

TITLE 4
JUDGMENT AND EXECUTION
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**TITLE 4
JUDGMENT AND EXECUTION**

**CHAPTER 4.01
General Provisions**

4.0101 Purpose Statement.

The purpose of this title is to regulate the procedures to enforce and execute civil and criminal judgments, court orders or writs of the Tribal and Appellate Court.

4.0102 Judgment.

1. In all civil cases, judgment shall consist of an order of the court and notice of entry of judgment. Notice shall be given within ten (10) days of entry of judgment.
2. In all criminal cases, a judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly.
3. The judgment shall be signed by the judge and entered by the clerk.

4.0103 Recognition of foreign court orders and judgments.

The judicial orders and judgments of other reservations, and all federal and state courts will be recognized by the Turtle Mountain Tribal Court, unless objected to. These orders or judgments shall have the same effect and are subject to the same procedures, defenses, and proceedings as judgments of the tribal court. If recognition of a judgment is objected to by a party, the tribal court must be satisfied, upon application and proof by the objecting party with respect to Subsections (1) through (5), that the following conditions are present:

1. The foreign court had personal and subject matter jurisdiction;
2. The order or judgment was obtained without fraud, duress, or coercion;
3. The order or judgment was obtained through a process that afforded fair notice and a fair hearing;
4. The order or judgment does not contravene the public policy of the Turtle Mountain Tribe; and
5. The order or judgment is final under the laws and procedures of the rendering foreign court.

4.0104 Enforcement and Jurisdiction.

Any judgment or court order entered by the Turtle Mountain Tribal Court is enforceable within the jurisdiction of the Turtle Mountain Tribal Court. A court order or judgment from another jurisdiction is enforceable if it is recognized by the Tribal Court and due process is provided to all involved parties.

4.0105 Basis for Enforcement.

A judgment or court order is only enforceable when it is final.

4.0106 Stay of Execution; Posting of bond.

1. The judge of the Tribal Court may grant a stay of execution of any final judgment, order, or writ of the Tribal Court pending an appeal, provided the appellant posts a bond with the clerk of the Tribal Court. The amount of the bond shall be set by the judge of the Tribal Court, but in no case shall it exceed:
 - a. In a criminal case the amount of the fine including costs;
 - b. In a civil case the equivalent to the amount of the judgment, including costs, or the value of the property, including costs, if the judgment is for the return of the property. The clerk of the Tribal Court, in

- lieu of bond, may provide for the safe keeping of the property or accept the surrender of other property as collateral as long as such property is of comparable worth.
2. The clerk of the Tribal Court must notify within five (5) days of the posting of the bond, the other party by registered letter of the stay of execution pending appeal.

CHAPTER 4.02
Execution Proceedings

4.0201 **Property subject to execution.**

All property shall be subject to execution if not otherwise exempted by Tribal or Federal law.

4.0202 **Property exempt from execution.**

1. Following property is exempted from execution:
 - a. Clothes and other items for personal use for the debtor including furniture, equipment and chattels in the house up to five thousand dollars (\$5000).
 - b. Tools, vehicles and other equipment the debtor needs for his employment, or education, up to four thousand dollars (\$4000).
2. When determining exemptions, the Judge may take into consideration:
 - a. Whether the debtor or a person in the debtors household is suffering from a serious illness or a disability which requires special equipment;
 - b. If special circumstances allow it, items under subsection 1(b) above may be exempted even if the value is greater than four thousand dollars (\$4000).

This section shall not apply to garnishment of wages proceedings as described in section 4.0501.

4.0203 **Stipends and contributions exempt from execution.**

Exempt from execution is:

1. Stipends or other payments received for the promotion of cultural, scientific or humanitarian purposes;
2. Stipend received for the purpose of education;
3. Seventy-five percent of any General Assistance payment;
4. Any funds obtained from any Treaty payment or per capita payment made under federal law;
5. Payments from the state or tribe primarily for the benefit of children such as Aid to Families with Dependent Children payments;

Subsection (a) does not apply to contributions given in the capacity of personal wages.

