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TOHONO O'ODHAM CODE

TITLE 4 – CIVIL ACTIONS

CHAPTER 3 – GARNISHMENT LAW

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TITLE 4 – CIVIL ACTIONS

CHAPTER 3 – GARNISHMENT LAW

ARTICLE I - GENERAL PROVISIONS

Section 3101 Declaration of Intent and Purpose

This Chapter is enacted in accordance with the Constitution of the Tohono O'odham Nation to promote, protect and provide for the welfare of children within its jurisdiction, the Nation, and its members, to regulate the domestic affairs of such members, to provide for the maintenance of law and order and the administration of justice, and to enact laws governing the conduct of any person within the Nation consistent with federal law. This Chapter shall be interpreted in a manner that reflects the Nation's traditions of fairness and respect by providing impartial hearings respectful of the right to due process for both Creditors and Debtors, and to ensure that the inherent sovereignty of the Nation is enriched and preserved.

Section 3102 Construction

This Chapter shall be liberally construed to accomplish its intent and purpose and to preserve the principles of Tohono O'odham law, customs, and traditions.

Section 3103 Definitions

In this Chapter, unless otherwise stated:

- (A) "Arrears" means the amount of money the payer has not paid pursuant to the most recent Child Support Order. Arrears do not include birth expenses, paternity tests, or fees imposed by the state or other similar fees such as processing or filing fees.
- (B) "Business Day" means Monday through Friday, not including the Nation's recognized holidays.
- (C) "Child" means any person under the age of 18; over the age of 18 for whom a court order for Child Support exists; or a person who is 18, attending high school, and not otherwise emancipated, self-supporting, married, or an active member of the armed forces; or a person who is over the age of 18 and for whom equity demands continued Child Support as specified in this Chapter.
- (D) "Child Support" means the financial and emotional obligation a Parent owes toward children. The financial obligation of a Non-Custodial Parent shall be met through the payment of monies and/or through the provision of other goods and/or services, as ordered by the court or as agreed to by the parties.

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(E) “Child Support Order” means a Judicial Court order, or order from a court of competent jurisdiction relating to payment of Child Support that has been granted full faith and credit by the Judicial Court pursuant to Section 3302(B).

(F) “Creditor” means the person to whom a money judgment has been awarded, other than a judgment for child support.

(G) “Custodial Party” means a Parent of a Child born during a marriage, or for whom paternity has been established by law, who has primary physical custody of the Child. “Custodial Party” shall also mean an individual, other than a Parent, who has been granted physical custody of a Child by court order.

(H) “Debtor” means the person against whom a money judgment has been awarded, other than a judgment for child support.

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

(J) “Division of Child Welfare” or “Division” means the Tohono O’odham Department of Health and Human Services Child Welfare Division.

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

(L) “Elder” means a person who is at least 55 years of age or older.

(M) “Employer” means all persons or entities who agree to compensate another for services performed.

(N) “Financial Hardship” means extreme and involuntary privation, lacking the money necessary to provide the basic comforts and necessities of life through no fault of the individual.

(O) “Foreign” means any state, tribe, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(P) “Garnishment” means the legal process whereby a court order is directed to an Employer, bank, or agent holding monies or property of a Non-Custodial Parent or Debtor, to make payments or deliver money or property to satisfy Child Support in accordance with a Child Support Order, or to satisfy a Judgment.

(Q) “Garnishee” means the Employer named in a Garnishment application, in a Petition for Order of Garnishment, or of an individual against whom a Judgment Assessing Fines, Costs, and Fees has been entered as the one who owes Earnings to the Debtor or Obligor.

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(R) “Household Income” means the sum of all income of each person who resides with the Debtor in his or her principal dwelling whether or not the member is related to, or a dependent of, the Debtor. “Household Income” shall include, but not be limited to: wages, salaries, commissions, bonuses, dividends, severance pay, pension and retirement, interest, trust income, annuities, capital gains, social security benefits, workman’s compensation benefits, unemployment insurance benefits, gifts, prizes, and spousal maintenance. “Household Income” shall not include monies received for child support or from means tested public assistance programs.

(S) “Judgment” means any final judgment, decree or order from the Judicial Court or any Foreign Child Support judgment, decree or order from a tribal, federal or state court of competent jurisdiction awarding money to one or more parties. Judgment also means any Order of Adult Protection issued pursuant to 17 Tohono O’odham Code Chapter 1 in which monetary restitution and/or damages is awarded. Foreign Child Support judgments, decrees and orders will be granted full faith and credit upon filing with the Judicial Court in accordance with the provisions set forth in Section 3301(B).

