

**An Introduction to Rhode Island Paternity
And Child Support Laws
By Sharon A. Santilli, Esquire**

Introduction

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AN INTRODUCTION TO RHODE ISLAND PATERNITY AND CHILD SUPPORT LAWS

Presented by:
Sharon A. Santilli, Esquire
Child Support Director
Office of Child Support Services

P R E F A C E

This outline is intended for the attorney with limited Rhode Island Family Court experience in paternity and child support issues. It is designed to provide that attorney with a practical approach in handling these types of matters.

The objectives are:

1. To provide the attorney with an overview of paternity and child support laws and procedures;
2. To provide an understanding of the Rhode Island Family Court and the role of the Office of Child Support Services.
3. To introduce the applicable forms and documents.

(REV: 2/06)

INTRODUCTION

OVERVIEW OF RHODE ISLAND CHILD SUPPORT AGENCY

The Department of Human Services Office of Child Support Services- Office of Legal Counsel is located at 77 Dorrance Street, Providence, Rhode Island, Third floor. The general telephone number is 277-2847 and the website is www.cse.ri.gov. In August of 2004, Sharon A. Santilli was promoted from Chief Legal Counsel to the Child Support Director. Chief Legal Counsel Frank DiBiase now supervises the Legal Unit. There are (12) staff attorneys, (9) paralegals and four (4) clerical workers who comprise the Legal Unit. The Legal Unit also has a full support staff of approximately fifty (50) Child Support Case Workers and Supervisors.

All notices, pleadings and subpoenas relative to child support or paternity should be mailed or served at 77 Dorrance Street, Providence, Rhode Island 02903. Service by constable upon the Legal Office is not necessary for most motions. Service by mail is sufficient.

Due to federal and state confidentiality laws, the Office of Child Support Services- (hereinafter referred to as the OCSS) cannot divulge any personal information about custodial and non- custodial parents. Many times attorneys will request the address of a custodial parent for the purpose of serving him/her with a motion for visitation. If you require address information for an authorized purpose to establish paternity, to establish, and enforce child support, visitation and custody) pursuant to state and federal law, you must follow the procedures outlined herein and utilize the forms contained in the appendix. The OCSS is the authorized entity in child support and paternity matters. The Rhode Island Family Court is the authorized entity for custody and visitation matters. The Court works closely with the OCSS in any event. If any address information is contained in the court file it is of public record. If the custodial parent's address appears in the file, it is available for use. You should begin with the court file before beginning the formal procedure to request the address. The procedure to request an address is set forth in the appendix.

The OCSS administers a joint Federal/State program to establish and enforce child support from non-custodial parents. The program is divided into two basic categories.

The first category consists of all individuals receiving benefits under the Family Independence Act (FIP), or medical benefits under the RIte Care program. These individuals will automatically be referred to a child support agent to begin the process of pursuing the non-custodial parent for purposes of establishing paternity and collecting child support and medical support. There is no fee charged for this service.

The second category consists of all individuals in need of obtaining child support services. The fee for services rendered in this category is \$20.00. There are no financial qualifications for this service.

The child support program provides four essential services; locating the non-custodial parent whose whereabouts are unknown; establishment of paternity; establishment of child support and medical orders, and enforcement of those orders. These services are available regardless of whether the non-custodial parent resides in this state pursuant to the Uniform Interstate Family Support Act (UIFSA).

Ultimately, the non- custodial parent is brought before the court and a child support and medical order is established. All payments are made by wage withholding, payable to the Rhode Island Family Court, which is the designated State Disbursement Unit (SDU). If the custodial parent is a recipient of FIP, the payments are retained by the State except for the first \$50.00 collected per month. This sum is forwarded to the recipient as an incentive for their cooperation in pursuing the non -custodial parent as provided by Federal Law. Although the federal government abolished the \$50.00 DEFRA, the State of Rhode Island has chosen to continue to pay the \$50.00 DEFRA from state funds. If the custodial parent is not a recipient of FIP, all child support payments collected are forwarded to this individual.

I. PATERNITY OVERVIEW

There are few matters that have more of an emotional strain on individuals than a paternity lawsuit. The parties were once romantically involved and now probably abhor one another. To add to the situation, they may now be romantically involved with someone else. The fact that they now have to "air their dirty laundry" in a public courtroom can bring out a great amount of animosity.

With the common practice of Deoxyribonucleic Acid testing or hereinafter referred to as "DNA" testing, the courtroom battles contesting paternity have dwindled. That is not to say that contested hearings are not appropriate under certain circumstances where a case turns on the non- genetic evidence. You need to make a decision as to when it might be appropriate to request a contested paternity hearing. Once the DNA test results indicate a high probability of paternity, the focus shifts to the establishment of the child support order, custody and/or visitation.

II. INITIAL INTERVIEW WITH CLIENT

A. Gathering Facts

Your client either wishes to file a paternity complaint or has been served with a complaint.

When you meet your client for the first time, it is a good practice to conduct a thorough intake of information.

Be sure to obtain that information which is crucial to a paternity action such as your client's full legal name, including his middle name, address, telephone number, date of birth, place of birth, race, place of employment, work telephone number, gross weekly wages and social security number.

It is important to advise the alleged father about DNA testing and past liabilities as follows:

- The OCSS will pay DNA tests costs initially but will seek reimbursement if the defendant is adjudicated to be the father. The fee is \$200.00 for DNA tissue typing for three people.
- Pursuant to Section 15-8-4 of the Rhode Island General Laws, the State may pursue past liabilities for a period of six (6) years prior to the filing of a complaint. Generally, if your client acknowledges paternity after DNA testing is conducted, the State will waive past liabilities owed to the State. If the case proceeds to trial, the State will pursue all past liabilities including support and medical which may total thousands of dollars. Your client should be well informed of this claim.
- Naturally, in a non-FIP case, the plaintiff mother may pursue past liabilities whether or not a trial results. That is her decision since the past liabilities are owed to her.

When responding to a paternity complaint, the answer must be accompanied by a sworn affidavit setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact during the probable period of conception pursuant to R.I.G.L. Section 15-8-11.

B. Ethical Considerations

An attorney has a duty to reject or withdraw from a case if the client is seeking to have that attorney engage in any type of illegal or unethical conduct, or present frivolous claims or defenses. If your client has been ordered to attend DNA testing and advises you he intends to send another in his place you should withdraw. Or if your client wishes to file a paternity complaint against an individual even if she knows he cannot be the father, you should not proceed.

C. Fee Agreement

Handling an uncontested paternity action will take a minimum of five (5) billable hours, so be sure to indicate the time factor to your potential client and bill accordingly. Any concerns or potential problems that you feel may arise with this case should be indicated to the client at this time.

If your client still seeks your representation in this matter, you and the client should sign a specific agreement. The agreement should indicate the professional services to be performed and how the counsel fee should be paid. If there is a retainer agreement, the terms of such should be clearly indicated. The Rhode Island Supreme Court Disciplinary Board recommends a signed agreement.

III. APPLICABLE LAW

A. R.I.G.L. Section 15-8-1 et al Uniform Law on Paternity

This section of the law is a good starting place. It provides important information such as the obligations of the father, jurisdiction, venue, DNA testing, evidence, child support, bonds, birth records and appeals.

A typical scenario involves a woman who is legally married to one individual and has a child with another individual. In this situation, the husband is presumed to be the father. Pursuant to R.I.G.L. Section 15-8-3 and is entitled, "Presumption of Paternity". You should be aware that the Office of Child Support Services will rely on this presumption, and file a Motion for Support against the presumed father. This is a change from past practice. The presumed father must then rebut the presumption by requesting DNA testing. An exclusion may form the basis to rebut the legal presumption depending upon the relationship between the presumed father and child. The court may hold a hearing to hear evidence regarding that relationship. Use caution when representing the mother, and consider objecting to DNA, in a case where the alleged biological father is unknown, since the legal father's name may be removed from the birth certificate leaving the father's space blank and consequently the child without a father.

B. Discovery

The usual forms of pre-trial discovery apply to a paternity action such as interrogatories, request for admissions and depositions. The State utilizes request for admissions in every paternity case. Be sure to respond within 10 days or your answers will be deemed admitted and form the basis, along with the paternity test results, for a motion for summary judgment.

C. Jury or Bench Trial

Trial by jury has been abolished in Rhode Island. In order to claim a bench trial, he must make demand within ten (10) days of filing the Answer or it is deemed to be waived.

Should your client desire a bench trial, you may want to contain this request within your Answer.

D. Statute of Limitations

1. R.I.G.L. Section 15-8-6, "Statute of Limitations":

"An action to determine the existence of the father and the child relationship is not barred until four (4) years after the child reaches the age of majority."

This statute was amended in 1996 since it was very ambiguous and resulted in a great deal of litigation. Now it is clear that a paternity action may be filed up until four (4) years after majority.

2. R.I.G.L. Section 15-8-4, "Limitation of recovery from the father".

"The father's liabilities for past education and necessary support and maintenance are limited to a period of six (6) years next preceding the commencement of an action hereunder."

3. R.I.G.L. Section 15-8-5. "Limitations of recovery from father's estate."

The father's estate is liable to those amounts that accrued prior to his death.

