

ROSEBUD SIOUX TRIBE

RESOLUTION NO. 23-____

WHEREAS, The Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and pertinent amendments thereof; and

WHEREAS, The Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-laws; and

WHEREAS, This Rosebud Sioux Tribe is authorized, pursuant to the Constitution and By-laws of the Rosebud Sioux Tribe, Article IV, Powers of the Rosebud Sioux Tribal Council, Section 1, Subsection (l), to promulgate and enforce ordinances providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers; and

WHEREAS, The Rosebud Sioux Tribal Council has enacted RST Ordinance No. 80-02, creating and establishing the Rosebud Sioux Tribe’s Governmental Affairs Committee, authorizing the RST Governmental Affairs Committee to review and recommend all proposed legislation; and

WHEREAS, the Rosebud Sioux Tribe acknowledges that the Rosebud Sioux Tribal Court is a court of competent jurisdiction and those conducting business on the reservation are subject to the jurisdiction of the Rosebud Sioux Tribe and its Court system; and

WHEREAS, The Rosebud Sioux Tribe Governmental Affairs Committee recommends that this Ordinance, Wage Garnishment, be enacted pursuant to the inherent sovereign authority delegated by the people of the Rosebud Sioux Tribe to the Tribal Council under Article IV, 1(k), and (m) and (u) of the Constitution and Bylaws of the Rosebud Sioux Tribe, for the purpose of establishing a procedure through which the earnings of any individual are required to be withheld for the payment of any debt including monetary judgments, child support or other support obligations; and

WHEREAS, The Rosebud Sioux Tribe finds that it has the sovereign right and authority to promulgate and enforce ordinances providing for the maintenance of law and order and the administration of justice, and to safeguard and promote the peace, safety morals and general welfare of the Tribe by regulating the conduct of trade and the use and disposition of property upon the reservation; and

THEREFORE BE IT RESOLVED, That the Rosebud Sioux Tribe hereby adopts the Rosebud Sioux Tribe Ordinance for the Wage Garnishment to be codified as Title Four, Chapter Five of the Rosebud Sioux Tribe Law and Order Code; and

THEREFORE BE IT FURTHER RESOLVED, that the Garnishment Code shall become effective once it is published pursuant to Tribal Code.

EXHIBIT #1

ORDINANCE NO. 2023 -__.

ROSEBUD SIOUX TRIBE TITLE FOUR

CHAPTER FIVE

WAGE GARNISHMENT

INTRODUCTION: This Rosebud Sioux Tribe adopts this Title known as the Rosebud Sioux Tribe Wage Garnishment Ordinance, pursuant to the Constitution and By-laws of the Rosebud Sioux Tribe, Article IV, Powers of the Rosebud Sioux Tribal Council, Section 1, Subsection (k) and (m), pursuant to the inherent sovereign authority delegated by the people of the Rosebud Sioux Tribe to the Tribal Council under Article IV, 1(k), and (m) and (u) of the Constitution and Bylaws of the Rosebud Sioux Tribe, for the purpose of establishing a procedure through which the earnings of any individual are required to be withheld for the payment of any debt.

Section 4-5-1. **This Title shall be known and may be cited as the Rosebud Sioux Tribe Wage Garnishment Code.**

Section 4-5-2. **Actions or small claims proceedings in which garnishment is available.** Persons and agencies subject to garnishment. In any civil action or small claims proceeding to recover damages founded upon contract, express or implied, pursuant to a judgment or decree, any creditor is entitled to proceed by garnishment in the Rosebud Sioux Tribal Court against any person, defined in ____-____-____, including any corporation chartered, organized, by or under the laws of the Rosebud Sioux Tribe, other Tribal Nation, State or of the United States, which has the power to sue or be sued who shall be indebted to or have any property, real or personnel, in its possession or under its control belonging to such creditors' debtor, in the cases upon the conditions, and in the manner prescribed in this Chapter.