4.0204 **Homestead Exemption; Area and value.**

The homestead of any person, whether married or unmarried, residing within the Turtle Mountain Jurisdiction shall consist of the land upon which the claimant resides, and the physical structure, including a mobile home, in which a person has their primary place of residence and the land in which the homestead claimant resides, with all its appurtenances, and all other improvements on the land, the total not to exceed eighty thousand dollars in value, over and above liens or encumbrances or both. The homestead shall be exempt from judgment lien and from execution or forced sale. In no case shall the homestead embrace different lots or tracts of land unless they are contiguous.

4.0205 **Proceeds of sale exempt; Disposition.**

If the sale of a homestead is made, the proceeds thereof, to the amount of the homestead exemption must be paid to the claimant and the residue applied

to the satisfaction of the execution. When the execution is against a married claimant whose spouse is living, the court may direct that the amount be deposited in court to be paid out only on the joint receipt of the husband and wife, and it shall possess all the protection against legal process and voluntary disposition by either spouse as did the original homestead premises whether paid directly to the claimant or to the husband and wife jointly. Any excess funds remaining after the sale shall be returned to the debtor. First right to repurchase the property shall be with the debtor. In addition, the debtor has the right to participate in any auction held pursuant to this chapter.

4.0206 Lawful debt in proceedings to distribute decedents' estates.

A judgment shall be considered a lawful debt in all proceedings held by the United States Department of the Interior or by the Turtle Mountain Tribal Court of the Turtle Mountain Band of Chippewa Indians Tribe to distribute decedents' estate.

4.0207 Writs of execution; Renewal of judgment.

The party in whose favor a money judgment is given by the Turtle Mountain Tribal Court, may at any time within six (6) years after entry thereof obtain a writ of execution issued for its enforcement. Prior to the expiration of the six (6) year period, the judgment creditor, upon application may renew the judgment for one additional period of six (6) years. No execution, however, shall issue after the death of the judgment debtor. The judgment creditor's remedy shall be against the decedent's estate in the form of a creditor's claim. Any subsequently issued writ of execution on the same judgment shall not include any previously determined exempt property.

4.0208 Issuance; Contents.

A writ of execution shall be issued by the clerk of the Turtle Mountain Tribal Court and addressed to the Tribal or Bureau policeman and shall direct him/her to seize and deliver to the Clerk of Court sufficient unrestricted and non-exempt personal property of the debtor to pay the judgment and costs of sale. The writ of execution shall specify the particular type of property to be seized and the time and place of docketing.

4.0209 Return.

Within thirty (30) days of his/her receipt of the writ of execution, the policeman shall return it to the clerk of the Turtle Mountain Tribal Court with the property seized, or with a written explanation of why he/her cannot deliver such property. The clerk shall promptly forward a copy of the return to the debtor.

4.0210 Appraisal of property seized.

As soon as practicable upon receipt of the property seized under a writ of execution, the clerk of the Tribal Court shall cause it to be appraised item by item by three (3) disinterested parties, one (1) to be selected by the plaintiff, one (1) by the defendant and one (1) by the Clerk of Court, and all to be placed under oath by the clerk to make a just and true appraisal. If either plaintiff or defendant or both fail to select an appraiser, the clerk shall make the selection. If a majority of the appraisers cannot agree on an appraisal of any item of seized property within forty-eight (48) hours of their appointment, the Clerk may appoint new appraisers. Cost of appraisals shall be assessed and deducted from the sale held pursuant to Section 4.0211.

4.0211 Notice and public sale of property seized; Proceeds; Bill of sale.

Within ten (10) work days after appraisal of property seized under a writ of execution, the Clerk of Court shall post at the place designated by the

Tribal Council for the posting of legal notices and at least two (2) public places within the Turtle Mountain Jurisdiction notices of sale containing a full description of the property to be sold, together with the appraised value of each item and the time and place of sale. The sale shall be held not less than ten (10) nor more than twenty (20) work days after the posting of notice as provided in above paragraph. The sale shall be conducted between the hours of 9:00 A.M. and 4:00 P.M. at a convenient place. The Clerk of Court shall sell the property publicly to the highest bidder for cash, but for not less than ninety (90) percent of the appraised value. He may sell it by item or in bulk, at his discretion. The Clerk shall pay into the court the expenses of sale and any unpaid court costs of either party from the proceeds of sale, and shall pay the balance up to the full amount of the judgment less unpaid court costs to the plaintiff. Any excess shall be paid to the judgment debtor. The Clerk shall deliver a bill of sale to the buyer upon request.

