

Support Magistrates - Family Court Act § 439
Hon. Gerard E. Maney

Albany County Family Court – as well as all other family courts in the State – is staffed with support magistrates who hear and determine child and spousal support and child-support related issues. Below is a brief explanation of the origin and jurisdiction of support magistrates, who play a vital role in the family court system.

Establishment of the Position of Support Magistrate

When Family Court was first established in 1962, all support and paternity matters were adjudicated by a judge. In subsequent years, family court's caseload increased exponentially. This resulted in a backlog of cases and long delays, particularly for those cases seeking support for children. In 1978, the position of "hearing examiner" was added to family court staff to help ease the congestion and expedite support matters. By 2003, the Legislature, recognizing that child support collections had exceeded \$1 billion in each of the preceding three years as a result of orders issued by hearing examiners, upgraded the title to "support magistrate" in recognition of the importance of the position (L 2003, c 81, Memorandum).

Qualifications

Support magistrates are appointed as non-judicial employees of the Unified Court System on a full time basis for a term of three years, and may be reappointed for subsequent terms of five years. They must be admitted to the practice of law in New York State for at least five years and be familiar with family court procedure, family law and federal and state support laws and programs (22 NYCRR 205.32). Albany County Family Court currently has three full-time magistrates. In 2009, they presided over 7,538 new support and paternity filings. Each magistrate's caseload was upwards of 65 new cases per week, in addition to other pending matters. The majority of cases involve litigants who are self-represented.

Jurisdiction

The jurisdiction of the support magistrate is succinctly set forth in Family Court Act § 439. Magistrates are empowered to hear, determine and grant any relief within the powers of the court in child support matters where the parents are the litigants (Family Ct Act art 4), where a social service official files a petition on behalf of a person applying for or receiving family assistance (Family Ct Act art 4, 5-A), or where a support petition is brought on behalf of a child who is in an authorized residential placement (Family Ct Act §§ 234, 235). The magistrate also has jurisdiction over spousal support (Family Ct Act art 4) and uncontested paternity matters (Family Ct Act art 5).

Magistrates have the authority to modify previously-established support orders or to enforce their own orders or support orders of other courts and states. Their enforcement powers include the authority to enter income executions, order professional, recreational, or drivers'

license suspensions, grant money judgments, and award attorney fees in both enforcement and violation petition proceedings.

As extensive as the magistrate's jurisdiction appears to be, there are limits: support magistrates **may not** hear, determine or grant any relief in contested paternity proceedings involving claims of equitable estoppel, custody, visitation, visitation as a defense, and orders of protection or exclusive possession of the home, which must be referred to a judge. They may not grant any relief with respect to issues specified in Family Court Act § 455. The support magistrate may find that any person before him or her is in willful violation of an order of the court (Family Ct Act § 156), but can only recommend – and not impose – incarceration as punishment for such contempt. When the magistrate recommends incarceration, the matter is immediately referred to a judge to impose the appropriate punishment.

The support magistrate has the same authority as a judge to hear and decide motions, issue summons and subpoenas, including subpoenas for the production of a prisoner. The magistrate may issue temporary orders and final support orders (except where commitment is recommended for a willful violation of an order), administers oaths, direct parties to engage in and permit disclosure and may order blood grouping, genetic marker or DNA tests in paternity matters.

Support magistrates conduct hearings in the same manner as any other court trying an issue without a jury (22 NYCRR 205.35). The rules of evidence apply (Family Ct Act § 439 [d]). Proceedings are recorded mechanically (22 NYCRR 205.37 [a]). Parties may deliver opening statements and summations, call and cross-examine witnesses, and introduce evidence.

The support magistrate is required to issue “findings of fact” and a written decision and order (22 NYCRR 205.36). Litigants may appeal the magistrate's findings of fact and order by filing an “objection” (Family Ct Act § 439 [e]). The objection, and any rebuttal, is referred to the assigned judge, who may remand one or more issues of fact to the support magistrate, make his or her own findings of fact and order (with or without holding a new hearing) or deny the objections (*id.*). Any litigant aggrieved by the judge's decision and order may appeal it to the Appellate Division.