E. Rights of Putative Father

A putative father may file a paternity complaint under the Rhode Island Uniform Paternity Act. He may also complete an affidavit of paternity at the hospital, Vital Records, or the OCSS, if the mother is in agreement. The federal and state law requires that he receive oral and written notice of his rights and responsibilities before acknowledging paternity of a child. There is a videotape he should view, pamphlets and a Notice of Rights and Responsibilities he should review thoroughly, before he signs the *Affidavit of Paternity*. If he has any doubts he should not complete the affidavit and instead await DNA test results through the contested process.

IV. PATERNITY TESTS

A. R.I.G.L. Section 15-8-11, "Authority".

This section allows the court to grant a party's request for paternity testing or order it sua sponte. A DNA test is extremely accurate and scientific and will result in an exclusion of the possibility to parentage or a very high probability of paternity. Over the past few years significant amendments have been made to R.I.G.L. Section 15-8-11 as follows. The Child Support Agency may administratively order and schedule DNA testing upon receipt of a denial. A court order is not required.

- ◇ The DNA testing restriction relative to an infant under six (6) months of age has been removed.
- ◇ If the DNA test results indicate a 97% probability of paternity, a conclusive presumption exists.
- ◇ DNA test results may be introduced into evidence without the necessity of laying the foundation unless an objection has been filed ten (10) days before the hearing.

B. Qualified Genetic Testing Examiners

The State has contracted with LabCorp, a duly qualified expert DNA testing facility. DNA testing is conducted at the Child Support Office.

The two most common types of testing are HLA, (Human Leukocyte Antigens), red blood cell testing and DNA (Deoxyribonucleic Acid). LabCorp conducts DNA testing through buccal swabs. Genetic material is gathered on a swab from the inside of the cheek.

When the OCSS is involved in the case and paternity tests are required, we will schedule the tests and pay the initial costs. If the defendant is adjudicated the father, the State will be seeking reimbursement. The cost of DNA testing is \$200.00. When representing the non-custodial parent you may request that the Court grant some time to reimburse the State for this cost.

Pursuant to R.I.G.L. Section 15-8-11, if the results establish a 97% or greater probability of paternity, it shall constitute a conclusive presumption.

V. CHANGE OF NAME

Pursuant to R.I.G.L. Section 23-3-10 (d)(2), if the father and mother were not married at the time of the child's conception or birth, the child must bear the mother's surname unless the father and mother sign an affidavit of paternity at the hospital or at Vital Records. Once adjudication takes place, the natural father may seek to change the child's surname from

that of the mother to that of the father. To determine whether the father's request will be granted, the test is the "best interest of the child."

In Ribero vs. Monahan, 524 A.2d 586, the Rhode Island Supreme Court held that:

1. Traditional view at common law was that the child bore the surname of his or her father, but the current standard to be applied in surname disputes is the best interest of the child;
2. The best interests of a child who resided in mother's household required that child retain mother's surname which was the same name of members of household in which child resided and was the name on the child's birth certificate.

The OCSS will not file a petition for a name change only. The forms are available at the Rhode Island Family Court. Name changes will be requested within the context of a petition for voluntary acknowledgment only.

VI. UNCONTESTED PATERNITY MATTER

A. Procedure

Generally speaking most paternity matters are resolved once a DNA test result is obtained.

Generally, a paternity case proceeds as follows:

1. Once the alleged father is located a paternity complaint is filed.
2. The alleged father submits a denial and an affidavit.
3. DNA tests are administratively ordered and scheduled. A letter will be sent to counsel with the appointment date and time. Counsel is to notify their client of the date and time. The parties will not be scheduled at the same time.
4. Test results will not be forwarded to defense counsel by the facility. Results will be attached to Requests for Admissions and be sent by the agency. Please do not call the facility directly.
5. When necessary, additional discovery will be filed.

6. A Motion for Summary Judgment will be filed based upon the DNA test results and responses to request for admissions. A Motion to Dismiss will be filed by the State if the tests exclude the alleged father.
7. At the hearing on the Motion for Summary Judgment either an acknowledgment will be entered, or a trial date will be scheduled.

In an uncontested matter, the court's concern is that the parties are not engaging in some form of fraud, and that the natural father understands his rights and is making a full and voluntary acknowledgment.

Once the court is satisfied, an adjudication of paternity is ordered. This process takes only a few minutes in court but must be placed on the record. A waiver of confidentiality must be stated on the record as well. The court will order the Rhode Island Department of Health, Division of Vital Records to add the natural father's name, date and place of birth to the child's birth certificate. If requested by the parties, the court will also change the child's surname to that of the father and the Division of Vital Records will be ordered to amend the child's birth certificate to reflect the change. The parties may agree on a custody/visitation schedule at that time. Be advised the Office of Child Support Services is prohibited from becoming involved in those issues. The custodial parent may decide to retain counsel to represent her on those issues. Lastly, a child support order and medical order will be entered and past liabilities will either be waived, left open, or adjudicated.

B. Voluntary Acknowledgment

The natural father may voluntarily acknowledge paternity by:

1. signing an affidavit of paternity at the hospital upon the birth of the child. The affidavit is forwarded to the Division of Vital Records, which results in the father's name being added to the birth certificate.
2. filing a Petition for Voluntary Acknowledgment at Rhode Island Family Court pursuant to R.I.G.L. Section 15-8-27. A court date is assigned to formalize the acknowledgment on the record.
3. Signing an affidavit of paternity at the OCSS. The mother must accompany the natural father and must be willing to sign the form. No court date is required for the acknowledgment. The affidavit is forwarded to the Division of Vital Records, which results in the father's name being added to the birth certificate.
4. Applying for child support services and filing a petition for voluntary acknowledgment through the OCSS. These services are

provided to welfare recipients and/or the alleged father without the necessity of applying for services.

5. by making an appointment with the Department of Health, Division of Vital Records to complete an affidavit of paternity.

Please note: completing an affidavit of paternity cannot amend the surname of the child. Only the court can change the last name of a child.

Pursuant to R.I.G.L. Section 15-8-3 (a)(6), the sworn acknowledgment of paternity becomes a conclusive presumption if there is no court challenge within sixty (60) days of signing. The only defenses, which may be raised after the sixty (60) day period, are fraud, duress or mistake of fact.

VII. CHILD SUPPORT

I. CHILD SUPPORT FORMULA AND GUIDELINES

A. R.I.G.L. Section 15-5-16.2

Pursuant to the Income Shares model developed by the National Center for State Courts under a grant from the Federal Office of Child Support Enforcement, a child support payment formula and guideline was enacted into law on October 1, 1987. This child support formula and guidelines, commonly referred to as the "guidelines" provides a method of determining a fair and equitable child support order. The guideline contains a monthly gross income schedule ranging from \$600.00 to \$20,000.00. (A copy of the guideline chart is in the appendix).

To accurately reflect the increase in cost of supporting children, the guidelines were modified on June 6, 1988 on October 15, 1992 on November 1, 1997 and more recently on October 1, 2002. The court issued administrative order 2002- 3 to offer guidance when applying the guidelines. Administrative Order # 2002-3 should be read in conjunction with order #87-2. Both orders are contained in the appendix.

Pursuant to Section 15-5-16.2 of the Rhode Island General Laws the court shall make findings of fact based upon the following:

1. The financial resources of the child;
2. The financial resources of the custodial parent;
3. The standard of living the child would have enjoyed had the marriage not been dissolved;
4. The physical and emotional condition of the child and his educational needs;
5. The financial resources and needs of the non-custodial parent.

In every matter of child support regardless of whether it is contested or uncontested, a guideline worksheet must be presented to the court by the parties. The primary responsibility to file this worksheet with the court lies with the moving party.

B. Miscellaneous Child Support Issues

1. Pursuant to Section 15-5-16.2 (f) the court, upon a finding that an able-bodied parent is unemployed or underemployed shall order such parent to perform unpaid community service for a least twenty (20) hours per week. This applies to proceedings brought on behalf of children receiving FIP.

2. Pursuant to Section 15-5-16.2 (g) the parent of a minor parent may be responsible to reimburse the department if FIP is being remitted. The obligation is joint and separate between the parent and minor parent.

C. Application of the Guidelines

In order to apply the guidelines there are at least six (6) steps to follow:

First, you must obtain a guideline worksheet, which can be provided by the clerk of the court. The guideline worksheet was revised in 2002 to accommodate cash medical support. (A sample form is included in the appendix of this outline.);

Second, you begin your calculations by obtaining the gross weekly wages of both parents and multiply this amount by 4.3. This procedure gives you the average monthly gross wages of each parent. (There is an average of 4.3 weeks per month.);

Third, list the required deductions on the worksheet, namely health insurance, pre-existing child support payments and additional minor dependents. Effective 12/1/97 a new line was added for additional dependents. This will give you the average monthly-adjusted gross

wages of each parent. A pre-existing child support order is a monthly child support order the obligor has been ordered to pay in another case, or additional minor dependents refers to a child in a new family that the obligor is supporting.

It is important to note that administrative order 97-8 specifically addresses the issue of additional minor dependents and offers a recommended approach. The order provides that a deduction not to exceed 50% of the child support obligation for the additional children should be calculated by taking into account the combined gross income of both parents of the additional children. A second guideline worksheet need not be filed with the court so long as the court is satisfied that the deduction is accurate.