(T) “Judicial Court” means the Tohono O’odham Judicial Court as established by the Constitution of the Tohono O’odham Nation and in accordance with 6 Tohono O’odham Code Chapter 1.

(U) “Nation” means the Tohono O’odham Nation and its governmental agencies.

(V) “Non-custodial Parent” means a Parent of a Child born during a marriage, or for whom paternity has been established by law, who does not have primary physical custody of the Child.

(W) “Nonexempt Earnings” means the portion of Disposable Earnings subject to Garnishment under this Chapter.

(X) “Obligor” means the person with an obligation to pay Child Support.

(Y) “Obligee” means the person or agency with the right to receive Child Support.

(Z) “Parent” means the biological or adoptive mother or father of a Child.

(AA) “Vulnerable Adult” means a person aged 18 or over who suffers from a learning or physical disability; a physical or mental illness, chronic or otherwise; or a reduction in physical or mental capacity that results in dependency upon others in the performance of, or a requirement for assistance in the performance of, basic physical functions; a severe impairment in the ability to communicate with others; or impairment in a person’s ability to protect him or herself from physical and financial harm.

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ARTICLE II – APPLICATION OF TITLE 6 OF THE TOHONO O’ODHAM CODE

This Chapter is intended to supplement, not supersede, Title 6 of the Tohono O’odham Code or Judicial Court rules and procedures, and, except as otherwise provided herein, the Judicial Court’s general rules of practice and procedure shall apply to all actions and proceedings under this Chapter.

ARTICLE III – ENFORCEMENT OF CHILD SUPPORT ORDERS AND ORDERS OF ADULT PROTECTION

Section 3301 Child Support Orders

(A) Judicial Court Orders

Any Judicial Court Order containing a determination of Child Support and payment shall provide for Garnishment of Nonexempt Earnings as a means for execution to pay Child Support.

(B) Foreign Child Support Orders; Petition for Order of Garnishment

Foreign Child Support Orders shall be granted full faith and credit by the Judicial Court in accordance with this Article. An Obligee may seek an Order for Garnishment of Nonexempt Earnings by filing a Petition for Order of Garnishment. The Petition for Order of Garnishment must include:

- (1) A certified copy of the Foreign Child Support Order, with all modifications thereto entered by the rendering jurisdiction;
- (2) A certified copy of any income or wage-withholding order entered by the rendering jurisdiction;
- (3) A sworn statement that the Judgment is final and that no appeal is pending;
- (4) A sworn statement that no subsequent orders vacating, modifying or reversing the Judgment has been entered in the rendering jurisdiction, or in any other jurisdiction;
- (5) A sworn statement providing evidence that the person against whom the Judgment has been rendered is subject to the jurisdiction of the Judicial Court with regard to enforcement of the Judgment;
- (6) A sworn statement providing evidence that the rendering jurisdiction had both personal jurisdiction over the party against whom the Judgment was rendered, and subject matter jurisdiction;
- (7) A sworn statement of the facts entitling the rendering agency or tribunal to issue an income or wage-withholding order, including a statement of the amount of arrearages

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and a statement that all procedural due process requirements of the rendering jurisdiction for issuance of the income or wage-withholding order have been carried out in full;

- (8) The name, address and social security number of the Obligor;
- (9) The name and address of the Obligor's employer;
- (10) The tribal enrollment number of the Obligor, if applicable and known to the Obligee; and
- (11) The name and address of the agency or person to whom support payments collected by the Nation under Garnishment procedures should be transmitted.

Section 3302 Child Support Garnishment Order

(A) Issuance of Garnishment Order

Upon the issuance of a Child Support Order or the granting of full faith and credit to any Foreign Child Support judgment, decree or order, pursuant to the provisions of Section 3301, the Judicial Court shall issue and serve upon the Obligor's Employer an Order of Garnishment directed against the Nonexempt Earnings of the Obligor, which Order shall remain in effect until modified or terminated by a subsequent Judicial Court Order. The Court shall serve the Order of Garnishment upon each successive Employer of the Obligor while the garnishment remains in effect.

