



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
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2/12/2007	1	TRIBAL COUNCIL	Approved	Pass
1/25/2007	1	RULES COMMITTEE	Approved and Forwarded to Council	Pass

A LEGISLATIVE ACT AMENDING TITLE 12 OF THE CHEROKEE NATION CODE ANNOTATED - CIVIL PROCEDURE; ADDING PROVISIONS FOR GARNISHMENT
BE IT ENACTED BY THE CHEROKEE NATION:

SECTION 1. TITLE AND CODIFICATION

This act shall be known as the "Garnishment Code Act of 2006" and codified as Title 12, Sections 1170, *et seq.* of the Cherokee Nation Code Annotated.

SECTION 2. PURPOSE

The purpose of this legislative act is to prescribe procedures by which parties owed a judgment debt or child support obligation/arrearage will be able to collect monies owed.

SECTION 3. LEGISLATIVE HISTORY

None.

SECTION 4. DEFINITIONS

1170 - Terms Defined.

A. For the purposes of this subsection and Sections 1171.2 through 1171.4 of this title:

1. "Arrearage" means the total amount of unpaid support obligations;
2. "Delinquency" means any payment under an order for support which becomes due and remains unpaid;
3. "Income" or "earnings" means any form of payment to an individual regardless of source including, but not limited to, wages, gaming winnings, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local

government, school district, or any entity created by law;

4. "Disposable income" means income or earnings less any amounts required by law to be withheld, including, but not limited to, federal, state, and local taxes, Social Security, and public assistance payments;

5. "Obligor" means the person who is required to make payments under an order for support;

6. "Person entitled" or "obligee" means the person to whom a duty of support is owed as designated in the support order or as otherwise specified by the court;

7. "Payor" means any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person;

8. "Support order" means an order for the payment of child support issued by the District Court, the Office of Child Support Enforcement or the IV-D agency of another state or tribe;

9. "Income assignment" is a provision of a support order which directs the obligor to assign a portion of the monies, income, or periodic earnings due and owing to the obligor to the person entitled to the support or to another person designated by the support order or assignment for payment of support or arrearages or both. The assignment shall be in an amount which is sufficient to meet the periodic support arrearages or other maintenance payments or both imposed by the court order or administrative order. The income assignment shall be made a part of the support order;

10. "Child support" means and includes all payments or other obligations due and owing to the person entitled by the obligor pursuant to a child support order, including but not limited to medical insurance or health care premiums and other medical expenses, current child care obligations, child care arrearages and any fixed child care obligations and such other expenses and requirements as determined by the District Court; and

11. "Notice of income assignment" means the standardized form prescribed by the United States Secretary of Health and Human Services that is required to be used in all cases to notify a payor of an order to withhold for payment of child support and other maintenance payments.

12. IV-D agency means an agency of a state or Federally recognized tribe entering, enforcing, or collecting child support payments under Subchapter IV of Chapter 7 of the Social Security Act found in Title 42 of the United States Code.

B. For the purposes of prejudgment garnishments, "judgment creditor" includes prejudgment garnishors.

SECTION 5. SUBSTANTIVE PROVISIONS OF LAW

1171 - Right to Garnishment.

A. Any creditor shall be entitled to proceed by garnishment in the District Court if said court has jurisdiction against a person who shall be indebted to the creditor's debtor or has any property in his possession or under his control belonging to such creditor's debtor, in the cases, upon the conditions, and in the manner described by law.

No garnishment shall be accepted by the Cherokee Nation or any of its business entities unless said garnishment is issued by a court with jurisdiction over the Cherokee Nation or its business entities. All foreign orders of garnishment, except those for child support, must be domesticated within the Cherokee Nation District Court in accordance with the laws or court rules of the Cherokee Nation. Foreign garnishments for child support shall be delivered to the Cherokee Nation Office of Child Support Enforcement to be enforced in accordance with Cherokee Nation law and the policies and procedures of the Office of Child Support Enforcement.

B. Subject to the limitations and exceptions otherwise provided by law, there shall be two classes of garnishments:

1. Prejudgment garnishments, which shall consist only of general garnishments pursuant to Section 1173.3 of this title; and

2. Postjudgment garnishments, which shall consist of the following types of garnishments:

a. Income assignment for child support pursuant to the provisions of Section 1171.2 of this title;

b. Noncontinuing earnings garnishment pursuant to Section 1173 of this title;

c. Garnishment for collection of child support pursuant to Section 1173.2 of this title;

- d. General garnishment pursuant to Section 1173.3 of this title; and
- e. Continuing earnings garnishment pursuant to Section 1173.4 of this title.
- f. Automatic gambling winnings garnishment pursuant to Sections 1197 and 1198 of this title.

1171.1 - Money Earned from Prejudgment Garnishment - Exemption.

A. Money that was earned by a natural person as wages, salary, bonus or commission for personal services shall be exempt from garnishment issued before judgment of a court of competent jurisdiction except as provided for support in a divorce proceeding interlocutory order pursuant to the law of the jurisdiction which issued the order of support, and as otherwise specifically provided by statute.

B. Seventy-five percent (75%) of all earnings for personal or professional services earned during the last ninety (90) days shall be exempt from garnishment except for collection of child support obligations.

1171.2 - Child Support Payments - Garnishment - Filing Fee.

A. Any person awarded custody of and support for a minor child by a court of competent jurisdiction or awarded periodic child support payments by the Office of Child Support Enforcement, or the IV-D agency of another state or tribe on behalf of a recipient of Temporary Assistance for Needy Families or on behalf of a person not receiving Temporary Assistance for Needy Families, upon proper application, shall be entitled to proceed to collect any current child support and child support due and owing through income assignment pursuant to the provisions of this section and Sections 1171.3 and 1171.4 of this title or by garnishment, if the minor child is in the custody and care of the person entitled to receive the child support or as is otherwise provided by the court or administrative order at the time of the income assignment or garnishment proceedings.

