

**CHAPTER 2-3**  
**GARNISHMENT OF EARNINGS**  
**(11/20/1999)**

# GARNISHMENT OF EARNINGS

## Table of Contents

1.	.....	General Provisions
2.	.....	Definitions
3.	.....	Jurisdiction of the Court
4.	.....	Application of Tribal Court Code
5.	.....	Commencement of Garnishment
6.	.....	Liability of Garnishee
7.	.....	Objection to Garnishment; Request for Hearing
8.	.....	Continuing Lien on Earnings
9.	.....	Continuing Effect on the Garnishment
10.	.....	Reporting by Creditor
11.	.....	Hearings
12.	.....	Priorities
13.	.....	Exemptions
14.	.....	Sovereign Immunity
15.	.....	Effective Date; Amendment
16.	.....	Forms

## **GARNISHMENT OF EARNINGS**

### **§ 1. General Provisions**

1.1. Enacted by the General Council of the Forest County Potawatomi Community, acting pursuant to the authority vested in it by Article IV, Section 1(d) of the Constitution, to enact, make known and enforce ordinances governing the conduct of persons within the jurisdiction of the Tribe, including the power to establish a Tribal Court and to define its powers, authority and procedures:

#### 1.2. Declaration of Intent and Purpose

- (A) This Ordinance provides the exclusive means to enforce judgments against Earnings earned within the limits of the Reservation and trust lands of the Forest County Potawatomi Community or against Earnings earned by those employed by the Tribe wherever that employment occurs. This Ordinance is not applicable to garnishments of amounts which are not Earnings, as defined below.
- (B) This Ordinance does not authorize garnishment of tribal per capita payments to Tribal members.
- (C) Judgments obtained from the Tribal Court are enforceable under this Ordinance. Foreign judgments, decrees, and orders obtained from other tribal, federal and state courts of competent jurisdiction, including judgments, decrees and orders for child support or spousal maintenance, are enforceable under this Ordinance, subject to compliance with the Tribe's Foreign Judgment Enforcement Ordinance.
- (D) This Ordinance is intended to address garnishment issues in a manner consistent with the Indian Civil Rights Act, 25 U.S.C. §§ 1301 et seq., and in a manner which reflects Tribal traditions of fairness and respect, by providing for impartial hearings respectful of an individual's right to due process. Both creditors and debtors are entitled to this traditional fairness and respect.
- (E) Further, this Ordinance is intended to ensure that the inherent sovereignty of the Forest County Potawatomi Community is enriched and preserved.

#### 1.3. Construction

This Ordinance shall be liberally construed to accomplish its purpose and intent and to preserve the principles of Tribal law, customs and traditions.

### **§ 2. Definitions**

As used in this Ordinance:

“Business day” means 8.00 am to 4.30 p.m., Monday through Friday, not including Federal, State or Tribal holidays.

“Creditor” means the person to whom a money judgment has been awarded.

“Debtor” means the person against whom a money judgment has been awarded.

“Disposable Earnings” means that part of the Debtor’s gross Earnings for a pay period remaining after deductions required by state and federal law, such as social security taxes, federal and state income taxes, and any tribal taxes, all of which must be listed on the Debtor’s wage statement.

“Earnings” means compensation payable for personal services, whether designated as wages, salary, commission, bonus or otherwise.

“Garnishment” means the legal process through which the Earnings of a Debtor are required to be withheld by a Garnishee for payment of a judgment.

“Garnishee” means the employer named in a garnishment application as the one who owes Earnings to the Debtor.

“Judgment” means any final judgment, decree or order from the Tribal Court or any foreign judgment, decree or order from a tribal, federal or state court of competent jurisdiction awarding money to one or more parties. It includes a judgment, decree or order for child support or spousal maintenance, but does not include a judgment for taxes, a fine or other governmental penalty. Foreign judgments, decrees and orders must be domesticated in compliance with the Tribe’s Foreign Judgment Enforcement Ordinance.

“Nonexempt Earnings” means the portion of Disposable Earnings subject to garnishment under Section 13 of this Ordinance.

“Reservation” means the reservation of the Forest County Potawatomi Community, including all trust land wherever located.

“Tribe” means the Forest County Potawatomi Community.

“Tribal Court” means the Forest County Potawatomi Community Tribal Court.

### **§ 3. Jurisdiction of the Court**

#### **3.1. Subject Matter Jurisdiction**

The Tribal Court shall have original and exclusive subject matter jurisdiction over all proceedings under this Ordinance.