Section 4-5-3. **Sovereign Immunity of the Rosebud Sioux Tribe.** Except as required by federal law, or the Constitution and By-laws of the Rosebud Sioux Tribe, the Rosebud Sioux Tribe and its officers and employees shall be immune from suit in any civil action for any liability arising from the performance of their official duties, unless specifically waived by a resolution or ordinance of the Tribal Council making specific reference to such, as provided by RST Law and Order Code Section 4-2-1. The Rosebud Sioux Tribe, and all its constituent parts, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by this Title. The Rosebud Sioux Tribe, by the enactment of this Wage Garnishment Ordinance, waives its sovereign immunity from suit by this Ordinance, specifically

limited by the provisions of this Chapter, for the enforcement of garnishment or withholding of the earnings of any Tribal official, employee, or agent for the payment of any debt only. Nothing in this Title shall be construed as waiving the sovereign immunity of the Tribe, or any of its constituent parts, shall be subject to suit for prospective, equitable relief, including declaratory and injunctive relief, that arise from the enactment of this Title. Nothing in this Title, nor any appeal to the Tribal Court, nor any enforcement action taken pursuant to this Title, shall constitute a waiver of such immunity as to any claim for damages, attorney fees or costs, regardless of whether any such claim arises out of the same transaction or occurrence, or in any other respect. Nothing in this Title shall be construed as a legislative declaration of any tribal liability under federal or state law, or as a waiver of tribal sovereign immunity with respect thereto.

Section 4-5-4. General Definitions.

Subject to additional definitions contained in subsequent Chapters of this Title, which are applicable to specific Chapters or Parts thereof, and unless context requires otherwise, in this Title:

- (1) “Action” a judicial proceeding to recover damages in any civil matter or small claims proceeding to recover damages founded upon contract, or other legal obligation, pursuant to a judgment or decree, against any person.
- (2) “Plaintiff” any judgment creditor.
- (3) “Defendant” every judgment creditor.
- (4) “Earnings subject to garnishment” the term, as used in this Title, means compensation paid or payable or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments.

Section 4-5-5. Plaintiff’s affidavit for Garnishment-Contents. In any action where garnishment is permitted, the plaintiff, or some person’s behalf, may make an affidavit stating that the plaintiff believes the named person is indebted to, or has property, real or personal, in the person’s possession or under the person’s control belonging to the defendant, or either of any of the defendant’s in the action, naming him, and that such defendant has no property on the Rosebud Sioux Tribe Reservation other than the property subject to garnishment under this Title sufficient to satisfy the plaintiff’s demand, and that the indebtedness or property mentioned in such affidavit is, to the best of the knowledge and belief of the person making such affidavit, not be law exempt, and the amount of such claim sued upon.

Section 4-5-6. Garnishment prohibited before judgment. Garnishment prior to obtaining final judgment in the principle action is prohibited.

Section 4-5-7. Affidavit covering more than one garnishee—Joint and several proceedings. Any number of garnishees may be embraced in the same affidavit, but if joint liability is claimed against any, it shall be so stated, and the garnishee named as jointly liable shall be deemed

jointly proceeded against; otherwise several garnishees shall be deemed severally proceeded against.

Section 4-5-8. **Garnishee summons annexed to affidavit.** Form. The plaintiff shall annex a garnishee summons to the garnishment affidavit in substantially the following form:

ROSEBUD SIOUX TRIBAL COURT
ROSEBUD SIOUX INDIAN RESERVATION
ROSEBUD, SOUTH DAKOTA

IN CIVIL COURT

Case No.

Plaintiff,

SUMMONS

vs.

Defendant(s), and

Garnishee.

THE ROSEBUD SIOUX TRIBE TO SAID GARNISHEE:

You are hereby summoned pursuant to the annexed affidavit, as garnishee of the defendant_____, and required within thirty (30) days after service of this Summons upon you, exclusive of the day of service to answer, according to law, whether you are indebted to or have in your possession or under your control any property, real or personal, belonging to the such defendant, and to serve a copy of your answer on the undersigned at _____(address), and in the case of your failure to do so, you will be liable to further proceedings according to law, of which said defendant will also take notice.

Dated this ____day of _____, 20__.

Attorney for the Plaintiff

(Address)

Section 4-5-9. Service of the summons, affidavit, and garnishment disclosure on garnishee. The garnishee summons, affidavit, and garnishment disclosure shall be served on each of the several garnishees named, in the manner provided for service of a summons in an action, by certified mail, or by registered mail, pursuant to the Rosebud Sioux Tribe Law and Order Code Rules of Civil Procedure.

