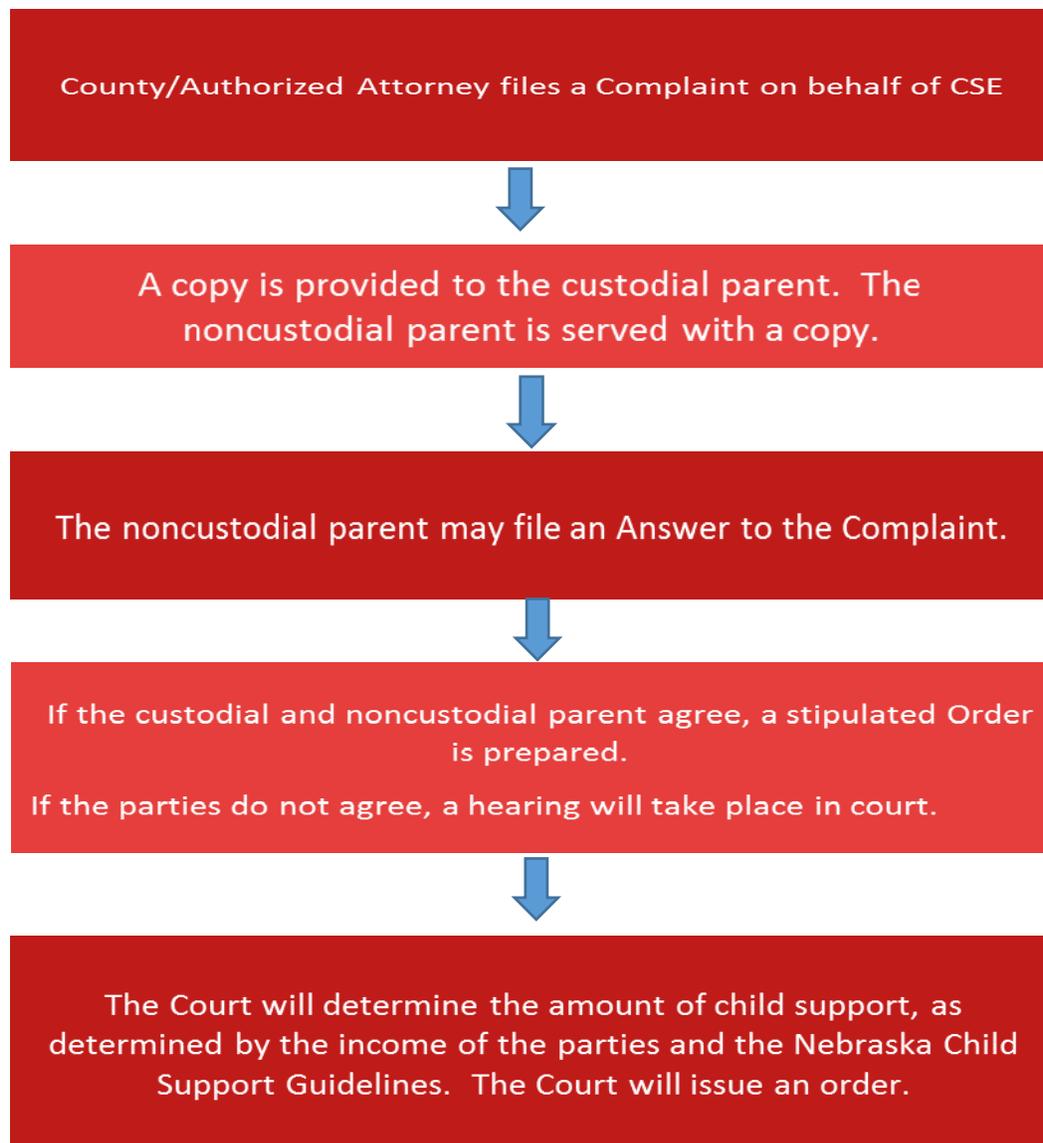


The following material is intended as a resource to give you a brief general overview of how the court process normally progresses for a child support case. However, every case is different and not all cases will proceed in exactly the same manner. Please bear in mind that there may be slight variations in the court procedure between judicial districts. If you have specific questions, please contact your attorney or the child support worker assigned to your case. This material is not a source of legal advice, and should not be relied upon as such. If you believe you need legal advice, you should consult with an attorney.