B. The maximum part of the aggregate disposable earnings of any person for any workweek which is subject to garnishment or income assignment for the support of a minor child shall not exceed:

1. fifty percent (50%) of such person's disposable earnings for that week, if such person is supporting his spouse or a dependent child other than the child with respect to whose support such order is used; and
2. sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child. The fifty percent (50%) specified in paragraph 1 of this subsection shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph 2 of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment 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.

C. No filing fee shall be required for a garnishment to collect current or past due child support.

1171.3 - Income Assignments

A. In all child support cases arising out of an action for divorce, paternity or other proceedings, the court shall order the payment of child support as provided under Section 508 of Title 43 of the Cherokee Nation Statutes.

B. 1. A notice of income assignment shall be sent by the applicant to the payor on a standardized form prescribed by the Secretary of the United States Department of Health and Human Services and available through the Office of Child Support Enforcement. The notice shall be sent by certified mail, return receipt requested or served according to law. The payor shall be required to comply with the provisions of this subsection and the provisions stated in the notice.

2. The income assignment shall take effect on the next payment of earnings to the obligor after the payor receives notice. The amount withheld shall be sent to the Centralized Support Registry as provided for in Section 502 of Title 43 of the Cherokee Nation Statutes within seven (7) days after the date upon which the obligor is paid. The payor shall include with each payment a statement reporting the date the obligor's support obligation was withheld.

3. Each pay period the payor shall withhold the amounts specified in the notice from the obligor's income and earnings. The amount withheld by the payor shall not exceed the limits on the percentage of an obligor's income which may be assigned for support pursuant to Section 1171.2 of this title.

4. The income assignment is binding upon the payor until released or until further order of the court.

5. All payments shall be made through the Centralized Support Registry as provided in Section 502 of Title 43 of the Cherokee Nation Statutes.

6. If the amount of support due under all income assignments against the obligor exceeds the maximum amount authorized by Section 1171.2 of this title, the payor shall pay the amount due up to the statutory limit, and the payor shall send written notice to the person or agency designated to receive payments that the amount due exceeds the amount subject to withholding. If the payor wrongfully fails to pay or notify as required in this subsection, the payor may be liable for an amount up to the accumulated amount due upon receipt of the notice.

7. If the payor is the obligor's employer, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days of the date the obligor terminates employment, and shall provide the obligor's last-known address and the name of the obligor's new employer, if known.

8. If the payor has no income due or to be due to the obligor in the payor's possession or control or if the obligor has terminated employment with the payor prior to the receipt of notice of income assignment required pursuant to this subsection, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days. Failure to notify the person or agency entitled to support within the required time limit may subject the payor to liability for an amount up to the accumulated amount due upon receipt of the notice of income assignment.

9. The payor is liable for any amount up to the accumulated amount that should have been withheld and paid, and may be fined up to Two Hundred Dollars (\$200.00) for each failure to make the required deductions if the payor:

a. fails to withhold or pay the support in accordance with the provisions of the income assignment notice, or

b. fails to notify the person or agency designated to receive payments as required.

10. The payor may combine withheld amounts from earnings of two or more obligors subject to the same support order in a single payment and separately identify that portion of the single payment which is attributable to each individual obligor.

11. An income assignment for child support shall have priority over any prior or subsequent garnishments of the same wages.

12. The payor may deduct from any earnings of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed Ten Dollars (\$10.00) per month as reimbursement for costs incurred by the payor for the income assignment.

13. The income assignment shall remain in effect regardless of a change of payor.

14. The income assignment shall remain in effect as long as current support is due or until all arrearages for support are paid, whichever is later. Payment of arrearages shall not prevent the income assignment from taking effect.

15. The payor may not discipline, suspend, discharge, or refuse to promote an obligor because of an income assignment executed pursuant to this section. Any payor who violates this section shall be liable to the obligor for all income, wages, and employment benefits lost by the obligor from the period of unlawful discipline, suspension, discharge, or refusal to promote until the time of reinstatement or promotion. Violation of this subsection may result in a fine of up to \$200 against the payor for each violation.

C. Income assignment shall be available to collect any amounts due for child support, child care and medical expenses, as well as current support alimony payments; provided, child support shall be paid prior to any alimony payments.

D. Any existing support order or income assignment which is brought before the court shall be modified by the court to conform to the provisions of this section.

E. Any person obligated to pay support, who has left or is beyond the jurisdiction of the court, may be prosecuted under any other proceedings available pursuant to the laws of this Nation for the enforcement of the duty of support and maintenance.

F. The income assignment proceedings specified in this section shall be available to other states or tribes for the enforcement of support and maintenance or to enforce out-of-state orders.

G. 1. In all child support cases in which child support services are being provided under the Nation's IV-D program, all orders for support are subject to immediate income assignment without need for a hearing by the District Court.

2. In all child support cases arising out of an action for divorce, paternity, or other proceeding in which services are not being provided under the Nation's IV-D program, the court shall order the income of any parent ordered to pay child support to be subject to

immediate income assignment regardless of whether child support payments are in arrears at the time of the order, unless:

a. one of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding. Any finding that there is good cause not to require immediate income assignment must be based upon at least:

(1) a written determination and explanation by the court of why implementing immediate income assignment would not be in the best interests of the child, and

(2) proof of timely payment of previously ordered support in cases involving modification of support orders, or

b. a written agreement is reached between the parties which provides for an alternative arrangement including in-kind payments. For purposes of this subparagraph, "written agreement" means a written alternative arrangement signed by both the custodial and noncustodial parents which has been reviewed by the court and entered into the record by the court.

H. The noncustodial parent may dispute a withholding only on the grounds of a mistake in the amount of the monthly withholding, amount of arrearage, or in the identity of the alleged noncustodial parent.

(I) Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which the payments which the noncustodial parent has failed to make under a Tribal support order are at least equal to the support payable for one month.

