

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark in this Box

FILED

AUG 12 1 16 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: DHHR-CHILD SUPPORT ENFORCEMENT DIVISION TITLE NUMBER: 97
RULE TYPE: LEGISLATIVE; CITE AUTHORITY 48A-2-9(a); 48A-5-3; 42 USC 651;
15 USCS 1673; WV Rules of Civil
AMENDMENT TO AN EXISTING RULE: YES NO X Procedure, Rule 41(b)

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 10

TITLE OF RULE BEING PROPOSED: PROCEDURES FOR VACATING A TEMPORARY SUPPORT
ORDER WHEN THE CASE IS DISMISSED PURSUANT TO THE WV RULES OF CIVIL
PROCEDURE, RULE 41(b)

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS
COMMENT PERIOD WILL END ON 9/15/97 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING
ADDRESS.

Ilene Schnall, Deputy In-House Counsel
Child Support Enforcement Division
1900 Kanawha Boulevard, East
Building 6, Room 817
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.

G. Jeffrey Johnson
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$3.40

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES PROCEDURES FOR VACATING A TEMPORARY SUPPORT ORDER WHEN THE CASE IS DISMISSED PURSUANT TO THE WV RULES OF CIVIL PROCEDURE, RULE 41(b)

Rule Title: _____

Type of Rule: X Legislative Interpretive Procedural

Agency DHHR - Child Support Enforcement Division

Address 1900 Kanawha Blvd., East
 Building 6, Room 817
 Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

There would be no financial impact as a result of the passage of this Legislative Rule.

3. Objectives of these rules:

Shall determine the procedures for processing a case when the case has been dismissed pursuant to the WV Rules of Civil Procedure, Rule 41(b).

Rule Title: PROCEDURES FOR VACATING A TEMPORARY SUPPORT ORDER WHEN THE CASE IS DISMISSED PURSUANT TO THE WV RULES OF CIVIL PROCEDURE, RULE 41(b)

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date: AUGUST 8, 1997

Signature of Agency Head or Authorized Representative

R. Jeffrey Johnson

FILED

TITLE 97
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

AUG 12 1 16 PM '97

SERIES 10
PROCEDURES FOR VACATING A TEMPORARY SUPPORT ORDER
WHEN THE CASE IS DISMISSED PURSUANT TO THE
WEST VIRGINIA RULES OF CIVIL PROCEDURE, RULE 41(b)

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§97-10-1. General.

1.1. Scope. -- This legislative rule establishes procedures by which the Department of Health and Human Resources, Child Support Enforcement Division (CSED) shall terminate a support order when an order is entered pursuant to Rule 41(b) of the West Virginia Rules of Civil Procedure.

1.2. Authority. -- W. Va. Code §48A-2-9(a), W. Va. Code §48A-5-3, West Virginia Rules of Civil Procedure, Rule 41(b), 42 U.S.C. 651, 15 U.S.C.S. 1673.

1.3. Filing Date. --

1.4. Effective Date. --

§ 97-10-2. Definitions.

2.1. Arrearages - the total unpaid and overdue support obligation owed by a legally responsible person. Arrearages include interest which has accrued on the unpaid and overdue obligation.

2.2. Child Support Enforcement Division - the agency intended by the Legislature to be the single and separate organizational unit of state government administering programs of child and spousal support enforcement and meeting the staffing and

organizational requirements of the Secretary of the Federal Department of Health and Human Services. W. Va. Code §48A-1A-7.

2.3. Employer - any individual, sole proprietorship, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state and any other legal entity which hires and pays and individual for his services. W. Va. Code §48A-1A-16.

2.4. Federal Consumer Credit and Protection Act - sets the percentage limitations which can be withheld from an individual's wages for garnishment purposes. 15 U.S.C.S. 1673.

2.5. Income Withholding - the mechanism used for the automatic deduction of support from wages which start as soon as the order for support is established. W.Va. Code §48-2-15(b) and W. Va. Code §48A-5-3.

2.6. Support Order - a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent

jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearage, or reimbursements, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief. W. Va. Code §48A-1A-30.

2.7. Temporary Support Order - an order issued prior to a final resolution of the case. The temporary support order remains in effect until further order of the court or until a time specified within the order itself.

§97-10-3. Vacating a Temporary Support Order.

3.1. Title IV-D of the Social Security Act, and Chapter 48A of the West Virginia Code authorizes the Child Support Enforcement Division to collect support on behalf of recipients of services.

3.2. If following the filing of a petition for support, a temporary support order is entered and no further action is taken within the last one hundred eighty days (180), the court may issue a Dismissal Order. West Virginia Rules of Civil Procedure, Rule 41(b).

3.3. When a case is dismissed pursuant to the West Virginia Rules of Civil Procedure, Rule 41(b), the CSER shall end the obligation and

terminate the income withholding if no arrearages are owed.

§97-10-4. Collection of Arrearages When a Support Order is Dismissed Pursuant to West Virginia Rules of Civil Procedure, Rule 41(b).

4.1. If arrearages are owed in a case and the case is dismissed pursuant to the West Virginia Rules of Civil Procedure, Rule 41(b), the CSER shall issue a notice to the employer modifying the income withholding.

4.2. The modification notice will state current support is no longer due and will require the employer to withhold for arrearages only.

4.3. The amount withheld will comply with current state law and the Federal Consumer Credit and Protection Act. W. Va. Code §48A-5-3 and 15 U.S.C.S. 1673.

4.3.a. If the arrearages are more than twelve (12) weeks old and the individual is remarried or has another dependent child, the employer may withhold up to 55% of the employee's pay for an arrearage only case.

4.3.b. If the individual does not have another dependent child living with him or her and has not remarried, the employer may withhold up to 65% of the employee's pay for an arrearage only case.

4.3.c. If the arrearages are overdue for a period of twelve (12) weeks or less and the individual is

married, the employer may withhold up to 50% of the employee's pay for an arrearage only case.

4.3.d. If the arrearages are overdue for a period of twelve (12) weeks or less and the individual is not married, the employer may withhold up to 60% of the employee's pay for an arrearage only case.



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood
Governor

Office of the Secretary
State Capitol Complex
Building 3, Room 206
Charleston, West Virginia 25305
Telephone: (304) 558-0684 FAX: (304) 558-1130

Joan E. Ohl
Secretary

August 11, 1997

The Honorable Ken Hechler
Secretary of State
State Capitol
Building 1, Suite 157K
Charleston, West Virginia 25305

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 12 1 16 PM '97

FILED

RE: Legislative Rule § 97-10

Dear Secretary Hechler:

Please accept the attached proposed rule for filing.

Thank you for your attention to this matter. If you should have any questions, please contact Ilene Schnall, Deputy In-House Counsel for the Bureau for Child Support Enforcement, at 558-0907.

Sincerely,

Joan E. Ohl
Secretary

Attachments