### THE COURT PROCESS

For new child or medical support cases, the Child Support Enforcement (CSE) Program may be involved in the process of getting a court order. They may also ask the court to modify existing orders, either to increase or decrease child support. This chart shows how the court process works.



## **FILING THE COMPLAINT**

The court process begins with a *Complaint*. The County/Authorized Attorney will file a *Complaint* with the court to request a child support order.

The *Complaint* includes:

- Information about the child's birth and paternity
- Amount of child support requested
- Address and telephone number of the Child Support office

The *Complaint* and a *Summons* are delivered to the parent from whom child support is sought. This is done within 90 days of locating the parent and it is called service of process. A noncustodial parent is usually given the opportunity to sign a Voluntary Appearance and consent to the jurisdiction of the court and avoid the cost and potential inconvenience of being served in person by the Sheriff.

The person served with a *Complaint* must respond within 30 days. If the person served does not respond in writing within 30 days, the court may set child support with the information it has. This is sometimes referred to as a default order.

The county or authorized attorney uses the same child support guidelines the court uses. If the noncustodial parent agrees to pay the amount of child support indicated by the guidelines, an agreement or stipulation is prepared. The court may approve this agreement without requiring the noncustodial parent to come to court.

---

*Important! The noncustodial parent must file an Answer within 30 days after service of the Complaint. A parent served with a Complaint should call or visit the Child Support Office or retain their own legal counsel if they have questions about the case.*

---

## **SCHEDULING A HEARING**

Once all parties to the case have been given notice that the *Complaint* has been filed, the case can be scheduled for a hearing. While every effort will be made to accommodate the parents, any witnesses, and the attorneys involved, ultimately the scheduling of hearings is done by the Court and based upon the Court's available schedule. Please keep in mind that there are many cases to schedule, and it may take some time for your case to be heard before the Judge. Some counties may only have one day a month set aside for child support matters, and even in counties that have more frequent opportunities for hearings, cases are often scheduled months in advance. We ask that you be respectful of the Court's schedule, and make the Court and the county or authorized attorney as soon as possible if a scheduling conflict develops.

## **YOUR DAY IN COURT**

Several different types of cases involving paternity and/or child support are handled by Child Support offices and county or authorized attorneys. Often these cases will be scheduled for trial or other court hearing. Your attendance may be required at some or all of the hearings. This material is designed to provide parties and other court witnesses with basic information about appearing in court. Additional information may be provided to you by your attorney, if you have one, or someone from the CSE office who is assigned to your case.

### **Notice of Court Hearings**

If you are required or requested to appear for trial or other court hearing you will typically receive notice of the hearing at least one or two weeks ahead of time. Occasionally you will be notified closer to the hearing date, if, for instance, the court has only given the CSE office a short notice of the trial date. Scheduling of your hearing is limited to the available dates given to us by the court.

### **Types of Hearings**

The majority of child support related court hearings fall into one of four categories:

- Paternity establishment;
- Child and medical support establishment;
- Orders to Show Cause, also known as “contempt” hearings; and
- Child support modifications

The court also hears requests to appoint counsel for indigent parties, as well as requests to suspend or reinstate child support. Other issues may be addressed by the court as needed.

### **Length of Hearings**

Many court hearings are typically scheduled on any given day. These hearings may be held before a district court judge, or by the child support referee in a county where a referee has been appointed by the district judges to receive evidence and make recommendations to the district judge. The length of hearings can range from ten minutes for stipulated matters to the better part of a day, in more complicated cases. Most hearings take less than one hour to complete, but even if you believe the issue is a fairly simple one, there is no guarantee that this will always be the case.

Occasionally hearings will be recessed or “continued” until another date, when the court’s schedule or other factors dictate. Every attempt is made to minimize delays, but they often happen due to unforeseen circumstances. Court hearings are scheduled between 9 a.m. and 3 p.m. in most counties, but may start earlier or go later in the day in some instances.

It is not a bad idea to bring something to occupy your time, in case you have to wait a while for your case to be called. A book or magazine may pass the time. If the local court rules allow, you may bring a smartphone or similar device into court, with the following important restrictions:

- No electronic device shall emit ANY sound
- Absolutely NO PHOTOGRAPHY is permitted in court.
- Use of any device that distracts from the courtroom decorum is prohibited, and the device may be confiscated by the court for the duration of your time in the courtroom.

## **Do NOT Bring Children**

Do not bring small children to court! Silence must be observed by all spectators when in court, and for this reason children are generally not permitted inside a courtroom. Most courthouses do not have child care facilities or anyone to watch your children. Please make other accommodations for the care of your children while you are in court.

