

RULE 86

ENFORCEMENT OF ORDERS FOR SUPPORT PAYMENTS

A. Definitions applicable to support payments. As used in Rule 86 and in statutes providing for support payments or support enforcement procedures:

A.(1) "Obligor" means any person who has been ordered by a court to make payments for the support of a child or a caretaker parent or other dependent person pursuant to ORS chapter 107, 108, 109, 110, or 419.

A.(2) "Obligee" means a child or caretaker parent or other dependent person for whose benefit a court has ordered a payment of support pursuant to subsection (1) of this section.

B. When support payments payable to Department of Human Resources; fee.

B.(1)(a) Subject to section 86 C., after January 1, 1976, when any court decrees, orders, or modifies any preexisting order for support of any person under ORS chapter 107, 108, 109, 110, or 419, the obligor shall make payment thereof to the Department of Human Resources which shall transmit the payment to the obligee except that when the obligee is receiving general or public assistance, as defined by ORS 411.010, or care, support, or services pursuant to ORS 418.015, the Department of Human Resources shall, except for amounts required by federal law or regulation to be paid to the obligee, retain either all of the support money or the amount, equal to the general or public assistance or care, support, or services being paid, whichever is less.

B.(1)(b) Except as provided in this paragraph, the department shall not transmit any payment to an obligee until and unless the check or other instrument tendered by the obligor has cleared or has been paid. For a three-month period beginning on January 1, 1976, the department may immediately transmit payments received from any obligor who has not previously tendered any payment by a check or instrument which was not paid or was dishonored, to the obligee, without waiting for payment or clearance of the check or instrument received. The department shall no later than March 15, 1976, report its collection experience for such checks and instruments to the Emergency Board, which may then or at a later time authorize continuation of the practice, subject to any conditions which it may then or later impose, until adjournment of the next succeeding legislative session or until the authorization is terminated.

B.(2) The decree or order shall contain the home address and Social Security number of the obligee and the home, business address and Social Security number of the obligor. Each person shall inform the court and the Department of Human Resources in writing of any change in his home or business address within 10 days after such change. The Department of Human Resources may also require of the parties any additional information which is authorized by law and is necessary for the operation of support enforcement and collection activities.

B.(3) Notwithstanding the provisions of subsection (1) of this section, the Department of Human Resources shall withhold from every nonpublic assistance support payment it receives pursuant to chapter 458, Oregon Laws 1975, a fee not to exceed \$1 to reimburse the department for the cost of processing.

B.(4) When a support payment is delinquent, the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, shall promptly send notice by certified mail to the defaulting party of the amount due. If payment is not made to the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, within 10 days after the notice is sent, the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, shall send to the Support Enforcement Division of the Department of Justice or to the district attorney, whichever is appropriate, a copy of the statement of the delinquent amount. Upon receipt of a copy of the statement of the delinquent amount, the district attorney or the Support Enforcement Division may, in their discretion, institute contempt proceedings under ORS 33.010 to 33.150 or other enforcement action against the person ordered to pay the money, or, when requested by the obligee, shall institute such proceedings. A statement of the amount due may be used in lieu of the affidavit required under ORS 33.040.

B.(5)(a) In addition to support enforcement service fees established under subsection (3) of this section, a support enforcement service fee of \$10 may automatically be imposed upon the

obligor in any case in which the Department of Human Resources does not receive payment from the defaulting obligor before the department sends a copy of the statement of the delinquent amount to the Support Enforcement Division of the district attorney pursuant to subsection (4) of this section, 10 days after the notice required by subsection (4) of this section is sent to the obligor. The notice sent pursuant to subsection (4) of this section shall inform the obligor that such fee will automatically be imposed upon failure to pay in accordance with the notice.

B.(5)(b) Any \$10 support enforcement service fee imposed pursuant to this section shall when collected be paid over to the Support Enforcement Division or the district attorney, whichever is appropriate.

