

# T A K E-1

## REGISTRATION OF OUT OF STATE CUSTODY ORDERS

**1. Q. Before I moved to North Carolina, a judge in another state issued custody and visitation orders concerning my minor child. If the child's other parent does not comply with the custody and visitation terms of that state's order, what can I do to get it enforced?**

A. An attorney in the state that issued the order can help you enforce the order in that state. Depending on the circumstances, the repeated failure of the other party to comply with the order may even be sufficient reason to change it, for example, awarding primary custody to you rather than to the other parent. The original issuing court will generally have the authority, or jurisdiction, to take these actions as long as one of the parties still resides in that state.

**2. Q. Petitioning a judge in another state sounds like it may be expensive and may require me to travel to that state one or more times. Isn't there something I can do in North Carolina to enforce the foreign state's order?**

A. Yes. If the child is located in North Carolina, either party to the original judgment may wish to register the order in North Carolina. Once it is registered, North Carolina courts can enforce the order.

**3. Q. Is there any advantage to registering the order now, even though everyone is complying?**

A. Yes. Registering the order now will make it easier to enforce and to correct violations that may arise later. Furthermore, if the other party relocates in the future, it may be far more difficult to serve him or her person with the necessary legal papers to get the order registered, especially if you don't know that person's address.

**4. Q. What does that mean, "enforce the order"? What can North Carolina courts do to people who disobey another state's custody order that is registered in North Carolina?**

A. If the North Carolina court determines that there has been a violation of the foreign state's order that you registered in North Carolina, it can punish the violator for contempt of court with a fine or jail. The judge can even direct law enforcement agents to seize the child from one party and deliver the child to the other party.

**5. Q. How do I file the foreign state order in North Carolina? What are the rules?**

A. The rules are provided at section 50A-305 of the North Carolina General Statutes. Basically, they say that you need to provide the local clerk of superior court with a petition asking to register the foreign court's order. The petition must include two copies of the foreign state's order. At least one of these copies must be certified by the issuing

court. (A copy of a certified copy is insufficient.) You must provide your name and address and the name and address of any other person that has been awarded custody or visitation. You must swear before a notary that the statement is true and that the foreign state's order has not been modified.

**6. Isn't there some form that I can use to make this petition? It seems like courts have forms for everything.**

- A. Yes, there is a form you should use. It is form AOC-CV-660, entitled "Petition for Registration of Foreign Custody Order." This form can be found online at the website of the Administrative Office of the Courts, <http://www.nccourts.org/courts/crs/aocadmin/default.asp> . At the tool bar at the top, click on "Forms." Then, in the next screen, type in the form number: "AOC-CV-660" and then click on "Search." You can print out the form and the official instructions for filling it out. Sign and swear to its truthfulness before a notary public. You will need an original and three copies.

**7. Are there any other forms I need to fill out to register the foreign state custody order in North Carolina?**

- A. Yes. You will also need to prepare the Notice of Registration of Foreign Custody Order (AOC-CV-661) and sign / swear to it before a notary public. You will need an original and three copies of this form as well.

**8. Once I have these two forms prepared, signed, and sworn to before a notary public, and have made three copies of each, what do I do with them?**

- A. Take them to the office of the clerk of the superior court in your county. Hand them in at the civil division and advise that you want to register a foreign state child custody order. The clerk will assign a case number to the petition and to the notice of registration and will stamp that number onto the originals and the copies. The clerk will keep the original and return the stamped copies to you. The clerk will then file the foreign state's order as a "Foreign Custody Order."

**9. Is there a fee involved?**

- A. Yes. When you provide the Petition for Registration of Foreign Child Custody Order and Notice of Registration of Foreign Custody Order to the court clerk, you will be asked to pay a filing fee. Fees change over time, generally increasing, but as of 2013 the required fee is \$150. It must be paid either in cash or by money order.

**10. Does the other parent have the opportunity to persuade the court that the foreign state order should not be registered or enforced?**

- A. Yes. The adverse party has the opportunity to contest registration and enforcement by showing that the original court did not have the authority to issue the order in the first place, that the order has been cancelled or changed in some way by the original issuing

court, or that the order was issued without first giving proper notice. You will be required to serve notice to the other parent of the opportunity to contest the validity of the order. If you don't do so, the order will not be registered in North Carolina.

**11. How do I serve this notice on the other parent?**

- A. Mail a complete, court-stamped copy of the Petition for Registration of Foreign Child Custody Order (AOC-CV-660), including a copy of the issuing court's judgment, and a complete, court-stamped copy of the Notice of Registration of Foreign Support Order (AOC-CV-505) to the other parent. Make sure that you mail these documents certified mail, return receipt requested, and that you retain the certified mail notice from the post office. Be sure to request restricted delivery as well. When the post office delivers the certified mail, the mailman will ask the recipient to sign a green card acknowledging receipt. The post office will send this card to you.