## **Parking**

In many counties, parking is provided near the courthouse. However, parking may be an issue, especially on days when many hearings are scheduled. You should always allow plenty of time to find a parking place and still make it to the hearing at the scheduled time. If you are late to a scheduled hearing and your case is called, the matter may be continued to another date or even dismissed.

## **Security**

In most counties, persons having business in court facilities must pass through security metal detectors. In order to speed up your trip to court please remove items from your personal effects that may trigger the detectors *before* entering the courthouse. Security staff cannot be expected to “hold” items for you if you happen to have a prohibited item with you when you attempt to pass through security.

## **We Do Not Represent You**

A county or authorized attorney acting in that capacity is prohibited by law from representing any private citizen, and no attorney-client relationship or privilege exists between the parties to a child support case and the county or authorized attorney. CSE attorneys and staff work on behalf of the State of Nebraska and are acting in the best interests of the children. You may hire your own attorney to represent you in court if you wish, or you may choose to represent yourself. If you do hire an attorney, make sure to inform the child support services office as soon possible of this fact, so that CSE attorneys may remain in contact with your attorney regarding court scheduling and other matters. According to the Nebraska Rules of Professional Conduct on attorney ethics, a county or authorized attorney representing the State cannot communicate directly with you if you are represented by an attorney, unless the other lawyer consents to the communication.

## **What to Wear for Court**

Courtrooms are formal places, and you are expected to dress accordingly. *Please be neat and clean.* While no one expects you to purchase new clothes for court, be advised that T-shirts, halter tops, frayed shorts, flip-flops and similar attire are not considered respectable courtroom attire, and you may be sent home to change clothing, delaying your hearing. Men must remove hats/caps before entering the courtroom.

## **What to Bring to Court**

Please be on time for your court hearing. Otherwise other cases may “leap frog” ahead of your case.

In general, you should bring any witnesses or documents you believe are needed to prove your case. If you are a custodial parent appearing for a paternity trial, you should bring proof of your income both at present as well as for any previous times where you are seeking “retroactive” child support. Any correspondence you have from the other parent, discussing your child or financial issues would be valuable to bring to court. You might want to discuss this in more detail with the child support office before coming to court.

If you owe child support, and are appearing to answer to an “order to show cause”, you should consider bringing all documentation available to you in support of your position. If you claim a medical condition that prevents or interferes with your ability to work full time, for example, bring all related documents from your treating physician, the social security office, or the like. This type of information might also be useful for noncustodial parents in new paternity cases, as you will be asked to detail your earning capacity for the purpose of setting a child support award.

If you are applying for a court appointed attorney (only noncustodial parents and alleged fathers may apply for court appointed attorneys) you should consider bringing your most recent federal tax return, a recent pay stub, and any other financial documentation to substantiate that you are unable to afford the services of a private attorney.

### **What Happens in Court**

The court always tries to resolve all issues presented to it in one hearing. Coming to court prepared minimizes the chance that you will need to come back at a later date to finish the hearing.

In a **paternity** case, the court will be asked to make a finding that the man named in the lawsuit as the biological father of the minor child(ren) is in fact the biological father. Additionally, the court will be asked to set an amount of child support and to provide for health care for the children. If the custodial parent requests it, the court may also address child care costs, but CSE does not have the legal authority to address child care, custody, or visitation. The court may order the noncustodial parent to pay the court costs and fees of the case.

In **order to show cause (contempt)** hearings the parent who is ordered to pay child support must try to satisfy the judge that he or she is doing the best that they can to pay the child support in full and on time each month. When child support is delinquent, the court wants to know why one parent is disobeying the court order. If the court finds that the parent who is supposed to pay support isn't paying as ordered, and that the failure to pay is willful and contumacious (stubbornly disobedient), the court will impose sanctions to try to guarantee that support will be paid on time in the future, and that the child support arrears will also be paid off. Civil sanctions include the possibility of up to 180 days in jail.

In a **modification** hearing, the court will hear evidence from all sides to determine whether the current amount of child support is either too high or too low under the present circumstances of each parent. The parents will present evidence of their income or earning capacity and the court will decide the issue using Nebraska's child support guidelines, which were recently modified in February 2013.

## **Closed Hearings**

Unlike what you see on TV or in the movies, there are seldom casual spectators sitting in court. Most people you will see in the courtroom are either court personnel, people waiting their turn to have their case called, or witnesses waiting to testify. Cameras are not permitted in Nebraska trial courts.