B.(6) Whether or not any payments by an obligor are delinquent, payment of any money by an obligor direct to an obligee or on behalf of an obligee to a person other than the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, shall not be credited against his support obligation.

B.(7) Subject to section 86 C., this section, to the extent it imposes any duty or function upon the Department of Human Resources, shall be deemed to supersede any provisions of ORS chapters 107, 108, 109, 110, and 419 which would otherwise impose the same duties or functions upon the county clerk.

B.(8) Before enforcing collection of the additional fee provided in paragraph (a) of subsection (5) of this section, the court out of which the order to pay support was issued may by rule provide to the obligor such hearing as it deems appropriate to meet the requirements of due process provided such hearing is requested by prompt application of the obligor.

C. Payment to clerk of court or bank account; discontinuance of payment to clerk.

C.(1) Notwithstanding section 86 B., support orders in respect of obligees none of whom are recipients of general or public assistance or former recipients with unreimbursed past assistance may provide for payment under the order:

C.(1)(a) To the clerk of the court in any county in which the governing body by resolution or ordinance elects to maintain support collection, accounting, and disbursement services for those persons not receiving general or public assistance; or

C.(1)(b) To a checking or savings account established pursuant to sections N. or O. of Rule 86, if the obligor and obligee have so elected.

C.(2) The governing body of a county providing child support collection, accounting, and disbursement services under subsection (1) of this section may by resolution or ordinance discontinue such service. Immediately upon such discontinuance, the support due under orders of the court of record in such county shall become payable to the Department of Human Resources and subject to all provisions relating to such payments.

D. When support payments payable to clerk of court.

D.(1) When any court decrees or orders the payment of money for the support of any person under ORS 107.095, 107.105, 108.120, 109.155, or 419.513, the person ordered to pay the money shall make payment thereof to the clerk of the court, who shall transmit the payment to the person for whose benefit the decree or order was made.

D.(2) The decree or order shall contain the home address of the person for whose benefit the decree or order was made and the home and business address of the person against whom the decree or order is directed. Each person shall inform the clerk in writing of any change in his home or business address within 10 days after such change.

D.(3) Within 10 days after the second payment is delinquent, the clerk shall send notice by certified mail to the defaulting party of the amount due and an explanation of the procedure for collection under this section D. and sections J. through M.

E. Alternative procedure when payments delinquent.

E.(1) In addition to any other remedy provided in law for the enforcement of support, the court, upon notice that support payments or any fees provided for in chapter 458, Oregon Laws 1975, are delinquent and application by the obligee or by the district attorney or Support Enforcement Division of the Department of Justice, shall issue an order directing any employer or trustee,

including but not limited to a conservator, of the obligor to withhold and pay over to the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, money due or to become due such obligor in an amount not to exceed:

E.(1)(a) One-fourth of the disposable earnings as defined in ORS 23.175 due or becoming due the obligor at each pay period, until all delinquent amounts due together with interest are paid in full, plus all further amounts coming due before the delinquent amounts are paid in full.

E.(1)(b) Thereafter at each pay period, the amount ordered to be paid for support, but not more than one-fourth of the disposable earnings as defined in ORS 23.175 due or becoming due the obligor at each pay period.

E.(2)(a) An order entered pursuant to this section shall recite the amount of all delinquent support amounts due, together with interest, and the amount required to be paid as continuing support.

E.(2)(b) Effective January 1, 1976, the Department of Human resources or the clerk of the court out of which the order is issued, whichever is appropriate, shall notify any employer or trustee upon whom such an order has been served whenever all delinquent support payments and interest have been paid in full, and whenever for any other reason the amount required to be withheld and paid over to the department under the order as to future pay periods is to be reduced. Prior to January 1, 1976, the

the district attorney or the Support Enforcement Division shall provide such notification.

