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| ADMINISTRATIVE DIRECTIVE |
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TO: Commissioners of
Social Services

TRANSMITTAL: 99 ADM-1
DIVISION: Child Support
Enforcement
DATE: January 22, 1999
SUBJECT: Administrative Issuance of Subpoenas in Child Support Cases

SUGGESTED
DISTRIBUTION: Child Support Enforcement Coordinators
Support Collection Unit Supervisors

CONTACT
PERSON: OCSE - County Representative
Legal - Eileen Stack

ATTACHMENTS: Administrative Subpoena form (not available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Legal Refs.	Manual Ref.	Misc. Ref.
			CPLR 306		
			CPLR 308		
			CPLR Art 23		
			SSL 111-b		
			SSL 111-h		
			SSL 111-p		
			SSL 111-r		
			SSL 111-s		
			SSL 143		

I. PURPOSE

This directive provides social services districts with the approved New York State child support administrative subpoena form and provides guidance on its use.

II. BACKGROUND

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 provides that states must have laws which authorize the child support enforcement agency to administratively subpoena any information needed to establish, modify, or enforce a support obligation.

Chapter 398 of the Laws of 1997 added section 111-p of the Social Services Law (SSL) and amended article 23 of the Civil Practice Law & Rules (CPLR) to provide that an authorized child support enforcement official or designee may administratively issue a subpoena for the purpose of obtaining any financial or other information required to establish, modify, or enforce an order of support.

III. PROGRAM APPLICATIONS

The authority to administratively issue subpoenas for the purpose of gaining access to information increases the efficiency of local district operations.

IV. REQUIRED ACTION

A. Applicable Cases.

The authority for social services districts to administratively issue subpoenas is applicable to cases receiving child support enforcement services under the provisions of Title 6-A of the Social Services Law.

B. Restrictions On Use.

A subpoena is served on an individual or entity having possession or control of information, records, or documentation in order to compel the production of such information, records, or documentation. The issuance of an administrative subpoena must be limited to purposes related to the establishment, modification or enforcement of an order of support.

C. Issuing Official.

1. An administrative subpoena may be issued by the child support enforcement unit coordinator or support collection unit supervisor of a social services district, or his or her designee.

2. If a coordinator or supervisor chooses to delegate issuing authority, the designee shall be appointed in writing.
3. An administrative subpoena may also be issued by the Office of Temporary and Disability Assistance (OTDA), or by another State's child support enforcement agency governed by Title IV-D of the Social Security Act.

D. Records for which a subpoena IS required:

1. A subpoena is required to obtain access to information contained in customer service records held by public utility companies and corporations, (including but not limited to, cable television, gas, electric, steam, and telephone companies and corporations). [see SSL 111-s 1(b)(i)]
2. A subpoena is also required to obtain access to information contained in records maintained by any individual or entity not specifically identified in paragraph E below, [e.g. landlords, individuals, retail establishments], if any such individual or entity refuses to provide access to information without a subpoena.

E. Records for which a subpoena IS NOT required: A subpoena is not required to obtain access to information contained in records held by the following:

1. Records of state and local government agencies. [see SSL 111-b 4 and 111-s 1(a)]
2. Information held by financial institutions, including information regarding assets and liabilities. [see SSL 111-h 8 and 111-s 1(b)(ii)]
3. Records held by an employer including last known address, social security number, full information regarding wages, salaries, earnings or other income, and information relating to any group health plans available for the provision of care or other medical benefits by insurance or otherwise for the benefit of the employee and/or the child or children from whom such employee is legally responsible for support. [see SSL 111-h 9, 111-r, and 143]

NOTE: Nothing herein precludes the issuance of a subpoena where such use is not required.

F. Service. [see CPLR 2303]

1. An administrative subpoena issued to a public utility company or corporation, as described in paragraph D 1 above, may be served by regular mail, or through an automated process where information is maintained in an automated data base.

