

FAMILY COURT ORDERS

STANDARD NO(S):

NYSSA CD # 100

DATE:

September 1, 2010

REFER TO:

David Smith

I. OBJECTIVE:

To establish procedures for the service and enforcement of Family Court Orders.

II. DETAILS:

A. Definitions -

1. Infant or minor – A person who has not attained the age of eighteen (18).
2. Jurisdiction – All Family Court Orders may be served and executed in any part of the state.

B. Processing –

1. The Civil Division will log the papers and obtain a file number for all orders and record that number on the papers for service.
2. Obtain original plus two (2) copies of the order.

C. Service of Process –

1. The statutory requirements for Service of Process for Family Court Orders differ from Service of Process under CPLR §308 and §309. The Family Court Act (FCA) specifies the time limits and manner of service for Family Court Orders. All Subpoenas should be served in accordance with CPLR provisions, all other processes should be served in accordance with the court's direction. The following is a list of Family Court Orders that are exclusively within Family Court jurisdiction and specify time limits. If personal service is not made within the required time, the process should be returned to court with an explanation. The court may amend the process and return it for service.
 - a. A family court petition, summons and temporary order of protection may be served any day of the week at any hour of the day or night. (FCA §153-b)

- b. In every Family Court proceeding a copy of the petition filed therein shall be served upon the respondent at the time of service or, if that is not practicable, at the first court appearance by respondent. (FCA §154-a)
- c. Service of process in a support or paternity proceeding must be to the person summoned or to a person of suitable age and discretion at the actual place of abode of the person to be served and by mailing to the person to be served at least eight (8) days before the time stated for appearance. (FCA §427, 525)
- d. Service of process in a proceeding to terminate parental rights must be made to the person summoned at least twenty (20) days before the time stated for appearance. (FCA §617)
- e. Service of summons and petition of a Person In Need of Supervision (PINS) and family offenses must be to the person summoned at least twenty-four (24) hours before the time of appearance. (FCA §737)
- f. A PINS Notice of Motion must be served upon the parties, agencies, or institution having custody of the child not less than seven (7) days prior to the return date of the Motion. (FCA §763)
- g. Service of a petition and summons in a child protective proceeding must be made to the person summoned within two (2) court days after issuance. (FCA §1036)
 - i. If we cannot serve within the time allowed such facts shall be reported to the court within three (3) days after their issue. The court may order substituted service.
- h. Generally, an order of protection is not enforceable until the respondent has been served. Therefore, the urgency of service cannot be overstated. When serving an order of protection, the deputy must attempt to fully explain the conditions outlined in the order and must ensure the respondent is notified if there is a provision requiring him to stay away from the family home. If service is being completed at the home and the respondent's reaction is hostile, request that the closest available police officer respond.
 - i. Once the order has been served, it is enforceable, but the respondent should be afforded a reasonable time to comply, unless ordered by the court to immediately vacate.

- ii. A Civil Division Officer is responsible for serving, not enforcing the order. If there is specific language in the order requiring the respondent to immediately vacate the family premises, the Civil Officer may request a Road Patrol Division member to assist with service.
- iii. When an Order of Protection includes an order to surrender firearms, a Road Patrol Division member may be requested by the Civil Office to assist with service of the order.
 - 1. Follow procedures for securing and submitting seized property in accordance with written SCSO policies and procedures.
- iv. Service of an Order of Protection must be recorded in the central registry as soon as possible. This is completed by providing the E-911 Center with the Order of Protection number, Docket number, Date issued, Date served, the name of the Officer who served the order and a copy of the order.
- i. All other process should be served in accordance with the court's direction.
- j. All records, proofs of service and returns on service should be filed in the Civil files.