4.0212 Private sale of property seized; Delivery of unsold property to plaintiff or return to defendant.

If the Clerk is unable to sell the property seized under a writ of execution for at least ninety (90) percent of its appraised value, he may hold it for fourteen (14) work days after the date of the attempted sale, during which time he shall sell it to the first person offering him the appraised value in cash. The Clerk, at any time within the fourteen (14) work day period following an unsuccessful public sale, upon request of the plaintiff and payment of all costs, may deliver the property to him and credit the appraised value thereof against the judgment debt. The judgment creditor shall have a judgment against the judgment debtor for costs as they are allowed under section 4.0302. If the appraised value is greater than the debt, he shall not deliver the property to the plaintiff until the plaintiff pays the judgment debtor in cash for such excess value. At the end of fourteen (14) workdays if the property remains unsold and unclaimed by the plaintiff, the Clerk shall return it to the judgment debtor.

4.0213 Execution prior to judgment perishable goods.

Any perishable goods, legal title to which is in the plaintiff or upon which the plaintiff holds a lawful lien, may be taken into custody and delivered to the clerk upon a writ of execution issued prior to judgment, upon motion of the plaintiff, for good cause shown and upon posting bond or making a cash deposit in an amount determined by the Court, not less than double the amount claimed by the plaintiff. Plaintiff shall deposit such additional sum as the Court may fix to cover costs of the execution and of the maintenance of the property while in custody. Any perishable goods seized under subsection (1) shall be sold immediately by the Clerk for a reasonable price. All proceeds of a sale of perishable property shall be held by the Clerk until after judgment is rendered or the case is dismissed. If judgment is for the defendant, the Clerk shall return the proceeds of the sale to him. The bond or cash deposit, less the court costs, and any loss of value to the property or a result of seizure or sale, shall be returned to the plaintiff.

**CHAPTER 4.03
Costs and Fines**

4.0301 Security for costs.

In all civil suits, the complainant, at the Court's discretion, may be required to deposit with the Clerk of the Tribal Court a cash fee or surety bond in a reasonable amount to cover costs and other disbursements in the case.

4.0302 Assessment of costs.

The Court may assess costs of the case against the party or parties against

whom judgment is given. Such costs shall consist of the expenses of voluntary witnesses for which either party may be responsible and the fees of jurors in those cases where a jury trial is held. The Court may direct payment of incidental expenses to include attorney's or agent's fees unless specifically provided for elsewhere in this Code.

4.0303 Payment of fines.

Fines shall be paid in cash, or in property of the required value as may be directed by the Court. All fines and fees must be delivered, within two (2) working days, to the Clerk of the Tribal Court.

**CHAPTER 4.04
Replevin**

4.0401 Immediate delivery of personal property before judgment.

The plaintiff, in an action to recover the possession of personal property, at the time of issuing the summons or at any time before the answer, may claim the immediate delivery of such property as provided by this chapter.

4.0402 Affidavit of claim and delivery required; Contents; Endorsements or immediate delivery.

When an immediate delivery is claimed, an affidavit must be made by the plaintiff or by someone in his behalf stating that the plaintiff is the owner of the property claimed, is lawfully entitled to the possession of it, or that he had a lawful lien against such property, payment of which is in default; the facts of such ownership or right to possession must be set forth along with a detailed description of the property; and that the property is wrongfully detained by the defendant; and the alleged cause of the detention of the property, according to his best knowledge, information, and belief; and that the property has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or, if so seized, that it is by law exempt from such seizure; and the actual value of the property. The plaintiff, after completing, endorsing and swearing to the truth of the affidavit before some authorized by law to administer oaths, may request any Tribal or Bureau police officer to take the property from the defendant and deliver it to the plaintiff.

