
Rule CS 2
ENFORCEMENT TOOLS

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2.1. Purpose and Effective Date

2.1-1. This rule is promulgated for the purpose of establishing the enforcement tools that may be used when an obligor is no longer paying the amount required by a child support order.

2.1-2. This rule shall be effective June 24, 2009.

2.2. Definitions

2.2-1. In this rule:

- (a) “Administrative enforcement actions” means actions authorized by federal regulations which are taken to enforce a child support order without obtaining an order from the Family Court.
- (b) “Agency” means the Oneida Tribe Child Support Agency.
- (c) “Alternative payment plan” or “plan” means a negotiated agreement between the Agency and an obligor, or an order set by the Family Court, to establish terms for the payment of arrears.
- (d) “Equity” means the fair market value of property minus the liens on that property with priority over the child support lien.
- (e) “Lien amount” means the difference between the monthly amount of support due and the arrears in a case.
- (f) “Lien docket” means the registry kept by the State of Wisconsin containing the names of people who owe past-due child support.
- (g) “Monthly amount due” means the sum of court-ordered provisions for periodic payments due in one (1) month, including any arrears payment.
- (h) “Obligee” means the person or entity to whom child support is owed.
- (i) “Obligor” means the person who is obliged to pay child support to the obligee.
- (j) “Ownership interest” means any personal financial interest.
- (k) “Qualified child” means an individual who is no longer a minor but who, while still a minor, was determined to be disabled under Title II or Title XVI of the Social Security Act.
- (l) “Threshold” means an amount, expressed as either a percentage of the monthly amount due, a fixed dollar amount, or both, that the lien amount must equal or exceed before an administrative enforcement action may be used to enforce a child support order.

2.3. Compliance Plan

2.3-1. The Agency shall attempt to meet with a party who is found to be subject to enforcement action as soon as possible by sending a Letter of Non-Compliance within five (5) business days of being informed of a party’s failure to either pay support as ordered or to meet a required obligation or action.

- (a) The Letter shall set out the conditions the party has failed to comply with, outline the enforcement actions that may be taken and request the party meet with the Agency.

- (b) If the party does not respond to the Letter within five (5) business days after receipt of the letter, the Agency shall send a second Letter.
- (c) If the party fails to respond to the second Letter within five (5) business days after receipt of the letter, the Agency shall proceed with appropriate enforcement action.
- (d) If the party responds to the Letter, the Agency shall interview the party to determine the reasons and barriers for the non-compliance and create a Compliance Plan. The Compliance Plan may include an increase in payment and/or any activity that is necessary to ensure payment, including programs that focus on:
 - (1) Employment and training;
 - (2) Social service and mental health;
 - (3) Physical and learning disabilities;
 - (4) Tribal traditions and customs;
 - (5) Family counseling.
- (e) If the party successfully completes the Compliance Plan, no further enforcement action is necessary. However, if the party fails to complete the Compliance Plan, the Agency shall proceed with appropriate enforcement action.

2.4. Notice of Enforcement Actions

2.4-1. The enforcement actions in this rule may be applied when an obligor is no longer in compliance with a child support order and is not making efforts to comply with the order. An obligor shall be provided with at least thirty (30) days notice before an enforcement action is utilized, unless another time line is specified within this rule. An enforcement action shall be stayed and/or suspended after notice is given to the obligor if the obligor pays the debt in full or enters into, and maintains, an alternative payment plan.

2.4-2. *Notice of Delinquency.* In the event that an obligor owes a debt equal to or exceeding the monthly amount due, the Agency shall send a notice of delinquency to the obligor.

- (a) The notice shall inform the obligor of the following:
 - (1) The dates that the delinquency accrued;
 - (2) The total amount of the delinquency;
 - (3) Any prior agreement or showing of good cause to not wage withhold may be terminated and the obligor may be subject to wage withholding;
 - (4) The enforcement action that may be taken as a result of the delinquency;
 - (5) The obligor may request, in writing to the Agency, to negotiate an alternative payment plan with the Agency within ten (10) business days after the service of notice in order to stay any enforcement action;
 - (6) The obligor has ten (10) business days after the service of the notice of delinquency to file an objection with the Agency presenting good cause why an arrears payment or other enforcement action should not be implemented. The only allowable objections are:
 - (A) There is an error in the amount of current or overdue support; or
 - (B) The identity of the obligor is mistaken.
- (b) If the obligor does not file an objection or request to negotiate an alternative payment plan:
 - (1) the enforcement action shall be taken; and/or
 - (2) a wage withholding order, or revised order if one is already in place, shall be imposed on the payor. No more than an additional twenty percent (20%) of the current support payment order can be withheld to satisfy the delinquency

provided that the total amount withheld does not exceed forty percent (40%) of the obligor's monthly income.

