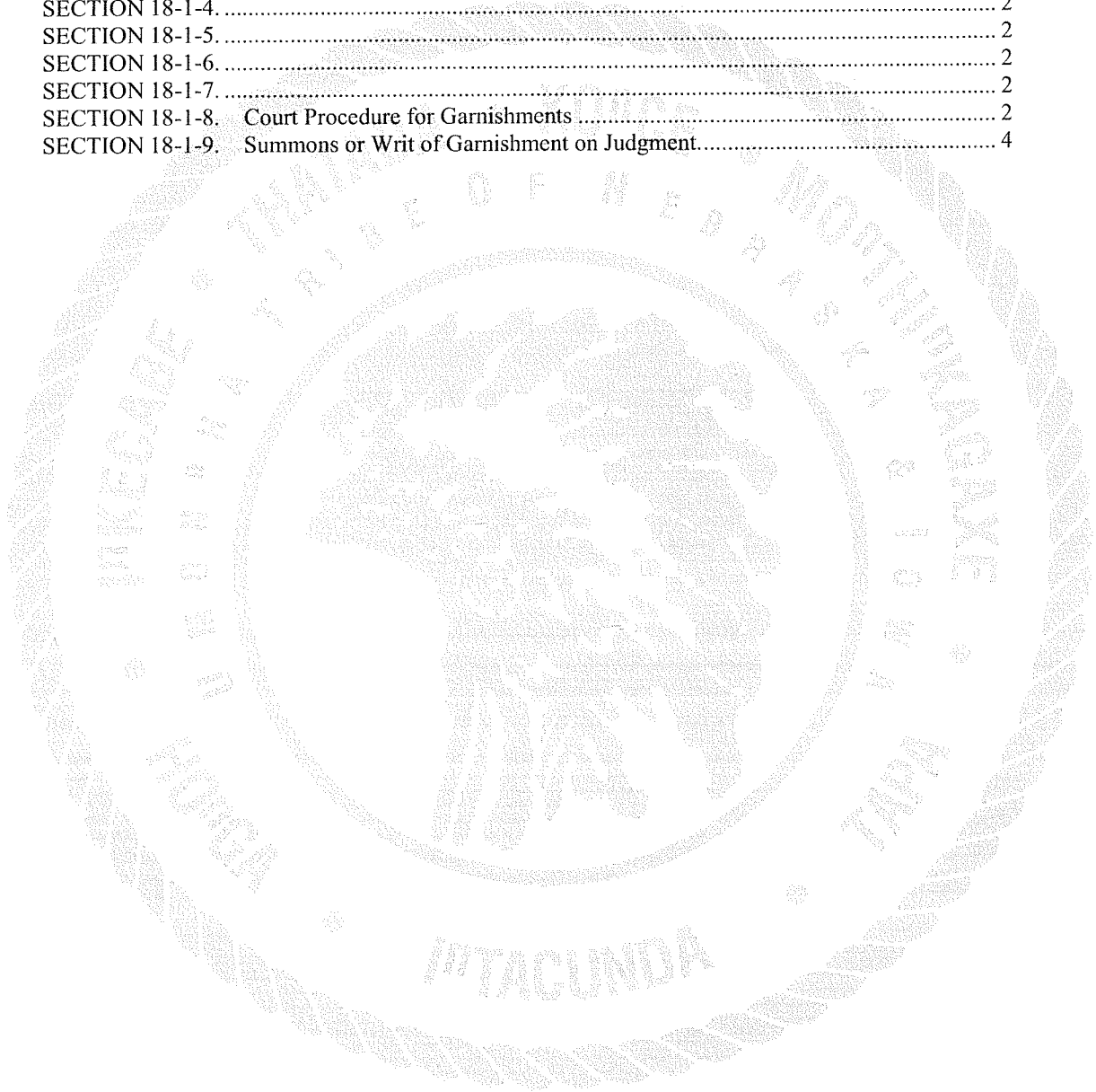


OMAHA TRIBAL CODE (2013)

TITLE 18. GARNISHMENT

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TITLE 18. GARNISHMENT

AN ORDINANCE MAKING A CONDITIONAL WAIVER OF TRIBAL SOVEREIGN IMMUNITY FROM CIVIL SUIT IN CERTAIN GARNISHMENT PROCEEDINGS IN THE OMAHA COURT OF INDIAN OFFENSES

WHEREAS, the Omaha Tribe of Nebraska is a federally recognized Indian Tribe organized pursuant to the Act of June 18, 1931. (25 U.S. Code, Section 476); and,

WHEREAS, the Omaha Court of Indian Offenses was established and is operated on the Omaha Indian Reservation by joint action of the Secretary of the Interior and the Omaha Tribe under 25 CFR, Part 11.1, et seq; and,