It is also important to note that administrative order 2002-3 specifically addresses the issue of medical support. If the child is covered by health insurance through the parent's place of employment, at the time the child support order is established, the child shall continue to be covered under that plan. If the child could be covered through the parent's employer, the parent shall be ordered to provide the coverage if it is at a reasonable cost. Reasonable has been defined as 5% of the parent's gross income. If on the other hand the cost is over 5%, the parent may be ordered to contribute cash medical support, weekly or monthly, at a rate of 5% of the obligor's gross income, in addition to the child support order. The maximum that may be collected is the actual cost of the coverage. The cash medical order is reflected on line 12 of the worksheet. Parents shall continue to receive an above the line deduction for any health insurance premium paid for the child on line 2b as well as an above the line deduction for the cash medical order.

Fourth, combine each parent's average monthly-adjusted gross wages and list this amount on the worksheet. Also, determine each parent's percentage share of income from the combined amount and list each of these figures on the worksheet;

Fifth, look at the guidelines under the "gross income" column. As you can see, this column is in increments of fifty (\$50.00) dollars. You must determine the amount closest to your combined amount listed on the worksheet. (If the combined amount is in excess of the amount in the "gross income" column, you need to use the next highest increment listed on the guidelines.) Once you have located the appropriate amount in the "gross income" column, look to the right side of the guidelines under the applicable number of children. This figure is the total child support obligation and should be listed on the worksheet. Next add the day-care expenses to the total monthly obligation giving the appropriate tax credit.

Lastly, multiply the non-custodial parent's percentage share of increase (step four), by the total child support obligation (step five), to determine that parent's monthly child support obligation. To determine the non-custodial parent's weekly child support obligation, divide the monthly child support obligation by 4.3. Both the monthly and weekly child support obligations should be listed on the worksheet.

It is important to note that the child support guidelines worksheet considers optional adjustments that would further reduce a parent's monthly-adjusted gross income. However, the

adjustments are totally within the discretion of the court. The adjustments include previous retirement payments, life insurance payments, parent's extraordinary medical expenses, income tax adjustments and payments of original marital debts.

The Rhode Island Family Court also has discretion in ordering child support above or below the amount suggested by the guidelines when the court finds that the order would be inequitable to the child or either parent. When exercising this discretion, the court should make specific findings of fact and write them on the back of the guideline worksheet.

D. Child Support Guidelines Examples

The following ten examples of child support guidelines worksheets are designated to depict a variety of factual situations.

E. Modifications of Existing Order

Pursuant to Section 15-5-16.2 of the R.I. General Laws, a child support order may be modified only if there is a substantial change of circumstances. A substantial change of circumstances shall not have occurred if it results in a new child support order that is less than ten (10%) percent higher or lower than the prior order of support. The moving party has the burden of proof. [See Ciallela v. Ciallela, 320 R.I. 81 (1954)].

An example of a substantial change in circumstances that could result in an increase in child support is when the custodial parent faces an increase in educational or day-care expenses while the non-custodial parent receives an increase in wages.

A common example of substantial change in circumstances that would result in a decrease, or, perhaps a temporary suspension in child support, is when the non-custodial parent has been terminated from employment or has received a decrease in earnings.

R.I.G.L. Section 15-13-3, "Recommendation of Support Orders", provides that if a child support order is entered pursuant to a divorce decree and the custodial parent becomes a recipient of FIP subsequent thereto, the OCSS is entitled to a hearing de novo on the issue of support. This is because the Agency was not a party to the initial action.

R.I.G.L. Section 15-5-16.2(c), "Retroactive Modification of Child Support", allows the court discretion to modify or suspend a child support order retroactive but only to the date that the adverse party received notice of said petition.

Pursuant to federal and state law, Section 15-5-16.7 of the Rhode Island General Laws, the OCSS may review child support orders in all cases where support rights have been assigned to the State, or at the request of either party every three (3) years from the date of last review. Accordingly, the Agency may be filing a motion for review and adjustment and

requesting that the court apply the guidelines and order a guideline order regardless of whether the application results in an upward or downward modification.

VIII.R.I.G.L. Section 15-16 INCOME WITHHOLDING (GARNISHMENT)

A. Overview

The purpose of garnishment is to enhance the enforcement of support obligations by providing a quick effective way of collecting child support.

Pursuant to R.I.G.L. Section 15-16-5.1 and 15-5-25, all child support orders issued, enforced or modified after January 1, 1994 are subject to immediate wage withholding unless the court finds that there is:

1. good cause not to impose wage withholding, or,
2. if the obligor and obligee (agency) enter into a written agreement or order, which provides for an alternative arrangement for the timely payment of support due under the support order.

The statute was amended in 1994 to include all child support orders, including non-IV-D cases.

The garnishing agent can deduct the sum of two (\$2.00) dollars per month from the obligor's wages to cover the cost of expenses in transmitting the support payments.

Title 15, Sections 1672 and 1673 of the United States Code, entitled the "Federal Consumer Protection Act" provides the following exemptions to income withholding.

1. Only disposal earnings are subject to income withholding. Disposable earnings are defined in Section 1672 as "that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." Federal, State and Local income and employment taxes would therefore be deducted from your gross earnings in determining disposal earnings.
2. The income withholding order may not exceed the following maximums permitted under Section 1673.
 - a. If you are supporting a spouse or dependent child other than the spouse or child with respect to whose support the order is issued, the maximum

amount of your disposal earnings that may be withheld is 50% of such earnings, unless you are twelve (12) weeks or more in arrears, in which case the maximum is 55% of such earnings.

- b. If you are not supporting a spouse or dependent child other than the spouse or child with respect to whose support the order is issued, the maximum amount of your disposal earnings that may be withheld is 60% of such earnings unless you are twelve (12) weeks or more in arrears, in which case the maximum is 65% of such earnings.

B. Employment Notification

Pursuant to R.I.G.L Section 15-20-1, the department shall notify the current employer of the existence of a child support order so that the wage withholding order shall continue.

Further, the employer must notify the department within 10 days of the termination of the employee.

Pursuant to R.I.G.L. Section 15-20-2, when the obligor parent changes employment, he/she must notify his new employer of the wage withholding order and must notify the department.

Chapter 24 of Title 15 entitled "Reporting of New Hires" requires employers, under certain circumstances to report all new hires to the CSE agency. Upon learning of the new employer, the CSE agency can send a new DR-29 provided a garnishment order was previously entered by the court. In this manner wage withholding may continue uninterrupted.

IX. MEDICAL SUPPORT

Pursuant to Section 15-5-16.2 (d2) any order for child support shall contain a provision for health coverage when coverage is available to the parent through their employment without cost or at a reasonable cost. Reasonable cost has been defined in administrative order 2002-3 as coverage provided through an employer which is less than 5% of the obligor's gross monthly income. If the cost of coverage meets the threshold, the obligor will be ordered to maintain the coverage for the child. A national medical notice will be sent directly to the employer informing the employer to enroll the child (ren). The law, which addresses the national medical notice, is contained in Chapter 29, Title 15 and was passed in July of 2002. If the coverage represents more than 5% of the obligor's monthly income, the Court may order the obligor to contribute 5% of the monthly gross income as cash medical order. This amount is in addition to the child support order and would also be garnished from the obligor's wages.

Section 15-5-16.2.5 provides that if the agency determines an employee/obligor has medical coverage available, and has failed to enroll the minor child after being ordered to do so, the agency may send notice to the employer to enroll the child. The employer must enroll the child in the least expensive plan available. If the plan is cost prohibitive, the obligor must file a motion with the court requesting relief. It is not incumbent upon the employer to determine this. The court determines the issue.

X. FILING OF PRIVATE CHILD SUPPORT ORDERS

A. STATE REGISTRY

Pursuant to R.I.G.L. Section 15-5-16.2, all support orders established or modified in the state on or after 10/1/98 shall be recorded with the Rhode Island Family Court regardless of whether services are being provided by the child support program. This information is provided to the federal registry and shared by all states.

- All cases must be recorded by completing part A of the CSS-1 form (appendix).
- All cases must be recorded regardless of the fact that the court did not order wage withholding.
- The CSS-1 form must be completed and filed with the court upon completion of the hearing.
- Changes in the general information must be provided on the CSS1form within ten (10) days of the change.
- If there is a history of domestic violence, this must be indicated on the form. If it is indicated on the form, address information will not be released by the federal registry without a court order.

B. STATE DISBURSEMENT UNIT FOR THE COLLECTION AND DISTRIBUTION OF CHILD SUPPORT

Pursuant to R.I.G.L. Section 15-26-1 all cases in which the support order is initially issued in the State on or after 1/1/98 and in which the income of the obligor is subject to income withholding shall be payable through Rhode Island Family Court.

1. All income withholding orders must be payable through Rhode Island Family Court via a DR-29.
2. The DR-39 was abolished when Section (h) was deleted from R.I.G.L. Section 15-16-10 which previously authorized wage withholding from the employer to the custodial parent.