(c) If a permissible objection is filed, the obligor shall be entitled to a hearing before any enforcement action is taken.

2.4-3. *Use of Mail.* The Agency shall send notices related to the enforcement of a child support order by mail to the last-known mailing address provided by the obligor. If the notice is returned, the Agency shall send notice to the obligor using the current employer mailing address provided by the obligor. If the notice to the obligor mailed to the obligor's employer is returned, the Agency shall use all appropriate tribal, federal, state and local resources to ascertain an obligor's current mailing address. If those resources are used for a period of sixty (60) days and a verified mailing address has not been identified, the Agency may proceed with the administrative enforcement action.

2.4-4. *Notice to the Obligee of Enforcement Proceedings.* The Agency shall provide written notice to the obligee when an enforcement action has been initiated against the obligor or when the obligor requests a hearing and the hearing has been scheduled. The notice to the obligee shall be sent at the same time notice is sent to the obligor.

2.4-5. *Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest in Property.* The Agency shall provide notice related to the seizure of property to any individual, other than the obligor, with a recorded ownership interest in property subject to seizure. The individual may request a hearing for a determination of the proportion of the value of the property that is attributable to his or her net contribution to the property. The hearing shall be requested within thirty (30) days after the notice was received by the individual.

2.5. Liens

2.5-1. The Agency shall have an obligor placed on the lien docket if the obligor owes a debt in one or more of the obligor's cases equal to or exceeding the monthly amount due or \$500.00, whichever is greater.

2.5-2. *Lien Amount.* The lien amount on the lien docket shall equal the sum of lien amounts from the cases in which the lien amount meets or exceeds the lien threshold.

2.5-3. *Filing Date.* The filing date on the lien docket is the date that a lien is first docketed and delivered to the register of deeds. The filing date is the effective date of the lien. The effective date does not change if the lien amount is adjusted up or down within five (5) years after the date that the lien is first docketed.

2.5-4. *Lien Priority.* The child support lien shall have priority over all other liens on property except tax and special assessment liens, purchase money mortgages, construction liens, environmental liens, liens that are filed or recorded before the child support lien becomes effective and any other lien given priority under the law.

(a) Property subject to a lien includes personal property in which the obligor has a recorded ownership interest.

(b) A child support lien is not effective against a good faith purchaser of titled personal property unless the lien is recorded on the title.

2.5-5. *Credit Bureau Reporting.* The Agency may report the total amount of an obligor's liens to the credit bureau, so long as the lien is fully enforceable and the case is not barred from credit bureau reporting.

2.5-6. *Denial of State-issued Grants and Loans.* Wisconsin state agencies may deny grants and loans to an obligor who is placed on the lien docket. These grants and loans include student loans and higher education grants, as well as mortgage loans from the Wisconsin Housing and Economic Development Authority (WHEDA).

- 2.5-7. The Agency shall, either on its own or in conjunction with the State, be responsible for:
- (a) updating the lien docket periodically.
 - (b) providing a copy of the lien docket to the appropriate register of deeds.
 - (c) responding to inquiries concerning information recorded on the lien docket.
 - (d) ensuring the satisfaction of a lien is recorded on the lien docket.
 - (e) renewing a lien if the lien amount equals or exceeds the lien threshold at the end of the five (5) year effective period.
 - (1) When a lien is renewed, the date on which the lien is renewed shall become the effective date of the lien, and a new five (5) year period shall commence.
 - (f) sending the obligor a notice when a lien has been renewed.
 - (g) developing procedures for releasing a lien and releasing specific property from a lien.