(J) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(K) In cases brought by the Cherokee Nation Office of Child Support Enforcement (OCSE), OCSE shall promptly request of its payment system provider that amounts which have been improperly withheld be refunded and OCSE shall promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

1172 - Affidavit - Contents

A. Garnishment proceedings, whether prejudgment or postjudgment, shall be commenced by the filing of an affidavit, on a form prescribed by the Judicial Branch of the Cherokee Nation, stating:

1. The name(s) of the plaintiff(s);

2. The name(s) of the defendant(s);

3. In the case of prejudgment garnishments, the amount of the plaintiff's original claim against the defendant or defendants over and above all offsets;

4. In the case of postjudgment garnishments, the amount of the interest-bearing balance;

5. In the case of postjudgment garnishments, the rate and the date the interest begins to accrue; and

6. That the plaintiff verily believes that some person who is subject to the jurisdiction of the Cherokee Nation, naming him, whether within or without the Nation, is indebted to or has property in his possession or under his control belonging to the defendant, or either or any of the defendants, in the action or execution and that the indebtedness or property is, to the best of the knowledge and belief of the person making such affidavit, not by law exempt from seizure or sale upon execution.

B. The affidavit may be filed by the plaintiff or the plaintiff's attorney at or before the time of filing of a garnishment summons.

C. Only one garnishee may be embraced in any affidavit or garnishment summons.

1172.1 - Prejudgment and Post Judgment Summons - Procedure.

A. A garnishee summons shall not be issued in any action prior to judgment until:

1. Defendant has been served with a notice, to which the affidavit required by Section 1172 of this title is attached, which notifies the defendant that the issuance of a garnishee summons is requested and that the defendant may object to the issuance of the summons by filing a written objection with the court clerk and delivering or mailing a copy to the plaintiff's attorney within five (5) days of the service of the notice. The service of the notice on the defendant satisfies the notice requirement of Section 1174 of this title;

2. If no written objection is filed within the five-day period, and if the undertaking has been executed as provided herein, the court clerk shall issue the garnishee summons;

3. Should a written objection be filed within the five-day period, the court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If, at the hearing, the plaintiff proves the probable merit of the plaintiff's cause and the truth of the matters asserted in the affidavit and if the plaintiff executes an undertaking, as provided herein, the court may issue the garnishee summons; and

4. An undertaking on the part of the plaintiff has been executed by one or more sufficient sureties, approved by the clerk or the court and filed in the clerk's office, in a sum not less than double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay to the defendant all damages which the defendant may sustain by reason of the garnishment, together with a reasonable attorney's fee, if the order be wrongfully obtained.

B. If the court finds that the defendant cannot be given notice as provided by paragraph 1 of subsection A of this section, although a reasonable effort was made to notify the defendant, and at the hearing the plaintiff proves the probable merit of the plaintiff's cause of action and the truth of the matters asserted in the affidavit and the plaintiff has executed an undertaking as provided herein, the court may issue a garnishee summons after which the defendant may move to have the garnishee summons quashed. Notice of a motion to quash, with the date of the hearing, shall be served on the attorney for the plaintiff. The motion shall be heard promptly, and in any case within five (5) days after the date that it is filed. The court must grant the defendant's motion unless, at the hearing on defendant's motion, the plaintiff proves the probable merit of the plaintiff's cause and the truth of the matters asserted in the affidavit. The court clerk may issue an order to pay the money into the court after the hearing, at the direction of the court.

C. A prejudgment or postjudgment garnishment may be amended as in other civil actions. Upon request of the garnishor, alias or additional summons shall issue against the garnishee.

1172.2 - Garnishment Summons - Order to Pay Garnishment Fund.

A. When a garnishment summons is issued in any action after the judgment is filed, the court clerk shall attach to the garnishment summons a notice of garnishment and exemptions required by subsection C of Section 1174 of this title and an application for the defendant to request a hearing. If the garnishee is indebted to or holds property or money belonging to the defendant, the garnishee shall immediately mail by first-class mail a copy of the notice of garnishment and exemptions and the application for hearing to the defendant at the last-known address of the defendant shown on the records of the garnishee at the time the garnishment summons was served on the garnishee. If more than one address is shown on the records of the garnishee at the time of service of the summons, the garnishee shall discharge the duty by mailing the required items to any one of the addresses shown on its records. In lieu of mailing, the garnishee may hand-deliver a copy of the notice of garnishment and exemptions and the application for hearing to the defendant. The garnishee shall have no liability except for willful failure to mail or hand-deliver the copy of the notice of garnishment and exemptions and the application for hearing to the defendant. The answer of the garnishee shall contain a statement indicating substantial compliance with this section. If the application requesting a hearing is filed, the court shall set the matter for hearing within not less than two (2) nor more than ten (10) days from receipt of the returned application, and the court clerk shall give notice of the hearing to each of the parties by first-class mail. The defendant shall have the burden of proof to show that some or all of the assets subject to the garnishment are exempt. The court shall issue an order determining the exemption and directing distribution of funds, as appropriate. The court may direct such other orders to the judgment creditor as are necessary to prevent subsequent garnishment of the exempt property.

B. In any case in which the garnishee is required by law or by order of the court to pay garnishment funds, the garnishee shall pay the funds directly to the judgment creditor, unless otherwise ordered by the court upon good cause shown, to pay the funds directly to the court clerk or unless due to federal law or federal regulation it is necessary that payment be made directly to the court clerk.

C. Any funds paid to the court clerk on a judgment, whether or not pursuant to a garnishment summons shall be paid to the judgment creditor's attorney, or to the judgment creditor if there is no attorney within twenty-one (21) days from receipt by the court clerk, notwithstanding the various times set forth above unless otherwise directed by the court. No order of disbursement shall be necessary. In distribution of funds to the judgment creditor's attorney or judgment creditor, if received pursuant to a garnishment, the court shall not have the duty to determine whether or not the garnishee has complied with the mailing or hand-delivery required of this section or be held liable for complete or partial noncompliance with the notice delivery requirement by the garnishee.