3. Pursuant to R.I.G.L. Sections 15-16-5-1 and 15-5-24, the court must order wage withholding unless the court finds that there is good cause not to order wage withholding or the obligor and obligee enter into a written agreement or order, which provides for an alternative arrangement for the timely payment of support. If the court orders wage withholding, it must be payable through the Rhode Island Family Court. If no wage withholding is ordered, the order need not be payable through the court.
4. The private cases must be recorded via the CSS-1 form, parts A, B and C and if appropriate attach a wage withholding order.
5. The obligee must provide all information and sign the form if she/he desires to receive payments through the court.
6. The obligee must choose bookkeeping only, in which payments are simply collected and remitted, or full service, in which the obligee would receive all enforcement remedies. By signing the form, the obligee is acquiescing in all child support services including all enforcement measures.

I. DIRECT DEPOSIT

Direct Deposit is the electronic transfer of child support payments into the custodial parent's checking or savings account. It is a fast, reliable, and secure way to receive child support payments. In most instances, direct deposit will result in immediate access to the child support payment more quickly than the method of mailing paper checks. It is an optional method of payment receipt, which eliminates check-cashing fees. Your client can avail herself of this option by downloading the "Authorization for Direct Deposit" form, which can be found in the FORMS section of the web site or in the appendix. The authorization form must be completed enclosing a copy of a voided check from the checking account, or a letter from the financial institution that lists their name, address, bank routing number, and account number (note: a letter is required if you want your payment to be sent to your savings account). A bank letter must be written on bank letterhead and signed by a bank representative. A deposit slip will not be accepted. The name must appear on the account. The authorization form and either the voided check or the bank letter to the Office of Child Support Services: Accounting Office

Once we receive the completed authorization form the financial institution will be contacted to confirm the account information. The account will then be programmed for Direct Deposit. Allow approximately 20 days from the time the agency processes the authorization form for direct deposit to begin.

XI. ENFORCEMENT TECHNIQUES

Once a child support order is established, it continues in full force and effect until it is modified or suspended by the Rhode Island Family Court. The biggest mistake made by non-custodial parents is the failure to file a motion to modify or suspend a court order when circumstances warrant it. Orders cannot be modified or suspended retroactively. Therefore, the order continues to run causing arrears to accumulate and enforcement measures to take place. All enforcement takes place in a computer generated automated way when a certain dollar amount is met or upon a certain event. A custodial parent need not contact the child support agency to request enforcement of a delinquent order. It occurs automatically if the obligee is a full service customer. The following are the enforcement tools that the child support agency has available:

- Administrative Offset Program
- Federal Tax Refund Offset Program
- Passport Denial
- Bank Match
- Insurance proceeds Intercept
- Credit Bureau Reporting
- Lottery Intercept
- Motion to Adjudge in Contempt
- Driver's License Suspension
- Child Support Recovery Act
- Administrative Liens
- Access to Information
- State Criminal prosecution
- Restraining Orders
- Bonds
- Body Attachments
- Interest

Administrative Offset Program- This enforcement tool is triggered when the non-custodial parent owes at least \$25.00 and is at least 30 days delinquent in his child support payments. The federal government will intercept federal payments to pay past due child support before a non-custodial parent is entitled to payments from the federal government. For example: private vendors who perform federal government work, small business loans and federal retirement benefits would be subject to intercept. Some payments cannot be intercepted such as: veterans' affairs disability benefits, federal student loans, supplemental security income, railroad retirement benefits, and black lung benefits. The non-custodial parent would receive a notice before the intercept occurs.

The state reports the cases to the federal government and the federal government seizes the amount due and sends it to the state. The non-custodial parent must follow the instructions

on the notice for relief from the local child support agency. Proceeds from this offset are delivered to families first before the state may retain the money for welfare debt owed.

Federal Tax Refund Offset Program- Pursuant to R.I.G.L. Section 44-30,1-1 et al, the Rhode Island Child Support Agency shall intercept the tax refund or any federal benefit or loan of an individual who is in arrears. Procedures followed by OCSS are found in R.I.G.L. Section 42-35.1 et al entitled the "Administrative Procedures Act".

The federal tax refund program collects past due child support payments from parents who have fallen behind in the amount of \$150.00 in child support payments and are due a tax refund. Under this program, tax refunds owed to non- custodial parents are intercepted and sent to the state child support program. Only cases receiving full services under the child support program are entitled to this enforcement measure. Cases eligible for tax refund offset are those cases that have a delinquent child support obligation and the child was not emancipated by December 31st of that year.

Non- custodial parents will receive a notice from the state before the case is referred. The notice will include an initial amount due which may vary from the amount actually deducted because of payments made. The notice will also outline how to contest the amount offset. At the time of the offset the IRS will also send a letter to the non -custodial parent stating that all or part of his refund will be sent to the state child support office. The notice will advise the non- custodial parent to contact their local child support office for further information.

Usually the state where the custodial parent resides will submit the obligation for intercept. In cases where the non- custodial parent owes a child support obligation to more than one state, each state will submit their case for offset. The parent will receive a separate notice for each state and must contest in each state. The first state to apply will receive the offset.

The state must first apply the offset against any past due amount due the state in full and then the families past due amount will be paid.

If the non- custodial parent owes past due child support but files a joint return with a spouse, the spouse may be able to request return of part of the refund due. The "injured" spouse must file a claim form preferably at the time the joint return is filed. The state may hold the refund for a period of 6 months before distributing until the IRS has made a determination on the claim.

Passport Denial - All cases receiving full services from the child support agency are entitled to passport denial process. Persons who owe past due child support in the amount of \$5,000 or more will be sent a notice and be referred to the federal government for passport denial. (Effective 10/1/06 the threshold will be reduced to \$2,500.) When an individual applies for a passport, the federal government denies the application based upon the child support obligation and sends a notice explaining why the passport application was denied. The applicant is told to contact the state child support agency for further information. The State of Rhode Island has a zero tolerance policy. The non -custodial parent must pay his/her arrears in full before the state child support agency will refer the case to the federal government to remove the individual from the list or lift the denial.

Bank Match-The OCSS will report a non- custodial parent who owes the sum of \$500.00 to participating banks to match against their records. The banks will provide the information about the savings or checking account and the agency will place an administrative lien on that account in accordance with the lien procedure.

Insurance Intercept -Chapter 57 of Title 27 entitled "Insurance Intercept Act" provides that any domestic insurance company making a settlement of any claim of \$10,000 or more, must access the Child Support Lien Network "CSLN", hosted by RI, to determine if the obligor is on the list. All obligors, owing past due support in the amount of \$500 or more, will be reported to the website. If the claimant is on the list, the insurance company must remit payment for past due support.

1. The insurance company must access the website thirty (30) days prior to paying the claim to determine if the claimant owes child support.
2. The obligor is notified of the payment to Rhode Island Family Court and of his/her right to request judicial review within thirty (30) days.
3. The payment is held in escrow at Rhode Island Family Court for a period of forty-five (45) days.
4. The insurance company may deduct payment for attorneys' fees, health care providers and assignment to the department of human services, before payment to the Rhode Island Family Court.
5. Arrearages from all the obligors' cases will be reported to the website.

Credit Bureau Reporting- Pursuant to R.I.G.L. Section 15-25-1, OCSS shall provide information regarding the amount of overdue support to consumer reporting agencies. The obligor is provided written notice 10 days prior to the release of information to afford the obligor an opportunity to contest. A hearing will be held by the OCSS and a determination made as to whether the obligor should be reported.

Lottery Intercept - Any person who has past due child support in the amount of \$500.00 is reported to the Director of the State Lottery. Upon a lottery winning of \$600.00 or more, the proceeds, after payment of state and federal taxes, shall be offset up to the amount of past due child support. The balance of the lottery proceeds will be payable to the claimant after offset. The payment is made by the Lottery to the Rhode Island Family Court and held for a period of forty five (45) days. The non- custodial parents have an opportunity within thirty (30) days to file a motion with the court to ask for the money to be returned. If there is no challenge within the thirty (30) day period and after the expiration of forty-five (45) days, the funds will be distributed for the past due child support.

Motion to Adjudge in Contempt-If a non -custodial parent falls behind in his/her child support payments, a motion to adjudge in contempt may be filed by the child support agency. The filing of this motion is triggered when four (4) months worth of child support is due and owing. This is done in an automated fashion so there is no need for a customer to contact the child support office to request this motion.

Pursuant to Rhode Island Family Court Administrative Order No 92-1, if the court finds that the non- custodial parent had the ability to pay child support and willfully failed to do so, they may be found in willful contempt and may be incarcerated until the contempt is “purged”. When an individual is found in willful contempt a review by the court shall occur at least once every thirty (30) days to see what efforts are being made by the person to comply with the order, and whether it is still necessary for that person to continue to be held at the ACI." The Rhode Island Superior Court has determined that an indigent non -custodial parent facing incarceration must be appointed counsel.

Oftentimes, if the committed individual has been able to make a substantial payment toward the amount due on arrears, the court will probably release that individual from incarceration. The court may first make inquiry of the obligee to determine if there are any strenuous objections to release. The court must also be convinced that the individual cannot raise any additional monies if he remains incarcerated. Should the individual be released, the court will usually schedule a review date to determine if the individual is in compliance. If the individual is unemployed, the court may refer that person to the Department of Labor and Training Rapid Job Entry Program This office is exceptional in working with an individual for assistance in securing some type of employment.

Driver’s License Suspension- Pursuant to R.I.G.L. Section 15-11.1-1 et seq. the OCSS may serve notice upon a support obligor who is not in compliance with a court order intention to submit the obligor's name to the appropriate board for license revocation or suspension.

