

**TITLE II**  
**TRIBAL COURT**

**CHAPTER 2-1**  
**TRIBAL COURT**  
**(05/28/1993)**

**TRIBAL COURT**

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## TRIBAL COURT

### § 1. General Provisions

#### 1.1. Council Findings

- (A) The potential of Tribal sovereignty is best fulfilled by the Forest County Potawatomi Community fully exercising its lawful authority over matters to Tribal interest, including the peaceful resolution of disputes through an orderly legal process. Therefore the Forest County Potawatomi General Tribal Council finds:
- (1) That Art. IV, Sec. 1(d) (1) of the Forest County Potawatomi Community Constitution authorizes the establishment of a Tribal Court and definition of its powers, authority and procedures;
  - (2) That the Forest County Potawatomi Community desires to deal with all persons in a just and equitable manner;
  - (3) That the Forest County Potawatomi Community desires to administer in a fair and impartial fashion all applicable laws, ordinances, regulations and policies of the Community;
  - (4) That the Forest County Potawatomi Community will best be served by a separate and independent judiciary within the Tribal Government, and
  - (5) That the Forest County Potawatomi Community in so doing asserts its Tribal sovereignty in all matters essential to the Tribe's goal of self-sufficiency.

#### 1.2. Purpose and Construction

- (A) Declaration of Purpose: This code shall be interpreted and understood to accomplish the following Tribal objectives:
- (1) To exert jurisdiction over all civil matters essential to the Tribe's goal of self sufficiency;
  - (2) To address and resolve conflicts in a manner which reflects Tribal traditions and prevailing community standards, and which affords all affected persons a fair and impartial hearing, consistent with due process and individual rights;
  - (3) To establish a Court system for the enforcement of Forest County Potawatomi Community Laws;
  - (4) To ensure that all trials shall be conducted in a manner so as to afford all persons who appear before the Forest County Potawatomi Tribal Court all

rights guaranteed by the Indian Civil Rights Act of 1968, 25 U.S.C. Sections 1301, 1302, and 1303; and

(5) To ensure that the sovereignty of the Forest County Potawatomi Community is recognized in all matters affecting the welfare of the Community.

(B) Construction: This Code shall be liberally construed. It shall be read and understood in a manner that gives full effect to the purposes for which it is enacted. Whenever there is uncertainty or a question as to the interpretation of certain provisions of this Code, Tribal law or custom shall be controlling and where appropriate may be based on the written or oral testimony of a qualified Potawatomi tribal elder, historian, or other knowledgeable tribal representative.

## **§ 2. Definitions**

**Authorized Enforcement Officers:** Forest County Potawatomi Tribal law enforcement officers and federal law enforcement officers; and, state and county law enforcement officers when cross deputized by the Tribe.

**Forest County Potawatomi Community Law or Tribal Law:** The Forest County Potawatomi Community Tribal Constitution and all codes, ordinances, regulations and policies duly adopted by the Tribal General Council or the Tribal Executive Council.

**Forest County Potawatomi Community or Tribe:** The Forest County Potawatomi Community, unless the context in which “Tribe” is used clearly indicates otherwise.

**Forest County Potawatomi Community Reservation or Forest County Potawatomi Reservation:** All lands of the Forest County Potawatomi Community as defined in 18 U.S.C. Section 1151, Indian Country Defined, as well as any other lands which the United States may now or hereafter hold in trust for the Forest County Potawatomi Community, whether designated as a Reservation or not.

**Substitute Judge:** A Judge of any Tribal Court, qualified through training, education or experience, who is appointed by the Tribal Executive Council to preside over a Forest County Potawatomi Tribal Court proceeding when all Forest County Potawatomi Tribal Court judges are unavailable due to absence or disqualification.

**Summons:** An order, issued by the Tribal Prosecutor or authorized law enforcement personnel to a suspected violator in connection with a violation of tribal law, to appear before the Forest County Potawatomi Tribal Court at a later date; also commonly known as a citation.

**Temporary Judge:** A person, qualified to be a Judge of the Forest County Potawatomi Tribal Court, who is appointed by the Tribal Executive Council to temporarily fill an unexpired judicial term or any portion thereof. Any vacancy shall be filled by election at the next regular Tribal judicial election.

### **§ 3. The Court**

3.1. The Forest County Potawatomi Community Tribal General Council does hereby establish for the Forest County Potawatomi Community a court of general civil jurisdiction to be known as the Forest County Potawatomi Tribal Court.

3.2. There shall be a Branch of the Tribal Court known as the Forest County Potawatomi Children's Court.

3.3. The Court shall consist of a Chief Judge and one (1) or more Associate Judge(s) as elected by the Forest County Potawatomi Tribe, and other judicial officers as may be appointed by the Forest County Potawatomi Community Executive Council.

