

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____, FLORIDA

_____,
Respondent/Father,

CASE NO: _____

vs.

DEPARTMENT OF REVENUE,
CHILD SUPPORT ENFORCEMENT,
Petitioner.

_____/

MOTION TO HOLD CHILD SUPPORT PAYMENTS IN ABEYANCE

COMES NOW the Respondent, _____, and respectfully moves this Honorable Court for an Order to hold his child support payments in abeyance pursuant to *Fla.Fam. L.R.P. 12.905(b)*.

In support thereof, the Respondent (“Mr. _____”) does state:

1. Mr. _____ acknowledges his responsibility to pay child support for his child(ren) as the father/parent named in the above-captioned case.

2. Mr. _____ is unable to pay his child support monthly obligation based upon his incarceration in the Florida Department of Corrections. See on-line Inmate Information Database at myfla.com.doc/inmatelocator/dc#_____.

3. Mr. _____ is financially insolvent and does not have any property or income from which to form a basis for payment of his child support obligation, see Affidavit of Insolvency and Family Law Financial Affidavit attached hereto as Exhibit A.

4. Mr. _____ seeks the holding in abeyance of his child support obligation until his release from incarceration and employment thus creating his ability to pay. His current release date is established as _____, 20__.

5. Mr. _____ has every intention of meeting his obligation in this matter.

6. However, occasionally detainers are placed on incarcerated fathers by the Department of Revenue for non-payment of child support. If this were to occur, Mr. _____ would not be able to participate in many self-betterment programs to prepare for a successful transition back to society. Furthermore, Mr. _____ would not be eligible for participation in any work release programs. This ineligibility would prevent Mr. _____'s ability to start making payments on said child support even before his projected release date.

7. Our state supreme court has determined that although incarceration does not forgive the obligation created by child support responsibilities, it does create the need for abeyance of the accrument thereof. See *Department of Revenue v. Jackson*, 846 So. 2d 486, 491-492 (Fla. 2003) stating:

[5]...Therefore, pursuant to section 61.14(1)(a), a parent seeking modification of child support payments because he or she is unable to pay the installments due to incarceration may file a petition to modify with the trial court that entered the original child support order. Thereafter, the trial court shall hold the petition in abeyance and place the matter on its inactive calendar for the term of the obligor parent's incarceration. During this time the petitioner is not subject to dismissal for failure to prosecute, and the relationship of the incarceration to support is good cause to delay activity. The support installments, although still outstanding according to the original payment schedule, do not accrue as a vested interest of the child to be reduced to judgment which cannot be altered.

[6]...Upon the obligor's release any party to the initial support arrangement may bring the original

petition for modification to the trial courts attention for resolution. At that time, the trial court shall conduct a hearing on the matter. In reaching a conclusion with regard to the resolution of support matters, the trial court should consider all current facts and equitable factors to determine a realistic plan for the payment of meaningful support both past and present.

See also *Gonnella v. Gonnella*, 854 So.2d 754 (Fla. 2d DCA 2003) where the Second District held:

We reverse with instructions to hold the petition in abeyance on the active calendar for the term of Gonnella's incarceration until a time when a thorough evaluation of his ability to pay may be conducted and a farsighted plan for payment may be established. *See Dep't of Revenue v. Jackson*, 346 So.2d 486 (Fla. 2003).

8. Therefore, Mr. _____ has shown a prima facie cause for the holding in abeyance his child support obligation until his release.

9. Additionally, Mr. _____ has simultaneously herewith filed a Motion for Telephonic Hearing should this court desire to conduct a hearing.

WHEREFORE the Petitioner respectfully prays this Honorable Court to grant this motion and hold in abeyance his child support payment obligation until a hearing can be held within 6-months after his release from incarceration.

Respectfully submitted,

Respondent, Pro Se

OATH

Under the penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true and correct.

Respondent, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished to **Department of Revenue** at:

by handing said document to a prison official, for mailing by pre-paid first class U.S. mail on this ___ day of _____, 20__.

Respondent, Pro Se
DC# _____
Marion C.I.
P.O. Box 158
Lowell, FL 32663-0158

INDEX

<u>EXHIBIT</u>	<u>DOCUMENT</u>	<u>DATE</u>
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A	Affidavit of Insolvency and Family Law Financial Affidavit	
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IN AND FOR _____ COUNTY, FLORIDA

_____,
Respondent/Father,

CASE NO: _____

vs.

DEPARTMENT OF REVENUE,
CHILD SUPPORT ENFORCEMENT,
Petitioner.

_____/

MOTION FOR TELEPHONIC HEARING

COMES NOW the respondent, _____, and respectfully moves this Honorable Court for a hearing in his simultaneously filed herewith Motion to Hold Child Support Payments in Abeyance pursuant to *Fla.R.Jud.Admin. 2.070*.

In support thereof, the respondent (Mr. _____) does state:

1. This cause of action is a motion to hold in abeyance Mr. _____'s child support accrument during his incarceration initiated by separate motion for same filed on this date.

2. Mr. _____ can appear at the requested hearing telephonically as this electronic procedure requires no costly transport expenses, security concerns and should not hinder the Court's ability to receive evidence in this matter, see *Waugh v. Waugh*, 679 So.2d 1 (Fla. 2d DCA 1996).

3. If this Court determines that a hearing is not necessary Mr. _____ hereby withdraws this request for hearing.

4. If this Court determines that a hearing is warranted Mr. _____ requests that a copy of the order granting same be furnished to:

Assistant Warden
Security
Marion C.I.
P.O. Box 158
Lowell, FL. 32663-0158

WHEREFORE the respondent respectfully prays this Honorable Court to grant this motion, conduct a hearing in this matter, and provide for his appearance telephonically.

Respectfully submitted,

Respondent, Pro Se

OATH

Under the penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true and correct.

Respondent, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished to **Department of Revenue** at:

by handing said document to a prison official, for mailing by pre-paid first class U.S. mail on this ___ day of _____, 20__.

Respondent, Pro Se
DC#
Marion C.I.
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Lowell, FL 32663-0158