2. Compliance - means that the support obligor is no more than 90 days in arrears in making payments in full for current support or in making periodic payments pursuant to a court order or payment

agreement.

3. License - refers to a driver's license, professional, business or occupational license.
4. Upon receipt of the notice the obligor may:
 - a. Request a compliance hearing at the Rhode Island Family Court pursuant to Section 15-11.1-4 within 20 days. An automatic stay of any further action will occur.
 - b. File a motion to modify with the Rhode Island Family Court. Again an automatic stay will occur.
 - c. Pay all past due support or enter into a payment agreement with the department to be filed with the Rhode Island Family Court.
5. If the obligor does not take the above actions and the 20-day time frame elapses, the obligor will be certified to the appropriate board for suspension.

Child Support Recovery Act- The OCSS may refer a case to the United States Attorneys Office for criminal prosecution. In 1992, Congress passed the Child Support Recovery Act. The act makes the willful failure to pay past due child support with respect to a child living in another state a federal crime.

Elements of the offense include: having the ability to pay child support, willfully failing to pay a known past due amount which has remained unpaid for longer than one year or is an amount greater than \$5000 for a child who resides in another state. The first offense carries six (6) month imprisonment and/or fine. Subsequent violations carry a two (2) year imprisonment and/or a fine. OCSS is working in conjunction with the U.S. Attorneys Office to prosecute cases that meet the elements of the offense.

The act was amended in 1998 to make it a felony if the debt has remained unpaid for longer than two (2) years or in an amount greater than \$10,000.

Administrative Liens- Pursuant to Rhode Island General Laws. section 15-21-1 OCSS may send written notice of an intent to lien personal or real property of the non- custodial parent for past due support. Liens may be placed on tangible, intangible property, personal or real property. There is no minimum amount of past due support which is required for the administrative lien process. The lien includes any unpaid child support that may accrue in the future. The non - custodial parent may request an administrative hearing within thirty (30) days of receipt of the notice to contest the procedure. If the non custodial parent does not request a hearing, or requests a hearing and does not appear for the hearing or does not pay the child support due and

thirty (30) days passes, the agency will file a notice of lien followed by a levy which means the agency can take the funds from a savings or checking account or levy on an insurance settlement or foreclose on real property up to the amount of child support due. This chapter also provides for foreclosure proceedings.

Access to Information- Although not an enforcement tool, it is important to know that pursuant to Rhode Island General Laws, Section 15-22-1 the Rhode Island Child Support Agency shall have access to and may request information about the obligor from the individuals or entities provided; the information shall be available only for the purpose of and to the extent necessary for the administration of the child support program. . Entities include but are not limited to employers, utility companies, assessor's office, licensing boards, financial institutions, credit bureau, etc. A \$100.00 penalty may be assessed by the OCSS or the Rhode Island Family Court for each violation.

State Criminal Prosecution- Pursuant to Section 11-2-1.1 of the R.I. General Laws entitled "Failure to pay child support" an individual who has incurred an arrearage of past due support in the amount of \$10,000 or who has willfully thereafter having the means to do so, fails to pay one or more installments or who willfully over a period of three (3) years failed to pay child support shall be guilty of a felony for each instance of failure to pay and upon conviction, be punished by imprisonment for period not to exceed five (5) years.

Pursuant to Section 11-2-1 of the R.I. General Laws entitled "Abandonment or nonsupport of spouse or children". Any individual who shall neglect to provide according to his or her means shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than six (6) months. Note: This statute does not mandate that a court order for child support exists.

Bonds- The Rhode Island Family Court may require a non-custodial parent to post a bond, which will be deposited with the registry of the court to satisfy or to secure future support.

Body attachments - When pursuing motions pertaining to establishment of child support, modification of an existing order or contempt, it is wise to have the individual served with a witness subpoena and a summons. If the individual does not appear in court, the subpoena will allow you to request a body attachment.

A body attachment is a civil warrant for a person's arrest. The issuance of the body attachment will be indicated on a statewide computer that is researched by law enforcement officials in many situations including when a person is detained for a traffic violation. This may assist you in apprehending the individual.

Once the court has issued a body attachment, you may ask the Court not to withdraw the body attachment upon presentment and to have the individual held at the ACI until you and your client are notified. This will give you an opportunity to be heard in court. Also,

the court may, on its own volition, order that the body attachment not be withdrawn in order to insure the individual's appearance on the next scheduled court appearance.

You may also ask the court to consider the issue of having your client be reimbursed for lost wages when the individual is apprehended and presented on the body attachment. Pursuant to R.I. General Laws Section 15-5-16.2.3, entitled "Continuances-- Compensation for lost wages", the court has discretion to award lost wages to one party when the other party requests a continuance and there is no mutual agreement. An argument can be made that the issuance of a body attachment is comparable to a continuance in that the matter before the court was not addressed.

Interest- Any past due child support accrues interest at twelve (12%) percent annually or 1% per month on the unpaid balance. A non- custodial parent who owes past due child support must pay back the principal plus any interest that has accrued. Two sections of the law address interest. Rhode Island General Laws Section 15-5-16.5, entitled "Interest on Arrearages", provides the court with the discretion to award interest on child support arrears at twelve (12%) per annum. The court has the discretion to waive past due interest or eliminate it prospectively. In the first interest it is charged because Rhode Island General Laws Section 9-21-8, entitled "Interest on judgment for money" provides that every judgment shall draw interest at twelve (12%) percent per annum. The key word here is "shall". Calcagno, supra, held that unpaid child support is a final judgment; accordingly Section 9-21-8 would also apply.

XII. TERMINATION OF CHILD SUPPORT

A non-custodial parent is obligated to pay child support until the child has reached the age of eighteen (18) years and has graduated from high school. Pursuant to Rhode Island General Laws Section 15-5-16.2 (B), the court has discretion to order support for ninety (90) days after graduation, but in no case beyond their nineteenth (19th) birthday. This statute was amended in 1998 to allow child support to continue until the 21st birthday if the child is severely physically or mentally impaired.

Lastly, the non-custodial parent has the obligation to petition the court in order to terminate support payments. In Calcagno, the court held that support payments for a child did not automatically terminate when the child became emancipated.

XIII.INTERSTATE PROCESSING INTERSTATE CHILD SUPPORT CASES

A. INTERSTATE DEFINED

An interstate child support case is, in general, one in which the non-custodial parent and custodial parent do not live in the same state.

There are two broad categories of interstate cases:

- When RI acts as the initiating state because the custodial parent resides in Rhode Island and the non-custodial parent resides outside Rhode Island, and;
- When RI acts as the responding state because the custodial parent resides in another state and the non-custodial parent resides in Rhode Island;

In the first category, Rhode Island is the initiating state so the petition is prepared in RI and is forwarded to another state for processing.

In the second category, Rhode Island is the responding state so another state prepares the petition and forwards it to RI to process. The non-custodial parent may reside in RI or have assets in Rhode Island.

Both types of cases are commonly referred to as UIFSA (Uniform Interstate Family Support Act, RIGL Section Title 15 Chapter 23.1-) cases. Federal law requires all states to provide Child Support services to all families that have applied, including location, paternity establishment, establishment of support obligations, and enforcement of support obligations, regardless of where the non-custodial parent resides. Federal law also requires states to meet specific timeframes in the provision of these services, even when one parent is in a different state from where children are living. This federal legislation sets out procedures for enforcing child support orders across state lines and establishes the concept of "Continuing Exclusive Jurisdiction." UIFSA also simplifies income withholding across state lines by requiring employers to honor wage assignments issued by another state's court.

B. BASIS FOR JURISDICTION OVER NON RESIDENT

In proceeding to establish, enforce, or modify a support order or to determine parentage, under Rhode Island General Law, Title 15, Chapter 15, Section 15-23.1-201, known as "basis for jurisdiction over a non resident," a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian if:

- The individual is properly served within this state;
- The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document, waiving any contest to personal jurisdiction;
- The individual resided with the child in this state;
- The individual resided in this state and provided prenatal expenses or support for the child;
- The child resides in this state as a result of the acts or directives of an individual;
- The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- The individual acknowledged paternity by completing an affidavit of paternity signed by both parents; or
- There is any other basis consistent with the constitutions of this, state, and the United States for the exercise of personal jurisdiction.

In public assistance cases, Rhode Island has the same right to initiate a proceeding as an individual FIP caretaker relative for the purpose of establishing paternity, establishing a child support and medical order, and enforcing those orders administratively or judicially.

C. THE OFFICE OF CHILDL SUPPORT SERVICES' CENTRAL REGISTRY

The Central Registry is located at the Office of Child Support Services (OCSS). The Central Registry manages Rhode Island's interstate case load, both initiating activities and responding to requests from other states.

Within 10 working days of the receipt of a case from an initiating state, the OCSS Central Registry will:

- Review the request to ensure that all necessary

documentation is included and complete. When documentation is inadequate and cannot be remedied without the assistance of the initiating state, the OCSS will forward the case for any action which can be taken, pending action by the initiating state;

- Forward the case to the State Parent Locator Service for location services, or to the appropriate agency for processing;
- Send acknowledgment of the request to the initiating state, and request any missing documentation;
- Inform the initiating state where the case was sent for action.