2.5-8. *Financial Record Review.*

- (a) An obligor may request a financial record review, within ten (10) business days of receiving a notice of a lien, to determine the correctness of the financial records in a case. The request shall be made in writing to the Agency.
- (b) Upon receiving a request for a financial record review, the Agency shall, at no charge to the obligor, provide the obligor with:
 - (1) all relevant financial records.
 - (2) information explaining how to interpret the records.
 - (3) a form the obligor may use to identify any alleged errors in the records.
- (c) Within twenty (20) days after receiving the relevant financial records, the obligor may:
 - (1) request a meeting with the Agency to review the financial records and to discuss any alleged errors.
 - (2) provide a statement of alleged error on the documents.
 - (A) The Agency shall review the records to determine whether the alleged error is correct and provide a written determination within sixty (60) days after the obligor's request for a financial record review is received as to whether the lien against the obligor is in the correct amount.
- (d) The Agency may proceed with the lien if:
 - (1) the obligor does not request a meeting with the Agency or provide a statement of alleged error within twenty (20) days after receiving the financial records; or
 - (2) no errors are found in the financial records of the case; or
 - (3) the arrears exceed the required threshold amount after any errors in the financial records are corrected.

2.6. Seizure of Property

2.6-1. When seizing property, the Agency shall presume that an obligor's equity or ownership in the property, whether an account or personal property, is an equal pro-rata share of the equity or ownership based on the number of individuals with a recorded ownership interest in the property.

2.6-2. *Account Seizure.* The Agency may initiate an account seizure if there is a lien against an obligor and the lien amount in the obligor's case equals or exceeds 300% of the monthly amount due in the order or \$1,000, whichever is greater.

- (a) The Agency may not issue a notice of seizure unless the sum of the funds in all of the obligor's financial accounts, minus expected seizure fees and any early withdrawal penalty, exceeds \$500. The first \$500 of each account shall not be frozen and/or seized.
- (b) The notice shall instruct the financial institution of the following:

- (1) The maximum amount frozen in an account may not exceed the amount specified by the Agency in the notice.
- (2) The maximum amount frozen in an account may not exceed the obligor's ownership interest.
- (3) A financial institution is not liable for encumbering or surrendering any assets held by the financial institution in response to instructions from the Agency for the purpose of enforcing a child support order.

2.6-3. *Seizure of Personal Property Other than Financial Accounts.* In addition to the requirements under (a) and (b) below, the Agency may initiate the seizure of personal property if there is a lien against an obligor and the lien amount equals or exceeds 600% of the monthly amount due in the order. Upon issuance of a written order of execution, non-exempt personal property may be seized and sold in a reasonable manner after notice to the owner in payment of a child support obligation that has been adjudicated delinquent by the Family Court. Ceremonial or religious property and real property are exempt from such writs of execution.

- (a) Personal Property. The Agency may seize personal property if the obligor's equity in the property, minus expected seizure fees, exceeds \$500 per item total.
- (b) The Tribe's "Disposition of Excess Tribal Property Policy" shall not apply to any property seized under this law.

2.7. Other Enforcement Tools.

2.7-1. *Attachment of Per Capita Payments.* The Agency may initiate the attachment and/or seizure of per capita payments of tribal members in accordance with applicable law.

2.7-2. *License Suspension.*

(a) The Agency may initiate the suspension or denial of occupational, fishing, recreational, motor vehicle and/or Oneida-issued licenses if there is a lien against an obligor that equals or exceeds 300% of the monthly amount due in the child support order, or \$1000, whichever is greater. Suspension of an occupational and/or motor vehicle license shall be pursued only as a last resort and the Agency shall not initiate the suspension of a license(s) if:

- (1) there is an order in place that prohibits the suspension of the license(s);
- (2) the obligor has filed for bankruptcy; or
- (3) action has already been taken to suspend the license.

(b) When an Oneida-issued license is suspended, that suspension shall be binding on and given effect by the license issuing agencies. Orders affecting licenses issued by other governmental agencies shall be sent to such agencies for enforcement.

2.7-3. *Intercept of Lump-Sum Pension Payments, Judgments and Settlements.* The Agency may initiate the intercept of lump-sum pension payments, judgments and/or settlements when an obligor has been placed on the lien docket.

(a) When initiating the intercept of lump-sum pension payments, judgments and/or settlements, the Agency shall specify in the notice that the amount withheld from the lump-sum pension payment, judgment or settlement may not exceed the obligor's ownership interest in the payment.

