§ 110-136.5. Implementation of withholding in non-IV-D cases.

(a) Withholding based on delinquent or erratic payments. Notwithstanding any other provision of law, when an obligor is delinquent in making child support payments or has been erratic in making child support payments, the obligee may apply to the court, by motion or in an independent action, for an order for income withholding.

(1) The motion or complaint shall be verified and state, to the extent known:
   a. Whether the obligor is under a court order to provide child support and, if so, information sufficient to identify the order;
   b. Either:
      1. That the obligor is currently delinquent in making child support payments; or
      2. That the obligor has been erratic in making child support payments;
   c. The amount of overdue support and the total amount sought to be withheld;
   d. The name of each child for whose benefit support is payable; and
   e. The name, location, and mailing address of the payor or payors from whom withholding is sought and the amount of the obligor's monthly disposable income from each payor.

(2) The motion or complaint shall include or be accompanied by a notice to the obligor, stating:
   a. That withholding, if implemented, will apply to the obligor's current payors and all subsequent payors; and
   b. That withholding, if implemented, will be continued until terminated pursuant to G.S. 110-136.10.

At any time the parties may agree to income withholding by consent order.

(b) Withholding Based on Obligor's Request. The obligor may request at any time that income withholding be implemented. The request may be made either verbally in open court or by written request.

(1) A written request for withholding shall state:
   a. That the obligor is under a court order to provide child support, and information sufficient to identify the order;
   b. Whether the obligor is delinquent and the amount of any overdue support;
   c. The name of each child for whose benefit support is payable;
   d. The name, location, and mailing address of the payor or payors from whom the obligor receives disposable income and the amount of the obligor's monthly disposable income from each payor;
   e. That the obligor understands that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10; and
   f. That the obligor understands that the amount withheld will include an amount sufficient to pay current child support, an additional amount toward liquidation of any arrearages, and a two dollar ($2.00) processing fee to be retained by the employer for each withholding, but that the total amount withheld may not exceed the following percent of disposable income:
      1. Forty percent (40%) if there is only one order for withholding;

2. Forty-five percent (45%) if there is more than one order for withholding and the obligor is supporting other dependent children or his or her spouse; or
3. Fifty percent (50%) if there is more than one order for withholding and the obligor is not supporting other dependent children or a spouse.

(2) A written request for withholding shall be filed in the office of the clerk of superior court of the court that entered the order for child support. If the request states and the clerk verifies that the obligor is not delinquent, the court may enter an order for withholding without further notice or hearing. If the request states or the clerk finds that the obligor is delinquent, the matter shall be scheduled for hearing unless the obligor in writing waives his right to a hearing and consents to the entry of an order for withholding of an amount the court determines to be appropriate. The court may require a hearing in any case. Notice of any hearing under this subdivision shall be sent to the obligee.

(c) Order for withholding. If the district court judge finds after hearing evidence that the obligor, at the time of the filing of the motion or complaint was, or at the time of the hearing is, delinquent in child support payments or that the obligor has been erratic in making child support payments in accordance with G.S. 110-136.5(a), or that the obligor has requested that income withholding begin in accordance with G.S. 110-136.5(b), the court shall enter an order for income withholding, unless:

(1) The obligor proves a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligee's motion or independent action alleging that the obligor is delinquent or has been erratic in making child support payments; or
(2) The court finds that the child support obligation can be enforced and the child's right to receive support can be ensured without entry of an order for income withholding; or
(3) The court finds that the obligor has no disposable income subject to withholding or that withholding is not feasible for any other reason.

If the obligor fails to respond or appear, the court shall hear evidence and enter an order as provided herein.

(c1) Immediate income withholding. In non-IV-D cases in which a child support order is initially entered on or after January 1, 1994, an obligor is subject to income withholding immediately upon entry of the order, unless either of the following applies:

a. One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding.
b. A written agreement is reached between the parties that provides for an alternative arrangement.

The term "good cause" as used in this subsection includes a reasonable and workable plan for consistent and timely payments by some means other than income withholding. In considering whether a plan is reasonable, the court may consider the obligor's employment history and record of meeting financial obligations in a timely manner.

In entering an order for immediate income withholding under this subsection, the court shall follow the requirements and procedures as specified in other sections of this Article, including amount to be withheld, multiple withholdings, notice to payor, and termination of withholding.

(d) Notice to payor and obligor. If an order for income withholding is entered, a notice of obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 5, Rules of Civil Procedure. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(e) Modification of withholding. When an order for withholding has been entered under this section, any party may file a motion seeking modification of the withholding based on changed circumstances. The clerk or the court on its own motion may initiate a hearing for modification when it appears that modification of the withholding is required or appropriate. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 60; 1989, c. 601, s. 4; 1993, c. 517, s. 2; 1999-293, s. 18; 2001-487, s. 72.)