

CHAPTER 35 – DEBT COLLECTION AND GARNISHMENT

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CHAPTER 35 -- DEBT COLLECTION AND GARNISHMENT

35.1 SECTION 1: DEFINITIONS (11-21-17)

- 35.1.1 “A Judgment Debtor” is a person or entity that owes money due to a legal judgment or court finding.
- 35.1.2 “A Judgment Creditor” is a person or entity that is owed money from a legal judgment or court finding.
- 35.1.3 “A Garnishee” is a person or entity that is in possession of property belonging to a judgment debtor, and is ordered by the Court to give that property or a portion of it to the court or the judgment creditor to satisfy the obligations of the judgment debtor.

35.2 SECTION 2: GENERAL PROVISIONS

- 35.2.1 A judgment creditor may petition the Tribal Court for a Writ of Garnishment for any specific personal property or credits, including earnings owed to the judgment debtor that are in the possession of a third party within the jurisdiction of the Court pursuant to section 35.3 of this ordinance. (11-21-17)
- 35.2.2 The Tribe may recover a debt, civil forfeiture or judgment debt owed by any Tribal employee to the Tribe or any tribal organization, corporation, board, committee or any other entity pursuant to section 35.4 of this ordinance. (11-21-17)

35.3 SECTION 3: PETITION PROCEDURE

- 35.3.1 A petition for a Writ of Garnishment shall state the following facts:
- (a) That the judgment creditor has a foreign judgment from another tribunal that is granted full faith and credit by the Red Cliff Tribal Court, that is wholly or partially unsatisfied; (11-21-17)
 - (b) The amount alleged to be due under that judgment;
 - (c) That the judgment creditor has reason to believe and does believe that the garnishee, stating the garnishee’s name and residence or place of business, is indebted to the judgment debtor, or that garnishee has possession or control of personal property or effects belonging to the judgment debtor which are not exempted from garnishment under this Chapter; and
 - (d) Whether or not the garnishee is the employer of the judgment debtor.

35.3.2 When a Petition for a Writ of Garnishment is made by a judgment creditor the Tribal Court Clerk shall docket the case in the names of the judgment creditor as plaintiff, the judgment debtor as defendant, and the garnishee as garnishee defendant, and shall immediately issue and serve a writ of garnishment to the judgment debtor, directed to the garnishee, commanding the garnishee or judgment debtor to comply or object within fifteen (15) days after the service of the Writ on the garnishee. Absent an objection, the Writ shall be enforceable fifteen (15) days after proper service. A Writ of Garnishment may be simultaneously issued with a petition to enforce a foreign judgment.

35.3.3 When a Writ of Garnishment is issued, the Court Clerk shall at the same time issue and serve the garnishee defendant a Notice of Garnishment directed to the judgment debtor. The Notice of Garnishment shall contain a statement of the Garnishee's obligations under this Code and the total amount of judgment or amount of income to be withheld.

35.4 SECTION 4: NOTICE OF WAGE DEDUCTION (11-21-17)

35.4.1 The Tribe may recover a debt by mailing written notice to the Tribal employee stating its intent to deduct the debt from the employee's wage earnings.

35.4.2 All written notices to employee(s) shall be sent by certified mail with return receipt requested to constitute evidence of service.

35.4.3 All notices shall state the amount to be deducted out of each payroll check until the total amount of the debt is paid in full and the exact date said deductions would commence. The notice shall also state that an employee may contest the wage deduction pursuant to Section 35.5.3 of this ordinance.

35.4.4 Employee payroll deductions shall not commence on or before a date at least twenty (20) days after service of notice or during the period when contested pending a hearing requested by the employee pursuant to Section 35.5.3.

35.5 SECTION 5: HEARING PROCEDURE

35.5.1 At the request of the judgment creditor, or upon filing of an objection by the judgment debtor, or garnishee defendant the Court shall schedule a hearing on the matter.

35.5.2 Any request for hearing or objection to the Writ of Garnishment must specify the reason the party is requesting the hearing or objecting.