1173 - Garnishee Summons.

A. Any judgment creditor may obtain a noncontinuing lien on earnings. For the purposes of this section, "earnings" means any form

of payment to an individual including, but not limited to, salary, commission, gambling winnings, or other compensation, but does not include reimbursements for travel expenses.

B. A noncontinuing earnings garnishment shall be commenced by filing the affidavit provided for by Section 1172 of this title.

C. The form for the summons required by this section shall be prescribed by the Judicial Branch of the Cherokee Nation.

D. The summons shall be served upon the garnishee, together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and request for hearing, and claim for exemptions, in the manner provided for the service of summons in the Federal Rules of Civil Procedure and shall be returned with proof of service within ten (10) days of its date.

E. The garnishee's answer shall be on a form prescribed by the Judicial Branch of the Cherokee Nation.

F. Within seven (7) days after the end of the defendant's then-current pay period or thirty (30) days from the date of service of the garnishment summons, whichever is earlier, the garnishee shall file the answer with the court clerk and the garnishee shall pay the amount withheld from the pay period to the judgment creditor's attorney or to the judgment creditor, if there is no attorney, with a copy of the answer which shall state:

1. Whether the garnishee was the employer of or indebted to the defendant named in the notice in any manner or upon any account for earnings or wages, specifying, as applicable, the beginning and ending dates of the pay period existing at the time of the service of the affidavit and summons, the total amounts earned in the pay period, and all of the facts and circumstances necessary to a complete understanding of the indebtedness or liability. When the garnishee shall be in doubt respecting the liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances in the affidavit;

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of other claimants and, so far as known, the nature of the claims; and

5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons to the extent the property is not exempt from garnishment.

H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee except for a garnishment lien or summons to collect child support.

2. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons and by giving the date when all previous garnishment liens or garnishment summonses are expected to end.

I. 1. When a postjudgment noncontinuing earnings garnishment under Section [1173](#) <http://www.oscn.net/applications/oscn/DeliverDocument.asp?citeid=94463> of this title or a continuing earnings garnishment under Section 1173.4 of this title is issued against a defendant already subject to an income assignment for child support, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of Section 1171.2 of this title and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under the income assignment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).

2. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

Upon the filing of such affidavit and the undertaking and, when a hearing is required, after said hearing, where the garnishment is for the collection of support, garnishee summons shall be issued by the judge of the district court if prejudgment garnishment is sought or by the clerk of the district court if postjudgment garnishment is sought and served upon each of the garnishees, in the manner provided for service of summons under the laws or court rules of the Cherokee Nation, and shall be returned with proof of service within five (10) days of its date. The garnishee summons shall be on a form prescribed by the Judicial Branch of the Cherokee Nation.

1173.3 - General Garnishment.

- A. A general garnishment shall be commenced by filing the affidavit provided for by Section 1172 of this title.
- B. The summons required by this section shall be on a form prescribed by the Judicial Branch of the Cherokee Nation.
- C. The summons required by subsection B of this section shall be served upon the garnishee together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and request for hearing, and claim for exemptions in the manner provided for by the laws or court rules of the Cherokee Nation and shall be returned with proof of service within ten (10) days of its date.
- D. The garnishee's answer shall be on a form prescribed by the Judicial Branch of the Cherokee Nation.
- E. Within ten (10) days after service of the garnishment, the garnishee shall file its answer with the court clerk and pay or deliver to the judgment creditor's attorney or to the judgment creditor if there is no attorney the indebtedness or property belonging to or owed to the defendant, together with a copy of the answer which shall state:
1. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;
 2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances;
 3. At the garnishee's option, any claim of exemption from execution on the part of the defendant, or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;
 4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of such other claimants and, so far as known, the nature of the claims; and
 5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.
- F. The garnishment summons and affidavit served on the garnishee under this section are a lien on the defendant's property due at the time of service of the summons to the extent the property is not exempt from garnishment.

1173.4 - Continuing Lien on Earnings - Definitions

- A. Any judgment creditor may obtain a continuing lien on earnings. For the purposes of this section, "earnings" means any form of payment to an individual including, but not limited to, salary, wages, commission, gaming winnings, or other compensation, but does not include reimbursements for travel expenses.
- B. A continuing earnings garnishment shall be commenced by filing the affidavit provided for by Section 1172 of this title.
- C. The summons required by this section shall be on a form prescribed by the Judicial Branch of the Cherokee Nation.
- D. The summons required by this section shall be served upon each of the garnishees, together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and request for hearing, and claim for exemptions, in the manner provided for the service of summons in the Federal Rules of Civil Procedure and shall be returned with proof of service within ten (10) days of its date.
- E. The garnishee's answer shall be on a form prescribed by the Judicial Branch of the Cherokee Nation.
- F. Within seven (7) days after the end of each pay period, or, if the judgment debtor does not have regular pay periods, after any payment by the garnishee to the judgment debtor, the garnishee shall file an answer with the court clerk, and pay the amount withheld to the judgment creditor's attorney or to the judgment creditor, if there is no attorney, together with a copy of the answer which shall state:
1. Whether the garnishee was the employer of the defendant named in the notice, was indebted to the defendant, or was under any liability to the defendant in any manner or upon any account for earnings, specifying the beginning and ending dates of the pay period, if applicable, existing at the time of the service of the affidavit and summons, the total amounts earned in the entire pay period, and all of the facts and circumstances necessary to a complete understanding of any indebtedness or liability. When the garnishee shall be in doubt respecting the liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;
 2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances in the affidavit;
 3. At the garnishee's option, any claim of exemption from execution on the part of the defendant or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;
 4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of other claimants and, so far as known, the nature of their claims; and
 5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.
- G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons, to the extent the property is not exempt from garnishment. This lien attaches to subsequent nonexempt earnings until one of the following occurs:
1. The total earnings subject to the lien equals the balance of the judgment against the defendant owing to the plaintiff;
 2. The employment relationship is terminated;
 3. The judgment against the defendant is vacated, modified, or satisfied in full;