3.4. All Judges must have attained the age of twenty five (25) years at the time of their election.

3.5. The Chief Judge and Associate Judges shall be elected at separate judicial elections conducted for that purpose, and shall take office the day following the election.

3.6. If there are more than two (2) candidates for any judicial position, there shall be a primary election to narrow the number of candidates to two (2) which shall be the two (2) persons receiving the highest number of votes in the primary election. The primary election will be followed in two (2) weeks by a general election at which time one (1) of the two (2) shall be elected Judge.

3.7. Judges shall serve a six (6) year term and shall not be subject to removal except at a special recall election called for that purpose. More than half (1/2) of the number of voters who voted in the last general election for Tribal Officers must vote in favor of removal for such recall to be valid. Cause for recall must be specified on the ballot. Cause for recall shall be clearly demonstrable illegal conduct, violation of the Forest County Potawatomi Community Judicial Code of Ethics, or physical or mental incapacity to carry out the duties of office.

3.8. The Chief Judge shall designate himself or herself or one of the Associate Judges as the Judge of the Forest County Potawatomi Children's Court, which shall be in addition to that Judges other duties.

3.9. The Tribal Executive Council may appoint a Temporary Judge to fill an unexpired judicial term for a period of twelve (12) months during which time an election shall be held to elect a successor for a full six (6) year term.

3.10. The Court shall exercise the general civil jurisdiction of the Forest County Potawatomi Tribal Court and such other additional civil jurisdiction where not prohibited by federal law:

- (A) The Forest County Potawatomi Tribal Court shall have exclusive original jurisdiction over all civil causes of action arising within its territorial jurisdiction.
- (B) When state, federal or other tribal courts have jurisdiction over any Tribal members for any of the matters provided for in this Code, the Forest County

Potawatomi Tribal Court shall have concurrent jurisdiction over the same matters to the extent consistent with federal law.

3.11. No person shall serve as Judge while serving as a member of the Tribal Executive Council or as a prosecutor, defender, clerk of court or tribal law enforcement officer.

3.12. No Judge shall be qualified to act in any case wherein he or she has any direct interest. A trial Judge shall not, unless his or her service is agreeable with all parties and only after explaining his or her relationship sit on any case where he or she is related by blood or marriage to any party to an action before the Court.

3.13. In any case where all judges have been prevented from presiding by virtue of disqualification, illness, or absence, the Tribal Executive Council shall appoint a Substitute Judge to hear that case.

3.14. All Court Officers, except the judges, shall be appointed by the Tribal Executive Council pursuant to Tribal personnel policies. Unless otherwise provided by the Tribal Executive Council, the Chief Judge may temporarily fill staff vacancies and permanently discharge employees for cause except as to those serving as Judge(s), prosecutor(s), court clerk, or in any defender capacity. All Court personnel, except those serving in a prosecutorial or defender position, shall be subject to the supervision of the Chief Judge.

3.15. Judges shall receive such compensation as shall be set by the Tribal Executive Council. The salary for any vacant judgeship shall be set before the judicial election or appointment to fill that office. The compensation for any Judge may not be diminished during such Judge's term.

3.16. The Court shall exercise appellate jurisdiction over all administrative hearings of the Tribe. Administrative hearings shall consist of any final actions by Tribal programs, agencies or boards. Appellate decisions made by the Court under this Section shall be final and no further appeal allowed.

#### **§ 4. Rule Making Power**

The Forest County Potawatomi Tribal Court may from time to time prescribe rules for the conduct of the Courts business. Such rules shall, upon Court order, be made a part of this Code under the caption Rules of Court.\*

#### **§ 5. Tribal Prosecutor**

5.1. The Tribal Executive Council shall appoint a person or persons to represent the Forest County Potawatomi Community to prosecute cases before the court.

5.2. The Prosecutor shall be appointed by the Tribal Executive Council pursuant to tribal personnel policy.

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\* See Note in Legislative History

5.3. The Prosecutor may be removed for cause by the Tribal General Council upon three-quarter (3/4) vote of the General Council.

5.4. The Prosecutor shall have the power to issue a summons and complaint on the basis of his or her own investigation or on the basis of reliable information furnished by law enforcement officers or others.

5.5. The Prosecutor shall have discretion to decline to prosecute an action where he or she shall find that there is not sufficient justification for the complaint or in the interest of justice. If the Prosecutor declines to issue a complaint or prosecute a case, the Chief Judge may appoint a Special Prosecutor to do so, and to carry out all prosecutorial duties in conjunction with that case.

5.6. The Prosecutor shall represent the Forest County Potawatomi Community in all proceedings under this Code, acting on its behalf and in its best interests.

5.7. The Prosecutor shall be empowered to establish policies and procedures not inconsistent with Tribal law necessary to carry out the duties of the Prosecutors office.

