



COLLECTING SUPPORT: GARNISHMENT



The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

1. I AM OWED ALIMONY AND CHILD SUPPORT BY A MILITARY MEMBER AND I HAVE A COURT ORDER OF SUPPORT. CAN I GET THIS WITHHELD FROM HIS PAY?

A. Yes. The way to do this is by garnishment.

2. WHAT IS GARNISHMENT?

A. Garnishment is a statutory proceeding whereby a person's property or money (usually a bank account or paycheck) is taken and applied to the payment of the former's debt. The normal situation involves the military member's paycheck at the Defense Finance and Accounting Service (DFAS).

3. WHAT TYPES OF PAY CAN BE GARNISHED?

A. All pay after taxes are garnishable. Such pay includes basic pay, hazardous duty pay, severance pay, sick pay, cash awards, pensions, retirement, etc. However, allowances such as BAQ, BAS and Family Separation Allowances cannot be garnished.

4. WHAT IS GARNISHMENT USED TO ENFORCE?

A. Garnishment is used to enforce a military member's obligation to pay child support and/or alimony.

5. CAN I USE GARNISHMENT PROCEEDINGS IN NORTH CAROLINA TO COLLECT UNPAID ALIMONY AND/OR CHILD SUPPORT?

A. Yes. In North Carolina, garnishment can be used to enforce an individual's obligation to pay child support or alimony. North Carolina also allows assignment of wages for these enforcement purposes.

6. HOW DO I START A GARNISHMENT PROCEEDING FOR CHILD SUPPORT?

A. To start a garnishment proceeding in North Carolina, you must first have a court order requiring the government as the employer to withhold money and remit payments to satisfy the support obligation. You must go to court to obtain this garnishment order. Once the garnishment order is obtained from the local court, it must be served on DFAS.

7. WILL I NEED MORE INFORMATION TO ENSURE PROCESSING BY DFAS?

A. Yes. The withholding order need not name the specific government office in which the obligor is employed, but it must provide the obligor's full legal name, and social security number.



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8. HOW MUCH OF AN INDIVIDUAL'S PAY MAY THE COURT GARNISH?

A. There are state and federal limitations on the amount of pay that can be garnished. Unless a lower maximum garnishment limitation is provided by state law, the maximum amount ranges from 50% to 65% under federal law.

9. IF MY PAY IS GARNISHED, HOW CAN I STOP THE GARNISHMENT?

A. The only way a military member can stop the garnishment is to go to the court that issued it and file a motion to stop or reduce it. Under North Carolina law, you will have to demonstrate a change of circumstances since the last court order that required the garnishment before the court can stop or reduce the garnishment.

10. Q. IF I HAVE OTHER QUESTIONS ABOUT INVOLUNTARY CHILD SUPPORT/ALIMONY, WHAT SHOULD I DO?

A. Please consult a legal assistance or private attorney of your choice as soon as possible. Your lawyer can answer the many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters.

HELPFUL WEBSITES:

North Carolina Legal Aid
<http://www.legalaidnc.org/>

DFAS—Garnishment
www.dfas.mil/garnishment.html

Armed Forces Legal Assistance Website
<http://legalassistance.law.af.mil/>

North Carolina Child Support
<http://www.nccourts.org/Support/FAQs/FAQs.asp?Type=14&language=1>

North Carolina Child Support Enforcement
<http://www.dhhs.state.nc.us/dss/cse/>

Support Law of the 50 States
http://www.law.cornell.edu/topics/Table_Divorce.htm