

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,

IN AND FOR _____ COUNTY, FLORIDA

CASE NO.: _____

FAMILY DIVISION

_____, Petitioner

and

_____, Respondent.

**MOTION FOR INCOME DEDUCTION ORDER OR WRIT OF CONTINUING
WAGE GARNISHMENT**

COMES NOW, the Petitioner, _____, by and through the undersigned counsel, and moves this Honorable Court to enter an income deduction order pursuant to Florida Statute 61.1301 or alternatively, a writ of continuing wage garnishment pursuant to 77.0305, and in support shows as follows.

1. Respondent has a child support obligation pursuant to his/her Final Judgment for Dissolution of Marriage previously entered on _____. The monthly child support obligation is \$_____.
2. Respondent has failed to pay the child support obligation from _____ through _____. This results in _____ months of delinquency multiplied by the support obligation per month and a resulting arrearage of \$_____.
3. Florida Statute 61.1301(3)(a) states, **“It is the intent of the Legislature that this section may be used to collect arrearages in child support or alimony payments.”** (Emphasis added). The legislature intended for the enforcement of an arrearage through an income deduction order be left to the trial court’s discretion. Dept. of Health and Rehab. Serv. v. Beckwith, 624 So.2d 395 (Fla.App. 5 Dist. 1993).
4. Petitioner should be entitled to an income deduction order pursuant to Florida Statutes 61.1301 in order to enforce child support/ alimony payments for both ongoing support obligations and arrearages.

5. Florida Statute 61.1301(1)(b)1 states, “The income deduction order shall direct a payor to deduct from all income due and payable to the obligor the amount required by the court to meet the obligor’s support obligation including any attorney’s fees or costs owed and forward the deducted amount pursuant to the order.”
6. Florida Statutes 61.1301(1)(b)2 states, **“The income deduction order shall state the amount of arrearage owed, if any, and direct a payor to withhold an additional 20 percent or more of the periodic amount specified in the order establishing, enforcing, or modifying the obligation, until full payment is made of any arrearage, attorney’s fees and costs owed, provided no deduction shall be applied to attorney’s fees and costs until the full amount of any arrearage is paid.”** (Emphasis added).

Petitioner is seeking an income deduction order which would direct the payor/employer to deduct the obligor’s ongoing support obligations. The Petitioner further seeks an income deduction order directing the payor/employer to deduct an additional 20 percent or more to be applied to the arrearage set forth above, attorney’s fees and costs owed on as may be determined.

7. Alternatively, Florida Statute 77.0305 allows for wage garnishment to apply to past arrearages. See Florida Proceedings After Dissolution of Marriage, The Florida Bar, Continuing Legal Education, Eighth Edition, 2007. See also, Cooper v. Cooper, 546 So.2d 107 (Fla.App. 4 Dist. 1989) (holding that a judgment for arrearages of alimony or child support may be enforced against the wages or salary of the head of the family by a continuing writ of garnishment regardless of the fact that the order giving rise to the arrearage no longer continues in effect.).
8. Petitioner has retained the undersigned counsel and has agreed to pay to them a reasonable fee for their services for which Respondent should be liable for. Accordingly, Petitioner requests that Respondent reimburse undersigned counsel whom Petitioner retained for this matter in the amount of

\$_____. Petitioner further requests an award of all taxable court costs.

WHEREFORE based upon the facts, authorities, and the record established to date, and given the outstanding child support and/or alimony obligation, Petitioner requests that this Honorable Court enter an income deduction order or alternatively a continuing writ of wage garnishment directed to Respondent's employer to ensure and secure payment of ongoing support obligations, arrearages, attorney's fees, court costs, and fashion such further relief as may be just and proper.

Dated: _____.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed and/or emailed to Respondent at _____, email (if known) Dated:_____.

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