

IN THE DISTRICT COURT OF THE CHEROKEE NATION
TAHLEQUAH, OK

_____))
_____))
Plaintiff,)
V) Case No. _____
_____))
_____))
Defendant,)
And)
_____))
Garnishee.)

GARNISHMENT AFFIDAVIT

CHEROKEE NATION) ss
)

I, _____, being duly sworn, states as follows:

1. That _____ is the Judgment Creditor or Plaintiff in the above-styled case;
2. For Prejudgment Garnishment only: That, _____, the Judgment Debtor or Defendant in the above-styled case, is indebted to the Judgment Creditor in the amount of \$_____, on the original claim over and above all offsets.
3. For Post Judgment Garnishment only: That, _____, the Judgment Debtor or Defendant in the above-styled case is indebted to Plaintiff as follows: Interest at _____% from _____, _____ for cost of \$_____; court cost of \$_____; and attorney fees of \$_____.
4. That I believe that _____ is indebted to or has property within their possession or under their control, which is not by law exempt from seizure or sale upon execution, belonging to the Judgment Debtor or Defendant;
5. That I am _____; I am not _____ seeking a continuing garnishment.
(check one)

(Plaintiff/Plaintiff's Attorney)

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public or Court Clerk

By: _____

My Commission Expires: _____

IN THE DISTRICT COURT OF THE CHEROKEE NATION
TAHLEQUAH, OK

_____))
_____))
Plaintiff,)
V) Case No. _____
_____))
_____))
Defendant,)
And)
_____))
Garnishee.)

CONTINUING JUDGMENT EARNINGS GARNISHMENT SUMMONS

THE CHEROKEE NATION

TO: Said Garnishee

You are hereby summoned pursuant to the attached affidavit as garnishee for the defendant _____ and required within seven (7) days from the end of defendant's present pay period or thirty (30) days from the date of service of this upon you, whichever is earlier, to answer according to law. In your answer you must state whether you are the employer of the defendant and you must withhold the required amount to the plaintiff, attorney for the plaintiff, or the clerk of this court within seven (7) days after each pay period during the time this summons is effective and, at the time you file your answer, to deliver or mail a copy of your answer to the plaintiff or his/her attorney of record and to the defendant, unless defendant is otherwise given actual written notice, which may consist of notation on the defendant's statement of earnings for salary or wages.

If the garnishee, is indebted to or holds salary, wages or money belonging to the defendant, the garnishee immediately shall 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 his duty by mailing 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.

You are hereby directed to pay with your answer the amounts required by law and in case of your failure to do so, you will be liable to further proceeding according to law, and judgment shall be rendered against you in the amount of the judgment rendered against the judgment debtor which has a present balance of \$ _____, together with costs in the principal action and cost of the garnishment proceeding.

Because this is a continuing garnishment, garnishee will withhold and continue to withhold and pay to the judgment creditor's attorney, or the judgment creditor if not represented by an attorney, the amounts calculated on the answer form from judgment debtor's earnings as they accrue until one of the following first occurs: (1) the total earnings withheld equals the total balance due on the judgment, (2) the employment relationship is terminated, (3) the judgment is vacated, modified or satisfied in full, (4) the garnishment summons is dismissed, or (5) 180 days have elapsed from the date of service of the garnishment summons. The garnishment summons shall continue in effect and shall apply to a pay period beginning before the end of the 180 day period even if the conclusion of the pay period extends beyond the 180 day period. This summons may also be suspended or modified for a specific period of time within the effective period of the garnishment by agreement of the parties in writing and filed with the clerk of the court. If the judgment debtor is already subject to a garnishment, this summons shall take effect immediately upon the conclusion of the prior garnishment, and shall be effective for its full period of time. Garnishee shall answer once to disclose the prior garnishment and shall not be required to answer again until this garnishment becomes effective.

Issued this ____ day of _____, _____, and shall be returned with proof of service on or before the ____ day of _____, _____.