If the documentation received with a case is inadequate and cannot be remedied without the assistance of the initiating State, the central registry shall obtain the needed documentation.

D. RHODE ISLAND AS THE INITIATING STATE

When Rhode Island acts as the initiating state, the Office of Child Support Services prepares the UIFSA petition for proceeding in another state. Generally the custodial parent resides in RI and the non- custodial parent resides in another state. However OCSS may initiate a petition on behalf of a non-custodial parent when a modification is requested and the custodial parent resides in another state.

1. UIFSA Petition

The petition or complaint shall be verified and shall state the name and, so far as known to the custodial parent, the address of the non-custodial parent and the persons from who support is sought, and all other pertinent information. The custodial parent may include in, or attach to, the UIFSA petition information that may help in locating or identifying the non-custodial parent including:

- A photograph of the non-custodial parent;
- A description of any distinguishing marks on his/her person;
- Other names and aliases by which he/she has been or is known;

- The name of his/her employer;
- His/her social security number.

2. Petition for a Minor RIGL 15-23.1-302

A minor parent, or a guardian or other legal representative of a minor parent may maintain a proceeding on behalf of or for the benefit of the minor child.

3. Duty of Initiating State pursuant to RIGL 15-23.1-304

Upon the filing of a petition authorized by UIFSA, the – Office of Child Support Services shall forward three (3) copies of the petition and its accompanying documents:

- a. To the responding tribunal or appropriate support enforcement state, or
- b. If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

4. Costs and Fees RIGL 15.23.1-313

The petitioner shall not be required to pay a filing fee or other costs, but OCSS may request the responding court to collect fees and costs from the non-custodial parent. Those costs may include reasonable attorney's fees. A responding court shall not require payment of a filing fee or other costs from the custodial parent, but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the non-custodial parent, be paid in whole or in part by the non-custodial parent, or by the OCSS. These costs or fees do not have priority over amounts due to the custodial parent.

5. OCSS Responsibilities

As the initiating state agency, the OCSS will:

- a. Attempt to establish paternity using the State's long arm statute, whenever appropriate;
- b. Refer a case, within 20 calendar days of finding a non-custodial parent in another state, to the responding State's Interstate central registry for action, including:

- Requests for location if location efforts have been exhausted;
 - UIFSA petitions to establish paternity, establish child support and medical orders, modification of orders if appropriate, enforcement of orders, registrations and administrative lien requests;
 - Document verification;
 - Administrative reviews in administrative offsets;
 - Income withholding;
 - State income tax refund offset in IV-D cases;
 - Provide the responding state with sufficient, accurate information to act on the case by submitting with each case any necessary documentation with the Child Support Enforcement Transmittal package.
- Provide the responding state with any additional information requested. When information cannot be provided immediately, the interstate agent will notify the responding state that it will be provided within thirty calendar days of the request. The agent will submit an updated form or a computer-generated replica in the same format and containing the same information, and any necessary additional documentation;
 - Notify the responding state within 10 working days of receiving new information, by submitting an updated form and any related documentation including court orders;
 - Contact the responding state IV-D agency for a status update when there has been no contact for 90 calendar days.

6. Initiating Paternity Establishment

In cases where a putative father lives out of state, the OCSS agency will first determine if there is a jurisdictional basis to establish paternity the same as if the non-custodial parent lives in Rhode Island. This is called the “long arm process” pursuant to RIGL15-23.1-201. If there is no basis to exercise long arm jurisdiction the OCSS will initiate a petition to establish paternity.

(a) Long Arm Cases RIGL 15.23.1-201

Federal regulations require that potential Interstate paternity cases be screened for the use of the long-arm statutes before considering any other action. Under Rhode Island law, a person who has had sexual intercourse in this state submits to the jurisdiction of the court of this state as to any action with respect to a child who may have been conceived by that act of intercourse. In

addition, the Uniform Interstate Family Support Act provides broad provisions for asserting jurisdiction over a non-custodial parent for the establishment of paternity and support.

In paternity establishment, it allows Rhode Island to exercise jurisdiction over a non-resident alleged father when the custodial parent claims that conception occurred in Rhode Island.

When it has been determined that sufficient grounds exist to exercise long-arm jurisdiction, the procedures for filing a long-arm action are:

- The child support agent obtains the necessary information to file a long arm paternity complaint from the mother.
- The putative father is served with the complaint generally by certified mail;
- The Office of Child Support Services must advise the putative father of the hearing date;
- If the putative father was properly served but fails to appear for the hearing, the court proceeds to rule on the issues properly before the court;
- If the non-custodial parent defaults on the order at a later date, the judgment (usually by default) can be enforced by the R.I. Family Court or it can be registered for enforcement in the non-custodial parent's state of residence.

When OCSS has filed a long-arm suit but has been unable to obtain service on the putative father, the Office of Child Support Services can request assistance with service of process from the child support agency where the putative father resides pursuant to RIGL 15.23.1-202. If service cannot be accomplished, a petition to establish paternity and support can be forwarded to the putative father's state of residence. The petition should note the attempted long-arm action and the inability to proceed due to problems with service of process.

(b) Initiating Paternity

When long arm process cannot be used, the OCSS agent will pursue paternity establishment via the regular UIFSA process. The UIFSA Petition will include the Paternity Affidavit to be signed by the custodial parent.

Federal regulations provide that the initiating state is responsible for paying the costs for DNA testing. All other costs (such as expert witness fees, depositions, or costs of a paternity trial) must be borne by the responding state. When the personal testimony of the custodial parent or client is required in a paternity trial, a telephonic hearing may be scheduled upon request in order to secure the testimony of the custodial parent pursuant to 15-23.1-316(8).

The responding state should coordinate the testing schedule with the initiating state. Genetic testing laboratories send the genetic test report to the agency that is making payment. The original test report must be sent to the agency that is taking the case to court, since the report is submitted as paternity evidence.

When paternity is established by the responding state, the Office of Child Support Services must attempt to obtain a judgment for the genetic testing costs to reimburse the initiating state. The court order should address the repayment of those costs to the initiating state.

(c) Initiating Support Order Establishment

The OCSS agency will initiate a UIFSA action to obtain an order for support when:

- The non-custodial parent is located out of state;
- Paternity is not an issue in the case;
- There is no order for support.

The tribunal may issue a child support order if:

- The non-custodial parent has signed a verified statement acknowledging parentage;
- The non-custodial parent has been determined by or pursuant to law to be the parent; or
- There is other clear and convincing evidence that the non-custodial parent is the parent.

(d) Initiating Interstate Enforcement

The OCSS agency will determine what type of action to take and/or request in an interstate case depending upon certain circumstances. Under UIFSA and other applicable enforcement laws, the case may be enforced by the Office of Child Support Services or forwarded to another state for enforcement. If it is determined that such measures or remedies under state law are inadequate, or that additional measures are available and practicable, or that there is no basis to exercise jurisdiction over a non resident or the exercise of jurisdiction is impracticable, OCSS may request enforcement in another jurisdiction. The agent may request Interstate Wage withholding if direct wage withholding under 15-23-.1-502 is impractical;

- A UIFSA action to establish an arrears order when:

The non-custodial parent is located out of state; and there is no arrears order

- Registration for Enforcement.

(e) Initiating Interstate Income Withholding

When OCSS identifies cases where direct wage withholding is not practical, and interstate income withholding is appropriate, the agent will initiate action to request the responding State to issue an income withholding order. This request is made on the Child Support Enforcement Transmittal Form.

The packet sent to the responding State includes:

- A verified place of employment for the non-custodial parent;
- An original and four copies of the support order. The original must be certified with the court seal;
- An affidavit of arrears showing the accumulation of arrears on month by month basis. An original and four copies are required. The original and the two copies that will be sent to the responding State should all be notarized and stamped with the notary seal. Welfare cases are signed by the agent as the OCSS representative and on non-welfare cases the custodial parent must sign.

In a UIFSA proceeding, the OCSS will prepare the appropriate interstate forms and forward the petition and other documents to the Central registry of the responding state.

E. Registration of a Foreign Order

There are two types of registration: Registration for Enforcement and Registration for Modification.

1. Registration for Enforcement

A support order or income-withholding order of another state may be registered for enforcement in Rhode Island pursuant to RIGL 15-23.1-601 through 604 by sending the following documents and information:

- A letter of transmittal to the tribunal requesting registration and enforcement;
- Two (2) copies, including one certified copy, of all orders to be registered, including any modification of an order;
- A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
- The name of the non-custodial parent and, if known;

- The non-custodial parent's address, social security number, name and address of the non-custodial parent's employer, and any other source of income of the non-custodial parent; and,
- description and the location of property of the non-custodial parent in this state not exempt from execution; and
- The name and address of the custodial parent

Upon receipt the order shall be registered. The non-custodial parent has twenty days to contest the registration. There are very few defenses that can be raised pursuant to RIGL 15-23.1-607 such as: the order has been obtained through fraud, the order has been vacated or suspended, there has been full payment of the arrears, statute of limitations has expired or other limited defenses as the law provides. If the party does not have a valid defense or fails to contest the order is confirmed. A registered order is enforceable in RI in the same manner and is subject to the same enforcement as a RI order.