2.7-4. *Tax and Lottery Intercepts.* The Agency may coordinate with a federal or state agency in order to enforce a child support order through a tax and/or lottery intercept. Once an obligor has been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice is valid until all arrears are paid in full.

(a) Federal Tax Intercept. The Agency may certify a federal tax intercept when the requirements pertaining to federal tax intercept contained in an agreement between the State and the Tribe have been met.

(b) Wisconsin State Tax Intercept. The Agency may certify a Wisconsin state tax intercept when the following requirements are met:

(1) The arrears shall be at least one hundred fifty dollars (\$150).

(2) The arrears shall be at least thirty (30) days old.

(3) The arrears shall be for a minor child or a child who has reached the age of eighteen (18) within the last twenty (20) years.

(c) Wisconsin Lottery Intercept. When a case is certified for Wisconsin state tax intercept, it shall also be automatically certified for Wisconsin lottery intercept for lottery winnings of one thousand dollars (\$1,000) or more.

2.7-5. *Passport Denial*. If a federal tax intercept is in place and the obligor owes five thousand dollars (\$5,000) or more in arrears, an obligor may be denied a passport. The arrears must meet the criteria for federal tax intercept in order for passport denial to be used as an enforcement tool.

An obligor shall be removed from the passport denial list if:

(a) The federal tax intercept certification amount is zero (0);

(b) The obligor makes a lump-sum payment and/or negotiates a payment plan with the Agency;

(c) The obligor has to travel abroad because of a life-or-death situation involving an immediate family member, such as the obligor's parent, guardian, step-parent, child, step-child, grandparent, sibling, step-sibling, aunt, uncle or spouse; or

(d) The obligor was denied a passport in error.

2.8. Family Court Enforcement Action

2.8-1. If the Agency does not have the authority to conduct the appropriate enforcement action, or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the case shall be referred to the Family Court for enforcement.

2.8-2. The Family Court may order any of the enforcement actions the Agency is authorized to implement. In addition, the Family Court may order the following to enforce a child support order:

(a) Bonds and Other Guarantees. The Family Court may require an obligor to provide a surety, bond or guarantee to secure the payment of arrears, if wage withholding is not applicable, practical or feasible to secure payment of arrears.

(b) Claims Against Estates.

(1) The Family Court may approve a claim for past and future support against an obligor's estate.

(2) The Family Court may issue a restraining order against an estate from which an obligor will inherit.

(c) Community Service. The Family Court may order an obligor to perform community service. The number of hours of work required may not exceed what would be reasonable considering the amount of arrears the obligor owes. The obligor shall be provided a written statement of the terms of the community service order and that the community service order is monitored. The order shall specify:

(1) how many hours of community service the obligor is required to complete;

(2) the time frame in which the hours must be completed;

(3) how the obligor will report his or her hours; and

(4) any other information the Family Court determines is relevant.

(d) Contempt. An obligor who disobeys a lawful child support order shall be subject to punishment for contempt of court. An obligor found in contempt of court may be fined in an amount not to exceed one thousand dollars (\$1,000.00) per act of contempt and may not exceed five thousand dollars (\$5,000.00) in total. In instances of continuing contempt, each day shall constitute a separate act of contempt.

(e) Incarceration. The Family Court may order an obligor be incarcerated, contingent on the agreements necessary to enable the Tribe to incarcerate individuals. Before a jail sentence is imposed, the Family Court may provide other conditions that require a certain amount of money be paid or action be taken for an obligor to avoid incarceration.

2.8-3. *Criminal Non-Support*. A criminal non-support action may be initiated, in the appropriate county, against an obligor who has the ability to pay child support and willfully or intentionally failed to pay and the obligor knew or reasonably should have known he or she was legally obligated to provide.

2.9. Alternative Payment Plans

2.9-1. *Applicability of Alternative Payment Plans*. When an obligor is subject to administrative enforcement action, he or she may negotiate an alternative payment plan with the Agency.

2.9-2. *Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement Action*.

(a) In order to negotiate an alternative payment plan, an obligor shall submit a written request to the Agency. A written request to negotiate an alternative payment plan received by the Agency within ten (10) business days after the date of notice shall stay any administrative enforcement action. If a written request to negotiate an alternative payment plan is received by the Agency more than ten (10) business days after the date of notice, administrative enforcement action may be taken, as long as the requirements of 2.9-3 and 2.9-4 are met.