(B) Garnishment Amount

The Order of Garnishment shall direct that the Obligor's Nonexempt Earnings be garnished in an amount equal to the monthly support payments ordered by the rendering court, and shall direct that an additional 20% of the support payment amount be withheld each month from the Obligor's Nonexempt Earnings as and for payment towards any existing Arrears until the Arrears are satisfied.

(C) Employer Withholding

An Employer of the Obligor, served with an Order of Garnishment shall file an employer certification containing information in substantial compliance with Section 3404, and shall begin withholding not more than seven days after service of the Order.

(D) Stay of Order of Garnishment

Grounds for staying an Order of Garnishment shall be limited to mistakes of fact, challenges to the rendering court's jurisdiction to enter the underlying Judgment, and the applicability of one or more of the withholding restrictions set forth in Article VI. For purposes of this Section, "mistakes of fact" shall mean an error in the amount of current Child Support or Arrears owing or in the identity of the alleged Non-Custodial Parent. A party's motion for a stay of

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garnishment shall comply with applicable laws and Judicial Court rules and procedures, shall be signed and notarized, and shall state with specificity and supporting evidence the mistake of fact, jurisdictional challenge, or withholding restriction on which the motion is based.

(E) Satisfaction of Judgment

Upon full satisfaction of a Child Support Order for which enforcement through an Order of Garnishment has been obtained, the Obligor shall file a Motion to Terminate the Garnishment with the Judicial Court. The Motion to Terminate the Garnishment must include evidence that all past due support and any interest and fees have been paid in full.

Section 3303 Adult Protection Garnishment Order

(A) Issuance of a Garnishment Order

Upon the issuance of an Order of Adult Protection pursuant to 17 T.O.C. Chapter 1 in which monetary restitution and/or damages is awarded the Judicial Court shall issue and serve upon the Debtor's Employer an Order of Garnishment directed against the Nonexempt Earnings of the Debtor, which Order shall remain in effect until modified or terminated by a subsequent Judicial Order. The Court shall serve the Order of Garnishment upon each successive Employer of the Debtor while the garnishment remains in effect.

(B) Garnishment Amount

The Order of Garnishment shall direct that the Debtor's Nonexempt Earnings be garnished in an amount equal to the monthly payments ordered by the rendering court.

(C) Employer Withholding

An Employer of the Debtor, served with an Order of Garnishment shall file an employer certification containing information in substantial compliance with Section 3404, and shall begin withholding not more than seven days after service of such Order.

(D) Stay of Order of Garnishment

Grounds for staying an Order of Garnishment shall be limited to mistakes of fact, challenges to the rendering court's jurisdiction to enter the underlying Judgment, and the applicability of one or more of the withholding restrictions as set forth in Article VI. For purposes of this Section, "mistakes of fact" shall mean a clerical or typographical error in the Order of Garnishment as compared to the underlying Order of Adult Protection, or an error in the identity of the alleged Debtor. A party's motion for a stay of garnishment shall comply with Judicial Court rules and procedures, shall be signed and notarized, and shall state with specificity and supporting evidence the mistake of fact, jurisdictional challenge, or withholding restriction on which the motion is based.

(E) Satisfaction of Judgment

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Upon full satisfaction of an Order of Adult Protection for which enforcement through an Order of Garnishment has been obtained, the Debtor shall file a Motion to Terminate the Garnishment with the Judicial Court. The Motion to terminate the Garnishment must include evidence that all amounts due and owing, plus interest and fees, have been paid in full.

Section 3304 Statute of Limitations

No statute of limitations shall apply to any action to enforce a Child Support judgment, decree or order, or to any action to enforce an Order of Adult Protection.

ARTICLE IV – COMMENCEMENT OF CIVIL JUDGMENT GARNISHMENT

Section 3401 Creditor’s Application for Garnishment Order

A Creditor who has a Judgment, other than for Child Support or Adult Protection, against the Debtor and obtained from the Judicial Court 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. The Creditor shall attach to the Application a certified or authenticated copy of the Judgment. The Creditor’s Application shall comply with Judicial Court rules and procedures, shall be signed and notarized, and shall state:

- (A) That the Creditor is a party in a lawsuit to whom a money Judgment has been awarded.
- (B) The name and mailing address of the Debtor against whom the Judgment was awarded.
- (C) That the Creditor 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 voluntarily agreed to pay the Nonexempt Earnings to the Creditor until the Judgment is satisfied.
- (D) The amount of the outstanding balance due on the Judgment.
- (E) The name and address of the Garnishee or his or her authorized agent.
- (F) That the Garnishee is believed to be an Employer of Debtor and owes or will owe the Debtor Disposable Earnings.
- (G) That all statements contained therein are true and correct to the best of the Creditor’s knowledge and belief.

