will be bringing tax forms, you will be bringing any

information that the hearing officer, and the hearing officer on a child support case is a support magistrate. A support magistrate is a quasi-judicial hearing officer. They are delegated to hear all matters pertaining to child support and paternity. If the parties come in and consent they can enter the order. They can determine the biological lineage of the child, whether or not the father is to be determined as the biological child, and in a support case, determine the obligations, the income, what should be applied, what should be used to determine. And the support magistrate does all of those things, makes that determination. So if you have been in the family court and you have seen a support magistrate, it is like appearing before the judge with all of the same powers as the judge. They can issue all of the same service and any recommendations for incarceration, they

will refer to a judge for hearing. But they have all of those same powers.

Mr. Williams will explain the DIY Project. I mentioned electronic.

MR. MICHAEL WILLIAMS: Hi, good morning, or good afternoon. Just an overview of orders of filiation or paternity petition. There's four ways in New York State to be declared the legal father of a child. One, you can be married to the mother at the time of birth and / or conception. Two, an adoption. Three, in 1994 they instituted a procedure and a document called an acknowledgement of paternity. After the child's birth, this is usually done in the hospital but it can be filed any time thereafter, both parents, mother and father, would sign the acknowledgment of paternity. It's witnessed, notarized, and filed with the Bureau of Records or the Board of Health, and that legally declares a man the father

of the child. The fourth way was paternity, which we are discussing today. That's by filing a paternity petition a judge enters an order that's called a filiation order. Okay? That's how paternity is established.

For child support, Mr. Cairns went through a few of the topics with child support, the amount. Child support is effective up to the age of 21 in New York State. All right? Unless the child's emancipated by some other means. A child can be emancipated in several different ways. Once attaining the age of 21 a child is emancipated. Joining the military services, a child's emancipated. Possibly a marriage or basically if the child's self-supporting and can care for him or herself, then a child's emancipated. A child in college, living away in college, is not emancipated. Okay?

Child support, support collection, just to discuss support collection. Anybody who receives support should really seek out the services of the child support enforcement services. They're very, they have tremendous enforcement policies in going after money to obtain child support. Obviously if you're paying child support, the support collection unit is an enforcement agency for child support. They have a customer service office, although a payer, a person paying child support, would have to deal with them. Usually most of the time you've got to file a petition for a modification petition instead of dealing with them because they're the accountants of the child support order.

Once an order is established, an order is established like Mr. Cairns said, an order of support is the 17 percent for one child. That's per family, all right?

And you've got to add mandatory and discretionary add-ons. Some of the add-ons--mandatory add-ons are health insurance. Health insurance is a mandatory add-on. Child care can be a mandatory add-on if the mother works or the custodial parent works. Discretionary could be education, it could be music lessons, it could be any extra-curricular activity a child may have, dance lessons, athletics. That can be discretionary. When we say 17 percent, the easiest way, we submitted it, we handed out to everybody guidelines, the federal guidelines for what the minimum child support is. The easiest way in New York State to figure out what the child support order is, it's basically 17 percent of your gross income. You deduct social security tax and New York City locality or Yonkers tax. That's all you can deduct. And basically you do 17 percent of what's

left over and that's what a child support order would be for one child.

If you have children with different mothers it doesn't go to that 25 percent. Child support for two children is 25 percent but if those two children are with two different mothers then it's 17 percent for the one child to the first mother, and 17 percent to the second child, the mother of the second child. So it's technically 34 percent but you do however a mandatory deduction is an existing, an existing child support order. All right? You can't be in a relationship saying I'm paying this person $200 a week and say another person brings you in to file child support and say I want to deduct this $200. It has to be a written agreement or order. And it can't just be a regular written agreement. If the magistrate finds out that you're basically lying about your income or what you're

spending, because financial disclosure is mandatory in child support matters, then basically once they deem that you're not being truthful to the court they can basically enter what's called a needs order and they don’t have to take anything you say as evidence. And basically they would just ask the petitioner how much do you need and that's what the magistrate would enter.

