

How do I file?

There are four (4) things that need to be filed with the Trial Court.

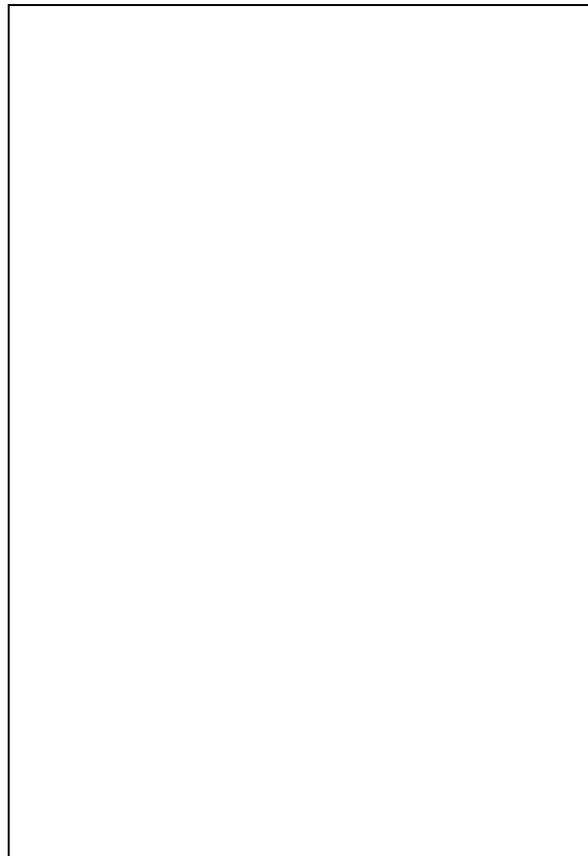
1. *Petition to Register & Enforce a Foreign Judgment/Order for Child Support*
2. Certified Copy of Foreign Order
3. \$20.00 Filing Fee
4. Certified Copy of Account Statement if Arrears are Sought



How do I modify?

There are five (5) things that need to be filed or done to effectuate a modification of child support withholding in the Trial Court.

1. *Motion* (letter requesting the Court to do something)
2. Certified Copy of the Foreign Order
3. Certified Copy of the Account Statement if Arrears are Sought
4. Send Copies to All Parties
5. File a *Certificate of Service* w/ Court



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HCN TRIAL COURT

*Answering Your
Questions About*

***Child Support
Enforcement
in the
Ho-Chunk Nation
Trial Court***

Petition A party seeking to register and enforce an existing child support order must file a written *Petition* with the Court. Parties may obtain a copy of the *Petition to Register and Enforce a Foreign Judgment/Order for Child Support* on the Court's website at www.ho-chunknation.com/?PageId=28. Parties can also pick up a copy of the *Petition* at the Court or have a copy mailed to them by contacting the Court at the numbers listed on the back page. A party may petition the Court to register and enforce a foreign child support order without using the *Petition* form, but must make sure that the self-generated petition includes the following information:

- The name, address, telephone number of the petitioner (child support recipient) and the name, address, telephone number, social security number, and the tribal enrollment number (if applicable) of the respondent (child support payor)
- Whether the respondent is an enrolled member or employee of the Ho-Chunk Nation
- The names and dates of birth of the children on whose behalf child support is owed
- Whether the petitioner is filing the claim against the wages and/or the per capita distributions of the respondent.

Certified Order and Account Statement All *Petitions* must be accompanied by a certified copy of the existing child support order. RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE (hereinafter RFCSO), 4 HCC § 2.4a. If the petitioner is requesting the Court to enforce the respondent's arrears obligation then a certified copy of the respondent's account history statement must also accompany the *Petition*. The Court is prohibited from withholding a tribal member's per capita monies for interest or miscellaneous costs or fees. *Id.*, § 2.8b. Thus, the account history statement must break down the total arrearage into those amounts constituting arrears principal and those amounts constituting arrears interest.

Filing Fee All *Petitions* must be accompanied by a \$20.00 filing fee. *See HCN R. Civ. P.*, Appendix.

Summons & Answer Once a *Petition* is filed and a *Summons* is issued to the respondent, the respondent has twenty (20) days to respond to the claim. RFCSO, § 2.4c. If, at the end of the twenty (20) days, the respondent has not responded in writing to the Court and the petitioner, the Court may enter a default judgment against the defendant. *Id.*, § 2.6c. If the respondent answers with a valid defense within the specified timeframe, the Court may convene a hearing. This hearing is not to review the merits of the underlying *Order*, but to determine: (1) whether the foreign court or administrative agency had jurisdiction to enter the child support order, (2) whether the defendant had due process including proper notice and a fair hearing, (3) whether collusion, fraud, or clear mistakes of law or fact are present, (4) whether there is conflict with any state or federal law, and (5) whether there is a conflict with the Nation's law or public policy. *Id.*, § 2.5.

Statutory Amount For cases involving child support withholding against a per capita payment, the Court must abide by the RFCSO, which states that the Court may withhold a maximum of sixty percent (60%) of a tribal member's per capita distribution for child support, including arrears. The Court maintains discretion in accommodating the child support allocation in a given case. The Court must give credence to the dictates of the foreign judgments. However, child support withholding against wages is bound by state law and does not fall under the authority of the RFCSO

Child Support Defined The Court utilizes the federal definition of "child support" when extending full faith and credit and/or comity to a foreign order. *See Kelli O'Connor et al. v.*

Domonic D. Bell, CS 00-28, 02-12 (HCN Tr. Ct., Oct. 11, 2002) at 14-16. The FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT incorporates the following definition: "'child support' means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child." 28 U.S.C. § 1738B(b).

Receipt of Child Support Funds In November 2008, the Trial Court ordered the HCN Department of the Treasury to distribute per capita funds for child support to the Wisconsin Support Collection Trust Fund on a monthly rather than quarterly basis. All other states and tribes shall receive child support funds on a quarterly basis. Under federal law, the state or tribe has 2-3 business days to forward child support funds to payees. Please consult with your relevant child support agency or court for more information as to receipt of child support funds.

Modification A party seeking to modify the amount withheld from the respondent's per capita distributions or wages for child support must file a *Motion* requesting that the Court so modify. *See HCN R. Civ. P.* 19(A). A certified copy of the foreign court order modifying current support must accompany the *Motion*. RFCSO, § 2.7. If the party is requesting that the Court enforce and/or update arrearage withholding, a certified copy of the respondent's account payment history must accompany the *Motion*. As aforementioned, the account history must separate arrearage amounts constituting principal and those amounts constituting interest or other costs. *Id.*, § 2.8b. The moving party must serve the other parties to the case with all documents submitted to the Court and notify the Court of such. This can be done by filing a *Certificate of Service* or *Affidavit of Mailing*. *See HCN R. Civ. P.* 5(B). Parties may obtain a copy of the *Certificate of Service* on the Court's website at www.ho-chunknation.com/?PageId=28.