4.0403 Security required before delivery.

Before possession of any property may be taken by the plaintiff, he must furnish to the Court sufficient security in the form of cash or sureties. The surety shall be at least double in amount the value of the property as stated in the affidavit. If the defendant shall be later adjudged the rightful owner of the property or shall be entitled to possession of the property, the security provided by the plaintiff shall be used in any recovery by the defendant against the plaintiff. If the plaintiff shall be adjudged the rightful owner of the property the security shall be returned to the plaintiff immediately.

4.0404 Seizure, custody and delivery of property by officer; Method; Service of papers received.

Upon receipt of a copy of the endorsed sworn affidavit, proof of security and notice of levy by the police officer, the officer shall accompany the plaintiff or his agent to secure the property described in the affidavit, if the property is in the possession of the defendant or his agent. If the property or any part thereof is concealed in a building or enclosure, then the plaintiff must request that the police officer obtain a search warrant from the Tribal Court. The warrant will only be issued upon a showing of probable cause as to the basis for the belief that the property is so

located. The plaintiff, at the time of taking any property, shall serve on the defendant a copy of the affidavit, endorsement, and proof of security or cash bond and notice of levy showing the property taken by delivering the same to the defendant personally, if he can be conveniently found, or to his agent from whose possession the property is taken; or if neither can be found, by leaving the papers at the usual place of abode of either, with some person of suitable age and discretion.

4.0405 Return of the property.

The defendant may require the return of the property by giving the Clerk of the Tribal Court within three (3) days after the taking, sufficient security or cash deposit of an amount not less than was required by the plaintiff for the delivery.

4.0406 Security, cash deposits, sureties.

Sureties may be provided by any person or company allowed by the Tribal Court. Security may be given in the form of a cash deposit. A receipt shall be given by the Clerk of Court and the deposit shall remain in the custody of the Court until the Court issues an order disposing of it.

4.0407 Police report of proceedings.

Within twenty (20) days after taking the property, the police officer shall be notified by the Clerk of Court in writing to make a verified report of his proceedings in taking and disposing of the property, and file the same together with the original affidavit, endorsement, or security, and a notice of his copy of levy, with the clerk of the Tribal Court. The failure or neglect of the police officer to make such verified report of his proceedings shall not, however, void his proceedings under the affidavit and endorsement but shall render him liable for contempt of court.

**CHAPTER 4.05
Garnishment**

4.0501 Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. Defendant means every judgment debtor.
2. Disposable earnings means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by other law to be withheld.
3. Earnings means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.
4. Person includes an individual, an individual's personal representative or other fiduciary, any two or more persons having a joint or common interest, a partnership, an association, a corporation, a limited liability company, and any other legal or commercial entity.
5. Plaintiff means every judgment creditor.

4.0502 Creditors may proceed by garnishment.

Any creditor is entitled to proceed by garnishment in the Turtle Mountain Tribal Court against any person, any public corporation, the tribal government of the Turtle Mountain Band of Chippewa, or any institution, department or agency of the Turtle Mountain Band of Chippewa, indebted to or having any property in possession or under control, belonging to the creditor's debtor after securing a judgment against the debtor in a court of competent jurisdiction, in the cases, upon the conditions, and in the manner prescribed in this chapter. A garnishment action brought pursuant to this chapter is the exclusive procedure which may be used to execute on earnings of a debtor while these earnings are held by a third party employer.

4.0503

Restriction on garnishment of earnings.

1. The maximum part of the total disposable earnings of an individual for any workweek which is subject to garnishment may not exceed the lesser of:
 - a. twenty-five percent (25%) of disposable earnings for that week.
 - b. the amount by which disposable earnings for that week exceed forty times the federal minimum hourly wage, or any equivalent multiple thereof in case of earnings for any pay period other than a week.
2. The maximum amount subject to garnishment under subsection 1 for any workweek must be reduced by thirty dollars for each dependent family member residing with the garnishment debtor. Within ten (10) days after receipt of the garnishment summons, the garnishment debtor shall provide to the employer a verified list of the names and social security numbers, if any, of the dependents who reside with the garnishment debtor. If the garnishment debtor fails to provide the list, it is conclusively presumed that the garnishment debtor claims no dependents.
3. The restrictions of subsection (1) do not apply in the case of:
 - a. Any order of any court for the support of any person;
 - b. Any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act;
 - c. Any debt due for any state, tribal or federal tax;
4. The maximum part of the total disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person may not exceed:
 - a. Where the individual is supporting a spouse or dependent child other than a spouse or child with respect to whose support the order is issued, fifty percent (50%) of the individuals disposable earnings for that week; and
 - b. Where the individual is not supporting a spouse or dependent child other than a spouse or child with respect to whose support the order is used, sixty percent (60%) of the individuals disposable earnings for that week.
5. The Tribal Court may not make, execute, or enforce any order or process in violation of this section.