Section 4-5-10. Service of summons, affidavit, and garnishment disclosure when the Rosebud Sioux Tribe is the garnishee. If the Tribe is the garnishee, the garnishee summons, affidavit, and garnishment disclosure shall be served on the Treasurer of the Rosebud Sioux Tribe.

Section 4-5-11. Fee paid to the garnishee for expense of garnishee disclosure. If a garnishee summons, affidavit, and garnishment disclosure is served, the garnishee shall be paid the sum of twenty dollars to reimburse the garnishee for the expense of preparing the garnishment disclosure. The fee shall be taxed as part of the plaintiff's costs. If the garnishee is not paid, the garnishment proceeding is void. The return of service of the garnishee summons shall include a statement that the sum was paid. The garnishment disclosure shall be returned to the plaintiff and filed with the court.

4-5-12. Service of the garnishee summons and affidavit on the defendant. The garnishee summons and affidavit shall also be served on the defendant to the action, either before or within thirty days after service on the garnishee, unless service is made by registered mail pursuant to Rosebud Sioux Tribe Law and Order Code Rules of Civil Procedure. If the defendant appears in the action by attorney, service may be made upon the attorney or the defendant.

4-5-13. Time and manner of service by summons, affidavit, and garnishment disclosure. Return. Payment or retention of property by garnishee. The garnishee summons, affidavit, and garnishment disclosure may be served by certified mail, return receipt requested, or personally by the RST Tribal Court Process Server, or by the sheriff of the county where any garnishee or defendant may be found, or by any other person not a party to the action, in accordance with the RST Law and Order Code Rules of Civil Procedure.

4-5-14. Liability of garnishee to plaintiff after service of summons. From the time of the service of summons upon the garnishee, the garnishee is liable to the plaintiff to the amount of property, money, credits, and effects in the garnishee's possession or under the garnishee's control belonging to the defendant, or in which the garnishee is interested, to the extent of the garnishee's right or interest therein, and of all debts due to the defendant, except such as may be by law exempt from execution.

4-5-15. Continuing lien on wages. Caption of garnishee summons. Disclose forms. The plaintiff may obtain a one hundred twenty-day continuing lien on wages by garnishment. If a lien is to be

obtained, the plaintiff shall mark the caption of the garnishee summons “continuing lien” and all disclose forms shall include the following:

Garnishee will continue to withhold nonexempt portion of the defendant’s earnings as they accrue through the last payroll period ending on or before one hundred twenty days from the effective date of the garnishee summons, or until the sum equals the amount stated in the garnishee summons, or until the employment relationship terminates, whichever occurs first.

At the time of the expected termination of the lien, the plaintiff shall mail to garnishee an additional copy of the disclosure form upon which the garnishee within ten days shall make further disclosure.

4-5-16. Judgment not rendered on garnishee’s liability on negotiable instrument. No judgment shall be rendered upon a liability of the garnishee’s liability arising by reason of his/her having drawn, accepted, made, endorsed, or guaranteed any negotiable bill, draft, note or other security.

4-5-17. Partial release of garnished funds on application of the defendant. The principle defendant may upon order to show cause, apply to the court for any order releasing such part of the funds as the court may direct without waiting for the disposition of the action on its merits, and upon receipt of the certified copy of the order the garnishee defendant may pay over the amount authorized thereby without necessity of waiting for the time of appeal to expire.

4-5-18. Actions by principle defendant against garnishee prohibited during garnishee. Stay of proceedings. No action shall be commenced by the defendant or his assignee against a garnishee upon any claim or demand liable to garnishment, or to recover any property garnished, nor execution be issued upon a judgment in favor of the defendant against the such garnishee subsequent to the service of the garnishee summons upon him, until the termination of the garnishee action; and, if an action shall have been commenced or an execution issued, it shall be stayed by the court upon the garnishee’s application, except that upon such cause shown, the court may by order permit the commencement of such an action, or the issuing of an execution, or the further prosecution of one stayed.

4-5-19. Garnishee’s affidavit denying liability. Form. Within thirty days from the service of such garnishee summons the garnishee may file with the clerk of court and serve as copy upon the plaintiff, his affidavit in substantially the following form:

ROSEBUD SIOUX TRIBAL COURT
ROSEBUD SIOUX INDIAN RESERVATION
ROSEBUD, SOUTH DAKOTA

IN CIVIL COURT

Case No.

Plaintiff,

vs.