2. Registration for Modification

An order may be Registered for Modification, pursuant to RIGL 15-23.1-609 through 614, in Rhode Island if the following requirements are met:

- The child, the individual custodial parent, and the non custodial parent does not reside in the state that issued the order;
- The petitioner, who is a nonresident of this state, seeks modification; and
- The respondent is subject to the personal jurisdiction of the state; or
- All of the parties have filed a written consent in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order.

Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by this state and the order may be enforced and satisfied in the same manner.

3. Choice of Law in Registration

The law of the issuing state governs the nature, extent, amount, and duration of payments. In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies pursuant to 15-23.1-604.

4. Reconciliation of Multiple orders

Under the Uniform Reciprocal Enforcement Act multiple orders were entered on a case involving the same parties. As the parties moved from state to state new orders were entered, while the orders continued to run and accrue arrears. Under UIFSA, RIGL 23.1-207 only one child support order is the controlling order. Although the non-custodial parents would receive credit for all payments made under any order, only one order is in effect. Rules had to be

developed to determine which order was controlling. The following is a simplified version of the rules used to establish which of many orders is the controlling order:

- If only one court has issued a child support order, that order controls.
- If two or more child support orders have been issued the following applies:
 - (1) If a party lives in one of the states that issued the order- that order controls,
 - (2) If each party lives in a state that issued orders, the current home state of the child controls.
 - (3) If there are multiple orders but no one resides in any of the states that issued orders, this state can issue an order as long as there is jurisdiction.

Within thirty (30) days after issuance of an order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support so that those orders can be suspended.

F. RHODE ISLAND AS THE RESPONDING STATE

The OCSS agency will respond to requests from other states to locate non-custodial parents, establish paternity, and establish a child support and medical order and to enforce those orders judicially and administratively.

1. Legal Basis

Rhode Island will serve as a responding state to accept the UIFSA Petition forwarded by the initiating state to locate the non-custodial parent, establish paternity, establish a child support and medical order and to enforce those orders. The statutes governing Rhode Island as the responding state in an interstate action are found in the Rhode Island General Laws, Title 15, Chapter 15-23.1-303.

2. Duties of the Responding State

Rhode Island acting as a responding state may do one or more of the following:

- Issue or enforce an order, modify an order, or determine parentage;
- Order an non-custodial parent to comply with a support order specifying the amount and manner of compliance;
- Order income withholding;
- Determine the amount of arrearages and specify a method of payment;
- Enforce orders by civil or criminal contempt or both;
- Set aside property;

- Place liens
- Order the non custodial parent to inform of his whereabouts;
- Issue a body attachment
- Order to seek employment;
- Award reasonable attorney's fees;
- Any other relief available.

The OCSS will send a certified copy of all support orders entered by the RI Family Court to the initiating agency and shall transmit all support collected to that agency.

3. Hearing and Continuance

If the custodial parent is not present at the hearing and the non-custodial parent denies owing the duty of support alleged in the petition or complaint or offers evidence constituting a defense, the Family Court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by telephonic hearing.

4. Inappropriate Tribunal

Under 15-23.1-306, if a petition is received by the Office of Child Support Services and it is inappropriate for the case to be processed and heard in Rhode Island, OCSS shall forward the pleadings to the appropriate agency for processing and notify the petitioner of the forwarding agency.

5. Limited Immunity of Petitioner

Under UIFSA, participation of a petitioner in a proceeding before a responding tribunal, does not confer jurisdiction for other proceedings under 15-23.1-314. A petitioner may not be served while present in the state. This does not apply if the petitioner commits acts while in the state that would subject him/her to civil litigation.

6. Evidence of Husband and Wife

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under the Rhode Island General Laws, Title 15, Chapter 15. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

7. Special Rules of Evidence

Pursuant to RIGL 15-23.1-316 the following special rules of evidence apply in interstate cases:

- The physical presence of the petitioner in this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage. The following are admissible in a hearing:

- A verified petition, affidavit, and substantiating documents are admissible in evidence if given under oath by a party or witness residing in another state.
- A copy of the record of child support payments certified is evidence and is admissible to show whether payments were made.
- Copies of bills for paternity testing, and for prenatal and postnatal health care of the mother are admissible.
- Documentary evidence transmitted by telephone, telecopy, or other means.
- Telephonic hearings are allowed to take testimony.
- A party called to testify may refuse to answer but the Court may draw an adverse inference.
- There is no privilege against disclosure between spouses.

8. Non Parentage as a Defense

A party whose parentage has been previously determined may not plead non parentage as defense according to RIGL 15-23.1-315. Any contest regarding parentage must be brought in the state where the parentage was adjudicated.

9. Additional Duties of Responding Court

A responding state has the following duties, which may be carried out through the clerk of the court:

- Transmit to the initiating agency any payment made by the non-custodial parent pursuant to any order of the court or otherwise; and
- Furnish to the initiating court, upon request, a certified statement of all payments made by the non-custodial parent.

10. Appeals

If the Office of Child Support Services is of the opinion that an order is erroneous, and presents a question of law warranting an appeal in the public interest, it may:

- Perfect an appeal to the State Supreme Court if the support order was issued by a court of this State; or
- Cause the appeal to be taken in another state if the support order was issued in the other state.

In either case, expenses of the appeal may be paid on its order from funds appropriated for its office.

G. Foreign Support Orders-Additional Remedies

If the duty of support is based on a foreign support order, the custodial parent has the additional remedies as provided in the Rhode Island General Laws, Title 15, Chapter 15-14.1-5.

H. Custodial Parent Legal Representation

Whether acting on its own behalf or on behalf of the custodial parent, non-custodial parent, or initiating state, the Department of Human Services OCSS attorneys do not represent the interests of any individual person, and its attorneys represent only the department. An attorney client relationship is not created between department attorneys and any person or entity. Nothing precludes any party from retaining the services of a private attorney to legally represent their interests.

I. Communication Between States

The Office of Child Support Services may communicate with another state agency in writing, by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. OCSS must also reciprocate and provide information upon request pursuant to 15-23.1-317.

J. Assistance with Discovery

The Office of Child Support Services may request that another state agency assist in obtaining discovery pursuant to RIGL 15-23.1-318. Similarly the Rhode Island Family Court may compel a person over whom it has jurisdiction to respond to a discovery order issued by another state.

K. Nondisclosure of Information

Pursuant to RIGL 15-23.1-312, upon a finding, which may be made ex-parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order provides, the RI Family Court may order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a court file.

L. Employer's Receipt of Income Withholding Order of Another State

An income-withholding order issued in another state may be sent directly to non-custodial parent in this state without first filing a petition to register for enforcement according to 15-23.1-502.

XV. Rhode Island Family Court Reciprocal Calendar

A. Overview

The Rhode Island Family Court Reciprocal Calendar is a unique calendar that includes paternity, custody, visitation and child support matters. The common distinctions between this calendar and the domestic calendar are basically twofold: one, the parties assigned to the Reciprocal Calendar are usually single with children in common as opposed to those who are divorced (and have a previously assigned domestic civil action number); two, almost all cases on this calendar involve the Rhode Island Department of Human Services, Office of Child Support Services, as either those who are recipients of Family Independence Program benefits "FIP" or private citizens who are utilizing the state's services (commonly referred to as non-FIP cases).

The Honorable Debra DiSegna, Magistrate of the Court, presides daily over this calendar in courtroom 5c on the fifth floor and Magistrate George DiMuro presides over the domestic calendar in courtroom 5b

When venue lies in other counties, the Reciprocal Calendar (many consisting of OCSS cases) is heard on scheduled days. Reciprocal cases are heard in Newport County on Tuesday and in Washington County on Thursday. There are no reciprocal cases heard in Kent County, only domestic cases on Monday. The Justices assigned to that particular county hear these cases.

B. Purpose

Pursuant to R.I.G.L. Section 15-11, entitled "Reciprocal Enforcement of Support", the purpose of the Reciprocal Court is "to improve and extend by reciprocal legislation the enforcement of duties of support." It seeks to bring uniformity with other states.

The Reciprocal Calendar contains those petitions where both parties reside in this State as well as those where only the non-custodial parent resides in this State. The latter type of case is commonly referred to as a UIFSA (Uniform Interstate Family Support Act) case.

Through UIFSA, a custodial parent who resides in one state may seek relief against the non-custodial parent who resides in another state in a quick and inexpensive fashion.

C. Powers of the Magistrate

Pursuant to the Rhode Island Family Court Administrative Order No. 89-3, and in accordance with R.I.G.L. Section 8-10-3.1, Magistrates have the following authority relative to incarcerating an individual:

1. Adjudicate a person in contempt and to order him imprisoned for not more than seventy-two (72) hours, pending review by a justice of the court for failure to appear in a response to a summons or for

refusal to answer questions or produce evidence or for behavior disrupting a proceeding;

2. Adjudicate a party in contempt and to order him imprisoned for not more than seventy-two (72) hours pending review by a justice of the court for failure to comply with a pending order to provide support or perform any other act. Upon completion of seventy-two (72) hours the Chief Judge in Providence County will review said cases.

D. Affirmation Hearings

If an individual is found in willful contempt he may be incarcerated for up to three (3) days the Magistrates. This person is subsequently brought before the Chief Judge (or in his absence, an Associate Justice or General Magistrate as designated by the Chief Judge) and the matter is reviewed to determine whether the individual should be released or remanded. As defense counsel you must demonstrate to the court that your client has made an effort to purge him/herself of contempt. Efforts include requesting loans from family members, friends, an employer, a bank or credit union; lining up a job for work release; exhausting all savings accounts, checking accounts, retirement accounts.