5.8. The Prosecutor shall receive such compensation as shall be set by the Tribal Executive Council.

## **§ 6. Court Clerk**

6.1. The Tribal Executive Council shall appoint a person to serve as Court Clerk.

6.2. The Clerk may be required to furnish a bond satisfactory to the Tribal Executive Council.

6.3. The duties of the Court Clerk shall be as follows:

(A) Maintain the courts calendar and schedule.

(B) Keep all case files safe and secure, and to file accurately and promptly all relevant documents such as notices, affidavits, reports, discovery materials, pleadings, court minutes, written court orders, judgments, dockets, correspondence and other legal documents.

(C) Promptly notify parties of all relevant court action, sending copies where such action is by written court order.

(D) Attend all court hearings or appoint, with Court approval, a delegate to attend in case of illness or absence and to keep minutes of all proceedings.

(E) Where requested by a Judge, prepare a written summary of a trial or other hearings and proceedings.

- (F) Keep an accurate account of all monies received and transmit copies of such accounts together with all monies received to the Tribal Treasurer or his or her designee at the end of each week.
- (G) Prepare and keep a list of all persons adjudged to have committed a violation or to be in contempt, and the nature of their violations or contempts and the Courts action taken as a result thereof, at the end of each month. Such records shall be open to inspection by the general public at reasonable times in the Clerk's office.
- (H) Serve as Court Clerk for the Forest County Children's Court in accordance with the appropriate provisions of the Children's Code.
- (I) Perform all duties not inconsistent with Tribal Law as may be assigned by the Chief Judge.

## **§ 7. Forfeiture and Civil Actions**

7.1. All actions to recover forfeitures for violations are civil actions in the name of the Forest County Potawatomi Community.

7.2. A forfeiture action may be commenced by the issuance of a summons and complaint in writing.

7.3. Except as otherwise provided in this code, service of a summons upon a suspected violator by a law enforcement officer in connection with a violation shall constitute adequate process to give the Court jurisdiction over the person, provided:

- (A) The summons is filed with the Court by the issuing officer within twenty-four (24) hours or on the first working day following weekends or holidays after its issuance. The court may waive this requirement in any case for good cause so long as the rights of the alleged violator are not jeopardized thereby.
- (B) The summons shall state which ordinance or regulation has been violated, and the time and place that the alleged violator must appear in court for a hearing. The court may adjourn such hearing from time to time for good cause so long as the rights of the alleged violator are not jeopardized thereby.

7.4. All actions for breach of contract or tort or such other civil actions as may be brought under authority of this Forest County Potawatomi Community Code, shall be commenced by the filing of a written complaint with the Court and the issuance of a summons by the Clerk.

7.5. No complaint shall be valid unless signed by the complainant before a Judge or the Clerk of the Forest County Potawatomi Tribal Court, except as may otherwise be provided by a Rule of the Court.

7.6. Upon the filing of the complaint with the Court Clerk, the Clerk will sign a summons, directing the defendant to appear before the Court at a date, time and place specified. Service of

the summons and complaint as hereinafter provided shall be the responsibility of the person filing the complaint.

7.7. The date set for a hearing in a summons shall not be less than ten (10) days or more than thirty (30) days from the date of service.

## **§ 8. Service**

8.1. Except as otherwise provided, the summons and a copy of the complaint shall be served on the defendant by personal service, or by delivery to an adult member of the defendant's family or household who is present at the defendant's residence.

8.2. Only authorized Tribal law enforcement personnel shall make personal service on the reservation, except as may be otherwise ordered by the Court. Personal service off the reservation may be made by any adult person.

8.3. After service is made, the server shall execute an affidavit of service, which shall be filed with the Court Clerk and placed in the case file, where it shall constitute proof of personal service.

8.4. The affidavit shall state the date, time and place of service, the person served and the official status of the server, if any.

8.5. Any natural or corporate person doing business or employing persons on the reservation, shall be deemed to have irrevocably appointed the Secretary of the Tribal Council as his or her true lawful agent upon whom may be served any legal process in any action or proceeding arising from the enforcement of the Code.

8.6. In all cases where the defendant is not resident upon the Reservation or cannot be found thereon, service may be made by the Court Clerk by mailing a copy of the summons and complaint to the defendant's last known address by certified mail.

8.7. The Court Clerk shall retain the postal receipt and place it in the case file, where it shall constitute evidence of service.

## **§ 9. Forfeitures and Deposits**

A person or corporation accused of a violation may be permitted to make a cash deposit in the amount of the forfeiture plus court costs with the Court Clerk in lieu of a court appearance, based upon a schedule of forfeitures and deposits prepared by the Chief Judge and approved by the Tribal Executive Council. The schedule of deposits shall include court costs in accordance with Section 1.12 of this Chapter.

## **§ 10. Stipulations of No Contest**

10.1. A defendant who made a deposit may stipulate to a plea of no contest, which, if accepted by the Court, shall result in a forfeiture no greater than the amount of the deposit.