Defendant(s), and

_____,
Garnishee.

_____, being duly sworn, says that on the ____ day of _____, 20__, he was served a garnishee summons in the above entitled action; that he was then in no manner and upon no account whatever indebted or under liability to the defendant _____, and that he then has in his possession or under his control, no real estate and no personal property, effects, or credits of any description whatever, belonging to said defendant, or in which he had any interest; and is in no manner liable at garnishee in this action.

Dated this ____ day of _____, 20__.

Subscribed and sworn before me this ____ day of _____, 20__.

Notary Public

4-5-20. Garnishee's garnishment disclosure liability. Time of filing. Contents. Unless the garnishee makes an affidavit as provided for in Section 4-4-18, he shall within thirty days from service of the garnishee's summons file and serve in like manner a garnishment disclosure in which he shall state:

- (1) Whether he was at the time of service of the garnishee summons indebted or under any liability to the defendant named in the garnishee's summons, in any manner, upon an account, specifying, if indebted or liable, the amount, the interest thereon, the manner in which evidenced, when payable, whether an absolute or contingent liability, and all the facts and circumstances necessary to a complete understanding of such indebtedness or liability. If the garnishee is in doubt respecting any such liability or indebtedness, he may set forth all the facts and circumstances concerning the liability or indebtedness and submit the question to the court;
- (2) Whether he held at the time aforesaid the title or possession of any real estate, or any interest in land of any description, or in any personal property, effects, or credits, or any instruments or papers relating to such, belonging to the defendant or in which he is in any way interested. If he admits any such or is in doubt respecting the same, he shall set forth the description of such property and all the facts and circumstances concerning the same, and the title, interest, or claim of the defendant to the same.

If the garnishee claims any setoff or defense to any indebtedness or liability or any lien on or claim to the property, he shall set forth the facts and circumstances thereof fully.

The garnishee may state any claim of exemption from execution on the part of the defendant, or other objection known to him against the right of the plaintiff to apply upon his demands the indebtedness or property disclosed.

If the garnishee discloses any indebtedness, or the possession of any property to which the defendant, and any other person as well, has a claim, he shall provide the names and residences of such claimants and so far as know the nature of the claims.

4-5-21. **Service of garnishment disclosure form on garnishee.** Contents of form. A garnishment disclosure form shall be served upon the garnishee. The disclosure shall be substantially in the following form:

ROSEBUD SIOUX TRIBAL COURT

ROSEBUD SIOUX INDIAN RESERVATION

ROSEBUD, SOUTH DAKOTA

IN CIVIL COURT

Plaintiff,

vs.

Case No.

GARNISHMENT DISCLOSURE

Defendant(s), and

_____,
Garnishee.

I am the _____ of the garnishee and duly authorized to disclose for the garnishee. On the _____ day of _____, 20__, the time of service of the garnishee summons on the garnishee, there was due and owing the defendant from the garnishee the following:

1. Earnings. For the purpose of garnishment, “earnings” means compensation payable for personal service whether called wages, salary, commission, bonus or otherwise, and includes periodic payments. “Earnings” does not include social security benefits or disability pension benefits, except when the benefits are subject to garnishment to enforce any order for support of a dependent child. “Earnings” include military retirement pay. “Disposable earnings” means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld (such as FICA, Medicare, social security taxes, and child support). If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both the past and the current pay period.
 - a. Enter on the line below the amount of disposable earnings earned or to be earned by the defendant within the defendant’s pay periods which may be subject to garnishment.

 - b. Enter on the line below forty times the hourly federal minimum wage times the number of workweeks within the defendant’s pay periods which may be subject to garnishment plus twenty-five dollars per week for each dependent family member residing with the garnishment debtor other than the garnishment debtor himself or herself. When the pay periods consist of other than a whole number of workweeks, each day of a pay period in excess of the number of completed workweeks shall be counted as a fraction of a workweek equal to the number of completed workweeks shall be counted as a fraction of a workweek equal to the number of workdays divided by the number of workdays in the normal workweek.

 - c. Enter on the line below the difference obtained (never less than zero) when line b is subtracted from line a.

d. Enter on the line below twenty percent (1/5) of line a.

e. Enter on the line below the lesser of line c and line d.

