

**Oneida Tribe of Indians of Wisconsin
Legislative Reference Office**

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Memorandum

TO: Legislative Operating Committee (LOC)
FROM: Krystal L. John, Staff Attorney
DATE: March 2, 2016
RE: Garnishment (Law) Amendments

On February 18, 2016, a public meeting was held regarding amendments to the Garnishment (Law) that:

- Remove the specific amount of the garnishment action fee and the administrative fee from the Law and instead the Judiciary is authorized to determine the garnishment action fee amount, while the Accounting Department determines administrative fee amount [See 58.5-2 (a) (1) and 58.5-5 (a) (1)]. The current Law sets the garnishment action fee at \$25.00 and the administrative fee at \$5.00.
- Limit representation to an attorney or advocate [See 58.5-3 (d)]. The current Law allows the parties to be represented by someone to speak on their behalf.
- Require post judgment interest be applied to the amount received beginning on the date of the judgment and ending on the date the garnishment order is satisfied [See 58.5-3 (d)]. The post judgment interest rate is a fixed rate and will be determined by 1) an agreement by both parties or 2) an annual post judgment rate equal to one percent plus the prime rate that was in effect on the date of the judgment [See 58.5-5 (d) (1) & (2)].

This memorandum is submitted as a review of the oral comments received during the public meeting process and the written comments received within the public comment period. The public meeting draft with oral and written comments is attached for your review.

Comment 1. Purpose and Policy

58.1-1. The purpose of this ~~Ordinance~~ Law is to ~~utilize~~ exercise the authority of the Oneida Tribe of Indians to provide an effective mechanism for creditors to access an employee's income for reduction of personal debt.

Rae Skenandore: And the second comment then is made from Rae Skenandore GTC member []. On a personal note, I would like this body to consider a mechanism for Tribal debt collection that is not subject to court orders. There is real life examples from federal, state and local government to exercise this right when it comes to the collection of taxes, the Department of Education exercises that right and call it an administrative garnishment when it comes to student loans. There should be another mechanism the Tribe can use to exercise its authority in that way. So that is all I have. Please see attached submission entitled *Who Can Garnish My Wages*.

Response

This is a major policy consideration for the LOC that would require extensive revisions to this Law. If this consideration is implemented, I would recommend a similar process be included for the attachment of per capita payments through the Per Capita Law.

Comment 2. Definition of “Accounting Department”

58.3-1(a) “Accounting Department” means that department of the Tribe charged with managing the finances of the Tribe, specifically, the office charged with responsibility for the payroll of the Tribe.

Rae Skenandore: I have two comments. The first one is from Finance and is regarding the definition for the Accounting Department on line 25. We wrote an alternate definition that I will read it here but I will submit it as well. It is for the Accounting Department, it means the area of the Tribe charged with keeping the records of financial transactions and includes accounts payable and receivable, inventory, payroll, fixed assets and other financial elements. So then I will submit that to LRO.

Response

I would defer to the Finance Department’s suggestion and recommend including the revised definition.

Comment 3. Garnishment’s Applicability to Per Capita Payments

58.3-1(h) “Garnishment” shall mean means the legal process in which money in the hands Earnings of the Oneida Tribe of Indians of Wisconsin as employer, due Debtor is required to be withheld by the respondent and are being claimed by Tribe for a creditor payment of a money judgement.

Jack Denny: Enrollment number []. The only question that I have in here is, because it says I would have to have a judgment. We get a fair amount of thefts through our stores. So if I have a judgment from Brown County or Outagamie County and that gets submitted to this judicial system it doesn’t clearly state are we able to garnishment the per capita. I guess that is my question.

David P. Jordan: I don’t know, I don’t believe we can garnish that from per cap. I think there are only certain things that you can garnish from per capita. Child support is one of them. Tribal debt.

Krystal John: Per capita goes through the Per capita Law and that is called attachment. That is a separate process from garnishment.

David P. Jordan: So that falls underneath the per capita law.

Krystal John: Yes.

David P. Jordan: Oh it does.

Response

I believe the response provided at the public meeting was clear, but just to reiterate, no, garnishment does not apply to per capita payments. Per capita payments may be attached

through the process provided in the Per Capita Law.

Comment 4. Duplicate Definition of “Judge”

58.3-1(l) “Judge” means the member of the Judiciary assigned to hear the Petition for Garnishment.

Layatalati Hill: I just want to point out that on line 53 the definition for judge and also on line 63 the same definition of judge so it is in there twice.

Response

Thank you for pointing this error out; I will remove the additional definition of “Judge.”

Comment 5. Notice of Initial Judgment

58.5-1. Judgment Required. A Creditor must obtain a Judgment before filing a Petition.