Section 3402 Issuance of Garnishment Order

If a Creditor has filed a complete Application that complies with this Chapter, the Judicial Court shall issue a Garnishment Order to the Garnishee. The Order shall state:

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- (A) The amount of the outstanding balance due on the Judgment, as reflected in the Application.
- (B) The name and address of the Garnishee.
- (C) The name and address of the Creditor and his or her attorney, if any.
- (D) The name and mailing address of the Debtor.
- (E) That the Garnishee not pay to the Debtor or for the Debtor's benefit any Nonexempt Earnings until further order of the Judicial Court.
- (F) That the Garnishee file an Answer to the Application, within ten Business Days after the Order is served on the Garnishee.

Section 3403 Service of Application, Judgment, and Garnishment Order

(A) Service on Garnishee

Within five days after the Judicial Court issues an original Garnishment Order, the Creditor shall serve on the Garnishee a copy of the Application, with Judgment attached, two copies of the Garnishment Order, and two copies of the Notice to Debtor and Request for Hearing form.

(B) Service on Debtor

Not later than three 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.

Section 3404 The Garnishee's Answer

(A) Answer of Garnishee

The Garnishee shall file in Judicial Court a written Answer to the Creditor's Application within ten 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 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.

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- (4) The dates of the Debtor's next two 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 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 Garnishment, recognized by Garnishee, and if so, a description of such Garnishment.
- (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) Failure to File an Answer

Failure of the Garnishee to file an Answer may result in the Garnishee's liability for the full amount of the debt owed to the Creditor, regardless of whether any earnings are owed by the Garnishee to the Judgment Debtor.

Section 3405 Service of Answer

Upon filing the Answer in Judicial Court, the Garnishee shall mail or hand deliver a copy of the Answer on the Creditor and the Debtor, and shall mail or hand-deliver to the Debtor a copy of the Notice to Debtor and Request for Hearing form.

Section 3406 Service of Documents

Documents shall be served upon the Creditor, Debtor and Garnishee in accordance with the provisions of Rules 3.3 through 3.8 of Tohono O'odham Rules of Court, Section 2.

Section 3407 Statute of Limitations

There shall be a two year statute of limitations on any action to garnish Nonexempt Earnings in satisfaction of a Judgment other than for Child Support or Adult Protection, which shall begin to run on the date the Judgment is entered by the Judicial Court.

Section 3408 Liability of the Garnishee

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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 Judicial Court. The Garnishee shall not be required to pay the Creditor except upon Judicial Court order, and in no event prior to the time when the Garnishee is required to pay Earnings to the Debtor. The Garnishee shall not otherwise be liable for the underlying debt, costs and interest owed to the Creditor, except pursuant to Section 3404(B).

Section 3409 Objection to Garnishment

(A) Objection

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 Judicial Court a written Objection and Request for Hearing. The hearing must be requested no later than ten 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.

(B) Grounds for Objection

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.

Section 3410 Hearing

(A) Time and Notice of Hearing

The hearing shall be held as soon as is convenient to the Judicial Court, but in no event shall the hearing be held later than 15 days after the Request for Hearing was received unless the Debtor consents. The Judicial Court shall notify the parties of the date and time of the hearing at least five Business Days before the date of the hearing.

(B) Burden and Standard of Proof

The Debtor has the burden to prove that relief should be granted. The standard of proof shall be clear and convincing evidence.

(C) Appeal

Appeal of an Order of Garnishment shall be governed by the appellate procedures contained in Tohono O’odham Rules of Court, Section 11.

Section 3411 Garnishment Order

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(A) Order in Absence of Objection

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 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 Judicial Court shall order that the Nonexempt Earnings withheld by the Garnishee be paid to the Creditor in accordance with the provisions of this Chapter. The Judicial 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. Prior to issuing the Garnishment Order, the Judicial Court shall consider the applicability of each withholding restriction as set forth in Article VI.

