

Bankruptcy Procedures

Under federal bankruptcy law, at the time a person/debtor files for bankruptcy protection, an 'automatic stay' immediately becomes effective, which typically prohibits creditor activities against the debtor. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (11 U.S.C. § 101, *et seq.*) recognizes a "domestic support obligation" (i.e. child/spousal support) as a priority claim, however, and permits certain child support enforcement activities to occur without seeking leave of the bankruptcy court.

Specifically, the bankruptcy code:

- allows the continuation of the wage attachment (covering both the monthly obligation and the payment toward arrears), regardless of whether the debtor/defendant has filed for bankruptcy protection under Chapters 7, 11, 12, or 13;
- exempts from the automatic stay not only actions to establish paternity and/or to establish/modify a domestic support obligation, but also the following:
 - custody/visitation proceedings;
 - actions involving the dissolution of a marriage (although equitable distribution is still subject to the automatic stay);
 - protection from abuse actions;
 - proceedings to suspend drivers' licenses or professional licenses;
 - reporting a debtor/defendant to consumer reporting agencies;
 - enforcing a medical obligation;
 - pursuing both federal/state tax intercept;
 - denial of a passport(Please note that the FIDM process is NOT exempted)
- requires that any unpaid support (i.e., arrears) in a Chapter 7 case be paid before the claims of any other creditors;
- compels that all pre-petition unpaid support owed to creditor/plaintiff in a Chapter 12 or 13 bankruptcy be paid in full through the Plan;
- makes contingent that the confirmation of a Chapter 11, 12, or 13 'Plan' is dependant on the debtor/defendant making ALL child support payments after the filing of the bankruptcy petition;
- provides for dismissal or conversion to a Chapter 7 bankruptcy, any Chapter 11 or 13 bankruptcy where the debtor/defendant fails to keep current on the child support obligation after the filing of the bankruptcy petition;
- bars a discharge where debtor/defendant has not paid in full all of the post-petition support obligation;
- directs the trustee to provide the creditor/plaintiff and/or agency responsible for collecting support the debtor/defendant's last known address.

Although in essence there is no reason to suspend the automated enforcement remedies in PACSES, the bankruptcy DROs (currently Julia Emes and Eric Opperman) will do so for purposes of ensuring that Family Division does not violate the 'automatic stay'. This procedure is being implemented to ensure that changes made to the FIDM process (i.e. Fast Levy) will not automatically result in the freezing/seizing of accounts at financial institutions. In addition, Family Division is prohibited from initiating contempt proceedings pending resolution of a Chapter 11 or 13 bankruptcy case, so designated cases should not be scheduled for contempt conference/hearings.

Please continue to alert the bankruptcy DROs of any bankruptcy filings, to ensure that the case is placed on the bankruptcy list for tracking purposes and so the bankruptcy DROs can code ENFS with the BK reason code. The bankruptcy code may not be removed from ENFS for the duration of the bankruptcy case, except in limited circumstances:

- cases changes from local to initiating
- case changes to a SSO or SAO debt type
- case is suspended or terminated, with no arrears balance owing

If you have any questions, please direct them to the bankruptcy DROs.