E.(2)(c) If the obligor's support obligation is required to be paid monthly and his pay periods are at more frequent intervals, the employer or trustee may at the request of the obligor and with the consent of the department withhold and pay over to the department, after all delinquent amounts together with interest have been paid in full, an equal amount at each pay period cumulatively sufficient to pay the monthly support obligation; otherwise the full amount of the support obligation (but not more than one-fourth, or such larger proportion as the court may have ordered pursuant to subsection (3) of this section, of the disposable earnings coming due) shall be withheld and paid from the obligor's first pay periods each month.

E.(3) Subject to the provisions of subsections (1) and (2) of this section, the court may in its discretion order the payment of a percentage or gross amount per pay period which is more than one-fourth of the disposable earnings due or becoming due the obligor at each pay period, if so requested in the application filed under subsection (1) of this section, and after citation and opportunity for hearing being accorded to the obligor and the employer or trustee. Upon application of the obligor, the court out of which the order was issued may provide for a hearing based upon affidavits and exhibits and such testimony as the court may find necessary to determine whether to

continue the order of the court as it affects future earnings and future, unaccrued support obligations.

E.(4) An order issued under subsection (1) or (3) of this section shall be a continuing order and shall remain in effect and be binding upon any employer or trustee upon whom it is served until further order of the court.

E.(5) An order to withhold issued and served pursuant to this section shall have priority over any notice of garnishment subsequently served upon any employer or trustee of an obligor.

E.(6) No employer or trustee who complies according to its terms with an order under this section or the notice provided for in paragraph (b) of subsection (2) of this section shall be liable to the obligor or to any other person claiming rights derived from the obligor for wrongful withholding.

E.(7) An employer or trustee described in subsection (1) of this section who wilfully fails or refuses to withhold or pay the amounts as ordered shall be deemed to be in contempt of the authority of the court and may be held personally liable.

E.(8) No employer shall discharge or refuse to hire an employe because of the entry or service of an order of withholding under this section. Any person who violates this subsection shall be deemed to be in contempt of the authority of the court.

F. Clerk of court to notify district attorney of continued delinquencies; when other agencies to be notified.

F.(1) If payment is not made within 10 days after the notice is sent, the clerk shall send to the district attorney a copy of the

support decree or order and a statement of the delinquent amount. If the person for whose benefit a payment described in section 86 D. is decreed or ordered is a person to whom or for whom general assistance or public assistance, as the terms are defined in ORS 411.010, is granted, the clerk, if he has notice thereof, or the district attorney, if he has notice thereof, shall send the notice of default to the Support Enforcement Division if such a division is functioning in that county; otherwise the district attorney shall proceed as he would in any other case under this section.

F.(2) If the Adult and Family Services Division is required to grant or increase assistance for the benefit of any child because support payments under a court decree or order are not being paid when due, the division shall cause notice to be sent to the district attorney or to the Support Enforcement Division if such a division is functioning in that county.

G. Order to employer or trustee to withhold delinquent payments from money otherwise due.

G.(1) Any decree, judgment, or order for the payment of support for the benefit of a spouse and child may in the discretion of the court include an order directing any employer or trustee, including but not limited to a conservator, of the obligor to withhold and pay over to the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, out of money due or to become

due such obligor at each pay period, an amount ordered to be paid for support.

G.(2)(a) The order shall recite the amount of the obligor's continuing support obligation and shall require withholding from the gross amounts due or becoming due to the obligor at each pay period and payment to the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, of the amount of the support obligation.

G.(2)(b) If the obligor's support obligation is required to be paid monthly and his pay periods are at more frequent intervals, the employer or trustee may at the request of the obligor and with the consent of the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, withhold and pay over to the department or clerk an equal amount at each pay period cumulatively sufficient to pay the monthly support obligation.

G.(3) An order issued under this section shall be a continuing order and shall remain in effect and be binding upon any employer or trustee upon whom it is served until further order of the court.

G.(4) An order to withhold issued and served pursuant to this section shall have priority over any notice of garnishment subsequently served upon any employer or trustee of an obligor.

G.(5) No employer or trustee who complies according to its terms with an order under this section served upon him shall be liable to the obligor or to any other person claiming rights

derived from the obligor for wrongful withholding.