4. The summons is dismissed; or
 5. One hundred eighty (180) days from the date of service of the affidavit and summons have elapsed; provided, an affidavit and summons shall continue in effect and shall apply to a pay period beginning before the end of the one hundred eighty-day period even if the conclusion extends beyond the end of the period.
- H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee during the period it is in effect, regardless of whether the amounts withheld by the garnishee are reduced by the court or by agreement of the parties, except for a garnishment lien or garnishment summons issued for the collection of child support.
2. a. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons, and by giving the date when all previous garnishment liens or garnishment summons are expected to end.
 - b. The subsequent summons is not effective if a summons or lien on the same cause of action is pending at the time of service unless the subsequent summons in the same cause of action is served after the one-hundred-fiftieth day of the previous garnishment lien.
- I. 1. When a postjudgment wage garnishment under Section 1173 of this title or a continuing earnings garnishment under this section is issued against a defendant already subject to an income assignment for child support, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of Section 1171.2 of this title and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under the income assignment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).
2. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.
- J. A continuing earnings garnishment may be suspended or modified for a specific period of time within the effective period of the garnishment by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which the judgment was entered, and a copy of which shall be mailed by first-class mail, postage prepaid by the judgment creditor to the garnishee.
- K. Any garnishment issued against a debtor already subject to a continuing or noncontinuing earnings garnishment shall take effect immediately upon the conclusion of the prior garnishment, and shall be effective for its full period of time or as otherwise provided in this section.

1174 - Notice to Defendant of Garnishment Proceedings

- A. In all cases of garnishment before judgment, the defendant in the principal action shall be given notice of the issuance in said action of any garnishee summons, the date of issuance of said summons, and the name of the garnishee.
- B. In all cases of garnishment for the collection of child support, the defendant shall be given notice as required by this section.
- C. In all cases of postjudgment garnishment, the court clerk shall attach notice, in a form prescribed by the Judicial Branch of the Cherokee Nation, with the garnishment, in the manner provided by Section 1172.2 of this title that the defendant may be entitled to claim an exemption for any assistance received pursuant to the terms of the Federal or Oklahoma Social Security Act and other exemptions that may be available to the defendant, and that any such claim should be filed with the court clerk within five (5) days from receipt of notice in a form prescribed by the Judicial Branch of the Cherokee Nation, requesting a hearing as to the status of any assets which the defendant asserts are exempt. Any proceeding to claim an exemption initiated subsequent to five (5) days after receipt of notice shall be by motion unless otherwise agreed by the parties.
- D. Said notification may be accomplished by:

1. Serving a copy of the garnishee summons on the defendant or on his attorney of record in the manner provided for the service of summons; or
2. Sending the notice or a copy of the garnishee summons to the defendant or his attorney of record by registered or certified mail with return receipt requested, which receipt shall be filed in the action; or
3. Attaching the notice on the summons issued in the principal action prior to its service; or
4. Including the notice in the publication notice when service in the principal action is by publication; or
5. Publication one time in a newspaper of general circulation in the county in which the action is filed at least five (5) days prior to the date on which the garnishee's answer is due if the defendant is a nonresident or if the defendant's whereabouts are unknown to plaintiff.

1175 - Subsequent Proceedings.

The judgment creditor may in like manner subsequently proceed against other garnishees, or against the same garnishees, upon a new affidavit, if the judgment creditor shall have reason to believe they have subsequently become liable.

1177 - Trial of Issue - Judgment on Answer.

The answer of the garnishee shall in all cases be conclusive of the truth of the facts therein stated, with reference to the garnishee's liability to the defendant unless the judgment creditor shall within twenty (20) days from the receipt of the garnishee's answer, from the date of the deposition of the garnishee, or from receipt of the garnishee's answers to interrogatories, whichever is later, serve upon the garnishee or the garnishee's attorney of record personally or by certified mail, return receipt requested, a notice in writing that the judgment creditor elects to take issue with the garnishee's answer; in which case, the issue shall stand for trial as a civil action in which the affidavit on the part of the judgment creditor shall be deemed the petition and the garnishee's answer the answer thereto. If

an issue for trial shall be joined between the judgment creditor and a garnishee resident in another county other than that in which the action is pending, the court may, on motion, change the place of trial of such issue to the county of the garnishee's residence. The judgment creditor may, in all cases, move the court, upon the answer of the garnishee, and of the defendant, if the defendant shall also answer, for such judgment to which the judgment creditor shall be entitled, but any such judgment shall be no bar beyond the facts stated in the answer.

1178 - Affidavit Required of Garnishee.

- A. For the purposes of this section, "earnings" means any form of payment to an individual including, but not limited to, salary, wages, commission, gaming winnings, or other compensation, but does not include reimbursement for travel expenses.
- B. Where the garnishment summons is on earnings and is issued under Section 1173 of this title, the garnishee shall, within seven (7) days after the end of defendant's present pay period or where a payment of earnings is due, or thirty (30) days from the service of the summons, whichever is earlier, file an affidavit with the clerk of the court in which the action is pending and deliver or mail a copy thereof to the judgment creditor or the judgment creditor's attorney of record. The affidavit shall state:
 - 1. Whether the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages, specifying, as applicable, the beginning and ending dates of the pay period existing at the time of the service of the garnishee summons, the total amounts earned in the pay period, and all of the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;
 - 2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to such property, the facts and circumstances in the affidavit;
 - 3. At the garnishee's option, any claim of exemption from execution on the part of the defendant, or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;
 - 4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant, or any other person, makes claim, at the garnishee's option, the names and addresses of such other claimants and, so far as known, the nature of the claims; and
 - 5. The garnishee shall state that he has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.
- C. The garnishee's answer shall be on a form prescribed by the Judicial Branch of the Cherokee Nation.