2. Money. Enter on the line below any amounts due and owing to the defendant, except earnings, from the garnishee.

3. Property. Describe on the line below any personal property, instruments or papers belonging to the defendant and in the possession of the garnishee.

4. Setoff. Enter on the line below the amount of any setoff, defense, lien or claim which the garnishee claims against the amount set forth on lines 1(e), 2 and 3. Allege the facts by which the setoff, defense, lien or claim is claimed. (Any indebtedness to a garnishee-employer incurred by the judgment debtor within ten days prior to the receipt if the first garnishment on a debt is void and should be disregarded.)

5. Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the defendant's property. State the names and addresses of the persons and the nature of their claim, if known. (Any assignment of wages made by the defendant within ten days prior to the receipt of the first garnishment on a debt is void and should be disregarded.)

6. Enter on the line below the total of lines 4 and 5.

7. Enter on the line below the difference obtained (never less than zero) when line 6 is subtracted from the sum of line 1(e), 2 and 3.

8. Enter on the line below one hundred five percent of the amount set forth in the Affidavit of Garnishment.

9. Enter on the line below the lesser of line 7 and line 8. As garnishee, you are hereby instructed to retain this amount only if it is \$25.00 or more. The balance shall be remitted to the debtor in a timely manner.

Signature _____

Authorized representative of Garnishee.

Title

Subscribed and sworn before me this _____ day of _____, 20__.

Notary Public

4-5-22. **Disclosure by garnishee not made on information and belief.** No answer or disclosure in garnishment except by the Rosebud Sioux Tribe shall be made upon knowledge and belief. The answer or disclosure of the garnishee may be made by an agent or attorney with knowledge of the facts.

4-5-23. **Garnishee's answer conclusive unless issue taken. Trial of issues.** The answer of the garnishee shall be in all cases conclusive of the truth of the facts therein stated, and if it denies liability the proceeding against such garnishee shall be deemed discontinued, unless the plaintiff shall within thirty days serve upon the garnishee a notice in writing that he elects to take issue on his answer. In such case the issue shall stand for trial as a civil action in which the affidavit on the part of the plaintiff shall be deemed a complaint and the garnishee's affidavit the answer thereto. Nothing herein contained, however, shall permit raising of any issue when the Rosebud Sioux Tribe is the garnishee defendant.

4-5-24. **Motion for order on answer of garnishee and defendant.** Affidavit. The plaintiff may in all cases move the court upon the answer of the garnishee and the defendant, if the defendant shall also answer, for such order as the plaintiff is entitled to therein. Such order is not a bar beyond the facts stated in such answers. The plaintiff shall attach an affidavit to the motion setting forth:

- (1) Amount that is owed on judgment and accrued interest;
- (2) Additional costs claimed;
- (3) Credit for any payment made;
- (4) Net balance due;
- (5) Specific request for payment of the garnished amount sufficient to satisfy judgment;
- (6) Any surplus returned to the defendant.

4-5-25. **Payment to clerk by garnishee.** Discharge. In case of the answer of the garnishee shall show indebtedness to the defendant, he may pay the amount thereof to the officer having a levy, or to the clerk of the court; and the officer to whom such payment is made shall give him a receipt specifying the facts and such receipt shall be a complete discharge of all liability to any party for the amount so paid.

4-5-26. **Retention of property disclosed by garnishee until expiration of garnishment, release, or court order.** Return of property to the defendant. If the answer of the garnishee discloses any money, credits, or other property, real or personal, in the possession or control of the garnishee, the garnishee shall retain the money, credits, or property in the garnishee's possession until the expiration of one hundred eighty days from the date of service of the garnishee summons upon the garnishee; the plaintiff causes a copy of the levy to be served upon the garnishee; the defendant authorizes release to the plaintiff; or the order of the court thereon. If, within one hundred eighty days, a levy has not been served upon the garnishee, no agreement has been made for payment or no order of the court for payment, the garnishment shall end, and any property, money, or credits held by the garnishee shall be returned to the defendant if the defendant is otherwise entitled to the money, credits or property.

4-5-27. **Payment to clerk by Tribe as garnishee.** Exoneration of Tribe. The Tribal Treasurer may, in the Tribal Treasurer's discretion, at any time, pay to the clerk of courts moneys that may be due to the principle defendant or the part thereof as was determined or due at the time of the service of the summons in garnishment upon the Tribe. Upon the payment of any money to the clerk of courts, or upon notification by the Tribal Treasurer to the plaintiff or the plaintiff's attorney of the amount, if any, due to the defendant, the Tribal Treasurer, tribal officials, and the Tribe are absolutely exonerated from any liability.