2. All other administrative subpoenas shall be served in the same manner as a summons, except that where service of such a subpoena is made pursuant to subdivision 2 or 4 of CPLR 308, the filing of proof of service with the clerk of court is not required and service shall be deemed complete:
 - a. upon the later of the delivering or mailing of the subpoena, if made pursuant to subdivision 2 of CPLR 308; or
 - b. upon the later of the affixing or mailing of the subpoena, if made pursuant to subdivision 4 of CPLR 308.
 3. Although the filing of proof of service with the clerk of court is not required where service of a subpoena is made pursuant to subdivision 2 or 4 of CPLR 308, it is recommended that proof of such service be completed and maintained on file by the CSEU/SCU.
 4. In those instances where a subpoena is issued to compel the production of information or documentation under tight time constraints, the CSEU/SCU should consider using personal service pursuant to subdivision 1 of CPLR 308. Proof of personal service is required in accordance with CPLR 306.
 - G. Fees. There is no provision in statute for the payment of fees to an individual or entity served with an administrative subpoena. However, upon the granting or denial of a motion to quash, fix conditions, or modify a subpoena, the court is empowered to impose reasonable conditions for complying with a subpoena which may include payment of any actual costs for reproducing the information, records, or documentation sought.
- H. Challenge. [see CPLR 2304]
1. In some instances, an individual or entity served with a subpoena may desire to challenge it on certain grounds. For example, the individual or entity may assert they have been misidentified as the source from which such information may be obtained; that certain information is exempted from disclosure based on a legal privilege; or that there are procedural defects in the issuance of the subpoena.
 2. If the individual or entity served with a subpoena desires to challenge it, a request to withdraw or modify a subpoena shall first be made to the official who issued it.
 3. Upon receipt of a request to withdraw or modify an administrative subpoena, the CSEU/SCU issuing official shall make a determination if withdrawal action is warranted, or if the subpoena should be modified.

4. If it is determined that withdrawal or modification is warranted, the issuing official shall confirm that decision in writing, and issue a modified subpoena, if applicable.
5. If it determined that withdrawal or modification is not warranted, the challenging party shall be advised by the CSEU/SCU that a motion to quash, fix conditions, or modify the subpoena may be made in the Family Court or the Supreme Court.

I. Disobedience. [see CPLR 2308(b)(2)]

1. If an individual or entity fails to comply with a subpoena issued pursuant to SSL 111-p, the issuing agency is authorized to impose a penalty against the subpoenaed person.
2. The amount of the penalty shall be determined by the OTDA Commissioner and set forth in regulation, and shall not exceed \$50.00. Regulations will be forthcoming.
3. Payment of the penalty shall not be required, however, if in response to notification of the imposition of the penalty the subpoenaed party complies immediately with the subpoena.
4. Compliance with an administrative subpoena may also be compelled by bringing a motion in accordance with CPLR 2308 (b)(1). In the event the subpoena was issued in connection with a pending case, the motion to compel compliance should be brought in the court where the case is pending. In the event a case is not currently pending, such action must be brought in the Supreme Court. If the court determines that the subpoena was authorized, it shall order compliance and may order reimbursement of costs up to \$50.00. In addition, the court shall order the subpoenaed party liable to the person on whose behalf the subpoena was issued for a penalty not exceeding \$50.00 and damages sustained by reason of the noncompliance.

J. Forms.

1. The attached administrative subpoena form shall be used by New York State child support enforcement agencies to access information from individuals or entities located within New York State, and to access information from individuals or entities located in other states.
2. A completed administrative subpoena form shall consist of two pages.
 - a. The first page of the subpoena form contains the basic subpoena language, including the specific direction for compliance and identification of authorizing laws.

- b. The second page of the subpoena form (the enclosure) identifies the information and documentation requested and also provides for certification by the individual responding to the subpoena.
 - c. There are two versions of the second page of the subpoena form - one to be sent to a business, company, agency, or entity, and the other to be sent to a private individual. Select the appropriate version of the second page for use in completing a subpoena form.
3. The form should be produced locally, and completed as follows:
- a. Insert case identifying information in caption, and appropriate information in "TO" and "FROM" blocks.
 - b. Insert the CSMS case number as the "New York Case Number".
 - c. Specify the desired date of return. No statutory timeframe exists. A reasonable return date should be selected, with more time allowed for complex requests. Consideration should be given to all relevant factors including mode of service. A date two weeks from the mailing date is recommended.
 - d. Specify the person to whom the information or documents should be mailed or delivered. This may be the issuing official (insert "the undersigned"), or another CSEU/SCU staff member (insert name).
 - e. The subpoena must be dated and signed by an authorized issuing official. If the issuing official is a designee of the Coordinator or SCU Supervisor, you may wish to also include the Coordinator's or Supervisor's name and title.
 - f. The enclosure accompanying the subpoena (second page) should have the identifying information and case number inserted, the list of information and/or documents set forth, and the county name added in the certification section.
 - g. Caution should be taken to ensure that the custodial parent's address is not entered on the subpoena or enclosure form under any circumstances.
4. Child support enforcement agencies of other states will use similar forms to gain direct access to information maintained by entities located in New York State.

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V. SYSTEMS IMPLICATIONS

Modifications are being made to CSMS to add the administrative subpoena form to the document generation module.

VI. EFFECTIVE DATE

This ADM is effective immediately.

Robert Doar
Director
Office of Child Support Enforcement