E. Appeals of the Magistrate's Decision- Administrative Order 77-8.

"Individuals wishing to appeal a decision of a Rhode Island Family Court Magistrate should file a stipulation claiming such appeal with the Reciprocal Office. Within five (5) days of filing this stipulation, the appellant must file with the Reciprocal Office a decision containing findings of fact pertaining to the hearing in question. The Magistrate who rendered the decision should sign such findings. No appeal will be in order unless the decision containing the findings of fact is filed.

XVI. DOMESTIC VIOLENCE AND CHILD SUPPORT

There are two scenarios where a custodial parent may allege there is an issue of domestic violence which prevents her, or limits her ability to pursue establishment and enforcement of a child support order. In the first scenario, the custodial parent applies for benefits from the Family Independence Program and alleges an issue of domestic violence. The caseworker determines there is good cause not to proceed. The case is referred to the Office of Child Support Services and generally the office relies on the good cause finding and will not pursue the non- custodial parent to establish an order. However, in a limited number of cases the custodial parent receiving benefits wishes to proceed with establishment of an order but needs to have her confidential address protected. In the second scenario, a non-welfare custodial parent applies for child support services and indicates that there is a domestic violence issue, and that the non- custodial parent does not know where she resides but that she wishes to establish or enforce a child support order in safety. The OCSS would follow procedures to obtain an ex- parte order to seal the Court file before any pleadings are filed and in substituting the address of the agency for the address of the custodial parent to protect the confidential address.

It is also important to note that you as the private attorney may indicate on the CSS-1 form that there is an issue of domestic violence as defined in the administrative order contained in the appendix and per the instructions to the css-1 form. By checking off the domestic violence indicator, on behalf of your client, whether it is the custodial or non- custodial parent, you are requesting that the address be concealed. You are not alleging anything in terms of a restraining order nor must a restraining order exist. You are simply securing the address and preventing it from being released by any jurisdiction without following the override process as outlined herein.

RIGL Section 15-22-1 et al sets for the law relative to safeguarding confidential information on the child support system and a procedure for overriding the domestic violence indicator under certain limited circumstances. The federal government allows the Child Support agency access to a great deal of information that resides on federal data- bases. States were required to pass laws and set forth procedures to ensure that the information was safeguarded. First and foremost, all information contained on the child support computer system is confidential in nature. The staff is not permitted to disseminate that information including the address of the custodial or non- custodial parent. 15-22-4 lists the authorized entities and individuals who may receive the information for what is described as an authorized purpose.

How does all of this affect your client?

A non- custodial parent may retain the services of private counsel to enforce a visitation order. The client indicates to you, that although he is paying child support, he does not know where she resides for service of process. You contact the Office of Child Support Services to request the

address. You are politely denied citing the confidentiality provisions. Your first step is to access the Court file to determine if the address is on record on a subpoena or in other pleadings. If the address on record is incorrect or obsolete, you would then follow the procedure described below. Your goal is to obtain the correct address so that you can pursue your visitation request on behalf of your client. Since the purpose of your request is visitation, which is provided under the law, the Court is the authorized entity to determine whether the request is authorized.

If, on the other hand, the non-custodial parent is requesting modification of an existing child support order, the authorized entity is the Office of Child Support Services. The procedure as outlined below, differs when the OCSS is involved since the OCSS will make the initial determination of whether the request is authorized.

PROCEDURE -REQUESTS FOR INFORMATION

1. IF THE ISSUE IS ONE RELATED TO VISITATION OR CUSTODY, the Requestor is referred to the Family Court designee (CLERK) and provided with both a “Request for Information” (form DO-1 I the appendix) and “Motion to Request Address Information” (form DO-2- appendix). The Court schedules a hearing and determines if it is appropriate for the Court, as an authorized entity, to request the information on behalf of the petitioning party. If the Court grants the request, an Order is prepared and the order (form DO-3 appendix) and the petitioner’s completed form, DO-1 are sent to the Office of Child Support Services, hereinafter referred to as OCSS. OCSS then proceeds with steps 3 through 7 below.

2. IF THE ISSUE IS ONE RELATED TO PAYMENT OF CHILD SUPPORT, the Requestor is referred directly to OCSS and proceeds with steps 3 through 7 below

1. Requestor completes the Request for Information form (Form DO-1)
2. **OCSS determines whether Requestor is AUTHORIZED PERSON* and request is made for Authorized Purpose****
 - A. if person or purpose is not authorized, OCSS sends Requestor Denial of Request (From DO-4 appendix)
 - B. if person and person are authorized, OCSS determines whether or not non-requestor party’s info on OCSS system?
 - if yes, and no FVI, contact non-requesting party to confirm no objection. OCSS sends Release of Requested Information (Form DO-5- appendix).

NOTE: amount and type of info sent to Court/Requestor depends of purpose of request (visitation/custody vs. support)

- if yes, and FVI on system, send Requestor Denial of Request (Form DO-7-appendix)
 - if no info on OCSS system, OCSS sends request to FPLS; 3 possible outcomes:
 1. FPLS indicates there is no FVI and OCSS sends Release of Requested Information (Form DO-5-appendix). NOTE: amount and type of info sent to Court/Requestor depends of purpose of request (visitation/custody vs. support)
 2. FPLS indicates there is no data. OCSS notifies Requestor (Form D-6-appendix)
 3. FPLS indicates disclosure is prohibited. OCSS notifies Requestor via “Denial of the Requested Information.” (DO –7-appendix) and provides to Requestor (in a child support matter) a “Motion for Override” (Form DO-8-appendix)
3. Upon “Denial of Requested Information” in a non-child support matter, the Court notifies the Requestor (form DO-7) and provides the Requestor with the Motion for Override (Form DO-8)
4. If **Motion to Initiate Override** is filed, court assigns a hearing date and a copy of Motion is provided to RICSE by the Court. If custody or visitation matter is at issue, OCSS need not be present.
1. if motion is denied by the court, the court issues an order (DO-09-appendix)
 2. if motion is approved by court, a continuance date is set in order, (Form DO-09) and copy of the order to initiate override is sent to OCSS (DO-09)
 - OCSS sends copy of Court order to OCSE via priority mail
 - OCSE determines:
 - a. to disapprove: for technical reasons, the request can be resubmitted. For other reasons, there is no way for the State to compel the federal agency to release the info
 - b. if Approve; OCSE sends to FPLS to secure the appropriate information. OCSE sends packet to OCSS under SEAL and the file remains SEALED until presented to the Judge. NOTE: Certain identifying information will be provided by OCSE under separate cover letter to allow OCSS to have access to the other

state agency and non requesting party to make them aware of the right to a telephonic hearing.

7. Standard of Proof: WHETHER THE RELEASE OF INFORMATION COULD BE HARMFUL TO THE INDIVIDUAL

- a. if denied, Order (Form DO-10-appendix) prepared. File will be destroyed upon the expiration of appeal periods
- b. if approved, Order (Form DO-11 appendix) prepared.
INFORMATION SHOULD NOT BE DISCLOSED UNTIL THE EXPIRATION OF ANY APPEAL PERIOD.
Court must indicate the specific information being provided and the purpose for which the information is being release, with appropriate instructions to the requestor not to disclose the information or use it for any other purpose.

*AUTHORIZED PERSON: 1) any agent or attorney from the Office of Child Support Services; 2) an agent or attorney from DCYF (when child in DCYF care); 3) R.I. Family Court w/authority to issue orders for support or visitation; 4) resident parent, legal guardian, attorney or agent seeking information about a non-custodial parent who has the duty to support said child

** AUTHORIZED PURPOSE: Establishing, enforcing or modifying an order for support, visitation, custody or paternity.

APPENDIX

Income Withholding Order DR-29

CSS-1

Child Support Guideline Worksheet DR-30

Administrative Order 87-2 and Administrative Order 2002-3

Form 2441 Credit for Child and Dependent Care Expenses

Child Support Guideline Chart

Gross to Net Conversion Tables

Sample Motion for Support

Sample Paternity Complaint

Sample Petition for Voluntary Acknowledgment (court form)

Sample Motion to Adjudge in Contempt

Sample Motion to Adjudge in Contempt and Modify

Sample Motion to Establish Arrears and Secure an Arrearage Order

Rhode Island Family Court Order to Terminate Wage Assignment

Body Attachment Order

Sample DNA report

Sample Motion for Summary Judgment

Sample Motion for Bond

Sample Request for Admission

Sample Interrogatories

Sample Motion for DNA

Sample Affidavit of Paternity

Sample Notices:

Administrative Offset

Medical

License Suspension
National Medical Notice
Authorization For Direct Deposit
Request For Address Packet
Request for Location Form (DO-1)
Motion To Request Address Information (DO-2)
Order (DO-3)
Denial of Requested Information (DO-4)
Release of Requested Information (DO-5)
Information Not Available (DO-6)
Denial of Requested Information (DO-7)
Motion For Authority to Initiate Override Process (DO-8)
Order (DO-9)
Letter to OCSE (DO-10)
Order (DO-11)