

§ 105B-3. Procedure.

(a) Notwithstanding any other provision of the law, in any case in which the Authority obtains a judgment against a debtor as defined in this Chapter, a judge of the district court in the county where the debtor resides or is found may enter an order of withholding whereby no more than ten percent (10%) of the debtor's monthly disposable earnings shall be withheld for the repayment of the debt owed to the Authority. For purposes of this section, "disposable earnings" is defined as that part of the compensation paid or payable to the debtor for personal services; whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension or retirement program) which remains after the deduction of any amounts required by law to be withheld.

(b) The Authority may move the court for an order of withholding. The motion shall be verified and shall state the name and address of the employer of the debtor, the debtor's monthly disposable earnings from said employer (which may be based upon information and belief), and the amount sought to be withheld, not to exceed ten percent (10%) of the debtor's monthly disposable earnings. The motion shall be accompanied by a letter to the debtor which includes information that the Authority will withdraw the motion if the debtor executes a sworn statement to the Authority that his family income is at or below two hundred percent (200%) of the annual federal poverty guidelines. The letter shall include the definitions of family and family income, the federal poverty guidelines in effect as of the date of the letter, and the procedure to contest the proposed garnishment. The Authority shall provide a form to the debtor for the purpose of securing his sworn statement about the level of his annual family income. The motion shall be served on both the debtor and his alleged employer either personally or by certified mail, return receipt requested as set forth in G.S. 1A-1, Rules of Civil Procedure.

(c) At any time following the filing with the district court of a motion under this section, the debtor may inspect and copy records relating to the debt or debts at the offices of the Authority.

(d) In lieu of or in conclusion of any legal proceeding instituted under this section, the debtor may enter into a written agreement with the State Education Assistance Authority to establish a schedule for the repayment of the debt or debts by periodic payments made directly to the Authority. Upon acceptance of any such repayment agreement, the Authority shall withdraw the motion for withholding.

(e) **Contested Withholding.** – The debtor or the payor may contest the withholding only on the basis of mistake of fact. To contest the withholding, the debtor or the payor must, within 30 days from the date of service, request a hearing before the district court by serving a written request upon the court and the Authority which specifies the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the Authority and the debtor or the payor, whoever has asserted the mistake of fact, no hearing shall occur. Otherwise, a hearing shall be held and a determination made within 30 days of the filing of the request by the debtor or payor. Following the hearing the court may enter an order of withholding not to exceed ten percent (10%) of the debtor's monthly disposable earnings and not to reduce the debtor's annual family income to a point at or below two hundred percent (200%) of the annual federal poverty guidelines. However, the court shall not enter an order of garnishment unless the court makes findings of fact that the family income of the debtor at the time of the hearing exceeds two hundred percent (200%) of the annual federal poverty guidelines. If an order of withholding is entered, a copy of same shall be served on the debtor and the payor either personally or by certified mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be

withheld for each pay period. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(f) **Uncontested Withholding.** – If neither the debtor nor the payor contests the withholding as provided in subsection (e) within the 30-day response period, the court may, without further hearing, enter an order of withholding not to exceed ten percent (10%) of the debtor's monthly disposable earnings and not to reduce the debtor's annual family income to a point at or below two hundred percent (200%) of the annual federal poverty guidelines. However, the court shall not enter an order of garnishment unless the court makes findings of fact that the family income of the debtor at the time of the hearing exceeds two hundred percent (200%) of the annual federal poverty guidelines. If an order of withholding is entered, a copy of same shall be served on the debtor and the payor either personally or by certified mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be withheld for each pay period. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(g) Upon receipt of an order of withholding, the payor shall transmit without delay the amount ordered to be withheld to the clerk of superior court who shall disburse it to the State Education Assistance Authority. The amount ordered to be withheld shall be increased by a processing fee of two dollars (\$2.00) to be retained by the payor, unless waived, for each withholding under the order. (1989, c. 475, s. 1.)