G.(6) An employer or trustee described in subsection (1) of this section who wilfully fails or refuses to withhold or pay the amounts as ordered shall be deemed to be in contempt of the authority of the court and may be held personally liable.

G.(7) No employer shall discharge an employe or refuse to hire a person because of the entry or service of an order of withholding under this section. Any person who violates this subsection shall be deemed to be in contempt of the authority of the court.

H. Order may include payment of support enforcement fees; limitation; use. Any decree, judgment, or order entered in a proceeding for the enforcement of any delinquent support obligation, including an order entered under section E., shall include, on the motion of the Support Enforcement Division of the Department of Justice or the district attorney, if either has appeared in the case, an order for payment of support enforcement fees established by subsection (3) of section 86 B., in addition to any other costs chargeable to the obligor, and in addition to his support obligation. The Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, shall deduct the amount of any previously imposed support enforcement fees from any payment subsequently made by the obligor but the amount of the deduction shall not exceed 25 percent of any payment. The support enforcement fee, when collected, shall be paid to the Support Enforcement Division of the

Department of Justice or the district attorney whichever appeared in the case.

I. When district attorney or Support Enforcement Division to represent obligee; application fee.

I.(1) Except as provided in subsections (3) and (4) of this section, in any case in which the obligee is not a recipient of public assistance or care, support, or services, the district attorney when requested shall represent the obligee for the purpose of seeking enforcement through contempt proceedings, garnishment, an order for assignment of wages under section E. or section G., or through the Uniform Reciprocal Enforcement of Support Act, of any order of decree entered under ORS chapter 107, 108, 109, 110, or 419, and may when requested initiate proceedings for issuance or modification of orders of support under those chapters.

I.(2) In any case involving a child or custodial parent or other dependent person who is a recipient of public assistance or care, support, or services, the Support Enforcement Division of the Department of Justice shall represent such child or children, caretaker parent, other dependent person, or the Department of Human Resources for the purpose of seeking modification, or enforcement through contempt proceedings, garnishment, an order for assignment of wages under sections E. or G. of Rule 86 or the Uniform Reciprocal Enforcement of Support Act, of any order or decree entered under ORS chapter 107, 108, 109, 110, or 419. The Support Enforcement Division shall also move to initiate proceedings for orders of support under those chapters.

I.(3) The district attorney of any county, the Department of Human Resources, and the Support Enforcement Division of the Department of Justice may provide by agreement for assumption by the Support Enforcement Division of the functions of the district attorney under subsection (1) of this section.

I.(4) The Department of Human Resources may direct the Support Enforcement Division to assume all functions of the district attorney of any county under subsection (1) of this section, if the department finds that the level of support enforcement in such county is insufficient to a degree incurring a risk of imposition of a penalty or loss of federal matching funds to the department or otherwise deemed by the department to be insufficient.

I.(5) The district attorney or the Support Enforcement Division, whichever is appropriate, shall provide the services specified in subsections (1) and (2) of this section to any person requesting them, but may in their discretion, upon a determination and notice to the person requesting the service that prospect of successful recovery from the obligor of a portion of the delinquency or future payment is remote, require payment to the district attorney or the Support Enforcement Division of an application fee, in accordance with an application fee schedule established by rule by the Department of Human Resources. If service performed results in the district attorney or the Support Enforcement Division recovering any support enforcement fees, such fees shall be paid to the applicant in an amount equal to the amount of the application fee.

J. Compelling payment to clerk of court for transmission to beneficiary. Any court which has decreed or ordered support payments paid directly to the person for whose benefit such payments are made may, upon notice that such payments are two months delinquent, order future payments to be made to the clerk of the court for transmission to the person for whose benefit the decree or order was made.