1178.1 - Summons for Collection of Support-Affidavit-Garnishee's answer

- A. For the purposes of this section, "wages" or "earnings" means any form of payment to an individual including, but not limited to, salary, commission, or other compensation, but does not include reimbursement for travel expenses.
- B. Where the garnishment summons is for the collection of support and is issued under Section 1173.2 of this title, the garnishee shall, within ten (10) days from the service of the garnishee's summons or within seven (7) days after the end of defendant's current pay period or thirty (30) days from the date of service of this summons, whichever is earlier, file an affidavit with the clerk of the court in which the action is pending and deliver or mail a copy thereof to the judgment creditor's attorney or to the judgment creditor if there is no attorney. The affidavit shall state:
 - 1. Whether the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages specifying, as applicable, the beginning and ending dates of the pay period existing at the time of the service of the affidavit and summons, the total amounts earned in the pay period and all of the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;
 - 2. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;
 - 3. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to such property, the facts and circumstances in the affidavit;
 - 4. At the garnishee's option any claim of exemption from execution on the part of the defendant, or other objection known to the garnishee against the right of the judgment creditor, to apply the indebtedness or property disclosed;
 - 5. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person, makes claim, at the garnishee's option the names and addresses of such other claimants and, so far as known, the nature of the claims; and
 - 6. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.
- C. The answer of the garnishee shall be on a form prescribed by the Judicial Branch of the Cherokee Nation.

1178.2 - Garnishment Summons Not on Earnings or for Collection of Child Support - Affidavit - Garnishee's Answer.

- A. Where the garnishment summons is not on earnings, is not for the collection of child support and is issued under Section 1173.3 of

this title, the garnishee shall, within ten (10) days from the service of the garnishee's summons, file an affidavit with the clerk of the court in which the action is pending and deliver or mail a copy thereof to the judgment creditor's attorney or to the judgment creditor if there is no attorney. The affidavit shall state:

1. Whether the garnishee was indebted or under any liability to the defendant named in the notice in any manner or upon any 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 of the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;
2. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;
3. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to such property, the facts and circumstances in the affidavit;
4. At the garnishee's option, any claim of exemption from execution on the part of the defendant, or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;
5. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of such other claimants and, so far as known, the nature of the claims; and
6. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

B. The answer of the garnishee shall be on a form prescribed by the Judicial Branch of the Cherokee Nation.

1179 - Failure of Garnishee to Answer.

If any garnishee, having been duly summoned, shall fail to file and deliver or mail the answer as required by Sections 1172.2, 1178, 1178.1 or 1178.2 of this title, to appear for deposition or to answer interrogatories as provided in Section 1183 of this title, the court shall enter an order to the garnishee to file and deliver or mail the answer, to appear for deposition, or to answer the interrogatories within a time prescribed by the court, not to be less than seven (7) days, in the order and also to deliver within the same period of time to the court or the judgment creditor any money or property of defendant that the garnishee is required to pay or deliver under this title. The court shall also direct the manner in which notice of the order shall be given to the garnishee. The order for giving notice shall specify a manner of giving notice which is calculated to be most likely to give actual notice to the garnishee or its managing officers, directors, or agents. The order shall specifically inform the garnishee that the garnishee has failed to respond to the summons and shall specifically advise the garnishee that judgment will be rendered against it in the principal amount of the judgment against the defendant plus costs, which amounts will be specified, upon failure to conform with the requirements of the order. If the garnishee shall fail to file and deliver or mail the answer affidavit as required in the order, appear for deposition, or to answer interrogatories as provided in the order, then the court shall render judgment against the garnishee for the amount of the judgment and costs due the judgment creditor from the defendant in the principal action together with the costs of the garnishment, including a reasonable attorney's fee to the judgment creditor for prosecuting the garnishment. The garnishee may also be subject to punishment for contempt; provided, however, the court shall have power to vacate or modify any order issued pursuant to this section in the manner provided for under the statutes or court rules of the Cherokee Nation.

1180 - Persons Authorized to Make Answer.

The answer of a corporation summoned as a garnishee may be made by any officer or attorney thereof; and of any other garnishee may be made by any agent or attorney of the garnishee.

1181 - Mutual Defense by Garnishee and Defendant.

At any time before final order or judgment against the garnishee, the defendant may in all cases, by answer duly verified defend the proceedings against any garnishee, upon the ground that the indebtedness of the garnishee, or any property held by him, is exempt from execution against such 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. The garnishee may at his option, defend the principal action for the defendant, if the latter does not, but shall be under no obligations so to do.

1182 - Proceedings Deemed Actions - Judgment and Enforcement - Trial and Dismissal - Unmatured or Unliquidated Debts.

The proceedings against a garnishee shall be deemed an action by the judgment creditor against garnishee and defendant, as parties defendant, and all of the provisions for enforcing judgment shall be applicable thereto. No trial shall be had of the garnishee action until the judgment creditor shall have judgment in the principal action, and if the defendant have judgment, the garnishee action shall be dismissed with costs, unless the judgment creditor shall perfect an appeal according to law, in which event the garnishment proceeding shall be continued until the disposition of the appeal, and it shall not be necessary to appeal the garnishment proceedings, or make the garnishee a party to the appeal. The court shall render such judgment in all cases as shall be just to all of the parties and shall properly protect their respective interests, and may adjudge the recovery of any indebtedness, the conveyance, transfer, or delivery to the appropriate law enforcement official, or any officer appointed by the judgment, of any property disclosed or found to be liable to be applied to the judgment creditor'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 of disposing of the proceeds thereof, or of any money or other things paid over or delivered to the clerk or officer. The judgment against a garnishee shall acquit and discharge from all demands by the defendant or the

defendant's representatives for all moneys, goods, effects, or credits paid, delivered or accounted for by the garnishee by force of such judgment; provided, it shall be no defense to proceedings against a garnishee that the debt owing by the garnishee to the defendant was unliquidated or was not due.