WHEREAS, the Omaha Court of Indian Offenses has jurisdiction to adjudicate certain civil actions under 25 CFR, Part 11.22, including collection actions on installment loan contracts, and actions in the nature of garnishment or attachment to enforce civil judgments, where the property or wages sought to be attached are located on the Omaha Indian Reservation; and,

WHEREAS, the Omaha Tribe of Nebraska possesses the attribute of sovereign immunity from civil suit, and may not lawfully be subjected to any civil action, including an action for garnishment in which the tribe is named garnishee, in any state, federal or tribal court in the absence of a prior express and unequivocal written waiver of said immunity by Act of Congress or Act of this Council;

NOW, THEREFORE, BE IT ENACTED that the Omaha Tribal Council does hereby waive the Omaha Tribe's sovereign immunity from civil suit for all actions filed in the Omaha Court of Indian Offenses wherein is sought the issuance of a writ of garnishment or attachment naming the tribe as garnishee, and whether the party whose wages or property are sought to be garnished be Indian or non-Indian or be located inside or outside of the Omaha Indian Country or on or off the Omaha Indian Reservation, said waiver being expressly conditioned upon and qualified by the absolute requirement that the Omaha Court of Indian Offenses shall strictly adhere to the following standards in adjudicating garnishment or attachment proceedings pursuant to this ordinance:

SECTION 18-1-1.

(a) Writs or summonses in garnishment and any other process or order issued to or served upon the tribe in such proceedings pursuant to this waiver shall be served upon the Tribal Chairman or such other officer or employee within the tribal administration as the Tribal Chairman may from time to time designate in writing to receive service of process in such cases.

SECTION 18-1-2.

(a) The tribe's waiver of immunity in this ordinance does not extend to any garnishment or attachment proceeding in which service of process has been made other than upon the Tribal Chairman or his designated agent for service of process as provided above.

SECTION 18-1-3.

(a) The tribe's waiver of immunity herein extends only to actions in the nature of garnishment or attachment filed in the Omaha Court of Indian Offenses to enforce judgments lawfully entered in the Omaha Court of Indian Offenses or foreign judgments determined by that court to be valid and enforceable hereunder in accordance with the following additional requirements:

(1) The judgment was entered by the principal trial court of any state or Indian Tribe, by the principal trial court of any foreign country, or by any court of the United States.

(2) The judgment was entered of record after or not more than two (2) years preceding the effective

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date of this waiver ordinance.

(3) The party seeking enforcement of said judgment presents a certified copy of such judgment and a certified copy of papers from the original court file showing proof of service of process on the defendant for the proceeding giving rise to said judgment.

SECTION 18-1-4.

(a) Recognition by the Omaha Court of Indian Offenses of judgments for enforcement pursuant to this waiver ordinance shall be extended or withheld in accordance with general principles of comity after such inquiry into the record and facts concerning the judgment for which recognition is sought as the court may deem appropriate under the circumstances, provided that recognition may not be accorded any foreign judgment under this section or otherwise unless the court shall first have made inquiry into and have made an affirmative finding that the party against whom such judgment was entered was personally served with process or otherwise received actual notice thereof after constructive service by publication sufficiently in advance of trial to render recognition of such judgment equitable under the circumstances and that the rendering court had jurisdiction to enter the judgment.

The Omaha Court of Indian Offenses is prohibited from recognizing foreign judgments in civil actions except as provided in Sections 18-1-3 and 18-1-4, and an order substantially in the form of Exhibit A or B shall be entered to record the court's recognition or refusal to recognize a foreign judgment.

SECTION 18-1-5.

(a) The Omaha Court of Indian Offenses shall follow substantially the same procedure in recognizing judgments and in handling garnishment and attachment proceedings involving private party garnishees who possess or are thought to possess Indian property or Indian wages on the Omaha Indian Reservation as are provided herein for garnishment proceedings naming the Tribe as garnishee; provided, that private party garnishees who do not respond to or answer summons in garnishment may be held personally liable for the amount of the judgment sought to be enforced by the garnishment writ, with costs.

SECTION 18-1-6.

(a) The Tribe's waiver of Immunity pursuant to this ordinance shall extend to all corporate and non-corporate instrumentalities of the Tribe (including the Omaha Tribal Corporation established pursuant to 25 U.S.C. Section 477), provided that service of process in garnishment proceedings under this ordinance naming such corporations as garnishee shall be had upon the Chairman of the Board of Directors of said corporation, or upon its Chief Executive Officer, rather than upon the Omaha Tribal Chairman.

(b) The accounting or fiscal officers and administrative personnel of corporate instrumentalities of the Tribe shall in garnishment actions naming said corporation as garnishee follow substantially the same procedures as are provided in Part of this ordinance for actions naming the Tribe as garnishee.

SECTION 18-1-7.