(b) An obligor may negotiate a plan with the Agency to have a license issued or renewed after it has been restricted, limited, suspended or refused.

(c) The obligor may submit a written request for a hearing on the reasonableness of the plan within ten (10) business days after the terms of the plan are agreed upon.

(d) If the Agency and the obligor are unable to reach agreement on the terms of a plan, a hearing may be conducted. The Family Court may order a plan by setting payments in the amounts and at the times it considers reasonable.

2.9-3. *Staying Administrative Enforcement Actions*. Administrative enforcement actions shall be stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a hearing is requested, until the Family Court determination has been made. To stay an administrative enforcement action means the following:

(a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of professional, occupational, fishing, recreational, motor vehicle and/or Oneida-issued licenses.

(b) Any frozen financial accounts shall remain frozen and shall not be seized.

(c) Personal property that has been seized shall not be sold.

2.9-4. *Suspension of Administrative Enforcement Actions*.

(a) When a plan has been negotiated between the obligor and the Agency, or the Family Court has determined that a plan is reasonable or has ordered a plan, the Agency shall suspend administrative enforcement actions as long as the obligor complies with the plan.

(b) If an obligor makes a full arrears payment, the administrative enforcement action shall be suspended.

2.9-5. *Proceeding with Administrative Enforcement Actions.* The Agency may continue with the administrative enforcement action if:

- (a) the obligor and the Agency are unable to negotiate a plan.
- (b) the Family Court determines that the plan is not reasonable.
- (c) the Family Court does not order a plan.

2.9-6. *Disclosure of Income and Assets.* The request to negotiate a plan shall include an agreement by the obligor to provide the Agency with a full disclosure of income and assets available. The obligor shall provide complete income and assets information to the Agency within five (5) business days of the request to negotiate a payment plan.

2.9-7. *Terms of an Alternative Payment Plan.*

(a) An alternative payment plan may include a lump-sum payment, or periodic payments on the arrears, or both, subject to the following standards:

(1) The sum of any periodic payment established under the plan and any other payment of support ordered by the Family Court, when subtracted from the obligor's gross income, may not leave the obligor below 100% of the poverty line established under 42 USC 9902 (2) unless the obligor agrees otherwise.

(2) When establishing an alternative payment plan, the Agency shall consider the factors used by the Family Court in determining whether the use of the percentage standard is unfair to the child or any of the parties.

(b) Periodic payments under the plan may be made through wage withholding in amounts in addition to the amount ordered in the child support order that is in effect.

2.9-8. *Default on an Alternative Payment Plan.* In the event that the obligor defaults on the plan, the Agency shall notify the obligor in writing that an administrative enforcement action shall be implemented unless the lien is paid in full.

2.9-9. *Renegotiation of an Alternative Payment Plan.* After the entry of an alternative payment plan, the plan may be renegotiated upon the written request of the obligor or Agency if the requesting party can show a substantial change in circumstances. A substantial change in circumstances includes any of the following:

- (a) A change in the obligor's income or assets, including the sale or purchase of real or personal property.
- (b) A change in the obligor's earning capacity.
- (c) Any other factor that the Agency determines is relevant.

2.9-10. *Obligors with Cases in Multiple Jurisdictions.*

(a) When multiple child support agencies initiate administrative enforcement actions against the same obligor, and the obligor negotiates an alternative payment plan with one of the agencies, the plan does not preclude any other child support agency from proceeding with its administrative enforcement action.

(b) If a child support agency which has a lien against property of an obligor negotiates an alternative payment plan with the obligor, the agency may receive proceeds from the sale of the obligor's personal property under the lien including, but not limited to, proceeds from administrative enforcement actions taken by other child support agencies.

End.

Emergency Adopted- BC-06-30-08-C (Expired)
Emergency Extended- BC-12-10-08-H (Expired)
Permanently Adopted - BC-06-24-09-B
Emergency Amended- BC-10-28-09-E
Amended- BC-02-24-10-G
Amended - BC-02-23-11-E

Amended- BC-06-22-11-K
Amended - BC-10-10-12-C
Amended - BC-08-13-14-E