(B) Determination upon Objection

If the Debtor or other party files a timely Objection to the Garnishment and a Request for a Hearing, the Judicial Court shall conduct a hearing pursuant to Section 3410 above and shall thereafter determine:

- (1) Whether the Garnishment Order is valid against the Debtor;
- (2) The amount of the outstanding balance due on the Judgment at the time the Garnishment Order was served;
- (3) Whether the Debtor was employed by the Garnishee when the Garnishment Order was served; and
- (4) Whether Nonexempt Earnings were owed or would be owed by the Garnishee to the Debtor within 60 days after the service of the Garnishment Order.

If the Judicial Court, after a hearing, makes affirmative findings regarding the above determinations, the Judicial 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 Judicial Court shall order the Garnishee discharged from the Garnishment.

Section 3412 Continuing Effect of the Garnishment

Once the application for Garnishment has been filed and the Garnishment Order served and the time for filing an Answer has passed, the Garnishment shall be in effect until modified or terminated by a subsequent Judicial Court Order.

Section 3413 Reporting By Creditor

On the tenth 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 report shall state:

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- (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.

Section 3414 Satisfaction of Judgment

(A) Creditor's obligations

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.

(B) Release

Immediately after the Judgment is satisfied, the Creditor shall file with the Judicial Court a Satisfaction of Judgment and Request for Release of the Garnishment Order and shall serve a copy on the Garnishee and Debtor.

Section 3415 Contempt Proceedings

If the Creditor fails to comply with any duty imposed upon him by this Article, the court shall, upon petition of any party to the proceedings affected by such failure and after notice, hold a hearing to determine whether such failure to comply, if any, was occasioned by mistake, inadvertence or excusable neglect. If the court determines that any failure to comply was not the result of mistake, inadvertence or excusable neglect, the court shall find the Creditor in contempt and shall award the petitioner all of the following:

- (A) An amount to compensate for actual losses, if any, caused by the failure to comply.
- (B) Reasonable attorney fees, if the petitioner was represented by an attorney at such hearing.
- (C) Court costs.
- (D) An additional amount of not less than one hundred nor more than one thousand dollars.

ARTICLE V – PRIORITY

Section 3501 Multiple Proceedings

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No more than one Garnishment withholding may be maintained against a Debtor at any one time, provided, however, that two or more Garnishment withholdings to pay Judgments for Child Support may be maintained against an Obligor at one time. Except as provided in Section 3502 below, conflicting Garnishments rank according to priority in time of service. Withholdings shall begin on the highest ranking Garnishment Order and then shall proceed on each successive Garnishment Order, according to priority, until all Garnishment Orders issued against the Obligor/Debtor have either been satisfied or terminated by the Court. An Employer served with a Garnishment Order ranking higher in priority shall begin withholding on that Order, and any withholding already in effect in compliance with a Garnishment Order of lower priority shall be stayed until the Order ranking higher in priority is satisfied or terminated by the Court.

Section 3502 Judgment for Child Support Superior

Garnishments which are to pay Judgments for Child Support are superior to Garnishments to pay any other Judgment, regardless of priority in time of service. Garnishments which are to satisfy Orders of Adult Protection are superior to Garnishments to pay any other Judgment, other than a Judgment for Child Support, regardless of priority in time of service.

ARTICLE VI – WITHHOLDING RESTRICTIONS

Section 3601 Application to Garnishment Orders

Upon a showing by an Obligor or Debtor, the Court shall apply the following withholding restrictions to an Order of Garnishment:

(A) Disposable Earnings

During any pay period the Obligor's/Debtor's Earnings shall not be subject to Garnishment in excess of 15% of Disposable Earnings, except that a greater percentage may be deducted with the written consent of the Obligor/Debtor or in accordance with Section 3602. It is within the Court's discretion to enter an Order of Garnishment for less than 15% of an Obligor/ Debtor's Disposable Earnings, upon a satisfactory showing by the Debtor of Financial Hardship.

(B) Household Income Below the Poverty Line

The Debtor's Earnings shall be totally exempt from Garnishment if the Debtor's household income is below the poverty line as established by 42 U.S.C. § 9902(2). This restriction does not apply to a Garnishment Order against an Obligor.

(C) Tribal Elders and Vulnerable Adults

If the Obligor/Debtor is a tribal elder or Vulnerable Adult, then the Judicial Court may refuse Garnishment of the Obligor's/Debtor's Earnings if just and equitable given the particular circumstances of the case.