10.2. Such stipulation may be made by signing the summons in the appropriate place, or by written notification to the Court Clerk.

10.3. If the Court declines to accept the no contest plea, it shall order that a summons be issued for the defendant's appearance.

10.4. The defendant may move to withdraw a no contest plea by notifying the Court in writing at least two (2) days prior to the scheduled court appearance, or by appearing in court at the time specified in the summons.

## **§ 11. Court Costs**

11.1. In addition to such other costs as may be assessed when a trial is had, defendants found guilty in a forfeiture action shall be subject to the following costs:

(A) The suit tax in an action shall be \$10.00.

(B) The Clerk's fee in an action shall be \$10.00.

11.2. The schedule of deposits shall include the costs set above.

## **§ 12. Monies**

12.1. All forfeitures collected pursuant to this Code shall be deposited by the Tribal Treasurer in a Tribal Court account designated solely for promoting the policies and administration of this Code. The Chief Judge with approval of the Executive Council shall have disbursement authority.

12.2. All monies received as filing fees or courts costs shall be deposited by the Tribal Treasurer in a Tribal Court account designated solely for the administration of courts. The Chief Judge shall have discretionary disbursement authority.

## **§ 13. Confiscation**

13.1. Enforcement officers may confiscate all fish and game or any other natural resources which they suspect to have been taken as a result of a violation found in the possession of a person they are citing for violation of the Forest County Potawatomi Community Natural Resources Ordinance.

13.2. Where feasible, such confiscated fish and game, other than alive, shall be donated to elderly feeding; or it may be sold, and the amount received deposited with the Court Clerk. Live fish and game shall be released by the officer if its survival is likely. Items other than fish or game shall be kept in a secure place designated by Court order pending disposition pursuant to Court Order.

13.3. Enforcement officers may confiscate fishing, hunting, trapping, logging, mining and/or other equipment involved in a violation, and hold such equipment as evidence for trial.

13.4. Such equipment shall be returned to the defendant if the Court shall find that he or she did not commit the violation.

13.5. If the defendant is found to have committed the violation, or enters a plea of no contest which is accepted by the Court, the confiscated equipment shall be returned after the forfeiture judgment is satisfied.

13.6. After a forfeiture judgment has remained unsatisfied for fifteen (15) days, the Court may order the equipment sold to satisfy the judgment, unless a prior arrangement for delayed payment has been made.

13.7. Any officer seizing items under this Section shall inventory the items seized or released, noting the disposition thereof, and file such inventory with the Court Clerk when filing the Summons. The alleged violator shall be given a copy of the inventory along with the Summons.

#### **§ 14. Subpoena Power**

14.1. The Court shall have the power to issue subpoenas to compel the attendance of witnesses and the production of physical evidence.

14.2. Such subpoenas shall be signed by a Judge.

14.3. Service of the subpoena shall be as prescribed in Section 8 of this Chapter, except as otherwise provided.

14.4. The server shall serve subpoenas by leaving a copy of the subpoena with the person served and returning the original to the Clerk to be placed in the Court file.

14.5. The server shall note the date, time and place of service on the back of the original, and sign his or her name, which signed notation shall constitute proof of service.

14.6. Absent justification satisfactory to the Court, failure to obey a subpoena shall constitute contempt of Court.

#### **§ 15. Contempt Power**

15.1. The Court shall exercise the inherent power of a court to enforce due regard for its dignity and lawful orders by finding those who disregard them to be in contempt.

15.2. When the Court shall determine that a person has willfully disregarded a subpoena, injunction or other lawful order of the Court, the Court may find that the person is in civil contempt and order the person to forfeit a stated amount for each day he continues to disregard the order or until he purges himself of the contempt.

15.3. In no case shall the Court order a forfeiture greater than \$500 per day for contempt.

## **§ 16. Warrants**

16.1. Judges of the Court shall have the power to issue warrants for the seizure of persons, and for the search and/or seizure of premises and property.

16.2. A warrant for the seizure of a person may be issued only after a violation notice, written complaint or contempt order has been served on the offending party, an affidavit of such service has been filed and the person's non-compliance continues.

16.3. In addition to a Judge's signature, a warrant shall contain the name or description of the person to be seized, his or her address, if known, a description of the offense charged, and the date of issuance.

16.4. No search warrant shall be issued except on probable cause that a search will discover:

- (A) Property taken, or held in possession, in violation of Forest County Potawatomi Community Law; or
- (B) Property which has been, is being, or is about to be used to commit such a violation; or
- (C) Property which constitutes evidence of a violation.

16.5. The search warrant shall state the name or description of the person, property or premises to be searched, a description of the articles or property to be seized, the date of issuance and the time limit within the warrant is to be executed.

16.6. The search warrant shall be returned to the Court Clerk within the prescribed time limit, but in no case shall any search warrant be valid after seventy-two (72) hours after the time of issuance.

