

# T A K E-1

## CUSTODY AND CHILD SUPPORT: THE INTERSTATE CONNECTION

### CUSTODY

1. **Q.** HELP! MY EX-WIFE TOOK OUR CHILDREN FROM TEXAS, WHERE I HAVE AN ORDER GIVING ME CUSTODY, AND DROVE TO NORTH CAROLINA. DO I NEED AN ORDER FROM A TEXAS JUDGE? A PRIVATE ATTORNEY IN NORTH CAROLINA? CAN A SHERIFF'S DEPUTY HELP ME? WHERE DO I GO FROM HERE?

**A.** Slow down – that's a lot of questions. We'll try to answer them all, but first you need to know about the Uniform Child Custody Jurisdiction and Enforcement Act. A summary is provided in this "TAKE-1" handout.

2. **Q.** WHAT IS THE STATUTE YOU JUST MENTIONED?

**A.** The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is a law that's found in all 50 states plus the District of Columbia. It is just about the same everywhere, and it provides a lot of protection in cases of child removal or kidnapping. For example, it allows you to register your "foreign custody order" (that's the one from Texas) in North Carolina.

3. **Q.** REGISTER MY TEXAS ORDER? WHAT GOOD WILL THAT DO?

**A.** Registering your foreign custody order allows the court in NC to enforce it just as if it had been entered here by a judge in this state.

4. **Q.** SOUNDS PRETTY GOOD. HOW DO I DO IT? DO I HAVE TO FILE A COMPLAINT OR A MOTION TO GET MY PAPERS FROM TEXAS REGISTERED HERE?

**A.** "Registration" under the UCCJEA means filing with the court –

- 1) A letter or other document requesting registration;
- 2) Two copies (including one that is a certified copy) of the foreign court order, plus an affidavit that – to the best of your knowledge and belief – your Texas order has not been modified; and
- 3) Except as otherwise provided in G.S. 50A-209, your name and address (or that information for the person who is seeking registration) and the same information for any parent or person acting as a parent who has been awarded custody or visitation in the custody order about child-custody order which you want registered.

The specifics are found on page 1 of one of the court forms, AOC-CV-660 (Petition for Registration of Foreign Child Custody Order). Here are the forms from the Administrative Office of the Courts (AOC) which are available for the foreign custody order registration process:

<a href="#">AOC-CV-660</a>	Instructions For Registration Of Foreign Child Custody Order (Side 1)/Instructions For Expedited Enforcement Of Foreign Child Custody Order (Side Two) (New 12/06)	PDF Ready
<a href="#">AOC-CV-660</a>	Petition For Registration Of Foreign Child Custody Order (New 12/06)	PDF Ready (Fillable)
<a href="#">AOC-CV-661</a>	Notice Of Registration Of Foreign Child Custody Order (New 12/06)	PDF Ready (Fillable)
<a href="#">AOC-CV-663</a>	Motion To Contest Validity Of A Registered Foreign Child Custody Order And Notice Of Hearing (New 12/06)	PDF Ready (Fillable)
<a href="#">AOC-CV-664</a>	Order Confirming Registration Or Denying Confirmation Or Registration Of Foreign Child Custody Order (New 12/06)	PDF Ready (Fillable)
<a href="#">AOC-CV-665</a>	Petition For Expedited Enforcement Of Foreign Child Custody Order (New 12/06)	PDF Ready (Fillable)

<a href="#">AOC-CV-666</a>	Order For Hearing On Motion For Expedited Enforcement Of Foreign Child Custody Order (New 12/06)	PDF Ready (Fillable)
<a href="#">AOC-CV-667</a>	Warrant Directing Law Enforcement To Take Immediate Physical Custody Of Child(ren) Subject To Foreign Child Custody Order (New 12/06)	PDF Ready (Fillable)
<a href="#">AOC-CV-668</a>	Order Allowing Or Denying Expedited Enforcement Of Foreign Child Custody Order (New 12/06)	PDF Ready (Fillable)

They are available from the website of the AOC at this address:  
<http://www.nccourts.org/Forms/FormSearchResults.asp>

**5. Q. WHAT'S THAT MEAN – THE PART ABOUT G.S. 50A-209?**

**A.** G.S. 50A-209 says you don't have to provide this information if you state in your affidavit that the health, safety or liberty of a party of the child/children would be endangered by disclosure. In that situation, the information must be sealed and may not be disclosed to the other party or the public unless the court – after a hearing - orders it in the interest of justice.

**6. Q. WHAT HAPPENS NEXT?**

**A.** One copy of the registration petition and one copy of the registration notice must be served upon the defendant (that's your ex-wife) and any other person listed in paragraph 3 of the Petition for Registration of Foreign Child Custody Order. Instructions regarding service are found in the "Notice to Plaintiff" section of the Notice of Registration, AOC-CV-661. Then the court proceeds to determine whether to confirm the order or not. There must be a hearing to determine whether the order is confirmed. The notice states that a registered order is enforceable as of the date of the registration just as if it had been entered by a judge here. Also the notice states that a hearing to contest the validity of the registered order must be requested within 20 days after service of notice; if the other side doesn't contest the registration, this will result in confirmation of the custody order.