4.0504

Notice before garnishment of earnings.

At least ten (10%) days before the issuance of any garnishee summons against the earnings of any person, the creditor shall serve upon the debtor a notice that a garnishee summons may be issued. The notice must be served personally or by certified mail. Failure to serve the notice renders any subsequent garnishment void. The notice must be in substantially the following form:

To: _____ Date: _____
Judgment Debtor

Please take notice that a garnishee summons that will require part of your wages to be withheld may be served upon your employer, without any further court proceedings, or notice to you, at any time after ten (10) days following the date of this notice. For each dependent family member residing with you, the amount subject to garnishment for any workweek may be reduced by thirty dollars (\$30), if within ten (10) days after receipt of the garnishee summons you provide to your employer a verified list of the dependent family members residing with you and their social security numbers, if any. You may wish to contact the undersigned judgment creditor, or attorney to arrange for the settlement of the debt, which is \$ _____.

Judgment Creditor
Address

4.0505 Service on tribal finance office fee.

Service upon the tribal government of the Turtle Mountain Band of Chippewa or any institution, department or agency thereof, as garnishee, may be made upon the tribal finance office by sending a copy of the garnishee summons and disclosure form by certified mail, return receipt requested, including the fees to be tendered and paid to the tribal finance office for making and filing an affidavit of disclosure in the amount of twenty dollars (\$20). The fee shall be made payable to the Turtle Mountain Band of Chippewa.

4.0506 Garnishee summons.

In any action in the Tribal Court for the recovery of money, at any time after judgment, a garnishee summons may be issued against any third person as provided in this chapter. The plaintiff and defendant shall be designated. The person against whom the summons is used shall be designated garnishee.

4.0507 Form of summons and notice.

1. The garnishee summons must state that the garnishee must serve upon the plaintiff or the plaintiffs' attorney within twenty (20) days after service of the garnishee summons a written disclosure, under oath, of indebtedness to or property of the defendant and answers to all written interrogatories that are served with the garnishee summons. The plaintiff may not require disclosure of indebtedness or property in excess of one hundred ten percent (110%) of the amount of the judgment, which remains unpaid. The garnishee summons must include the full name of the defendant and place of residence and the amount of the judgment, which remains unpaid. The garnishee summons must also state that the garnishee must retain property or money in the garnishees possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release of all detained property and money to the defendant and is discharged and relieved of all liability on the garnishee summons.
2. The garnishee summons must state:
 - a. that no employer may discharge any employee because the employee earnings are subject to garnishment; and
 - b. that any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten (10) days before the receipt of notice of the first garnishment on the underlying debt is void; and the date of the entry of judgment against the defendant; and after receipt of the garnishee summons a verified list of the dependent family members who reside with the defendant and their social security numbers; and
 - c. failure of the defendant to provide a verified list to the garnishee within ten (10) days after receipt of the garnishee summons establishes a rebuttable presumption with respect to whether the defendant claims no family members.
3. The garnishee summons and notice to defendant must be substantially in the following form:

In Turtle Mountain Tribal Court

_____)	
Plaintiff,)	
)	GARNISHEE SUMMONS AND
against)	NOTICE TO DEFENDANT
)	
_____)	
Defendant,)	
)	

and)
)
)
_____)
Garnishee,)

The _____ to the above-named Garnishee:

You must serve upon the plaintiff or the plaintiffs attorney, within twenty (20) days after service of this summons upon you, a written disclosure, under oath, setting forth the amount or any debt you may owe to the defendant, (give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed \$_____ (Enter the amount of 110 percent (110%) of the plaintiff's judgment which remains unpaid.) The date of entry of the judgment against the defendant was _____ (enter date of the entry of plaintiff's judgment) and the amount of the judgment that remains unpaid is \$_____. The defendant must provide you with a verified list of the names of dependent family members who reside with the defendant and their social security numbers if the defendant desires to have the garnishment amount reduced under Restriction on garnishment of earnings, § 4.0503(a) and (b). Failure of the defendant to provide the list to you is establishes a rebuttable presumption that the defendant claims no dependent family members who reside with the defendant. Failure to disclose and withhold may make you liable to the plaintiff for the sum of \$_____ (Enter the amount of lesser of the plaintiff judgment against the defendant or 110 percent (110%) of the amount that remains unpaid.)

You must retain the defendant's nonexempt property, money, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of one-hundred-eighty (180) days from the date of service of this summons upon you. If no writ of execution has been served upon you or no agreement has been made for payment within one-hundred-eighty (180) days, the garnishment ends and any property or funds held by you must be returned to the defendant if the defendant is otherwise entitled to their possession. Any assignment of wages by the defendant or indebtedness to you incurred by the defendant within ten (10) days before the receipt of the first garnishment on a debt is void and should be disregarded. You may not discharge from employment the defendant because the defendant's earnings have been subject to garnishment.

Dated this _____ day of _____, 19 ____.

By: _____

NOTICE TO DEFENDANT

TO: _____
The garnishee summons, garnishment disclosure form, and written interrogatories (strike out if not applicable), that are served upon you, were also served upon _____, the garnishee.

Plaintiff or Plaintiff's attorney

Address

Telephone

The garnishee summons and notice to defendant shall be served upon the garnishee in the same manner as other summons in the tribal court of record except that service must be personal. The plaintiff shall serve with the garnishee summons a disclosure form, substantially as set out in this chapter. The plaintiff may also serve interrogatories with the garnishee summons. A copy of the garnishee summons and copies of all other papers served on the garnishee must be served personally upon the defendant not more than ten (10) days after service is made upon the garnishee. A single garnishee summons may be addressed to two (2) or more garnishees but must state whether each is summoned separately or jointly.

4.0509

Disclosure.

Within the time as limited, the garnishee shall serve upon the plaintiff or the plaintiff's attorney written answers, under oath, to the questions in the garnishment disclosure form and to any written interrogatories that are served upon the garnishee. The amount of the garnishee's disclosure need not exceed one hundred ten percent (110%) of the amount of the plaintiff's judgment, which remains unpaid, after subtracting the total of setoffs, defenses, exemptions, ownership's, or other interests. The written answers may be served personally or by mail. If disclosure is by a corporation or limited liability company, it must be verified by some officer, manager, or agent having knowledge of the facts. Disclosure must state:

1. The amount of disposable earnings earned or to be earned within the defendant's pay periods, which may be subject to garnishment and all of the garnishee's indebtedness to the defendant, up to one hundred ten percent (110%) of unpaid judgment.
2. Whether the garnishee held, at the time, the title or possession of or any interest in any personal property or any instruments or papers relating to any property belonging to the defendant or in which the defendant is interested. If the garnishee admits any interest or any doubt respecting the interest, the garnishee shall set forth a description of the property and the facts concerning the property and the title, interest, or claim of the defendant in or to the property.
3. If the garnishee claims any setoff or defense or claim or lien to disposable earnings, indebtedness, or property, the garnishee shall disclose the amount and the facts.
4. Whether the defendant claims any exemption from execution or any other objection, known to the garnishee or the defendant, against the right of the plaintiff to apply upon demand the debt or property disclosed.
5. If other persons make claims to any disposable earnings, debt, or property of the defendant, the garnishee shall disclose the names and addresses of the other claimants and, so far as known, the nature of their claims.
6. A garnishment disclosure form must be served upon the garnishee. The disclosure must be substantially in the following form:

In Turtle Mountain Tribal Court

_____)		
Plaintiff,)		
)		
V.)		
)		
_____)		
Defendant,)		GARNISHMENT DISCLOSURE
)		
and)		
)		
_____)		
Garnishee,)		

I am the _____ of the garnishee and duly authorized to disclose for the garnishee.