#### **3.2. Personal Jurisdiction**

The Tribal Court shall have personal jurisdiction over the Creditor by reason of the Application, over the Garnishee by reason of its presence on the Reservation, and over the Debtor, by reason of his or her employment by the Tribe, or by reason of his or her Earnings earned on the Reservation.

#### **§ 4. Application of Tribal Court Code**

This Ordinance is intended to supplement, not supersede, the Tribal Court Code and, except as otherwise provided herein, the general rules of practice and procedure contained in the Tribal Code shall apply to all actions and proceedings under this Ordinance.

#### **§ 5. Commencement of Garnishment**

##### **5.1. Application for Garnishment Order**

- (A) A Creditor who has a judgment against the Debtor, either originally from the Tribal Court or domesticated in the Tribal Court under the Tribe's Foreign Judgment Enforcement Ordinance, may file an Application for a Garnishment Order, naming the Creditor as the Plaintiff, the Judgment Debtor as the Defendant and the employer as the Garnishee.
- (B) The Creditor's Application shall comply with the Tribal Code, shall be signed and notarized, and shall state:
  - (1) That he/she is a party in a lawsuit to whom a money judgment has been awarded.
  - (2) The name and mailing address of the Debtor against whom the judgment was awarded.
  - (3) That he/she has made demand on the Debtor for payment of the amount due, but the Debtor has not paid that amount and the Debtor has not agreed to pay the Nonexempt Earnings to the Creditor until the judgment is satisfied.
  - (4) The amount of the outstanding balance due on the judgment.
  - (5) The name and address of the Garnishee or his or her authorized agent.
  - (6) That the Garnishee is believed to be an employer of Debtor and owes or will owe the Debtor Disposable Earnings.
  - (7) The Application shall also state that all statements contained therein are true and correct to the best of the Creditor's knowledge and belief.
  - (8) The Creditor shall attach to the Application a certified or authenticated copy of the Judgment.

## 5.2. Garnishment Order

- (A) If a Creditor has filed a complete Application that complies with this Ordinance, the Tribal Court may issue a Garnishment Order to the Garnishee. The Order shall state:
  - (1) The amount of the outstanding balance due on the Judgment, as reflected in the Application.
  - (2) The name and address of the Garnishee.
  - (3) The name and address of the Creditor and his or her attorney, if any.
  - (4) The name and mailing address of the Debtor.
  - (5) The Order shall command that the Garnishee not pay to the Debtor or for his or her benefit any Nonexempt Earnings until further order of the Court. The Order shall also command that the Garnishee file an Answer to the Application, within ten (10) business days after the Order is served on the Garnishee.
- (B) After the Tribal Court issues an original Garnishment Order, the Creditor shall serve on the Garnishee a copy of the Application, with Judgment attached, two (2) copies of the Garnishment Order, and two (2) copies of the Notice to Debtor and Request for Hearing form.
- (C) Not later than three (3) days after the Garnishment Order is served on the Garnishee, the Creditor shall serve on the Debtor copies of the Application, with judgment attached, the Garnishment Order, and Notice to Debtor and Request for Hearing Form.

## 5.3. The Garnishee's Answer

- (A) The Garnishee shall file in Tribal Court a written Answer to the Creditor's Application within ten (10) business days of being served. The Answer shall be signed by the Garnishee or his or her authorized representative and shall state:
  - (1) Whether the Judgment Debtor was employed by the Garnishee on the date the Order was served.
  - (2) Whether the Garnishee anticipates owing Earnings to the Debtor within sixty (60) days after the date of service of the Order.
  - (3) If the Garnishee is unable to determine the identity of the Debtor after making a good faith effort to do so, a brief statement of the effort made and reasons for such inability.

- (4) The dates of the Debtor's next two (2) pay days occurring after the date of service of the Garnishment Order.
  - (5) The amount of Earnings and Disposable Earnings payable to the Debtor on the next two (2) pay days.
  - (6) The pay period of the Debtor, whether weekly, biweekly, semimonthly, monthly or another specified period.
  - (7) The amount of the outstanding judgment now due and owing as stated in the Order.
  - (8) Whether the Debtor is subject to an existing wage assignment, garnishment or levy recognized by Garnishee, and if so, a description of such assignment, garnishment or levy.
  - (9) The name, address and telephone number of the Judgment Creditor.
  - (10) The date and manner of service the Garnishee shall use to serve a copy of the Answer on the Debtor and Creditor.
- (B) Upon filing the Answer in Tribal Court, the Garnishee shall mail or hand deliver a copy of the Answer on the Creditor. At the same time the Garnishee shall serve a copy of the Answer and a copy of the Notice to Debtor and Request for Hearing form on the Debtor.