KRISTI MONCOOYEA, COURT CLERK

By: _____

_____))
Judgment Creditor) Attorney) Address)
_____))
Phone)

OFFICER'S RETURN

Received this writ on the ____ day of _____, _____ at ____ o'clock __m and executed the same in _____ County, on the ____ day of _____, _____ at ____ o'clock __m by _____.

Dated this ____ day of _____, _____.

_____))
Marshal)

IN THE DISTRICT COURT OF THE CHEROKEE NATION
TAHLEQUAH, OK

_____))
_____))
Plaintiff,)
V) Case No. _____
_____))
_____))
Defendant,)
And)
_____))
Garnishee.

CONTINUING GARNISHEE'S ANSWER/AFFIDAVIT

CHEROKEE NATION) ss
)

I, _____, being duly sworn, states as follows:

That he/she is the _____ of _____.
Official Title) (Garnishee)

Garnishee or _____, on behalf of garnishee having been served with a garnishment summons on the _____ day of _____, _____, and having knowledge of the facts and being sworn, states:

1. At the time of service of the garnishment summons, or upon the date it became effective, the garnishee was not indebted to the judgment debtor for any amount of money nor did the garnishee have possession or control of any property, money, goods, chattels, credits, negotiable instruments or effects belonging to the judgment debtor or in which the judgment debtor had an interest because the employee/individual/judgment debtor was:

- () Not Employed
- () Employed but no amounts due-specify reason: _____
- () Other, Specify _____

2. At the time of service of the garnishment summons or upon the date it became effective, the garnishee was indebted to the judgment debtor or had possession or control of the following property, money, goods, chattels, credits, negotiable instruments or effects belonging the judgment debtor as follows:

- () Earnings as shown on the Calculation for Garnishment of Earnings Form which is incorporated by reference into this answer;
- () Other, specify: _____

3. Nothing has been withheld due to a prior garnishment or continuing garnishment which will expire on _____ and is in case # _____ in the District Court of _____.

4. On _____, _____, the garnishee mailed a copy of the Notice of Garnishment and Exemptions and Application for Hearing by first class mail on the ____ day of _____, _____ to the judgment debtor at: _____.

(street address) _____ city/state _____ Zip _____

or hand delivered the same to judgment debtor at: _____
(judgment debtor) _____ Place _____

NOTE: THIS MUST BE DONE DURING EACH PAY PERIOD IN WHICH THE GARNISHMENT IS IN EFFECT.

5. The garnishee makes the following claim of exemption on the part of the judgment debtor, or has the following objections, defenses, or setoffs to judgment creditor's right to apply garnishee's indebtedness to judgment debtor upon judgment creditor's claim: _____.

Date: _____

By: _____
Title: _____

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

My commission expires: _____
Notary Public

A CONTINUING GARNISHMENT REMAINS IN EFFECT UNTIL ONE OF THE FOLLOWING OCCURS 1) THE JUDGMENT IS PAID IN FULL, 2)THE EMPLOYMENT RELATIONSHIP IS TERMINATED, 3)THE JUDGMENT IS VACATED, MODIFIED OR PAID IN FULL, 4) THE GARNISHMENT ACTION IS DISMISSED, 5) THE EXPIRATION OF 180 DAYS FROM THE DATE OF SERVICE OF THE SUMMONS. (IF PAY PERIOD BEGINS WITHIN 180 DAYS BUT ENDS AFTER THE EXPIRATION, THE PAY PERIOD IS SUBJECT TO THE GARNISHMENT.)

CALCULATIONS FOR GARNISHMENT OF EARNINGS

For the pay period in effect at the time of, or subsequent to, said service:

1. (a) Enter the pay period of judgment debtor (weekly, biweekly, semimonthly, monthly): 1(a) _____
 (b) Enter the date the judgment debtor's present pay period began (pay period for which calculation is made) 1(b) _____
 (c) Enter the date the judgment debtor's present pay period ends. 1(c) _____

2. (a) Enter the gross earnings for entire pay period 2(a) _____
 (b) Calculate deductions from said amount as required by law
 (1) Federal income tax withholding _____
 (2) FICA income tax withholding _____
 (3) State income tax withholding _____
 Total (1),(2), & (3) 2(b)_____
 (c) Net earnings: 2(a) less 2(b) 2(c)_____