58.5-2. Filing Action. 58.3-11. “Accounting Department” means that department of the Oneida Tribe charged with managing the finances of the Oneida Tribe, specifically, the office charged with responsibility for the payroll of the Oneida Tribe. That office shall designate a representative for receiving garnishment orders, irrevocable voluntary payroll deduction agreements, and child support orders, which shall be forwarded to the Hearing Body.

58.4-1. Garnishment Action Procedure. Judgment Required. A creditor shall begin a garnishment action against an employee of the Oneida Tribe by first obtaining a final judgment from an appropriate court. A garnishment action under this section shall not begin unless the creditor has already obtained a valid final judgment and can show proof of judgment to the Hearing Officer.

58.4-2. Filing Action. The creditor shall be responsible for notifying the Hearing Officer of its intent to begin the garnishment action.

(a) A written notice shall be mailed or given to the Hearing Officer indicating the creditor, the intended respondent, the reason for the claim and the amount of the claim.

(b) The Hearing Officer shall, within ten days, set a date and time for a garnishment hearing. The date for the hearing shall be within sixty days of receipt of the first notification to the Hearing Officer.

(c) It is the responsibility of the Hearing Officer to notify the creditor, respondent, and any other parties in interest as to the date, time and place of the garnishment hearing.

58.4-3. Hearing. The Hearing Officer shall establish a designated date, time, and place to hear evidence in In order to render a determination as to the validity of a claim by the creditor in a garnishment action and the amount of the garnishment order to be entered. Hearings shall not be utilized to initiate a Garnishment, the Creditor must file a petition with the Judiciary. The Petition must identify the Creditor, the intended Debtor, any other interested parties, the reason for the claim, the name of the court that issued the Judgment and the amount awarded. The Creditor must include a copy of the Judgment when filing the Petition.

Wesley Martin: So the questions is and really when I go through this ordinance and talk to people is that under the requirements of post judgment interests to apply one of the big issues I

have is whether or not that judgment was ever, the persons were ever notified. Because all that is required in the state statute for someone to bring a foreign judgment to the Court would be that they sent it to the person's last known address whether that person still lives there or nothing. So they are taking a judgment against a party of this Tribe and there is nothing to show that they were given notice. Was there personal service as such? There is nothing to show that that person ever received or that there is an action pending against them. The party goes to Court, gets a judgment and follows the next step is to enforce that judgment. While, then they could come through that with the Full Faith and Credit whether I look at the ordinance and whether that shows or doesn't show that that person was... was he given notice and did they receive notice. That is a big problem not just in the courts in this court system and they go after them and they find them and they get a... now it probably goes back to the same address and did that person receive it. And the second one I would like is the required post judgment. I think there should be language to show that the person got that judgment, that the person was notified in person of that judgment because if you don't know it how can I know that they took it. And all that has to be sent is the last known address. If that person moves or whatever, doesn't live there anymore and most of the persons ... it is just troublesome sometimes when all that has to be shown is the judgment against the person is that you sent the notice to the last known address. So I would ask this body to consider what I asked you. Thank you.

Response

I would not recommend any changes based upon this comment. There is presumption that notice of judgment is provided to the debtor and such judgments are generally publically available. If anything, this should be addressed in our Rules of Civil Procedure. Each jurisdiction could have its own requirements for providing notice that a judgment has been entered and we accept judgments for garnishment from courts other than our own.

Comment 6. Representation Limited to Attorneys and/or Advocates

~~-(d) Throughout the Garnishment proceedings, the parties may choose to —Final Decision. The Hearing Officer will make the final decision as to the garnishment action within five days of the garnishment hearing and notify by formal order all parties within ten days of the decision. 58.4-5. Representation. The respondent and creditor may represent themselves or may be represented by someone to speak on their behalf, if they so choose. Both an attorney or advocate.~~

Wesley Martin: Thank you. On the topic of the garnishment ordinance, as some of you as BC members know that I am also the Chair of the [Oneida Nation Commission on Aging] Board which is the elders and one of the concerns is the representation. Sometimes we have legal advocates, sometimes we have elders such as maybe people that are benefit specialists, someone in the ADRS but also persons that are related to that person that might have some input. And then to require it to me, it is a civil action. It is not a criminal action. It's more on them to have to hire an attorney or lay advocate. Sure they can speak for themselves but sometimes they might have a family member that might be able to speak on their behalf or someone else that not necessarily is a licensed to practice or whatever. So I think to take that away, and to reapply it that they have to have an advocate who is licensed with the judiciary or an attorney, I think would do disservice to that person. There are people that can come out there and if they feel that they need an attorney at that time of the hearing, there are other avenues they can do it but for the

first hearing I would ask this body to look at whether it is really in the interest of that person to go hire somebody. They could ask for an adjournment there are times they do it at the initial plea hearing but I think that unless there was something to show that the ones that did speak up for people are not capable of doing it. I didn't see anything that showed what the advantage would be. There might be an advantage to hiring an attorney or advocate but there is also cost for that, especially on our elders. So to me it's ... there are some problems with this and I know we are just here on the amendments but I think the one I would certainly ask this body to look at is looking at, number one, is the representation. Is to have to have somebody go hire an attorney for enforcement when probably they could answer that themselves or some relative or somebody else in the community help them. I don't see anything other than to have what it presently is, to have somebody speak of their behalf.