Also, a default order, if you don’t show up. The one thing about support, remember, it's retroactive to the date of filing. One of the most important things is that once a case is filed, that child support order is going to go back to the date it was filed. So if it's $100 a week and it took a year to enter that order, that basically will be you would owe $5,200 in back money. And support collection unit, nobody can change it. They have a certain policy for arrears

owed. Arrears owed is they collect $50 or 50 percent of the order, whichever is greater. So unfortunately when you walk out of court, when you walk out of court you may be told that you have a $100 order, but if arrears accrued because it took several months to settle it, it will go back. They will collect $150 per week. They add $50 or 50 percent of the order automatically. There's nothing you can do or nothing we can do to like lower that arrears amount. It just, it's basically the law. So it's difficult. So it's really to everybody's benefit to get these cases settled as quickly as possible. If you're served the papers, come in, and just realize that whatever the order will be, it will be retroactive to the date of filing.

A cost of living adjustment. Quite often you see a cost of living adjustment. A cost of living adjustment

is the consumer price index, it's what everybody calls inflation or cost of living. But when it goes up, every 24 months the support collection unit will review the order and if it went up above ten percent, if the cost of living gone above ten percent, they'll increase the order administratively without going to court. They just send everybody a notice that it's going up by that 10 percent. So a $100 order may go up by 10 percent if the cost of living went up 10 percent. You can file an objection to that but then once you file an objection it opens up to a modification process. Modification of child supports, you know, it's one of the number one filings in family court, modification of child support. Our Deputy Chief Judge of New York City Family Courts has created a, the Honorable Fern Fisher has created an interactive computer program to actually file these, either at

court based court computer, computers based in courtrooms, or from home, or from any access. It's available on the Internet and you can either actually mail this in or bring it to a court, the clerk's office, petition room, and they'll file it right there. So you don’t have to spend a significant amount of time in court.

So modifications, the one thing with a modification of child support, when it's filed you have to state a change of circumstances, what has changed since the order was entered. It has to be a significant change of circumstances. If you're filing for a downward mod, that change of circumstances can't be based upon your actions. If you got laid off due to your own fault, basically that doesn't mean a magistrate has to lower the order. If you were working and paying $200 a week in child support and then you

decide to go back to school, you can go back to school but they won't lower the child support order because of your choice. The importance is in the best interest of the child and basically they want to collect the money on behalf of the child, so they won't lower the order based on that. Obviously, with the present fiscal climate, if you're laid off for other reasons or downsizing possibly, you can file a modification petition to have it lowered.

The key to modifications, especially if you're paying child support, file it as quickly as possible because again, you won't get back money from the time you got laid off or your circumstances changed, it would be retroactive to the date you file the petition, not the date that you got laid off. So if you got laid off and you're still paying or you stopped paying and

you're receiving unemployment checks for four months, and now you get a notice from the support collection unit that you owe money and want to file a downward mod, you won't be able to recoup the overpayment possibly that you think that you may have overpaid or the arrears that have accrued during that period of time. It only goes back to the date of filing.

One other thing, we'll just go briefly, we've only got a very short period of time, it's interstate. Just because somebody lives in another state, there's something in the federal statute called URIFSA. It stands for Uniform Interstate Family Support Act. Basically it's a set of procedures throughout the 50 states and commonwealths that you can obtain jurisdiction over a person that lives in another state to obtain child support for them. Agencies work to assist. I mean in New York City,

corporation counsel will represent an out of state party seeking child support of a resident of New York City, and corporation counsel will also file papers to forward to whatever state the person, the non-custodial parent may live in if you need to obtain custody. There's a lot of different ways. It's just child support.

The one thing to remember with child support, you know, it's a right for the custodial parent and an obligation for the non-custodial parent. Child support is based upon the best interest of the child and it's important that everybody is aware of both the rights and obligations on child support matters.

MR. CAIRNS: Just before we move on I just want to--Mr. Williams mentioned the electronic filing. That system is called DIY. If you go onto the court's web site and you'll see indications for DIY, that's where it is. It's DIY stands

for do it yourself, and it's a great way. It's just being introduced and it's rather new but it's going to be the wave of the future for you to do your work in the family court.

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