For garnishment proceedings initiated under this ordinance, unpaid money fines or monetary restitution orders entered by the Omaha Court of Indian Offenses in criminal cases shall have the status of civil judgments. Garnishment proceedings to collect said fines or restitution orders may be initiated by the Omaha Tribal Prosecutor as garnishor and naming the defendant's employer as garnishee. Monetary fines or monetary restitution orders entered by other courts in criminal proceedings shall not be enforceable in the Omaha Court of Indian Offenses by garnishment proceedings.

SECTION 18-1-8. Court Procedure for Garnishments

(a) Filing Suggestion of Garnishment. Any judgment creditor who desires to enforce a money judgment pursuant to this waiver ordinance may file a Suggestion of Garnishment form with the Clerk of Court, Omaha Court of Indian Offenses, provided that no money judgment may be enforced by garnishment hereunder until not less than 15 days have passed since the date of entry thereof. The Suggestion of Garnishment form shall be in the form shown as Exhibit C.

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(b) Issuance of Summons. On application of a judgment creditor for a writ of garnishment naming the Omaha Tribe as garnishee, the Court Clerk shall cause to be issued to the Tribe a writ or summons in garnishment, with service to be had on the Tribal Chairman or his designated agent for such service. The Summons in Garnishment shall be in the form shown as Exhibit D.

(c) Hearing on Garnishment. The Court shall schedule a hearing on the garnishment request at the date and time specified in the summons in garnishment or at such later time as the court may direct with notice to all parties. The Court is required at the hearing to put the party seeking the garnishment to proof of all facts required by this ordinance to support issuance of a garnishment order, provided that no formal hearing need be held if the Tribe has filed the standard form Answer to Garnishment Summons (Exhibit E) marking items (1) or (5). Any challenges to the judgment sought to be enforced, or to the garnishment proceeding itself, which the Tribe wishes to make shall be raised at this hearing either orally or by written pleadings or the same shall be deemed waived, provided that issues going to the jurisdiction of the Court shall not be deemed waived even though not raised at the initial hearing. The Court shall rule on all challenges raised and shall enter findings on all facts necessary to allow the garnishment to go forward hereunder. The court may delay its ruling until it has further opportunity to consider all issues in the case.

(d) Transmittal of Garnishment Order. For each garnishment proceeding, an order directing the Tribe (or other employer served with a garnishment writ) to proceed with garnishment withholding or dismissing or continuing the garnishment proceeding (Exhibits F, G, H, I, J, L, M, N) shall be entered following the hearing depending upon the facts involved.

Once any order of dismissal, continuance, or garnishment withholding has been entered, the Court Clerk shall forward an information copy to the Office of the Tribal Chairman. Such transmittal shall not constitute service of process.

(e) Only One Wage Garnishment. No employee's wages may be made subject to more than one wage garnishment for the same time period, and the Court shall not issue any additional writ of garnishment respecting a named employee while there is outstanding an existing wage garnishment order against that employee.

Additional wage garnishment orders may be issued by the Court respecting the same employee following full satisfaction of the judgment on any prior wage garnishment order for that employee.

(f) Statement of Exceptions to Garnishment Procedure.

(1) Except as provided in Subsection (2) of this section, the maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment shall not exceed the lesser of the following amounts:

(i) Twenty-five per cent (25%) of his disposable earnings for that week;

(B) The amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by Section 206(a)(1) of Title 29 of the United States Code in effect at the time earnings are payable; or,

(C) Fifteen per cent (15%) of his disposable earnings for that week, if the individual is a head of a family.

(2) The restrictions of subsection (1) of this section shall not apply in the case of:

(A) Any order of any court for the support of any persons;

(B) Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act.

(3) The Omaha Court of Indian Offenses shall not make, execute, or enforce any order or process in violation of this section. The exemptions allowed in this section shall be granted to any person so entitled without any further proceedings.

(4) For the purposes of this section:

(A) Earnings shall mean compensation paid or payable for personal services, whether

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denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program, but shall not include student stipends or welfare or KEPT payments or alimony or child support payments;

(B) Disposable earnings shall mean that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld;

(C) Garnishment shall mean any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt; and,

(D) Head of a family shall mean an individual who actually supports and maintains one or more individuals who are closely connected with him by blood relationship, relationship by marriage, by adoption, or by guardianship, and whose right to exercise family control and provide for the dependent individuals is based upon some moral or legal obligation.

(5) Every assignment, sale, transfer, pledge, or mortgage of the wages or salary of an individual which is exempted by this section, to the extent of the exemption provided by this section, shall be void and unenforceable by any process of law.

(6) No employer shall discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(7) In the case of earnings for any pay day period other than a week, the Omaha Tribal Finance Office shall by regulation prescribe a multiple of the federal minimum hourly wage equivalent in effect to that set forth in this section.