K. Transfer of files in support payment cases to county where party resides or property located. With respect to any order or decree entered pursuant to ORS 107.095, 107.105, 108.120, 109.155, or 419.513, if the party in whose favor such order or decree for the payment of money has been made files an affidavit to the effect that the party ordered to make such payments is in default in the payment of monies due under such order or decree and is presently in another county of this state, the court may, upon motion of the party entitled to such support payments, order that certified copies of the files, records, and transcripts of testimony in the original proceeding be transmitted to the county clerk of the county in which the moving party or the defaulting party resides or in which property of the defaulting party is located.

L. Jurisdiction of circuit court in county to which files transferred. Upon receipt of such certified copies referred to in section K., the circuit court of the county to which such certified copies have been transmitted shall have jurisdiction to compel compliance with such order or decree, under ORS 33.010 to 33.150,

the same as if it were the court which made and entered the original order or decree for the payment of support. However, no court shall have jurisdiction to modify any provision of the original order or decree except the court having original jurisdiction of the cause in which such order or decree was entered and the circuit court of the county in which the moving party or defaulting party resides if that court has received the certified copies referred to in ORS 23.795.

M. Transfer of files when party or child is recipient of public assistance. The transmittal of such certified copies referred to in section K. may be made upon motion of the district attorney or of the Support Enforcement Division of the Department of Justice with respect to any suit or proceedings in which a party thereto, or a child of such party, is a recipient of public assistance, and with respect to an order made pursuant to ORS 419.513.

N. Election of support payment method.

N.(1) Whenever the obligee is not a recipient of public assistance or is not a former recipient with unreimbursed past assistance, the obligee and obligor may elect not to transfer payments in the manner described in section B. or paragraph (a) of subsection (1) of section C., but may, instead elect to make payments directly into a checking or savings account established in the obligee's name. The election shall be in writing

and filed either with the court that entered the support order if that county has elected to maintain support collections or with the Department of Human Resources, whichever is appropriate. The election must be signed by both the obligor and the obligee and must specify the amount of the support payment, the date payment is due, the court order number, and the account number of the checking or savings account that is to be used.

N.(2) The checking or savings account election does not alter the requirement set out in paragraph (a) of subsection (1) of section B. that all new or modified orders or decrees must provide for payments to the Department of Human Resources. The election may be filed subsequent to or contemporaneously with the order or decree.

0. Payment of support by alternative method; notice to county or Department of Human Resources; termination of alternative method.

0.(1) The obligor shall deposit an amount equal to the support payment ordered by the court on or before the due date in the checking or savings account. A receipt for the deposit acknowledged by the accepting financial institution shall be sent by the obligor within 10 days of the due date to either the county, if the county has elected to maintain support collections, or to the Department of Human Resources, whichever is appropriate. The receipt may be transmitted electronically by the financial institution if it uses such methods and if the department is equipped to

receive the receipt by that method. The receipt shall be in a form prescribed by the department after consultation with accepting financial institutions and shall specify the court order number, the obligor's and obligee's names, the amount of the deposit, and the date thereof.

0.(2) The election authorized by section N. is terminated by operation of law if:

0.(2)(a) The obligor is late in making the required deposit on three or more occasions in any 12-month period;

0.(2)(b) The obligor fails on any occasion to make the required deposit that results in payment to the obligee within 30 days after the due date. However, termination shall not be effective if, within 60 days after the due date the obligor makes a showing to the county or to the Department of Human Resources, whichever is appropriate, that failure to make the payment was for good cause;

0.(2)(c) The obligor fails to provide a receipt to either the court or the Department of Human Resources within 10 days of the due date on three or more occasions in any 12-month period; or

0.(2)(d) The obligee becomes a recipient of general or public assistance, as defined by ORS 411.010, or care, support, or services pursuant to ORS 418.015.

0.(3) In the event of termination, all subsequent payments shall be made either to the court if that county has elected to maintain support collections or to the Department of Human Resources. Notice of termination and payment requirement shall

be sent by either the court or the Department of Human Resources
to the oligor's last-known address.

COMMENT

Rule 86

This is ORS 23.760-.809.

ORS sections superseded: 23.760-.809.