Under Nebraska law all court hearings are open to the public, except for paternity establishment hearings. Paternity hearings are automatically closed to the public unless both parents waive that right. If you do not care whether the hearing is closed or not please advise the court of this at the beginning of your hearing. Otherwise other people will be ordered to leave the court.

## **What Happens if You Do Not Show Up for Court**

If you are subpoenaed for court it is required that you appear. A warrant for your arrest may follow if you do not.

If the CSE office asks you to appear, it is important to do so. If you must reschedule it is very important that you talk to the child support office as far in advance of your hearing date as possible. A failure of a custodial parent to appear may result in dismissal of a paternity case against the other parent. A party who is asking to have child support modified in their favor (increased for custodial parents or decreased if you are a noncustodial parent) may see their modification efforts fail if they do not show up for court. The county or authorized attorney is not able to testify in your place. Generally put, if you are requesting the court to provide you with any sort of benefit, you need to show up and plead your case to the court.

In some interstate cases it may be possible to arrange for telephonic testimony from a party who lives in another state. You will be advised of this possibility if you qualify for this type of testimony.

A special exception to these rules applies for active duty members of the U.S. Armed Services. Please advise the CSE office if you or any other parties to the case are serving on active duty with the military.

## **The Court Order**

In most cases you will receive a copy of your court order in the mail about 1-2 weeks following your hearing. In more complicated cases the judge or referee may take the matter "under advisement" and issue a written order at a later date, after which you will receive your copy within a few days of the issuance of the order.

## **Appeals / Exceptions**

If your case is heard before a referee, your order will take effect 14 calendar days after it is signed by the court, unless you or one of the other parties "takes exception," which is the technical term for an appeal to the district court. If your case is heard before a district court judge, the order takes effect the day the order is filed and any appeals would go to the Court of Appeals or the Nebraska Supreme Court.

If an exception is taken, the party that disagrees with the terms of the order has the burden of showing that the order contains one or more significant errors. On appeal, the party who takes exception must provide the higher court with a written transcript from the hearing that lead to the order they are appealing. Appeals typically take several months to be heard and decided. The party who takes exception must normally pay for the cost of the written transcript from the court hearing. Typically this costs \$50-\$100. The clerk of district court will assist you with regard to the transcript.

## **COMMONLY ASKED QUESTIONS ABOUT THE COURT PROCESS**

**Q I am a noncustodial parent. What should I do when I get the *Complaint*?**

**A** File an *Answer* to the *Complaint* within 30 days. You may call the Nebraska Child Support Customer Service Call Center (877-631-9973, option #2) to discuss the case. You also have the right to retain your own legal counsel.

**Q What if a noncustodial parent ignores or forgets about the *Complaint*?**

**A** If the noncustodial parent does not respond and does not show up at the hearing, the Court may enter an order for child support and medical support based on the information that is before the court at the time.

**Q If I file an *Answer* with the court, will I have a chance to talk to the judge?**

**A** Yes. If you respond to the *Complaint* and contest the amount of child support or paternity in a timely manner, you will be given an opportunity to be heard in court.

**Q How will the court decide how much child support I have to pay as a noncustodial parent?**

**A** The amount of child support is based on the income of both parents and the amount of time each parent cares for the child. The court uses child support guidelines provided by the Nebraska Supreme Court.

**Q How will my employer know how much money to take out of my paycheck to pay my child support?**

**A** After the court decides the amount of child support, an Income Withholding form is mailed to your employer with instruction on how much to deduct and where to send the payment.

**Q Is there any way to avoid having to go to court?**

**A** Yes. You may be able to avoid going to court by signing a legal agreement (stipulation). The parents and the County/Authorized Attorney can agree (stipulate) on the amount of child support and medical support. If you believe a stipulation may be possible, you or your attorney should work with the County/Authorized Attorney to develop the agreement.

**Q What else is in a stipulation?**

**A** The stipulation should contain the agreement between the parents, and at a minimum state that the noncustodial parent is:

- The parent of the child
- Willing to pay child support
- Willing to provide health insurance for the child if it is available at a reasonable cost
- Willing to allow the court to enter an order without appearing in court

**Q The noncustodial parent has group health insurance available at work. Must the children be covered by that insurance?**

**A** Health insurance must be addressed in every child support order. Even if it is not available immediately, the court order will order one parent to provide insurance when it does become available at a reasonable cost.