



Memorandum

TO: Legislative Operating Committee (LOC)
FROM: Douglass McIntyre, Staff Attorney
DATE: July 6, 2016
RE: Garnishment (Law) Amendments: Public Meeting Comment Review

On February 18, 2016 a public meeting was held regarding amendments to the Garnishment (Law). The written and oral comment comments were accepted by the Legislative Operating Committee on March 2, 2016 and review was deferred to a work meeting held on April 6, 2016. Changes to draft were made and a second public meeting on the item was held on June 2, 2016. This memorandum concerns only the comments raise at the second public. The second public meeting notice stated that these amendments would:

- 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)].
- Oneida entities, including chartered corporations, do not require a judgment or a garnishment order to garnish an employee's earnings to collect a debt owed to the Nation [see 58.6-1]. Oneida entities must follow the notification procedure [see 58.6-2]. An employee can request a garnishment hearing with the Judiciary within 30 days of the date of the final notice to challenge the debt owed to the Nation or to request a reduced garnishment amount [see 58.6-7]. The debtor is responsible for the Judiciary's garnishment action fee [see 58.6-3(b)]

This memorandum is submitted as a review of the oral and written comments received during the public meeting process which ended on June 10, 2016. The public meeting draft with comments, as well as the transcripts of the meeting and written comments received, have been attached for your review.

Comment 1. Garnishment and Per Capita

Wes Martin: And the other one, I could not find out how these effects the per caps for elders. Can they be garnished under this?

Brandon Stevens: No. Shouldn't be. This is just for tribal wages. So for per cap, we would have to amend the per cap ordinance for that.

Maureen Perkins: It is called an attachment under the per cap.

Wes Martin: But they could attach?

Maureen Perkins: Nope. It is totally different. Attachment goes to per cap, that is where you can attach, and garnishment is for wages.

Wes Martin: When I was talking to the elders, they said are they going to be able to come after our per cap. And I said as far as I know not like Brandon is saying but I just want that for the record.

Response.

The commenter questions whether a per capita distribution could be garnished under this law. The Garnishment law only provides for the garnishment of an employee's wage and cannot be applied to a per capita distribution. Per capita distributions may be attached through the Per Capita Law. There are no recommended changes based on the comment.

Comment 2. Repayment of OSB

Dan Hawk (written): LOC, as you may know, Oneida Small Business, Inc. was created from set-a-side funding by the State of Wisconsin due to gaming compact negotiation. Although, some Oneida people have paid their loans, some in full, and yet others pay month after month on time. There are also some Oneida people that are in default.

It is time, that LOC include repayment of OSB, Inc. loans (percapita intercept and garnishment) so that other Oneida Small Business people may enjoy the benefits of the Revolving Loan Fund, like many others have already done.

As a note, several Oneida people have already signed off on their percapita for repayment of the loan as a condition of the loan but, Trust and Enrollment will not enforce it because repayment of OSB, Inc. is not in the written law.

Response

The commenter requests that Oneida Small Business, Inc. (OSB) be included in the law so that default loans could be collected. OSB is "founded on the return of economic dollars from the State of Wisconsin from the Gaming Compact." It is difficult to determine if OSB is considered an Oneida entity or an outside entity for the purposes of this law, but regardless, there are no prohibitions to prevent OSB from seeking garnishment. If OSB is an Oneida entity, it can seek garnishment without a final judgment or garnishment order through the new processes found at section 58.6. If OSB is an outside entity, it can still seek garnishment through section 58.5 by first seeking a final judgment from an appropriate court and then filing a garnishment petition.

In section 58.6-1, the law defines Oneida entity, for that section only, to include chartered corporations. It is recommended that a definition for "Oneida entity" be added as the term is used a number of times and is the determining factor for whether section 58.5 or the faster section 58.6 can be used. The term "entity" is defined in several current laws:

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| Administrative Rulemaking 17.3-1(d) | “Entity” means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the majority of the Tribe’s eligible voters and also any department of the Tribe. |
| Comprehensive Policy Governing Boards, Committees and Commissions 3-2 | "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the General Tribal Council. |
| Audit Law 8.3-6 | <i>Entity.</i> Includes any or all activities, functions and operations of the Tribe, component units, vendors, consultants, partner in joint ventures, or businesses in which the Tribe has an investment. |
| Emergency Management and Homeland Security 35.3-1(g) | “Entity” means any Tribal agency, board, committee, commission, or department. |
| Indian Preference Law 57.3-1(n) | “Entity” means any person, sole proprietor, partnership, corporation, franchise, governmental enterprise, or any other natural or artificial person or organization. The term is intended to be as broad and encompassing as possible to ensure this law covers all employment and contract activities within the jurisdiction of the Tribe. |
| Per Capita (proposed) 9.3-1(n) | “Oneida Entity” means a department, board, committee, commission or chartered corporation of the Nation or the Judiciary. |
| Social Media Policy 3-1(c) | “Entity” shall mean any organization, division, branch, board, committee, commission or office of the Tribal government or a Tribal enterprise that performs specific functions or operations on behalf of the Tribe. “Entity” does not mean Tribally-owned corporate boards and/or corporations. |