You should ask for "restrictive delivery," since sometimes the postal carrier delivers the Document to the wrong person, and it is very important that these papers be given in person to the other party, not to someone who happens to be living in the same apartment or house.

**12. What should I do after I get the green card from the post office?**

- A. The defendant has twenty days from the receipt of these documents to file a notice with the court contesting the registration. After twenty days have passed from the date of receipt, you can return to the court clerk and provide the required documents. Actually, you may wish to wait 21 or 22 days before returning to the court, rather than the minimum of 20 days. That way you can be sure that at least 20 days have passed since the defendant's receipt of service, and you haven't made some mistake about counting the date of service on the defendant. Complete Form AOC-CV-662, Affidavit of Service, making sure to check the block indicating that service was executed by certified mail. Sign and swear to the truth of the document before a notary public. Provide this document, as well as the green card receipt from the post office, to the court clerk.

In addition, you should obtain Form AOC-CV-664, Order Confirming Registration or Denying Confirmation of Registration of Foreign Custody Order. Fill in the case file number, the county, your name and address as plaintiff, and the defendant's name and address. Bring this document to the clerk as well. You can save yourself an extra trip to the courthouse if you provide this document to the clerk on the same day that you provide the Affidavit of Service. The clerk will place this proposed order before a judge, who will review the matter, fill out the remainder of the form, and determine whether to sign it. If the procedures have been followed correctly, and the defendant has not filed a motion contesting the registration, the judge should sign the order confirming registration.

**13. What happens if the defendant files a motion within the 20-day period opposing the registration of the foreign state child custody order?**

- A. The defendant can file a motion with the court contesting the validity of the foreign child custody order, using form AOC-CV-663. Upon receipt of the motion, the court clerk will schedule a hearing and mail written notice of the hearing date to the parties.

**14. What if I need to have the foreign state custody order enforced immediately in North Carolina and don't have time to first register the order with North Carolina? I want custody of my children now!**

- A. North Carolina has special procedures for expedited enforcement of a foreign state custody order. Actually, the procedure should probably be called "emergency" procedures for enforcement, rather than expedited procedures. Your case doesn't go to the top of the list just because you want it to. There must be a bona fide emergency to justify a judge signing an order for such expedited enforcement.

**15. OK. I understand that there must be a true emergency to get expedited enforcement of a foreign state order. But there is a real emergency! How do I get expedited enforcement?**

- A. If necessary to ensure your safety or the safety of a child, you can file a Petition for Expedited Enforcement of Foreign Child Custody Order (AOC-CV-665). Attach a certified copy of the child custody order you want to enforce. Check the blocks on the form indicating whether or not the order has been confirmed by a North Carolina court. Sign and swear to the petition in front of a notary public and provide the original petition and three complete copies to the court clerk. Pay the filing fee in cash or by money order. (Later, you will have the opportunity to ask the judge to order the defendant to pay your expenses and the judge has the option of issuing such an order).

The clerk will take steps to ensure that a judge considers your motion as soon as possible, generally the same day as it was filed. However, the judge may not be able to drop everything immediately to consider your case. The clerk may tell you to wait in the hall, or to come back later in the day (or perhaps the next day), depending on the court's schedule. Also, as practical matter, it is far better to present the clerk with the motion for expedited hearing earlier in the day, when there are more "judge hours" left in the day. If you show up too late in the afternoon, you may find that the court cannot hear the matter until the next day, particularly if you show up late on a Friday afternoon. There may not even be any judges present. When the judge does consider your motion, you will be allowed to be present before the judge.

If the procedures have been followed properly, the judge will set a hearing date for the next judicial day, that is, the next day that a judge will be in the courthouse. The judge will direct law enforcement authorities to deliver notice of the hearing to the defendant.

**16. Can the judge direct the police to take the child away from the defendant immediately, even before the hearing?**

- A. Yes. If the judge considers it necessary, or upon consideration of your request, the judge may sign a warrant ordering law enforcement officials to seize the child concerned and deliver that child to the petitioning party. If you want the judge to order law enforcement agents to pick up the child immediately, and you believe that a child is in imminent danger of serious physical harm and / or is about to be removed from North Carolina, check the appropriate blocks at item 10 on AOC-CV-665. Additionally, you will need to obtain Form AOC-CV-667, Warrant Directing Law Enforcement to Take Immediate Physical Custody of a Child. Fill in your name and address, the name and address of the

defendant, the state that entered the original custody order and the date of the Order. The Judge will fill in the rest.

**17. What if I want a court in North Carolina to change the custody order that was issued in another state?**

- A. Generally, the court of the state that originally issued the custody order is the only one that has the power to change it. However, in some cases, such as when both parents and the concerned children no longer reside in the state that issued the order, and the child now resides in North Carolina, North Carolina may take jurisdiction of the matter and make appropriate custody and visitation orders. Also, there are limited emergencies in which North Carolina can hear the issue or modify custody orders even though a foreign state court has already ruled on these matters.

Consult an attorney if you wish to modify a foreign state order or want North Carolina to issue a new order.

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