3. (a) If judgment debtor is subject to withholding for child support or income assignment, enter maximum allowable percentage (50%, 55%, 60%, 65%): 3(a) _____
 (b) Enter actual percentage withheld: 3(b)_____
 (c) Subtract 3(b) from 3(a) and enter percentage 3(c) _____
 (d) Enter the lesser of 25% or line 3(c) here (If no child support or income assignment enter 25%): 3(d) _____

4. Multiply the percentage in 3(d)times the net earnings in 2(c) 4 _____

5. (a) Multiply and enter the present federal minimum wage as follows: weekly or more often by 30; biweekly by 60; semimonthly by 65; or monthly by 130. 5(a)_____
 (b) Subtract the amount of line 5(a) from the amount on line 2(c) and enter: 5(b)_____

6. Enter the smaller of the amounts entered on line 4 or 5(b). Pay this amount to the attorney for judgment creditor, or Judgment creditor if not represented by an attorney. 6 _____

WHEN COMPLETED, MAIL ORIGINAL ANSWER TO:

Kristi Moncooyea
 District Court Clerk
 P.O. Box 1097
 Tahlequah, OK 74465

You must send your check for the amount garnished with a copy of your answer to the attorney for judgment creditor, or the judgment creditor is there is not attorney. (Check one box and show the address used in the mailing):

() Attorney for Judgment Creditor: _____

() Judgment Creditor: _____

NOTICE OF GARNISHMENT AND EXEMPTIONS

IMPORTANT: Your money may be taken to pay a judgment, read this carefully

A Garnishee Summons has been served concerning your assets. This means money held for you by the garnishee may be taken by the Plaintiff to pay a judgment against you in this case. However, some money is protected by law ("exempt") and cannot be taken to pay judgments. The following is a list of funds that are exempt; however, there may be additional exemptions as well:

- () A. Social Security Benefits 42 USC, Sec. 407
- () B. Supplemental Social Security Income 42 USC Sec. 1383 (d)
- () C. Unemployment Benefits 40 OS Sec. 2-303
- () D. Workmen's Compensation Benefits 85 OS, Sec 48
- () E. Welfare Benefits 56 OS, Sec 173
- () F. Veterans' Benefits 38 USC Sec 3101, 31 OS Sec 7
- () G. Monies in possession of Police Pensions 11 OS Sec 50-124
- () H. Monies in possession of Firemen's Relief and Pension Fund 11 OS Sec 49-126
- () I. Monies in possession of County employee's retirement system 19 OS Sec 959
- () J. Monies in possession of Public Employee's Retirement Fund 74 OS Sec 923
- () K. Teacher's Annuities or Retirement Allowance 70 OS Sec 17-109
- () L. Annuities and Pension Payments under Railroad Retirement Act 45 USC Sec 231(m)
- () M. United States Civil Service Retirement and Disability Pension Fund Payments 5 USC Sec 8346
- () N. United States Civil Service Survivor Annuities 5 USC Sec 8346
- () O. Interest in Retirement, Pension and Profit Sharing Plans 60 OS Sec 327, 60 OS Sec 328
- () P. The wages of Seamen 46 USC Sec 601
- () Q. Funds vested in the Alien Property Custodian 50 USC appx. Sec 9(f)
- () R. Prepaid Burial Benefits 36 OS Sec 6125
- () S. Proceeds of Group-Life Insurance Policy 36 OS Sec 3632 and 36 OS Sec 4026
- () T. Alimony, support, separate maintenance, or child support necessary for support of defendant or dependant 31 OS sec 1.1
- () U. Personal wage exemption because of undue hardship 31 OS Sec 1.1

The above exemptions generally do not apply to judgments for alimony and child support.

If you are a corporation, you may have other exemptions.

If an account is being garnished and if the money in this account does not belong to you, or if you are aware of other reasons why money should not be taken to pay the judgment, you may want to consult an attorney. Because of the garnishment, the garnishee was required to hold the amount of money claimed by the creditor. This means you may not withdraw that money.