Comments 3 & 4. Section 58.5-3 Public Meeting Notice

Comment 3. Wes Martin: Thank you. I just have a few comments. The part I want to address first is number two bullet “limit representation to an attorney or advocate.” I went through the garnishing ordinance and amendments and when I look at that particular section, 58.5-3, I see no reference in the ordinance about representation in both the strikeouts. Unless I am looking some place different. I see filing fees under 58.5-3. I don’t see a “d” in both the strike out amendments so I don’t know what the applicable section of the code is about representation.

Comment 4. Wes Martin: So I think limiting that to attorneys or advocates, and plus I could not find it unless someone could help me, I missed it. I don’t see that section in either the amendments or the strikeouts.

Brandon Stevens: That would be 58.5-4(d) not [58.5-]3.

Wes Martin: They have 58.5-3(d).

Brandon Stevens: So we will make the change to reflect that.

Wes Martin: But if you look under [58.5-]4 I don't see it. Ok. I see it now but in the posting it said [58.]5-3.

Response.

These comments are in reference to the public meeting notice which incorrectly cited section 58.5-3(d) instead of section 58.5-4(d) as the section concerning representation. Since the error was only in the public meeting notice and not the draft, there are no recommended changes based on these comments.

Comments 5, 6 & 7. Representation.

Comment 5. Wes Martin: And if there was one I certainly is this a civil action, and noting that ... In both places it is a civil action and if you wanted someone to come with you to help you whether it be a relative or friend or someone to speak I believe that should be permitted. One of the things that is not mentioned in here is if you have the representation, whether it be attorney or advocate, there is a cost to that. And I assume if you are being garnished there is some reasons, it is not being able to pay bills so how are you going to be able to pay. The other problem is people trying to find an attorney, even now in the court system that we have, is hard to find the attorneys that practice here much less advocates. And you have GALs that might be able to help but them are more trained as Guardian ad Litem.

Comment 6. Wes Martin: And that is it I guess. Just a reconsideration about the part with the representation, it has always been, especially in tribal communities, someone is able to speak on their behalf whether it be friend or someone else and I think to take that away, especially when now if they have to go get somebody it will cost money. A lot of them don't have the money to do it in a lot of cases.

Comment 7. Wes Martin: Now I see it, but again my comment as far as attorney or advocate I think that should not be limited. Again for one to limit to attorney and advocates to practice and there is a cost to that too especially to elders.

Response

58.5-~~3~~-4. Garnishment Hearing. The Judiciary shall hold a ~~Garnishment Hearing~~ garnishment hearing within sixty (60) days of receiving the completed ~~Petition~~ petition.

...
(d) Throughout the ~~Garnishment~~ garnishment proceedings, the parties may choose to represent themselves or may be represented by an attorney or advocate.

The commenter expresses concerns over the language that would limit the representation to the individual, attorney or advocate. There were similar comments at the first public meeting and the LOC ultimately decided to keep the language the same as found in the current draft. The

commenter requests reconsideration of this decision again citing the cost of an attorney and difficulty in finding one able or willing to practice before the Judiciary.

“Advocate” is not defined in the proposed amendments, however the Rules of Civil Procedure provides a definition of “an Oneida non-attorney advocate as provided by law and other advocate who is admitted to practice law and is presented to the Court as the representative or advisor to a party.” In speaking with the court, advocates must fill out the same application for admission as an attorney, but do not require special training. The Court has indicated that there are a number of waivers available and that it generally does not hesitate to issue those.

It is recommended that the draft specifically cites the Rules of Civil Procedure to for advocate. Any further changes based on this comment are a policy decision for the LOC.

Conclusion

There were oral comments provided at the public meeting and comments provided in writing which the LOC should consider and incorporate as appropriate. Given the small number of comments, it is recommended that these comments be reviewed at the July 6, 2016 LOC meeting. The interested parties will be provided the LOC packet as notice of this recommendation.