On the _____ day _____, 19____, the time of service of garnishee summons on the garnishee, there was due and owing the defendant from the garnishee the following:

7. 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 under a pension or retirement program. "Earnings" does not include social security benefits, veteran's disability pension benefits, except when the benefits are subject to garnishment to enforce any order for the support of a dependent child. "Earnings" includes 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. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owed but not paid, complete the following disclosure for earnings from both the past pay period 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 (40) times the hourly federal minimum wage times the number of workweeks within the defendant's pay periods, which may be subject to garnishment. When 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 must 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 (0)) when line (b) is subtracted from line (a).

- d. Enter on the line below 25 percent (25%) of line (a).

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

- f. Enter on the line below the number of dependent family members living with the defendant (if properly claimed within ten (10) days after receipt of the garnishee summons).

- g. Enter on the line below an amount equal to the number of dependents (line f) times thirty dollars (\$30) times the number of workweeks used to compute line (b).

- h. Enter on the line below the difference (never less than zero (0)) when line (g) is subtracted from line (e).

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

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

10. 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(h), 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 (10) days before the receipt of the first garnishment on a debt is void and cannot be considered.

11. 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 each person's name and address and the nature of that person's claim, if known. (Any assignment of wages made by the defendant within ten (10) days before the receipt of the first garnishment on a debt is void and should be disregarded).

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

13. Enter on the line below the difference obtained (never less than zero(0)) when line (m) is subtracted from the sum of lines 1(h), 2 and 3).

14. Enter on the line below 110 percent (110%) of the amount of the judgment creditor's judgment, which remains unpaid.

15. 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 ten dollars (\$10) or more.

Signature _____

Authorized Representative of Garnishee

Title

4.0510 Disclosure fees.

In all garnishment proceedings, the plaintiff, when the garnishee summons is served upon the garnishee, shall tender to the garnishee the sum of twenty dollars (\$20) as the fee for making an affidavit of disclosure.

4.0511 Effect of disclosure.

Subject to the provisions of Sections 4.0512, "Oral disclosure", and 4.0513, "Third party may intervene", the disclosure is conclusive as to all property of defendant. If the garnishee denies having any indebtedness to the defendant or having any property of the defendant in possession, the filing in court of a copy of the disclosure operates as a full discharge of the garnishee at the end of twenty (20) days from date of service of the disclosure, in the absence of further proceedings as provided for in Sections

12, "Oral disclosure", and 13, "Third party may intervene". The filing of objections to the disclosure or the filing of any motion or other proceedings operates as a stay of the discharge. The court may, upon proper showing, relieve the plaintiff from the operation of the discharge after the expiration of twenty (20) days. The garnishee may be discharged where the value of the property of defendant held or indebtedness owing to defendant is less than ten (10) dollars, and the garnishee may apply to the court to be discharged as to any property or indebtedness in excess of the amount which may be required to satisfy plaintiff's judgment.

4.0512 Oral disclosure; Supplemental complaint.

Either before or after written disclosure, any party to the garnishment proceedings may obtain an ex parte order requiring oral disclosure. The order may be obtained upon affidavit showing, upon information and belief, facts justifying the order, and the court shall require the garnishee to appear for oral examination before the court. If the garnishee holds the garnished property by a title that is void as to the defendant's creditors, the garnishee may be charged for the property although the defendant could not have maintained an action against the garnishee for it; but in this, and in all other cases where the garnishee denies liability, the plaintiff may move the court at any time before the garnishee is discharged, on notice to both the defendant and the garnishee, for leave to file a supplemental complaint making the garnishee a party to the action, and setting forth the facts upon which the plaintiff claims to charge the garnishee. If probable cause is shown, the motion shall be granted. The supplemental complaint must be served upon both defendant and garnishee, either or both of whom may answer, and the plaintiff may reply. The issues must be brought to trial and tried as in other actions.