1183 - Examination of Garnishee by Deposition or Interrogatories.

The garnishee may be examined by the judgment creditor in any manner prescribed by the Federal Rules of Civil Procedure for discovery. Discovery may commence at any time after the service of the garnishee summons. If the garnishee is a corporation, any principal officer thereof may be so examined. Within forty-five (45) days after the filing of the answer affidavit by the garnishee, the judgment creditor may commence discovery concerning any matter contained in the answer or germane to any liability on the garnishee's part to the principal defendant. Attached to any discovery request or notice of deposition shall be a statement that, upon failure to answer or appear, a judgment may be taken against the garnishee by default for the amount of the judgment and costs which the judgment creditor shall recover or has recovered against the defendant in the principal action, together with costs of the garnishment, and that the garnishee may also be proceeded against for contempt. A copy of the discovery request or notice of deposition and such statement shall be served upon the garnishee or the garnishee's attorney of record in the manner provided for service of summons. The garnishee within twenty (20) days of the date of service of a discovery request shall deliver by mail a copy to the judgment creditor or the judgment creditor's attorney of record, full and true answers to all discovery requests, verified by affidavit, in the manner prescribed by the laws or court rules of the Cherokee Nation.

1184 - Disclaimer by Garnishee - Interpleading Interested Party.

When the answer of the garnishee shall disclose that any other person than the defendant claims the indebtedness or property in his hands, and the name and residence of such claimant, the court may, on motion, order that such claimant be interpleaded, as 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 shall 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 such indebtedness or property, and have a receipt therefore, which shall be a complete discharge from all liability to any party for the amount paid or property so delivered. Such notice shall be served in the manner required for service of a summons in a civil action, and may be made without the state, or by publication thereof, if the order shall so direct. Upon such service being made, such claimant shall be deemed a defendant to the garnishee action and within ten (10) 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.

1185 - Garnishee's Liability.

From the time of the service of the summons upon the garnishee he shall stand liable to the plaintiff to the amount of the property, moneys, credits and effects in his possession or under his control, belonging to the defendant or in which he shall be interested, to the extent of his right or interest therein, and of all debts due or to become due to the defendant, except such as may be by law exempt from execution. Any property, moneys, credits and effects held by a conveyance or title void as to the creditors of the defendant, shall be embraced in such liability. In case such moneys, credits and effects in the possession or under the control of the garnishee shall exceed the amount of the plaintiff's claim, the garnishee shall stand liable to the plaintiff only for the amount of the plaintiff's claim as disclosed by the garnishment affidavit, together with such further amount as shall be equal to all costs and damages, which the plaintiff may recover in the action and garnishment proceedings.

1186 - No Judgment upon Garnishee's Liability under Certain Circumstances.

No judgment shall be rendered upon a liability of the garnishee arising -

First, By reason of his having drawn, accepted, made, endorsed or guaranteed any negotiable bill, draft, note, or other security.

Second, By reason of any money or other thing received or collected by him as a law enforcement officer, by force of an execution or other legal process in favor of the defendant.

Third, By reason of any money in his hands as a public officer, and for which he is accountable to the defendant merely as such officer.

Fourth, By reason of any money or other thing owing from him to the defendant, unless before judgment against the defendant it shall become due absolutely and without depending on any future emergency. Judgment may be given for any money or other thing owing, although it has not become payable, in which case the garnishee shall not be required to pay or deliver it before the time appointed by the contract.

1187 - No Action against Garnishee until Termination of Garnishee Action.

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, or execution be issued upon a judgment in favor of defendant against 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 or a judge thereof, upon the garnishee's application; except that upon cause shown, the court or a judge may by order permit the commencement of such an action, or the issue of an execution, or the further prosecution of one stayed.

1188 - Defendant's Bond.

The defendant may, at any time after the garnishment affidavit is filed, and before judgment, file with the clerk of the court an undertaking, executed by at least two sureties, authorized to issue bonds by the Cherokee Nation, to the effect that they will, on demand, pay to the plaintiff the amount of the judgment that may be recovered against such defendant in the action, with all costs not exceeding a sum specified, which sum shall not be less than double the amount demanded by the complaint on file, or in such less

sum as the court shall, upon application, direct. The sureties shall justify their responsibility by affidavit annexed stating a sum which each is worth, in property, over and above all his debts and liabilities and property exempt from execution, the aggregate of which sums shall be double the amount specified in the undertaking. The defendant shall serve a copy of such undertaking, with a notice where and when the same was filed, on the plaintiff. Within three (3) days after the receipt thereof the plaintiff shall give notice to the defendant that he excepts to the sufficiency of the sureties, or he shall be deemed to have waived all objections to them.

1189 - When Plaintiff Excepts, Sureties Appear for Justification - Discharge of Garnishee.

When the plaintiff excepts, the sureties shall appear for justification before the judge of the district court or the county judge of the county in which the action is brought, at a time and place to be mentioned in the notice given by the plaintiff, and may be examined on oath on the part of the plaintiff touching their sufficiency, in such manner as the judge in his discretion may think proper. The examination shall be reduced to writing and subscribed by the sureties, if required by the plaintiff. If the judge find the sureties sufficient he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the clerk of the district court. Thereafter all the garnishees shall be discharged, and the garnishment proceedings shall be deemed discontinued, and any money or property paid or delivered to any officer shall be surrendered to the person entitled thereto, and the costs shall be taxable as disbursements of the plaintiff in the action if he recovers. The judge may in his discretion require the costs of the justification before him, including fees to the sureties as witnesses, to be forthwith paid by the party requiring justification.

1190 - Costs

A. A garnishee may deduct a fee of Ten Dollars (\$10.00) from the funds of the defendant in the garnishee's possession as reimbursement for costs incurred in answering. If the garnishee is not indebted to the defendant and the garnishee's answer evidencing that is filed and mailed or delivered to the judgment creditor or to the judgment creditor's attorney of record, the garnishee may assess the judgment creditor a fee of Ten Dollars (\$10.00) as reimbursement for such costs.