16.7. The enforcement officer making application for a search warrant shall support his or her application with an affidavit stating the grounds for probable cause. Affidavits shall comply with Section 17 below.

16.8. Only enforcement officers shall execute warrants.

16.9. Interference with the execution of a lawful seizure or search warrant shall constitute a contempt.

## **§ 17. Affidavits**

All affidavits required by this Code, by rule or order of the Court, or by regulations adopted pursuant to this code, shall consist of a written statement, sworn to and signed in the presence of a Tribal Court Judge or Clerk or a state notary public, who shall subscribe his or her name, the date and affix his or her seal, beneath the signature of the affiant.

## **§ 18. Searches**

18.1. Law Enforcement officers may conduct searches upon warrant, as provided in Section 16 of this Chapter.

18.2. No enforcement officer shall make a search without warrant unless the search is:

- (A) Incident to making a lawful seizure; or
- (B) Consented to; or
- (C) The enforcement officer has probable cause to believe that a violation has been committed, is being committed, or is about to be committed and has detained the suspect for temporary questioning or to issue a citation and the officer reasonably believes that he or another is in danger of physical injury.

## **§ 19. Seizure of Persons**

19.1. Law Enforcement officers may seize persons in connection with violations, either upon a warrant issued pursuant to Section 16 of this Chapter, or without a warrant under the following circumstances:

19.2. A person may be seized without a warrant when the officer has probable cause to believe that the person is committing or has committed a violation; and

- (A) The person refuses to accept a violation notice or to make a cash deposit with the Court Clerk; and
- (B) The person refuses to identify himself or herself satisfactorily, or the officer has reason to believe that the person is supplying false identification; or
- (C) Seizure of the person is necessary to prevent imminent bodily harm to the officer or other persons.

19.3. In all cases the officer shall bring the person seized before a Judge without unnecessary delay.

19.4. Upon seizure the suspect shall be advised of the following rights:

- (A) The right to remain silent.
- (B) That any statements made by the suspect may be used against him or her in court.
- (C) The right to obtain counsel at his or her own expense.

## **§ 20. Exemption From Liability**

Members of the Court, and each Law Enforcement officer, in the performance of his or her official duties, shall be exempt from all personal liability for acts done or property destroyed under authority of law.

## **§ 21. Burden Proof**

In all actions under this Code the complainant must convince the Court of every element of the violation by evidence that is clear and convincing, unless otherwise provided by other chapters of this Code or the Children's Code.

## **§ 22. Continuing Violations**

In addition to assessing a monetary forfeiture the Court may, by injunction, order the defendant to perform or refrain from performing certain acts in order to minimize harm or avoid further harm to persons, resources or the environment caused by a violation, or to avoid future damage.

## **§ 23. Revocations**

23.1. Where any violation involves the misuse of a Tribal license or permit, the Court shall have power to order revocation or suspension of such license or permit.

23.2. Where a license or permit issued pursuant to any Chapter of this Code is revoked, the violator shall be barred from receiving any other license or permit under that Chapter for at least one (1) year, except where Forest County Potawatomi Community Law shall provide otherwise.

23.3. The Court may recommend to the Tribal Executive Council that a person be excluded from the Forest County Potawatomi Reservation and/or denied the privilege of doing business or exercising other privileges granted by the Tribe under Tribal Law. Such recommendation shall be made only when the person has committed three (3) violations within a twenty-four (24) month period, at least two (2) of which were serious enough to require forfeiture of \$100 or more.

## **§ 24. Maximum Forfeitures**

Where not otherwise provided the maximum forfeiture for any first violation shall be \$500.

## **§ 25. Default Judgment**

25.1. Upon a failure of a defendant to appear before the Tribal Court within ten (10) days of service upon him of a summons and complaint or petition the Court may entertain a motion for default judgment. The plaintiff or petitioner may thereupon proceed to offer evidence including proof that the defendant was served with a summons and complaint or petition. The Court may thereupon render a judgment granting such relief as the evidence warrants, provided that the defaulting party may apply in writing for a new trial within (10) days after the entry of a default judgment, upon showing good cause for his or her failure to answer the summons and appear at the time specified.

25.2. Upon failure of any party to appear for trial or other proceeding, the Court may entertain a motion from another party that default judgment or dismissal to be granted. The Court may thereupon render a judgment or dismissal be granted. The Court may thereupon render a judgment granting such relief as the evidence warrants provided that the defaulting party may apply in writing for a new trial within ten (10) days after the entry of a default judgment, after showing good cause for his or her failure to appear at the time specified.

25.3. The Clerk of Court shall notify all persons against whom default judgments have been rendered of same by mailing a copy of the judgment by certified mail to their last known address.

## **§ 26. Community Service**

The Court in its discretion may, in addition to or in lieu of any other sanction allowed under tribal law, require first time offenders to perform community service.