If you believe that you are entitled to an exemption, **DO THE FOLLOWING IMMEDIATELY.** You have a deadline of five (5) days from the date you receive this notice.

1. On the "Claim for Exemptions and Request for Hearing", check the box next to the exemption or exemptions you claim.
2. Check whether you claim all money is exempt. If you do not claim all money is exempt, write in the amount you believe is exempt.
3. Sign your name in the space indicated on each form and write the address where the court clerk is to notify you of the hearing date and time.
4. Mail the Claim for Exemptions and Request for Hearing to the court clerk. You may include copies of any information you have that the money is exempt, such as copies of documents or letters from government agencies.

The Court Clerk must receive the Claim for Exemption and Request for Hearing within five (5) days from the date you receive this notice. The court clerk will set the matter for hearing and notify you. At the hearing in court, you will have to prove that your money is exempt. You may want to consult an attorney for advice or assistance concerning the hearing.

If you do not request a hearing within five (5) days from the date you received this notice, but believe you are entitled to an exemption, you should consult an attorney. The attorney may be able to assist you in claiming an exemption by filing a motion with the court.

YOU MUST MAIL A COPY OF THE CLAIM FOR EXEMPTION AND REQUEST FOR HEARING TO THE JUDGMENT CREDITOR'S ATTORNEY.

Kristi Moncooyea, Court Clerk
Cherokee Nation District Court
P.O. Box 1097
Tahlequah, OK 74465

IN THE DISTRICT COURT OF THE CHEROKEE NATION
TAHLEQUAH, OK

)	
)	
Plaintiff,)	
V)	Case No. _____
)	
)	
Defendant,)	
And)	
)	
Garnishee.)	

CLAIM FOR EXEMPTION AND REQUEST FOR HEARING

1. Funds sought in garnishment are exempt from execution because they are (check applicable box):
- A. Social Security Benefits 42 USC, Sec. 407
 - B. Supplemental Social Security Income 42 USC Sec. 1383 (d)
 - C. Unemployment Benefits 40 OS Sec. 2-303
 - D. Workmen's Compensation Benefits 85 OS, Sec 48
 - E. Welfare Benefits 56 OS, Sec 173
 - F. Veterans' Benefits 38 USC Sec 3101, 31 OS Sec 7
 - G. Monies in possession of Police Pensions 11 OS Sec 50-124
 - H. Monies in possession of Firemens' Relief and Pension Fund 11 OS Sec 49-126
 - I. Monies in possession of County employee's retirement system 19 OS Sec 959
 - J. Monies in possession of Public Employee's Retirement Fund 74 OS Sec 923
 - K. Teacher's Annuities or Retirement Allowance 70 OS Sec 17-109
 - L. Annuities and Pension Payments under Railroad Retirement Act 45 USC Sec 231(m)
 - M. United States Civil Service Retirement and Disability Pension Fund Payments 5 USC Sec 8346
 - N. United States Civil Service Survivor Annuities 5 USC Sec 8346
 - O. Interest in Retirement, Pension and Profit Sharing Plans 60 OS Sec 327, 60 OS Sec 328
 - P. The wages of Seamen 46 USC Sec 601
 - Q. Funds vested in the Alien Property Custodian 50 USC appx. Sec 9(f)
 - R. Prepaid Burial Benefits 36 OS Sec 6125
 - S. Proceeds of Group-Life Insurance Policy 36 OS Sec 3632 and 36 OS Sec 4026
 - T. Alimony, support, separate maintenance, or child support necessary for support of defendant or dependant 31 OS sec 1.1
 - U. Personal wage exemption because of undue hardship 31 OS Sec 1.1
 - V. Other _____

(Please State)

Check One Box:

- All funds are exempt or
- I believe the following amount of money is exempt \$ _____
(fill in amount of funds to be exempt)

2. Check if applicable:

- I have attached copies of the documents that show that my money is exempt.
- I request that this matter be set for a hearing.

Signature

Print Name

Address

Address for Mailing a copy of Claim to Judgment Creditor's Attorney

You must mail original to the Court Clerk of the Cherokee Nation District Court at P.O. Box 1097, Tahlequah, OK 74465