

O.C.G.A. § 19-6-33

GEORGIA CODE
Copyright 2011 by The State of Georgia
All rights reserved.

*** Current Through the 2011 Extraordinary Session ***

TITLE 19. DOMESTIC RELATIONS
CHAPTER 6. ALIMONY AND CHILD SUPPORT
ARTICLE 1. GENERAL PROVISIONS

O.C.G.A. § 19-6-33 (2011)

§ 19-6-33. Notice and service of income deduction order; hearing on enforcement of order; discharge of obligor; penalties

(a) The obligee or his or her agent shall serve an income deduction order and the notice to the payor, and in the case of a delinquency a notice of delinquency, on the obligor's payor. The obligor must be notified that withholding has commenced and how to contest the withholding.

(b) Service of the initial income deduction order by or upon any person who is a party to a proceeding under this Code section shall be by personal service, by certified mail or statutory overnight delivery, return receipt requested, or by regular mail. Service upon an obligor's payor or successor payor under this Code section shall be by regular first-class mail.

(c)(1) When the income deduction is effective upon a delinquency in an amount equal to one month's support, the obligor may apply to the court to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of support owed pursuant to a support order, the amount of arrearage of support, or the identity of the obligor. The obligor shall send a copy of the pleading to the obligee and, if the obligee is receiving IV-D services, to the IV-D agency. The filing of the pleading does not affect the enforcement of an income deduction order unless the court enters an order granting relief to the obligor. The payment of delinquent support by an obligor upon entry of an income deduction order shall not preclude service of the income deduction on the obligor's payor.

(2) When an obligor requests a hearing to contest enforcement of an income deduction order, the court, referee, or administrative law judge after due notice to all parties and the IV-D agency, if the obligee is receiving IV-D services, shall hear the matter within 30 days after the application is filed and shall not extend the time for hearing unless good cause for a later date is found by the court, in which event the time for a hearing may be extended for up to 30 days. The court, referee, or administrative law judge shall enter an order resolving the matter within ten days after the hearing. A copy of this order shall be served on the parties and the IV-D agency if the obligee is receiving IV-D services.

(d) When a court, court referee, or administrative law judge determines that an income deduction order is proper pursuant to subsection (c) of this Code section, the obligee or his or her agent shall cause a copy of the income deduction order and a notice to payor, and in the case of a delinquency a notice of delinquency, to be served on the obligee's payors. A copy of the

notice to the payor, and in the case of a delinquency a notice of delinquency, shall also be furnished to the obligor.

(e) The notice to payor shall contain only information necessary for the payor to comply with the income deduction order. The payor shall have the duties, penalties, and rights specified in the notice. The notice shall:

(1) Require the payor to deduct from the obligor's income the amount specified in the income deduction order, and in the case of a delinquency the amount specified in the notice of delinquency, and to pay that amount to the obligee or to a child support receiver, the IV-D agency, or other designee, as appropriate. The amount actually deducted plus all administrative charges shall not be in excess of the amount allowed under Section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b);

(2) Instruct the payor to implement the income deduction order no later than the first pay period that occurs after 14 days following the date the notice was mailed;

(3) Instruct the payor to forward, within two business days after each payment date, to the family support registry the amount deducted from the obligor's income and a statement as to whether that amount totally or partially satisfies the periodic amount specified in the income deduction order;

(4) Specify that if a payor willfully fails to deduct the proper amount from the obligor's income, the payor is liable for the amount the payor should have deducted, plus costs, interest, and reasonable attorney's fees;

(5) Provide that the payor may collect up to \$25.00 against the obligor's income to reimburse the payor for administrative costs for the first income deduction pursuant to an income deduction order and up to \$3.00 for each deduction thereafter. The payor of income may not deduct a fee for complying with any order or notice for enrollment in a health benefit plan;

(6) State that the income deduction order and the notice to payor, and in the case of a delinquency the notice of delinquency, are binding on the payor until further notice by the obligee, IV-D agency, or the court or until the payor no longer provides income to the obligor;

(7) Instruct the payor that, when the payor no longer provides income to the obligor, the payor shall notify the obligee and shall also provide the obligor's last known address and the name and address of the obligor's new payor, if known, and that, if the payor willfully violates this provision, the payor is subject to a civil penalty not to exceed \$250.00 for the first violation or \$500.00 for any subsequent violation. If the IV-D agency is enforcing the order, the payor shall make these notifications to the agency instead of to the obligee. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order;

(8) State that no payor may discharge an obligor by reason of the fact that income has been subjected to an income deduction order under Code Section 19-6-32 and that a violation of this provision subjects the payor to a civil penalty not to exceed \$250.00 for the first violation or \$500.00 for a subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order, if any support is owing. If no support is owing, the penalty shall be paid to the obligor;

(9) Inform the payor that the income deduction order has priority over all other legal processes under state law pertaining to the same income and that payment, as required by the income deduction order, is a complete defense by the payor against any claims of the obligor or his creditors as to the sum paid;

(10) Inform the payor that if the payor receives income deduction orders requiring that the income of two or more obligors be deducted and sent to the same depository, he may combine the amounts paid to the depository in a single payment as long as he identifies that portion of the payment attributable to each obligor; and

(11) Inform the payor that if the payor receives more than one income deduction order against the same obligor, he shall contact the court for further instructions. Upon being so contacted, the court shall allocate amounts available for income deduction giving priority to current child support obligations up to the limits imposed under Section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b).

(f) At any time an income deduction order is being enforced, the obligor may apply to the court for a hearing to contest the continued enforcement of the income deduction order on the same grounds set out in subsection (c) of this Code section, with a copy to the obligee and, in IV-D cases, to the IV-D agency. The application does not affect the continued enforcement of the income deduction order until the court enters an order granting relief to the obligor. The obligee of the IV-D agency is released from liability for improper receipt of moneys pursuant to an income deduction order upon return to the appropriate party of any moneys received.

(g) An obligee, or his agent, shall enforce income deduction orders against an obligor's successor payor who is located in this state in the same manner prescribed in this Code section for the enforcement of an income deduction order against a payor.

(h) The provisions of Article 3 of Chapter 11 of this title, the "Uniform Interstate Family Support Act," apply to all income deduction orders originating in this state and directed to another state. In addition, the provisions of Article 3 of Chapter 11 of this title, the "Uniform Interstate Family Support Act," apply to all income withholding orders originating in another state and directed to this state.

(i) Certified copies of payment records maintained by a child support receiver or the IV-D agency shall, without further proof, be admitted into evidence in any legal proceeding in this state.

(j) No payor shall discharge an obligor by reason of the fact that income has been subjected to an income deduction order under Code Section 19-6-32. A payor who violates this paragraph is subject to a civil penalty not to exceed \$250.00 for the first violation or \$500.00 for any subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order, if any support is owing. If no support is owing, the penalty shall be paid to the obligor.

(k) When a payor no longer provides income to an obligor, he shall notify the obligee and, if the obligee is an IV-D applicant, the IV-D agency and shall provide the obligor's last known address and the name and address of the

obligor's new payor, if known. A payor who willfully violates this subsection is subject to a civil penalty not to exceed \$250.00 for the first violation or \$500.00 for a subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order.

HISTORY: Code 1981, § 19-6-33, enacted by Ga. L. 1989, p. 861, § 3; Ga. L. 1990, p. 8, § 19; Ga. L. 1991, p. 950, § 2; Ga. L. 1993, p. 585, § 2; Ga. L. 1994, p. 1270, § 1; Ga. L. 1997, p. 1613, § 12; Ga. L. 1999, p. 1237, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1247, § 3.