## **§ 27. Irregularities**

27.1. Any violation notice, complaint, summons, warrant, or similar document whose content does not literally conform to the requirements prescribed in this Code, shall not thereby be rendered invalid if the Court finds that the content of the document substantially achieves the purposes of this Code.

27.2. However, no such document shall be valid unless it contains such signature or signatures as are prescribed by this Code.

## **§ 28. Advocates**

28.1. A party to an action shall have the right to be represented by an advocate at all hearings, at his or her own expense.

28.2. No advocate shall be admitted to practice before the Forest County Potawatomi Community Court unless he has successfully passed a standard written examination given by the Court.

28.3. The examination shall test the advocate's knowledge of Indian Law and this Code of Laws.

28.4. Passing the examination shall entitle the advocate to practice before the Forest County Potawatomi Community Court.

28.5. The Chief Judge, with the approval of the Tribal Executive Council, may establish a fee for administering the examination.

28.6. The Court at its discretion may, subject to availability of funds, provide an advocate for any party to the action who in the Court's determination needs but is unable to afford an advocate.

28.7. The Court may upon notice and hearing, revoke the right of an advocate to appear before and practice in the Forest County Potawatomi Community Court for disrespect, contempt or willful disobedience of the Courts lawful orders. Such revocation shall be subject to appellate review as provided for in the Tribal Code.

## **§ 29. Juveniles**

29.1. Juveniles shall include all individuals who have not achieved their eighteenth (18th) birthday.

29.2. Court processing and court proceedings concerning juveniles shall, except as provided herein, proceed in the same manner set forth for adults.

29.3. At the request of a juvenile charged with an offense the Court may, in its discretion, adopt informal procedures for the resolution of such pending charge or charges against such juvenile.

29.4. All juvenile records of the Court shall be closed and unavailable for public inspection, except as may be ordered by the Court.

29.5. Juvenile files and records shall be kept separate from the files and records of adults.

## **§ 30. Appeals**

30.1. In all actions before the Court, the defendant shall have the right of appeal to an appellate court consisting of one (1) Judge from the Forest County Potawatomi community court who was not the trial Judge and two (2) judges from other tribal courts approved by the Tribal Council.

30.2. No appeal shall be taken except from a final judgment or order of the Trial Court.

30.3. A written notice of appeal from a decision of the trial court must be filed within ten (10) days of the announcement of the decision in open court, or within ten (10) days after receiving notice of the decision or the mailing of a notice of default judgment by the Clerk of Court.

30.4. Notices of appeal shall be accompanied by a cash deposit equal to the amount of the forfeiture plus costs, and payment of the filing fee.

30.5. The filing fee for any appeal shall be \$10.00.

30.6. The Court may order the filing fee to be waived where it is satisfied that the appellant lacks means to pay it.

30.7. In its discretion the Court may postpone the provision of the cash deposit or allow alternative security to be furnished.

30.8. The trial court and the appellate court may, in its discretion, stay injunctive orders pending appeal.

30.9. A defendant in any action who believes that the decision of the Court was unfair may in addition to appealing matters of law, ask for a new trial before the appellate court. If the appellate court grants a new trial, it shall be before only one appellate court Judge, who shall also consider and decide any matters of law raised by the appeal. The decision of the one Judge appellate court in this instance shall be final.

30.10. A new trial shall be subject to a suit tax of \$10.00, and a Clerk's fee of \$10.00.

30.11. The notice of appeal shall clearly indicate whether a new trial is requested.

30.12. An appellant shall submit a written statement of the grounds for his or her appeal within fifteen (15) days of filing the notice of appeal, unless the Court below or the appellate court shall deem an expedited appeal to be advisable and shall notify the appellant promptly of the reduced time limit.

30.13. At the discretion of the appellate court, to aid it in reaching a wise decision or to avoid injustice to the appellant, an oral hearing on the appeal of matters of law may be ordered.

30.14. All appellate decisions shall be accompanied by a written opinion, briefly stating the issues as they appeared to the Court and the basis for the Court's decision.

### **§ 31. Limitations**

31.1. Civil actions must be commenced within three (3) years after the right accrues, except as may be otherwise provided by Tribal Law.

31.2. An action is commenced when the summons and complaint naming the defendant are filed with the Forest County Potawatomi Community Court, except that thereafter service of the summons and complaint must be made pursuant to this Code.

### **§ 32. Severability and Non-Liability**

If any section, provision, or portion of this Code is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Code will not be affected thereby. The Tribe declares there is no liability on the part of the Tribe, its agencies, or employees for damages that may occur as a result of reliance upon or conformance with this Code. The Tribe, by adoption of this Code, does not waive sovereign immunity in any respect.