B. 1. In case of the trial of any issue between the judgment creditor and any garnishee, costs shall be awarded to the judgment creditor and against the garnishee, in addition to the garnishee's liability, if the judgment creditor recovered more than the garnishee admitted by the garnishee's answer; and if the judgment creditor does not, the garnishee shall recover costs from the judgment creditor. The costs shall include a reasonable attorney's fee to be taxed in favor of the prevailing party.

2. In the case of the trial to determine the amount to be recovered for due and owing child support, where any liability on the part of the garnishee is disclosed, costs shall be awarded to the judgment creditor and against the defendant, including a reasonable attorney's fee.

C. In all other cases under this article not expressly provided for, the court may, in its discretion, award costs in favor of or against any party.

D. In addition to sums otherwise due pursuant to a judgment, a judgment creditor, if represented by an attorney, shall be entitled to an attorney's fee of Fifty Dollars (\$50.00) for prosecuting a garnishment pursuant to subparagraphs b, c, and d of paragraph 2 of subsection B of Section 1171 of this title, and an attorney's fee of One Hundred Dollars (\$100.00) for prosecuting a garnishment pursuant to subparagraph e of paragraph 2 of subsection B of Section 1171 of this title, not to exceed a total of One Hundred Fifty Dollars (\$150.00) in any twelve-month period.

1192 - Garnishment - Employees of Cherokee Nation or its Business Entities

That it shall be lawful for any creditor of any person, firm or corporation within the boundaries of the Cherokee Nation, to whom an employee of the Cherokee Nation or any of its wholly owned business entities is indebted, to cause a garnishment to issue to, and to garnishee wages due such creditor of the employee to the same extent and in like manner as if such creditor of the employee was a creditor of a private individual, firm or corporation; provided, however, that such employee of the Cherokee Nation shall be entitled to the exemptions as to amount of such wages, salary, fund or compensation due thereto, as is exempt from attachment, execution or garnishment in favor of officers or employees of private individuals or corporations.

1193 - Summons when Cherokee Nation Employee is Garnisheed

When an employee of the Cherokee Nation or one of its wholly owned business entities is garnisheed, summons shall be served on the payroll manager of the Cherokee Nation or the business entity. The payroll manager shall not enforce any garnishment that was not issued by the Cherokee Nation District Court except for child support garnishments from IV-D agencies of other states or tribes.

1194 - Cherokee Nation as Garnishee - Judgments

No judgment shall be rendered against the Cherokee Nation as garnishee, but judgment may be rendered against any person served pursuant to Section 1193 of this title, who shall willfully fail, neglect or refuse to answer garnishment summons; provided, no person employed by the Cherokee Nation shall be held personally liable unless the failure, neglect, or refusal to answer is willful.

1195 - Garnishment Bond Not Required when Nation is Plaintiff.

That in all actions in which the Cherokee Nation is party plaintiff, no garnishment bond shall be required of the plaintiff, but that a garnishment writ shall issue upon the filing of proper affidavits, as provided by law.

1196 - Judgment - Garnishee Liability to Defendant.

If the plaintiff takes issue with the answer of the garnishee, the plaintiff may have a copy of the garnishee's answer and a copy of the plaintiff's notice which takes issue with the answer served on the defendant. If the defendant is served copies of the garnishee's answer and the plaintiff's notice, the determination of the court as to the liability of the garnishee to the defendant will be binding on the defendant in any future action involving him and the garnishee whether or not the defendant participates in the trial of the issues raised by the garnishee's answer.

1197 - Garnishment of Gaming Winnings

Cherokee Nation Enterprises (CNE) shall verify that no child support arrearage is owed by any customer who wins an Internal Revenue Service reportable amount. Verification will be by comparing the social security number of the patron with the social security numbers provided by the Cherokee Nation Office of Child Support Enforcement. CNE shall not be required to perform such comparison until the Office of Child Support Enforcement provides the information necessary, or access to the necessary information, to compare the social security number of the patron to the social security numbers of persons owing child support arrearages under Cherokee Nation issued or enforced child support orders and that indicates the amount of the arrearage owed. CNE shall collect the amounts indicated in the arrearage information and shall not be liable for any errors in said arrearage information.

1198 - Withholding Gaming Winnings

A. Cherokee Nation Enterprises shall withhold 75% of the amount of the gaming payout or prize awarded, not to exceed the amount owed, and forward that amount to the Cherokee Nation Office of Child Support Enforcement. Failure to comply with this section shall result in CNE being liable for the amount it failed to withhold.

B. In circumstances where a patron is awarded a non-monetary prize and owes a child support arrearage, the patron shall be afforded the following options: 1) accept the cash equivalent of the prize offered minus the arrearage; or 2) pay the arrearage in cash or guaranteed funds and then take possession of the prize. After five business days, the day of the prize winning event not included, if the patron has not made his/her election, CNE shall award the cash equivalent of the prize but withhold and remit the child support arrearage to the Office of Child Support Enforcement or as directed by said Office, and then make any remaining funds available to the patron in accordance with CNE unclaimed jackpot procedures. The amount retained by CNE to pay the child support arrearage shall not exceed 75% of the net amount of the prize. Net amount is the amount of the prize after all deductions required by law are made not including the child support arrearage.

C. For the purposes of this section, "winnings" include prizes awarded to patrons as the result of promotions, or for other reasons, and which do not require a wager to be placed in order to win the prize. The prize must be of a sufficient amount to require that a report be made to the Internal Revenue Service.

SECTION 6. PROVISIONS AS CUMULATIVE

The provisions of this act shall be cumulative to existing law.

SECTION 7. SEVERABILITY

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

SECTION 8. EFFECTIVE DATE

The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.

SECTION 9. SELF-HELP CONTRIBUTIONS

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

Enacted by the Council of the Cherokee Nation on the ____ day of _____, 2007.