**7. Q. WHAT CAN MY EX-WIFE DO WHEN NOTIFIED ABOUT THE REGISTRATION?**

**A.** The other side can do nothing, which usually means that the foreign order will be confirmed by the judge here, or else the other side, your ex-wife, can contest the registration, which means challenging the validity of the Texas custody order. If the other side files a motion to contest the validity of the foreign order, you will receive a copy of the motion and a notice of hearing informing you of the date and time the court will hear the matter. If no one files a motion to contest the validity of the foreign child custody order, the clerk of court will mail you a copy of the Order Confirming Registration. If there is a question about the existence of a custody order, or the authority of the court to exercise custody jurisdiction, that question, by law, must be given priority on the court's calendar and handled expeditiously.

**8. Q. SO A FOREIGN CUSTODY ORDER MUST BE REGISTERED IN EVERY CASE BEFORE NORTH CAROLINA WILL ENFORCE IT?**

**A.** No. A foreign child custody order IS NOT required to be registered before it can be enforced in North Carolina. If you are seeking immediate enforcement of a foreign child custody order, see Instructions for Petition for Expedited Enforcement of a Foreign Child Custody Order, Form AOC-CV-665. If you want law enforcement officers to immediately pick up the children, you must check the box before paragraph 10. A warrant directing law enforcement to pick up the children immediately can be issued only by a district court judge, and the warrant is available only if the judge determines that the children are in danger of immediate serious physical harm, or there is an immediate danger of their being removed from the state. You must testify to the judge, or produce another witness to testify, that there is a need for law enforcement to get the children immediately. You will also need to complete portions of Form AOC-CV-667, which is the warrant form. If the warrant is not issued, the judge will consider your request for custody of the children at the hearing that will be set when you file the Petition for Expedited Enforcement of Foreign Child Custody Order.

**9. Q. WHEN WILL THE JUDGE HEAR MY CASE?**

**A.** After you file the Petition for Expedited Enforcement of a Foreign Child Custody Order, the court must issue an order stating the hearing date. A judge must consider your request for enforcement of the child custody order on the next judicial day after the Petition for Expedited Enforcement is served upon the other side. If your hearing date arrives and the other side hasn't been served, the judge will probably continue the case so that service can be had on the other party, your ex-wife, or upon any other person who has, or claims to have, custody of the children.

**10. Q.** SO THERE'S NOTHING THAT MY EX CAN DO TO CONTEST THE PETITION?

**A.** There are several defenses available to her. The instructions on the expedited enforcement order state that custody will be granted to you at the conclusion of the hearing unless she appears at the hearing and is able to prove one of these:

- 1) The foreign custody order has been stayed, vacated or modified, or was entered by a court that didn't have jurisdiction to do so; or
- 2) The foreign order has not been confirmed, and the other party was entitled to receive notice before it was entered.

If a defense is proven to the court, then the order will not be confirmed, and the registration will be vacated.

**11. Q.** ONCE I HAVE GOTTEN CONFIRMATION OF MY TEXAS CUSTODY ORDER HERE IN NORTH CAROLINA, CAN I FORGET ABOUT HEARINGS ON CUSTODY OR VISITATION BACK THERE?

**A.** Not at all. Texas still has original jurisdiction. Unless at some future point in time the case gets fully transferred to NC for misconduct by one of the parents or because NC is a more convenient forum, Texas remains the court with the primary responsibility regarding child custody in your case.

#### **CHILD SUPPORT**

**12. Q.** I NEED SOME HELP WITH CHILD SUPPORT. I HAVE A COURT ORDER AGAINST MY EX-HUSBAND FOR CHILD SUPPORT. IT WAS ENTERED IN IOWA. CAN I REGISTER IT HERE FOR ENFORCEMENT?

**A.** UIFSA (the Uniform Interstate Family Support Act) is the law in all states. It provides that a child support order (or an income withholding order in a support case) issued by another state may be registered in North Carolina for the purpose of enforcing the order against the payor.

**13. Q.** WHAT'S INVOLVED IN REGISTERING A FOREIGN CHILD SUPPORT ORDER?

**A.** To register your Iowa order, which is known as a "foreign child support order," you need to file:

- 1) a letter of transmittal requesting registration of the order for enforcement
- 2) two copies, including on certified copy, of the order for which registration is sought, and copies of all orders modifying the order
- 3) certification of the amount of any arrearage under the order
- 4) the name of the obligor (that's your ex-husband), his address (if known), his Social Security Number, the name and address of this employer, the source of any other income of his, and a description and location of any available property which he owns in this state
- 5) your own name and address, as well as the agency or person to whom support payments are to be sent.

**14. Q.** CAN I ALSO FILE A MOTION FOR ENFORCEMENT OF MY IOWA ORDER?

**A.** A motion seeking enforcement of a registered order may be filed at the time the order is registered for enforcement or after a registered support order is confirmed. The petition must state the grounds for the remedy that is being sought.