4-5-28. **Order to interplead adverse claimant disclosed by garnishee.** Payment by garnishee and discharge. Service on notice on claimant. When the answer of the garnishee shall disclose that any other person than the defendant claims indebtedness or property in his hands, and the name and residence of such claimant, the court may on motion order that such claimant be made a defendant to the garnishee action; and that notice thereof, setting forth the facts, with a copy of such order, in such form as the court may direct, be served upon him, and that after such service shall have been made, the garnishee may pay or deliver to the officer or the clerk of court such indebtedness or property, and have a receipt therefor, which shall be a complete discharge from all liability to any party for the amount so paid or property so delivered. Such notice shall be served in the manner required for service of a summons in a civil action.

4-5-29. **Answer or defense by adverse claimant. Judgment on default.** Upon service being made pursuant to Section 4-4-28 such claimant shall be deemed a defendant in the garnishee action and within thirty days shall answer, setting forth his claim or any defense which the

garnishee might have made. In case of default, judgment may be rendered which shall conclude any claim upon the part of such defendant.

4-5-30. **Answer by other parties to affirmative claim set up by adverse claimant.** When an adverse claimant is made a garnishee defendant by notice as provided by this Title and sets up an affirmative claim to the fund or property involved, any of the other parties to the garnishment may answer the same within thirty days after service thereof.

4-5-31. **Default judgment for adverse claimant.** Trial of issues on adverse claim. If no answer is made pursuant to Section 4-5-30, the claimant shall be entitled to default as in ordinary cases of failure to answer. If issue be raised upon such claim, the court shall determine the order of trial and procedure at the commencement of the trial or upon motion of any party prior thereto.

4-5-32. **Judgment against garnishee on failure to answer.** If any garnishee, except the Tribe, is summoned and fails to answer as required by this Title, the court may render judgment against the garnishee for the amount of any judgment, including costs, which the plaintiff has recovered in the principal action, together with the costs of the garnishee action.

4-5-33. **Judgment not entered against the Tribe as garnishee.** Summons of Tribe operating as assignment. No judgment shall be entered against the Rosebud Sioux Tribe, nor shall actual liability be incurred by the Tribe in any garnishment proceeding. Any judgment entered against principle defendant when the Tribe is garnishee shall be paid only out of moneys due such principle defendant at the time the service of the summons in garnishment and service of such summons on the Tribe shall be of the same force and effect only as an assignment of the sum claimed or as much thereof as may be due the defendant from the Tribe.

4-5-34. **Defense of garnishment proceedings by principle defendant.** Grounds. The principle defendant may in all cases by answer duly verified, to be served within thirty days from the service of the garnishee summons on him, defend the proceeding against any garnishee upon the ground that the indebtedness of the garnishee, or any property held by him, is exempt from execution against the defendant or for any other reason is not liable to garnishment; or upon any ground upon which a garnishee might defend the same; and may participate in the trial of any issue between the plaintiff and garnishee for the protection of his interests.

4-5-35. **Defense of action by garnishee.** The garnishee may defend the defendant if the latter does, not but is under no obligation to do so.

4-5-36. **Garnishment proceedings deemed civil action.** Procedural rules applicable. The proceedings against a garnishee shall be deemed an action by the plaintiff against the garnishee and defendant as parties defendant, and all provisions of the law relating to proceedings in civil actions at issue, including examination of the parties, amendments, and relief from default or

proceedings taken and appeals and all provisions for enforcing judgments, shall be applicable thereto.

4-5-37. Right to jury trial in garnishment proceedings. Any party to an issue in the garnishment proceedings shall be entitled to a jury trial in all cases where jury trials are allowed in ordinary civil actions.

4-5-38. Terms of judgment on garnishment proceedings. Orders for sale or disposition of property. The court shall render such judgment in all cases as shall be just to all parties, and properly protect their respective interests, and may adjudge the recovery of an indebtedness, the conveyance, transfer, or delivery to the Tribal Police or any other officer appointed by the judgment, of any real estate or personal property disclosed or found to be liable to be applied to the plaintiff's demand, or by the judgment pass the title thereto; and may therein or by its order, when proper, direct the manner of making sale and disposing of the proceeds thereof, or of any money or other thing paid over or delivered to the clerk or officer.