#### 5.4. Service of Documents

- (A) Service on Creditor. Documents shall be served upon the Creditor by regular mail to the address as shown on the Application, or by hand delivery to the Creditor. If the Creditor is represented by an attorney, service on the attorney is service on the Creditor.
- (B) Service on the Debtor. Documents shall be served upon the Debtor by personal service, by certified mail to the Debtor's last known address, or by hand delivery to an adult member of the Debtor's family or household who is present at the Debtor's residence. If the Debtor is represented in the garnishment proceeding by an attorney, service on such attorney is service on the Debtor.
- (C) Service on the Garnishee. Documents shall be served upon the Garnishee during a business day by hand delivery to the place of business where the Earnings were earned, or by certified mail to the employer's place of business where the Earnings were earned.
- (D) Proof of Service. The party serving documents shall file with the Tribal Court a Proof of Service indicating all documents served, on whom they were served, and the date and manner of service. The Proof of Service may be filed as a separate

document or may be attached to the Court's copy of the document that has been served.

## **§ 6. Liability of the Garnishee**

6.1. The Garnishment Order is a lien on the Nonexempt Earnings of the Debtor from the date of service on the Garnishee. The Garnishee shall not pay Nonexempt Earnings to the Debtor after service of the Garnishment Order except upon further order of the Court.

6.2. The Garnishee shall not be required to pay the Creditor except upon Court order, and in no event prior to the time when the Garnishee is required to pay Earnings to the Debtor.

6.3. The Garnishee shall not otherwise be liable for the underlying debt, costs and interest owed to the Creditor.

## **§ 7. Objection to Garnishment; Request For Hearing**

7.1. Any party, including the Debtor, who has an objection to the Application, the Garnishment Order, the Answer of the Garnishee, or otherwise, may file with the Tribal Court a written Objection and Request for Hearing. The hearing must be requested no later than ten (10) calendar days after receipt of the Application, Order, Answer or other document objected to, unless good cause is shown for filing later. At the time of filing the Objection and Request for Hearing, the party filing the Objection shall serve a complete copy thereof on all parties, including the Creditor, Debtor and the Garnishee.

7.2. The hearing shall be held as soon as is convenient to the Court. In no event shall the hearing be held later than fifteen (15) calendar days after the Request for Hearing was received unless the Debtor consents.

7.3. A party requesting a hearing must state the grounds for his or her Objection in writing, but that party is not limited to those written objections at the hearing.

7.4. The Court shall notify the parties of the date and time of the hearing at least five (5) business days before the date of the hearing.

## **§ 8. Continuing Lien on Earnings**

8.1. If it appears from the Answer of the Garnishee that the Debtor was an employee of Garnishee and that the Garnishee owed Nonexempt Earnings to the Debtor when the Garnishment Order was served, or Nonexempt Earnings would be owed within sixty (60) days thereafter, and there is no timely objection to the Answer filed by the Debtor or other party, on application by the Creditor the Court shall order that the Nonexempt Earnings withheld by the Garnishee be paid to the Creditor. The Court shall further order that the garnishment is a continuing lien against the future Nonexempt Earnings of Debtor until the judgment is paid in full.

8.2. If the Debtor or other party files a timely Objection to the garnishment and a Request for a Hearing, the Tribal Court shall conduct a hearing and shall thereafter determine:



- (A) Whether the Garnishment Order is valid against the Debtor;
- (B) The amount of the outstanding balance due on the judgment at the time the Garnishment Order was served;
- (C) Whether the Debtor was employed by the Garnishee when the Garnishment Order was served; and
- (D) Whether Nonexempt Earnings were owed or would be owed by the Garnishee to the Debtor within sixty (60) days after the service of the Garnishment Order.

8.3. If the Court makes affirmative findings under Sections 8.2(A) and 8.2(C) or (D), the Court shall order that the Nonexempt Earnings, if any, withheld by the Garnishee after service of the Garnishment Order be paid to the Creditor and shall further order that the garnishment is a continuing lien against the future Nonexempt Earnings of the Debtor. Otherwise the Court shall order the Garnishee discharged from the Garnishment.