4.0513 Third party may intervene.

If it appears that any person not a party to the action has or claims an interest in any of the garnished property preceding the garnishment, the court may permit that person to appear and maintain that person's rights. If the person does not appear, the court may direct that the person be notified to appear or be barred of the claim. The notice may be served in a manner as the court directs, and the person appearing or notified shall be joined as a party and is bound by judgment against the garnishee.

4.0514 Default.

If any garnishee who is duly summoned fails to serve disclosure as required in this chapter, the court may, upon proof by affidavit, render judgment against the garnishee for an amount not exceeding the plaintiff's judgment against the defendant or one hundred ten percent (110%) of the amount which remains unpaid whichever is the smaller, but the court upon good cause shown may remove the default and permit the garnishee to disclose on terms as may be just.

4.0515 Judgment against garnishee.

Judgment against a garnishee shall be rendered, if at all, for the amount due the defendant or so much thereof as may be necessary to satisfy the plaintiff's judgment against the defendant, with costs taxed and allowed in the proceedings against the garnishee but not to exceed one hundred ten percent (110%) of the amount which remains unpaid. The judgment shall discharge the garnishee from all claims of all the parties named in the process to the property or money paid, delivered, or accounted for by the garnishee by force of the judgment. When any person is charged as garnishee by reason of any property in possession other than an indebtedness payable in money, that person shall deliver the property, or so much thereof as may be necessary, to the plaintiff holding execution, and the property shall be sold

and the proceeds accounted for in the same manner as if it had been taken on execution against the defendant. The garnishee shall not be compelled to deliver any specific articles at any time or place other than as stipulated in the contract with the defendant.

4.0516 Minimum judgment.

No judgment may be rendered against a garnishee where the judgment against the defendant is less than fifty dollars (\$50), exclusive of costs. Rather, the garnishee shall be discharged.

4.0517 Discharge not a bar.

If any person summoned as a garnishee is discharged the judgment is no bar to an action brought by the defendant or other claimants against the garnishee for the same demand.

4.0518 Discharge from employment for garnishment or execution prohibited.

No employer may discharge any employee by reason of the fact that earnings have been subjected to garnishment or execution. If an employer discharges an employee in violation of this section, the employee may within ninety (90) days of discharge bring a civil action for recovery of twice the wages lost plus costs and reasonable attorney fee's as a result of the violation and for an order requiring reinstatement.

4.0519 Garnishment; Minimal amount; Disclosure.

If the amount required to be retained by the garnishee is less than ten dollars (\$10), the garnishee shall not retain the sum but shall make the disclosures otherwise required.

4.0520 Termination of garnishment.

A garnishee summons lapses and the garnishee is discharged of any liability upon the expiration of one hundred eighty (180) days after the service of the summons, or a longer period of time either agreed to in writing by the plaintiff and the defendant or ordered by the court. Immediately upon the lapse of the garnishee summons, all earnings, money, property, and effects which the garnishee has been retaining pursuant to the garnishment shall be returned to the defendant if the defendant is otherwise legally entitled to receipt of them.

4.0521 Continuing lien on wages.

A plaintiff may obtain a sixty (60) day continuing lien on wages by garnishment. If a lien is to be obtained, the plaintiff shall mark on the caption of the garnishee summons "continuing lien" and all disclosure forms must include the following: Garnishee will continue to hold the nonexempt portion of the defendant's earnings as they accrue through the last payroll period ending on or before sixty (60) days from the effective date of the garnishee summons, or until the sum held equals the amount stated in the garnishee summons, or until the employment relationship terminates, whichever first occurs. 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 (10) days shall make further disclosure.

4.0522 Claim of exemptions; How made.

Within ten (10) days of receipt of return of the execution, the debtor shall file his claim of exemptions with the clerk as to any property levied upon by the police. The creditor shall then have five (5) days to file any objections to the claim of exceptions. The debtor shall file a schedule of all personal property exemptions as provided in Chapter 4.02 of this Title.

4.0523 Claim of exemptions; When heard.

If an objection to a claim of objections is filed, the clerk shall schedule a hearing prior to any sale or distribution. If no objection is filed within the specified time period, the clerk shall approve the claim of objections and will order return of exempted property to debtor.