Response

The Rules of Civil Procedure which govern these garnishment proceedings allow for a party to represent themselves or be represented by an attorney or advocate admitted to practice before the court. If anything, I would recommend clarifying that this requirement is pursuant to the Rules of Civil Procedure.

Comment 7. Implementation by the Accounting Department

58.5-7(a) Deducting the appropriate amount from the Debtor's paycheck(s) and forward that amount to the Creditor; and

Layatalati Hill: One other thing. What page was that? When it is talking about the Accounting Department. Starts on line 101. "Where the Accounting Department shall determine the amount of the administrative fee. Oh not that part. I will try to find it, hold on.

Well the question, the question was for the interest that is recommended in the draft, who is going to track that each week. It is going to be a different amount and I talked with someone from Accounting and they said that they would probably need another staff member or a new system to track that because it would be kind of amortization schedule based on taking the interest each week and the payments made, so the interest is going to be the same but it will be lesser amount if the principle is less.

David P. Jordan: Is that by line number 48 to 55. Anywhere in there?

Layatalati Hill: No it was not in the definition. Are you looking at the redline?

Tehassi Hill: 139 is post judgment interests.

Layatalati Hill: Yeah ok line, starting line 151, second sentence: "the Accounting Department shall implement the garnishment by deducting the appropriate amount from the debtor's paychecks." The way I read that is they are the ones that are going to have to figure out what's going to be deducted each week so that would be including with the interest what it will be each week.

So my recommendation is to talk to someone from Accounting on what they would need to do with that or if they have that capability. So I don't really have a comment on ...

David P. Jordan: Would the ...

Layatalati Hill: ... what to change but just a recommendation to talk with someone in Accounting about that particular part.

David P. Jordan: So it wouldn't be like the court clerk to keep track of that. No? Is that where

they would be paying it? No? Ok.

Layatalati Hill: Well it says the Accounting Department would deduct the appropriate amount.

David P. Jordan: Ok.

Layatalati Hill: So to me it means they are going to figure out what. We will decide how much the judgment is but the interest is going to change with each payment. That's all I have.

Response

I did reach out to the Accounting Department manager Bob Chambers and he indicated that without adding additional staff, they could not calculate the post-judgment interest as currently defined. As currently defined post-judgment interest accrues through satisfaction of the garnishment, which means it would require a weekly manual calculation on behalf of the Accounting Department. He did say that they could calculate the post-judgment interest without adding any additional staff if we change the definition of post-judgment interest to stop accruing on the date the garnishment order is entered. Accordingly, I recommend revising Section 58.5-5(d) as follows:

(d) Post Judgment Interest. Post Judgment interest must be applied to the amount recovered from the date of the Judgment until the Garnishment Order ~~is satisfied~~is entered. The post Judgment interest rate must be fixed for the duration of the Garnishment Order and is determined by one (1) of the following: ...

Comment 8. Child Support Attachments of Per Capita

58.6-1. Orders for child support against any ~~employee shall~~Employee must be recognized and enforced, provided that the order has been issued from a court of competent jurisdiction.

Laurel Meyer-Spooner: My name is Laurel Spooner. I work for collections with Oneida Housing. I just have one question regarding maybe if the moneys owed are owed to other places besides child support, will they end up changing that back? It used to be at least fifty dollars (\$50) went to Tribal debt and child support got everything but fifty dollars (\$50).

Tehassi Hill: Is that the same question, because child support is in the Per Capita Law.

Krystal John: This law does not do that. If that was the former practice of the Tribe to allow fifty dollars (\$50) to go to the other Tribal debt, this is not addressed by Garnishment. The Per Capita Law does the per cap but it is silent as to the dollar amount that would be reserved for other Tribal debts.

David P. Jordan: Does that answer your question?

Laurel Meyer-Spooner: I think it did. Thank you.

David P. Jordan: Thank you.

Response

I believe the response provided at the public meeting was clear, but just to reiterate, garnishment proceedings do not apply to per capita payments. Per capita payments may be attached through the process provided in the Per Capita Law, which does not include any provision that reserves any per capita funds from a child support attachment for the payment of tribal debts.