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Section 3602 Child Support

The Judicial Court may permit Garnishment of the Obligor's Earnings to the extent the Judicial Court deems just and equitable given the particular circumstances of the case, up to a maximum of 30% of Disposable Earnings.

Section 3603 Allocation for Multiple Child Support Proceedings

When two or more Garnishment proceedings to pay Judgments for Child Support are maintained at one time, the Judicial Court shall allocate the allowable 30% of Disposable Earnings between the Obligees in an equitable fashion given the particular circumstances of each case.

ARTICLE VII – COLLECTION AND REMITTANCE OF GARNISHED FUNDS

Section 3701 Remittance

(A) Child Support; Orders of Adult Protection

Garnished funds shall be forwarded by the Garnishee to the Clerk of the Judicial Court for remittance to the Obligee/Creditor. In all cases wherein a Child for whom Support is ordered and garnished has been adjudicated a Child In Need of Care and remains in the care, custody and control of the Tohono O'odham Child Welfare Division, the Clerk of the Judicial Court shall remit the collected Support funds to the Tohono O'odham Office of the Treasury with an accompanying itemization of the Support funds collected and remitted for each Child, and the Office of the Treasury shall ensure the Support funds are deposited in the designated account for each child. The Clerk of the Judicial Court shall forward a copy of each itemization to the Division of Child Welfare.

(B) Other Judgments

Garnished funds in satisfaction of civil judgments other than for Child Support and Orders of Adult Protection shall be forwarded by the Garnishee directly to the Creditor. The Garnishee shall file a Notice of Remittance of Garnished Funds with the Clerk of the Judicial Court after each remittance.

Section 3702 Administrative Fee

(A) An administrative fee of \$20.00 shall be assessed against a Debtor/Obligor for each pay period wages are garnished. The purpose of this fee is to offset the Nation's costs of garnishment. For Child Support and Orders of Adult Protection the fee shall be remitted to the Clerk of the Judicial Court who shall then remit one-half of the collected fee to the Nation's Office of the Treasurer. For other Judgments, the fee shall be remitted directly to the Nation's Office of the Treasurer. The Treasurer shall deposit the administrative fees it has collected into the General Operating Account of the Nation. The Court shall deposit administrative fees it has collected in accordance with the Court's policies and procedures.

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(B) A Garnishee other than the Nation is entitled to assess a \$2.00 processing fee, in addition to the administrative fee to be remitted to the Nation, upon the Debtor/Obligor for each pay period wages are garnished to offset the Garnishee's costs of garnishment. A Garnishee may not assess more than \$10.00 per month in processing fees.

Section 3703 Record of Payments

(A) The Clerk of the Judicial Court shall maintain records listing the amount of payments required to be made, the names and addresses of the parties affected by an Order of Garnishment, the dates and amounts of each payment remitted to the Obligee/Creditor or the Division of Child Welfare, and the amount of administrative fees it has collected for each Garnishment.

(B) The Treasurer shall maintain records of the amount of administrative fees it has collected, including an itemization of the amount of fees received from the Court.

Section 3704 Change of Address and Employment

The parties affected by an Order of Garnishment shall inform the Clerk of the Judicial Court of any change of address and any change of employment within five Business Days of the change. The change of address and the change of employment shall be submitted in writing. The requirements of this Section shall be set forth in all Orders of Garnishment, and failure of a party to comply with these requirements shall constitute contempt of court. A finding of contempt of court may be either civil or criminal as appropriate, and in accordance with federal law and the laws of the Nation.

Section 3705 Employers Must Honor; Retaliation Prohibited

An Employer shall not refuse to honor a wage garnishment executed in accordance with this Chapter, and shall not discharge or prejudice any employee because an employee is being subjected to Garnishment actions.

ARTICLE VIII – SOVEREIGN IMMUNITY

The Nation hereby waives its sovereign immunity for the limited purposes of this Chapter and only concerning Garnishments wherein the Nation stands as Garnishee of an Obligor. This waiver of sovereign immunity does not apply to any actions or remedies against the Nation not expressly authorized by this Chapter. The Nation's immunity is not waived with regard to the award of any damages, costs of suit, including attorney's fees, or other monetary relief; in all such cases the immunity of the Nation is expressly preserved.

ARTICLE IX – FORMS

NOT EFFECTIVE UNTIL OCTOBER 1, 2017

The Judicial 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.