35.5.3 A Tribal employee may contest a wage deduction by petitioning the Tribal Court for a hearing to show cause why the wage deduction is unjustified. If the deduction is for a civil forfeiture or other judgment debt entered by a Court, the hearing shall be limited to the issue of the amount of the deduction. The petition

for a hearing must be filed with the Court Clerk no later than five (5) days before the commencement date of the employee's wage deductions. (11-21-17)

- 35.5.4 The court clerk shall issue a Notice of Hearing, a copy of which shall be served, along with a copy of the request for hearing or objection, on all parties no later than seven (7) days prior to the date of the hearing. If more than one party requests a hearing, the hearings shall be consolidated.
- 35.5.5 At the hearing the Tribal Court may hear evidence presented by any party as to why the Writ of Garnishment or wage deduction should not be enforced. (11-21-17)
- 35.5.6 At the hearing, the court may establish the appropriate payroll withholding under the writ of garnishment or wage deduction by determining the amount of the judgment debtor's income that is subject to an order. (11-21-17)
- 35.5.7 The Tribal Court may amend the Writ of Garnishment or wage deduction on the basis of the evidence presented at the hearing. (11-21-17)
- 35.5.8 A party may petition to the Court to amend or reconsider a Writ of Garnishment or wage deduction any time there is a substantial change in circumstances such that the enforcement of the Writ or deduction is no longer proper. Such petitions shall be handled as a hearing under the rules set forth in this subsection. (11-21-17)

35.6 SECTION 6: OBLIGATIONS OF GARNISHEE

- 35.6.1 Once served with a Notice of Garnishment a Garnishee Defendant may not pay or deliver to the debtor any non-exempt property or credit owing to the debtor.
- 35.6.2 The Garnishee must pay or deliver any non-exempt property or credit owing to the debtor over to the judgment creditor until otherwise ordered by the Court or until the amount owing the creditor has been satisfied, whichever is sooner;
- 35.6.3 Within 20 days of the date of service the garnishee must file a return with the Court containing the amount and a description of property of the judgment debtor which is in the garnishee's possession;
- 35.6.4 If the Garnishee is an employer of the judgment debtor, within 20 days of the date of service the garnishee must file a return with the Court stating the judgment debtor's pay periods, average gross wage per pay period, and any other compensation the judgment debtor receives through employment including but not limited to tips and bonuses.
- 35.6.5 The garnishee may withhold an addition processing fee, not to exceed fifty (\$50.00) per year for each Court order, from the remainder of the judgment

debtor's earnings.

35.6.6 If the garnishee relinquishes non-exempt personal property or credit to the judgment debtor after receipt of this notice, the garnishee may be found liable to the judgment creditor for the value of the property or credit wrongfully released.

35.6.7 A violation of any provision of this subsection shall be contempt of court and punishable under the rules set forth in Chapter 4.

35.7 SECTION 7: INCOME WITHHOLDING

35.7.1 Deductions shall not exceed 25% of gross pay, except for debts involving the support of a minor child in which case the maximum amounts set forth under 15 USC 1673 as amended from time to time and hereby set out as Appendix A, shall apply.

35.7.2 In no case may income withholding exceed the amounts allowable under Federal Law.

35.8 SECTION 8: RECONCILIATION

35.8.1 If a writ of garnishment is or has resulted in income withholding a party may request a determination under this section of the amount still due under the order. The court may determine the amount due and, if necessary order, the judgment creditor or the interested Tribal Agency or Department to reconcile the amount due with payments actually made.

35.9 SECTION 9: FOREIGN JUDGMENTS

35.9.1 Debts that are a result of a judgment in a court other than the Red Cliff Tribal Court must be properly registered with the Red Cliff Tribal Court pursuant to the procedures set forth in the Red Cliff Court Code Section 4.51

APPENDIX A

Federal Law places certain limitations on garnishment or income withholding. Currently those limits are:

15 USC 1673:

- (a) Maximum allowable garnishment except as provided in subsection (b) of this section and in section [1675](#) of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed;
 - (1) 25 per centum of his disposable earnings for that week, or
 - (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section [206\(a\)\(1\)](#) of Title [29](#) in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (C).

- (b) Exceptions

The restrictions of subsection (1) of this section do not apply in the case of;

 - (1) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.
 - (2) any order of any court of the United States having jurisdiction over cases under chapter [13](#) of title [11](#).
 - (3) any debt due for any State or Federal tax.

- (c) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed;
 - (1) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and
 - (2) where such individual is not supporting such a spouse or dependent child described in clause (1), 60 per centum of such individual's disposable earnings for that week; except that, with respect to the disposable earnings

of any individual for any workweek, the 50 per centum specified in clause (1) shall be deemed to be 55 per centum and the 60 per centum specified in clause (2) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.