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#### **Legislative History:**

10/15/1992	Ordinance recommended by Tribal Ordinance Committee
10/15/1992	Ordinance reviewed and recommended by the Tribal Executive Council
05/28/1993	Ordinance adopted by Tribal General Council Resolution No. GC 007-93
_____	Executive Council Resolution adopted implementing Tribal Court Code

#### **References in text:**

18 U.S.C. § 1151, referred to at Section 2, defines "Indian country" to include "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any

patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” Although this definition by its terms relates only to federal criminal jurisdiction, the U.S. Supreme Court has recognized that it also generally applies to questions of civil jurisdiction. See, *Alaska v. Native Village of Venetie*, 522 U.S. 520, 527 n.1, 118 S. Ct. 948, 140 L. Ed. 2d 30, 37-38 (1998).

For Children’s Code, referenced at §6.3(H), See 3-1 FCPC Code

The Court Rules authorized by Section 4 are available through the Tribal Court website, <http://www.fcpotawatomi.com/index.php/Tribal-Court/court.html>

**CHAPTER 2-2**  
**FOREIGN JUDGMENT**  
**ENFORCEMENT (11/20/1999)**

# FOREIGN JUDGMENT ENFORCEMENT

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## **FOREIGN JUDGMENT ENFORCEMENT**

### **§ 1. General Provisions**

#### 1.1. Authority

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. Intent

This Foreign Judgment Enforcement Ordinance (hereafter, “Ordinance”) establishes procedures for recognition and enforcement by the Tribal Court of the Forest County Potawatomi Community of foreign judgments of any tribal, federal or state court of competent jurisdiction. Determinations regarding recognition and enforcement of a foreign judgment pursuant to this Ordinance shall have no effect upon the independent authority of that judgment.

#### 1.3. Definition

As used in this Ordinance, “foreign judgment” means any final judgment, decree, or order of any tribal, federal or state court of competent jurisdiction other than the Tribal Court of the Forest County Potawatomi Community, but does not include a judgment for taxes, a fine or other penalty. A foreign judgment awarding spousal maintenance or child support is within the definition once the debt is past due.

#### 1.4. Applicability

This Ordinance applies to any foreign judgment that is final and enforceable where rendered even though such judgment may be subject to appeal.

### **§ 2. Recognition, Registration and Enforcement**

A foreign judgment may be domesticated in and registered with the Forest County Potawatomi Tribal Court by filing a certified or authenticated copy thereto with the Clerk of the Court. The Clerk shall treat the foreign judgment in the same manner as a judgment of the Tribal Court. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the Forest County Potawatomi Tribal Court and may be enforced or satisfied in like manner.

### **§ 3. Notice of Filing**

3.1. At the time of the filing of the certified or authenticated copy of the foreign judgment, the judgment creditor shall prepare and file with the Clerk an Affidavit setting forth the name and last known mailing address of the judgment debtor and the judgment creditor, and a statement of the balance due and owing on the judgment.

3.2. Promptly upon the filing of the foreign judgment and the Affidavit, the judgment creditor shall mail to the debtor at the address given a copy of the Judgment and Affidavit, and a copy of a Notice of Filing. The Notice of Filing shall notify the debtor that the foreign judgment has been filed in Tribal Court. The Creditor shall file with the Clerk proof of mailing the Judgment, Affidavit and Notice. The Notice shall include the name and mailing address of the judgment creditor and the judgment creditor's attorney, if any.

#### **§ 4. Stay of Enforcement of Judgment**

4.1. No execution, garnishment or other process for enforcement of a foreign judgment shall issue until twenty (20) days after the judgment creditor mails the Notice of Filing of the foreign judgment and files proof of mailing with the Clerk as required under Section 3.

4.2. If the judgment debtor shows the Tribal Court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted by the foreign court, the Court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

4.3. If the judgment debtor shows the Tribal Court any additional compelling reason why enforcement of the foreign judgment should be stayed, the Tribal Court may stay enforcement of the foreign judgment for an appropriate period in accordance with rules and procedures adopted by the Court governing stays.

#### **§ 5. Grounds for Non-recognition**

5.1. A foreign judgment is not conclusive if:

- (A) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (B) the foreign court did not have personal jurisdiction over the defendant;
- (C) the foreign court did not have jurisdiction over the subject matter.

5.2. A foreign judgment need not be recognized if:

- (A) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
- (B) the judgment was obtained by fraud;
- (C) the cause of action on which the judgment is based is repugnant to the public policy, customs and traditions of the Forest County Potawatomi, or the judgment conflicts with another final judgment;
- (D) the judgment conflicts with another final judgment;

- (E) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;
- (F) the foreign judgment was entered by a court that does not recognize and grant full faith and credit to the judgments of the Forest County Potawatomi Community Tribal Court; and
- (G) it appears to the Tribal Court that the exercise of personal jurisdiction by the foreign court offends to a very significant degree the public policy, customs and traditions of the Forest County Potawatomi Community.