4-5-39. Judgment against garnishee as discharge of liability to defendant. The judgment against a garnishee shall acquit and discharge him from all demands by the defendant, or his representative, for all money, goods, effects, or credits paid, delivered, or accounted for by the garnishee by force of such judgment.

4-5-40. Costs awarded in garnishment action. In case of the trial of an issue between the plaintiff and any garnishee, costs are awarded to the plaintiff and against the garnishee in addition to the garnishee's liability if the plaintiff recovers more than the garnishee admitted by the garnishee's answer; and if the plaintiff does not, the garnishee shall recover costs of the plaintiff. In all other cases under this Title not expressly provided for, the court may award costs in favor of or against any party in its discretion. When no issue is tried the costs of the garnishee action shall be taxed for the plaintiff in the garnishment action.

4-5-41. Storage and maintenance expenses allowed to garnishee. Possessory lien. In all cases the garnishee shall be allowed reasonable costs of the warehousing, storing, care or keep of the property garnished in the hands of the garnishee. And the garnishee shall have a possessory lien on the property garnished until the same is paid.

4-5-42. Maximum amount subject to garnishment. The maximum part of the aggregate disposable earnings of a wage earner for any workweek which is subject to garnishment may not exceed the lesser of:

- (1). Twenty percent of disposable earnings for that week;
- (2). The amount by which disposable earnings for that week exceed forty times the federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) as amended and

in effect on July 24, 2009 or as it may be amended after, of applicable state minimum wage if greater, or any equivalent multiple thereof prescribed by regulation by the secretary of labor and regulation in case of earnings for any pay period other than a week, in effect at the time the earnings are payable less twenty-five dollars per week for each dependent family member residing with the garnishment debtor other than the garnishment debtor himself or herself.

The restrictions of subdivisions (1) and (2) do not apply in the case of any order of any court for the support of any person or any order of any court of bankruptcy under Title 11 of the United States Code.

4-5-43. Maximum garnishment allowed for support of any person. The maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment to enforce any order for the support of any person may not exceed:

- (1) If the individual is supporting a spouse or dependent child other than a spouse or child with respect to whose support the order is used, fifty percent of the individual's disposable earnings for that week;
- (2) If the individual is not supporting a spouse or dependent child other than a spouse with respect to whose support the order is used, sixty percent of the individual's disposable earnings for that week;

Except that with respect to the disposable earnings of any individual for any work week, the fifty percent specified in subdivision (1) shall be deemed to be fifty-five percent and the sixty percent specified in subdivision (2) shall be deemed to be sixty-five percent, if and to the extent that the 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 the work week.

No court order may make, execute, or enforce any order or process in violation of this section.

4-5-44. Extent of debtor exemption. The earnings of a debtor are exempt from process or levy to the extent provided in Sections 4-5-42 and 4-5-43.

Note: This Garnishment Code has been proposed several times over the last five to ten years and beyond that. Historically, this has never got past the committee level as the thought of having someone be able to reach into our tribal member's wages has been troubling.

The Attorney General's Office, over the course of the last five years has received a number of requests for the garnishment of wages. As the Council is aware, we do not have any provision in place that would allow for garnishment. We recently had a federal garnishment request that we had to adhere to. One of the frequent creditors looking to garnish wages is Bad River Furniture and occasionally we will receive child support garnishment requests.

On an economic development level, many vendors will refrain from doing business with tribal members within the exterior boundaries if they have no remedy to recover their losses. As is the case with Bad River furniture, they do business here because they can get paid by payroll deduction. However, when the employee quits—the payments are not typically continued. We just have to notice what happened with our TELP loans over the last several years.

Another issue that this Garnishment Code might help resolve or limit is that there is no adequate enforcement as to judgments. *Law Enforcement* refuses to get involved in the execution of judgments as it is not covered by their 638 contract as an activity.

As you may have noticed, many people are out there committing slander, libel and defamation of character against the administration, the council, as well as this office. At present, these folks have nothing to lose, while good people will be left with their reputation in shambles and they might not recover professionally. Garnishment may serve as a deterrent to this reckless behavior.