### **§ 9. Continuing Effect of the Garnishment**

Once the garnishment Application has been filed and the Garnishment Order served and the time for filing an Answer has passed, the Earnings garnishment is in effect. After entry of an order of continuing lien under Section 8.1 or 8.3, above, and for each pay period thereafter until the Judgment is paid in full, the Garnishee shall deliver the Nonexempt Earnings to the Creditor or his or her attorney, and a description of each such payment shall be served on the Debtor by the Garnishee.

### **§ 10. Reporting By Creditor**

10.1. On the tenth (10<sup>th</sup>) day of each month after the first payment is received from the Garnishee reducing the outstanding balance on the Judgment, the Creditor shall prepare and file a written report and serve it on the Garnishee and Debtor. The reports shall state:

- (A) The beginning and ending date of the reporting period for that report. The beginning date for the first report is the date the Garnishment Order was served on the Garnishee.
- (B) The date and amount of each payment received during the report period.
- (C) The total amount credited to the Judgment balance for the report period.
- (D) The total outstanding balance then due on the Judgment.

10.2. The Creditor is obligated to take reasonable action to assure that the Garnishee does not withhold more Nonexempt Earnings of the Debtor than are needed to satisfy the Judgment.

- (A) Immediately after the Judgment is satisfied, the Creditor shall file with the Tribal Court a Release of the Garnishment Order and shall serve a copy on the Garnishee and Debtor.

## **§ 11. Hearings**

- 11.1. The Creditor has the burden to prove that relief should be granted.
- 11.2. The standard of proof shall be clear and convincing evidence.
- 11.3. Appeals of garnishment orders shall be governed by the appeal procedures contained in the Tribal Code.

## **§ 12. Priorities**

- 12.1. No more than one (1) garnishment proceeding may be maintained against a Debtor at any one (1) time, provided, however, that two (2) or more garnishment proceedings to pay Judgments for child support or spousal maintenance may be maintained against a Debtor at one time. Except as provided in subsection (B), below, conflicting Earnings garnishments rank according to priority in time of service.
- 12.2. Garnishments which are not to pay Judgments for child support or spousal maintenance are inferior to Garnishments to pay Judgments for child support or spousal maintenance, regardless of priority in time of service.

## **§ 13. Exemptions**

- 13.1. During any pay period the Debtor's Earnings shall not be subject to garnishment in excess of fifteen percent (15%) of Disposable Earnings, except that a greater percentage may be deducted with the written consent of the Debtor.
- 13.2. The Debtor's Earnings shall be totally exempt from garnishment if:
  - (A) The Debtor's household income is below the poverty line as established by 42 U.S.C. § 9902(2), or
  - (B) The Debtor received public assistance within six (6) months prior to the Garnishment Application, or is eligible for public assistance at any time during the effectiveness of the Garnishment.
- 13.3. If the Debtor is a tribal elder, then the Tribal Court may refuse Garnishment of the Debtor's Earnings if just and equitable given the particular circumstances of the case.
- 13.4. If the Creditor is a child support claimant, the Tribal Court may permit Garnishment of the Debtor's Earnings to the extent the Court deems just and equitable given the particular circumstances of the case, up to a maximum of thirty percent (30%) of Disposable Earnings, without regard to the limitation in Section 13.1, above.
- 13.5. When two (2) or more garnishment proceedings to pay Judgments for child support or spousal maintenance are maintained at one (1) time, the Tribal Court shall allocate the thirty percent (30%) of Disposable Earnings between the Creditors in an equitable fashion given the particular circumstances of each case.

#### **§ 14. Sovereign Immunity**

The Tribe does not waive any aspect of its Sovereign Immunity, except to the extent that, as an employer, it permits itself to be garnished in Tribal Court for the purpose of reaching the Earnings owed to a tribal employee. Notwithstanding Section 6, above, the Tribe shall not be liable to the Creditor to the extent the Tribe pays the Debtor.

#### **§ 15. Effective Date; Amendment**

This Ordinance and any future amendments to it shall become effective thirty (30) days after approval by the General Council for the Tribe.

#### **§ 16. Forms**

The Tribal Court is authorized to prepare and approve forms to be used by parties involved in Garnishment proceedings, including but not limited to: Application for Garnishment Order, Garnishee's Answer, Notice to Debtor, and Objection and Request for Hearing. To the greatest extent possible, the forms shall be simple and understandable to facilitate participation in Garnishment proceedings and ensure prompt resolution of disputes.

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#### **Legislative History:**

11/20/1999      Enacted by General Council Resolution No. GC032-99

#### **Notes:**

Tribal Court Rules are available through the Tribal Court website, <http://www.fcpotawatomi.com/index.php/Tribal-Court/court.html>