SECTION 18-1-9. Summons or Writ of Garnishment on Judgment.

(a) Summonses or Writs of Garnishment (Exhibit D) Issued by the Omaha Court of Indian Offenses summoning the Omaha Tribe of Nebraska, or any unincorporated subdivision thereof, shall, after service thereof on the Tribal Chairman or his designated agent for service of process in garnishment actions, be forwarded to the Tribal Finance Office and the Finance Officer shall be responsible for drafting a response for the Chairman's signature on the Answer to Garnishment Summons form (Exhibit E). The Office of the Chairman will forward the signed form to the Clerk, Omaha Court of Indian Offenses, for filing.

(b) It shall not be necessary for any representative of the Omaha Tribe to actually appear in the Omaha Court of Indian Offenses for any garnishment proceeding wherein is filed the standard Answer to Garnishment Summons form (Exhibit E) where the response on said form is (1) or (5) thereof. If items (2), (3), (4), or (6) are marked on the answer forms, a representative of the Chairman shall appear in the Omaha Court to provide testimony or other evidence of the answer made on the scheduled hearing date.

(c) Summonses or Writs of Garnishment issued by any court other than the Omaha Court of Indian Offenses summoning the Omaha Tribe of Nebraska, or any subdivision thereof, shall, after service on the Tribal Chairman, or anyone else, be brought to the attention of the Tribal Council which will make a determination of whether legal action will be taken to respond to or to contest the writ or summons in question.

(d) Internal Garnishment Procedures

(1) Informing Employee. The Finance Office, at the same time the Answer to Garnishment Summons form (Exhibit E) is being prepared, shall complete and transmit an employee garnishment notification (Exhibit N), with a copy to the keeper of the employee's time and attendance report.

(2) Deduction. The deduction of garnished wages shall be the responsibility of the payroll clerk or other employee handling the preparation of checks for the program account from which the employee is paid. At the same time as the reduced pay check is prepared, a check in the amount of 25% (15% for head of household) of the salary or wages which would otherwise be due to the employee shall be prepared and made payable to the Tribal Garnishment Account referencing the civil court number of the particular garnishment action on the check, provided that wage deductions of a lesser amount shall be made in lieu of the 25% or 15% deduction if required by the Statement of Exceptions to Garnishment procedure set out in Part 8(f) hereof.

(3) Deposit. The Tribal Chairman shall cause to be established in a local bank an account designated

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as the Tribal Garnishment Account. Each pay day, the sum of the garnished wages withheld from all tribal employees under this procedure shall be deposited in that account. Deposit slips shall list the amount deposited for each garnishment proceeding and shall reference the civil court numbers for such proceedings on the deposit slip.

(4) Quarterly Payment to Creditor/Garnishor. At the close of each quarter the Tribal Garnishment Account shall be depleted by preparation of checks withdrawing all funds deposited respecting each garnishment proceeding for which a deposit has been made. Each such check shall be made payable to the appropriate creditor/garnishor. No interest shall be paid to the creditor/garnishor. Provided that any judgment sought to be enforced by garnishment has been paid in full by other means, the Finance Office shall immediately cease withholding or deducting of funds from the employee's pay check and notice to the employee of such cessation (Exhibit P) shall be forwarded to him along with a copy of the court clerk's notification. Any funds previously withheld from the employee's wages which have not been transmitted to the Court Clerk as of the date of satisfaction of the judgment shall be refunded promptly to the employee by check drawn on the Tribal Garnishment Account.

BE IT FURTHER ENACTED that the Omaha Tribal Council does hereby reassert the Tribe's sovereign immunity from civil suit for all actions filed in any state or federal court wherein the Tribe is named as defendant, respondent, or garnishee and for any such actions filed in the Omaha Court of Indian Offenses which do not properly invoke the immunity waiver provided for in this ordinance, said reassertion of Immunity being applicable whether the party whose wages or property are sought to be garnished or attached be Indian or non-Indian or be located inside or outside of the Omaha Indian Country or on or off the Omaha Indian Reservation.

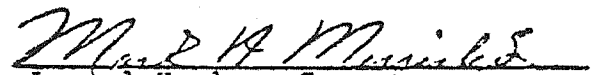
CERTIFICATION


This is to certify that the foregoing ordinance was considered at a meeting of the Omaha Tribal Council of the Omaha Tribe of Nebraska, duly called and held on the 2nd day of SEPT, 1981 and was adopted by a vote of 5 for, 0 against, and 2 not voting or absent. A quorum of 5 was present with the Chairman not voting.

DATED THIS 2nd DAY OF SEPT, 1981

ATTEST:


Elmer L. Blackbird, Chairman


Lemuel Harlan, Secretary


Russell Bradley, Superintendent

Approved 9/9/81

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