15. **Q.** IT SOUNDS LIKE THERE ARE TWO THINGS GOING ON HERE – REGISTRATION AND CONFIRMATION. WHAT’S THAT ABOUT?

**A.** Registration occurs when you submit your order to the court with the above documents and information. Then the notice of registration, AOC-CV-505, is sent to the other side. It warns him about the registration process, what it involves, and the results of ignoring the notice.

16. **Q.** WHAT DOES THE NOTICE SAY?

**A.** The Notice of Registration states that:

*If you want to contest the validity or enforcement of the registered Foreign Support Order, you **must** file a written request for hearing asking the Court to vacate registration of the order, asserting any defense regarding alleged noncompliance with the order, or contesting the amount of arrears allegedly owed under the order or the remedies that are being sought to enforce the order. Your request for hearing must be filed with the Clerk of Superior Court within twenty (20) days after the date of mailing or personal service of this notice. **Failure to contest the validity or enforcement of the registered Foreign Support Order in a timely manner will result in confirmation of the order and the alleged arrears, and precludes further contest of the order with respect to any matter that could have been asserted.***

At the hearing, the payor (your ex-husband) may ask the judge to vacate the registration. He may contest the amount of back support which you are requesting. He may contest the enforcement remedy being sought (such as seizure of property or garnishment). And he may assert a defense against his alleged non-compliance with the order. He cannot, however, challenge the fundamental provisions of the registered order; that is only available in the original court where the order was entered. Nor may he ask the court to modify the registered order unless he meets certain requirements of the law. There are only a limited number of defenses available to him for challenging registration. If he does not succeed in challenging registration, then the order is confirmed.

17. **Q.** WILL THE JUDGE TREAT A REGISTERED ORDER FROM IOWA JUST LIKE A NORTH CAROLINA ORDER FOR ENFORCEMENT?

**A.** No – the order must be confirmed, not just registered. Then, upon confirmation, the judge can grant you any remedies that a child support order entered in NC would allow.

18. **Q.** DOES THAT MEAN THAT THE JUDGE CAN ORDER PAYMENTS THROUGH THE COURT?

**A.** Payments no longer go “through the court.” The agency which collects child support and sends it to the parent with custody is called “Centralized Collections.” This agency will also keep records of payments received, in case there is a dispute about child support payments. The judge will often use this agency as the collection mechanism for child support.

19. **Q.** WHAT ABOUT DIRECT PAYMENTS FROM MY EX-HUSBAND? IF THAT’S ORDERED, I’M AFRAID THAT HE WON’T MAKE THEM ON TIME IN THE FULL AMOUNT.

**A.** Good point. In NC, the rule is that payments must be made by garnishment from his employer unless the two of you agree otherwise, or unless the court is convinced that an alternative means is available to guarantee payment of child support to you. When payments are made directly to you by the other side, there’s always the risk that they won’t be made in the full amount, they will be late, or the check will “bounce” when you try to deposit it at the bank. Some non-custodial parents also think that they can make deductions from child support for things that they provide for the children, or to punish the custodial parent for something she has done. Garnishment and using Centralized Collections are the best ways to ensure proper accountability for the payment of child support.

20. **Q.** CAN I SPEED UP THE CHILD SUPPORT HEARING PROCESS AT ALL? I’M AFRAID THAT IT’LL TAKE THREE OR FOUR MONTHS TO GET A HEARING DATE!

**A.** The law in NC (N.C. Gen. Stat. 50-32) states that child support is supposed to be on a fast track when there is a motion or complaint pending for establishment of support. This is known as “Expedited Process.” The statute says that:

*Except where paternity is at issue, in all child support cases the district court judge shall dispose of the case from filing to disposition within 60 days, except that this period may be extended for a maximum of 30 days by order of the court if:*

- (1) Either party or his attorney cannot be present for the hearing; or*
- (2) The parties have consented to an extension.*

**21. Q.** SO ONCE I HAVE GOTTEN CONFIRMATION OF MY CHILD SUPPORT ORDER HERE IN NORTH CAROLINA, I CAN FORGET ABOUT HEARINGS ON CHILD SUPPORT BACK IN IOWA?

**A.** Not at all. Iowa still has original jurisdiction. Unless at some future point in time the case gets fully transferred to NC for specific reasons set out in the statute, Iowa is the court with the primary responsibility regarding child support in your case.

**22. Q.** WHAT IF I HAVE OTHER QUESTIONS OR SPECIFIC PROBLEMS I WANT HELP IN SOLVING?

**A.** Please consult a military legal assistance attorney or private attorney as soon as possible. Your lawyer can answer the many questions and help you to make a fair and intelligent decision about your options.

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The TAKE-1 series of client handouts is a project of the North Carolina State Bar’s Standing Committee on Legal Assistance for Military Personnel. For comments or corrections, contact Committee member Mark E. Sullivan at: [Mark.Sullivan@ncfamilylaw.com](mailto:Mark.Sullivan@ncfamilylaw.com), or at 2626 Glenwood Ave. #195, Raleigh, NC 27608 [919-832-8507].