#### **§ 6. Other Rights of Enforcement**

The right of a judgment creditor to bring an action to enforce his or her judgment instead of proceeding under this Ordinance remains unimpaired.

#### **§ 7. Filing Fees**

Any person filing a foreign judgment shall pay to the Clerk a fee as required by the Tribal Court.

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

This Ordinance and any future amendment to it shall become effective thirty (30) days after its enactment by the Tribal General Council.

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#### **Legislative History:**

11/20/1999      Enacted as the Foreign Judgment Enforcement Ordinance by General Council Resolution No. GC033-99

#### **References in text:**

Wis. Stat. § 806.245 sets forth the rules pursuant to which Wisconsin courts will grant full faith and credit to tribal court judgments.

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

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

# GARNISHMENT OF EARNINGS

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## **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>

**CHAPTER 2-4**  
**DEBTS OWED (08/12/2000)**

**DEBTS OWED**

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**DEBTS OWED TO THE  
FOREST COUNTY POTAWATOMI COMMUNITY**

**§ 1. General Provisions**

1.1. Purpose

This Ordinance contains procedures under which the Tribal Court may determine whether debts are owed to the Forest County Potawatomi Community (“Community”) by an enrolled member of the Community.

1.2. Intent

This Ordinance shall be liberally construed and applied so as to accomplish its purpose.

1.3. Jurisdiction

The Tribal Court shall have jurisdiction to decide all matters under this Ordinance.

**§ 2. Procedure**

2.1. Complaint

The Tribal Treasurer, or his or her authorized representative, on behalf of the Community, shall file with the Tribal Court a Complaint to establish that a member owes a debt to the Community. In any case where the debt arose as a result of a loan to a member from the Community, the Treasurer shall file a Complaint on any loan that has remained due and unpaid at the time established by a promissory note, contract, loan agreement, or otherwise, for more than ninety (90) days. In all other situations, the Treasurer shall, after exercising due diligence to collect the debt without success, file a Complaint to collect a debt owed to the Community. The Complaint shall specify:

- (A) The name, mailing address and telephone number of the Tribal member who allegedly owes the debt;
- (B) His or her enrollment number;
- (C) The facts giving rise to the debt;
- (D) The original amount of the debt, the applicable interest rate, if any, amounts paid on the debt to date, if any, and the current balance owed on the debt; and
- (E) The relief requested.

2.2. Service

The original Complaint shall be filed in Tribal Court. A copy of the Complaint shall be hand-delivered or sent certified mail, return receipt requested, to the Defendant named in the Complaint.

### 2.3. Proof of Service

If the Complaint is hand-delivered, the person delivering the Complaint shall file a signed statement with the Tribal Court, indicating the date, time and place where a copy of the Complaint was delivered to the Defendant. If the Complaint is sent certified mail, the return receipt shall be filed with the Tribal Court.

### 2.4. Answer

The Defendant shall have twenty (20) calendar days to file in Tribal Court an Answer to the Complaint. The Defendant shall mail or hand-deliver a copy of the Answer to the officer/employee who signed the Complaint on behalf of the Community. The Answer shall admit or deny all statements in the Complaint, shall specify whether or not the debt is owed and past due, and shall state the amount that is owed, if any. If the debt is not owed, the Defendant shall state the reasons why the debt is not owed.

### 2.5. Hearing

The Tribal Court shall schedule and hold a hearing on the matter within fourteen (14) days after the Answer is filed, and it shall promptly schedule any further proceedings that are necessary for the Court to determine whether or not the debt is owed and, if so, the amount.

### 2.6. Judgment

If the Tribal Court determines that the Defendant owes the Community a debt, it shall enter judgment against the Defendant, specifying the amount owed as of the date of judgment and the rate of interest that is to accrue on the judgment, if any.

### 2.7. Collection/Execution

The Community may collect and execute on the judgment as authorized under applicable law and procedure. The Tribal Court may authorize the Tribal Treasurer, through the Accounting Department, to withhold all or a portion of such member's future payments under the Revenue Allocation Ordinance, as amended, and to deliver such payments for deposit to the Community's general account to satisfy the judgment; provided, however, that no less than seventy-five percent (75%) of such member's future payments shall be withheld until the judgment is satisfied. The Court shall determine the amount to be withheld based on consideration of all relevant facts.

### 2.8. Satisfaction of Judgment

Upon full payment of the judgment, the Tribal Treasurer, or his or her authorized representative, on behalf of the Community, shall prepare and file with the Tribal Court a Satisfaction of Judgment evidencing that the judgment has been paid in full. The Community shall deliver or mail a copy of the Satisfaction to the Defendant at his or her last known address.

### **§ 3. Forms**

The Tribal Court is authorized to prepare forms for use by persons participating in actions under this Ordinance.

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#### **Legislative History:**

08/12/2000      Enacted as “Ordinance to Establish Debts Owed” by General Council Resolution No. GC010-2000

#### **Notes:**

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