

**POKAGON BAND OF POTAWATOMI INDIANS
PER CAPITA PAYMENT AND ELDERS STIPEND PAYMENT
GARNISHMENT CODE**

Table of Contents

CHAPTER 1.....2

**SHORT TITLE; AUTHORITY; PURPOSE; APPLICABILITY;
CONSTRUCTION; NO WAIVER OF SOVEREIGN IMMUNITY; SEVERABILITY; EFFECTIVE DATE;
AND DEFINITIONS**

SECTION 1.01 SHORT TITLE2

SECTION 1.02 AUTHORITY2

SECTION 1.03 PURPOSE.....2

SECTION 1.04 APPLICABILITY2

SECTION 1.05 CONSTRUCTION.....2

SECTION 1.06 NO WAIVER OF SOVEREIGN IMMUNITY.....3

SECTION 1.07 SEVERABILITY.....3

SECTION 1.08 EFFECTIVE DATE.....3

SECTION 1.09 DEFINITIONS3

CHAPTER 2.....5

**JURISDICTION OF TRIBAL COURT; PAYMENTS SUBJECT TO GARNISHMENT; EXEMPTIONS
FROM GARNISHMENT; AND ENFORCEABILITY**

SECTION 2.01 JURISDICTION OF TRIBAL COURT5

SECTION 2.02 PAYMENTS SUBJECT TO GARNISHMENT5

SECTION 2.03 EXEMPTIONS FROM GARNISHMENT5

SECTION 2.04 ENFORCEABILITY.....6

CHAPTER 3.....5

**PETITION FOR ORDER OF GARNISHMENT; FILING NOTICE OF LEVY; ORDER OF
GARNISHMENT; OBJECTION TO ORDER OF GARNISHMENT; AND MOTION TO REDUCE ORDER
OF GARNISHMENT**

SECTION 3.01 PETITION FOR ORDER OF GARNISHMENT.....6

SECTION 3.02 FILING NOTICE OF LEVY7

SECTION 3.03 ORDER OF GARNISHMENT8

SECTION 3.04 OBJECTION TO ORDER OF GARNISHMENT.....8

SECTION 3.05 MOTION TO REDUCE ORDER OF GARNISHMENT.....9

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CHAPTER 4.....11

**WITHHOLDING OF PAYMENTS; MONTHLY REPORTING; FINAL STATEMENT; AND PRIORITY
OF GARNISHMENTS**

SECTION 4.01 WITHHOLDING OF PAYMENTS.....11

SECTION 4.02 MONTHLY REPORTING10

SECTION 4.03 FINAL STATEMENT.....12

SECTION 4.04 PRIORITY OF GARNISHMENTS12

CHAPTER 1

Short Title; Authority; Purpose; Applicability; Construction; No Waiver of Sovereign Immunity; Severability; Effective Date; and Definitions

Section 1.01 Short Title

This Code shall be known and may be cited as the "Per Capita Payment and Elders Stipend Payment Garnishment Code."

Section 1.02 Authority

The Tribal Council enacts this Code pursuant to the legislative powers of the Tribal Council as enumerated in Article IX, subsection 2 (a) of the Constitution and the duties of the Tribal Council stated in Article IX, subsections 1(a) and (c) of the Constitution.

Section 1.03 Purpose

The purpose of this Code is to implement Section 13 of the Gaming Revenue Allocation Plan and to implement Sections 10(b) and 11 of the Elders Stipend Policy by codifying a process and procedure governing the Garnishment of Per Capita Payments and Elders Stipend Payments by the Tribal Court if:

- (a) necessary to satisfy a Judgment in favor of the Band or Chi Ishobak; or
- (b) pursuant to a Notice of Levy and required under applicable federal law.

Section 1.04 Applicability

This Code shall extend to all Citizens and matters within the jurisdiction of the Band pursuant to Article III, Section 1 of the Constitution and as set forth in Section 2.01 of this Code.

Section 1.05 Construction

(a) This Code, to the extent reasonable, shall be read and interpreted in a manner consistent with the Constitution; provided in the event of any inconsistency, the Constitution shall control.

(b) This Code is intended to implement Section 13 of the Gaming Revenue Allocation Plan, and to the extent reasonable, this Code shall be read and interpreted in a manner consistent with the same; provided in the event of any inconsistency, the Gaming Revenue Allocation Plan shall control.

(c) This Code is intended to implement Sections 10(b) and 11 of the Elders Stipend Policy and to the extent reasonable, this Code shall be read and interpreted in a manner consistent with the same; provided in the event of any inconsistency, this Code shall control.

(d) This Code, to the extent reasonable, shall be read and interpreted in a manner consistent with applicable federal law; provided in the event of any inconsistency, such applicable federal law shall control.

(e) This Code shall be liberally construed in order to accomplish the purpose stated in Section 1.03 of this Code.

Section 1.06 No Waiver of Sovereign Immunity

Nothing in this Code shall be construed to provide a waiver of the sovereign immunity of the Band or any of its governmental officers, representatives, employees, or agents.

Section 1.07 Severability

If any provision of this Code, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Code, which shall continue in full force and effect.

Section 1.08 Effective Date

This Code shall become effective on the Effective Date.

Section 1.09 Definitions

As used in this Code:

(a) “Band” means the Pokagon Band of Potawatomi Indians, a sovereign nation, along with its instrumentalities, agencies, divisions, programs and any entity, regardless of form, which is wholly owned by the Band.

(b) “Band Law” means all legislative enactments, codes, statutes, ordinances, regulations, and judicial decisions of the Band.

(c) “Chi Ishobak” means Chi Ishobak, a community development financial institution organized as a non-profit corporation under the laws of the State of Michigan, whose purpose includes advancing and promoting the community and economic development of the tribal community of the Band.

(d) “Citizen” means a duly enrolled member of the Band.

(e) “Chief Financial Officer” means the chief financial officer of the Band, or in his or her absence, the Director of the Band’s Department of Finance, or his or her designee, who upon action of Tribal Council is required to make Per Capita Payments to Citizens pursuant to subsection 6(B)(2) of the Gaming Revenue Allocation Plan.

(f) “Code” means this Per Capita Payment and Elders Stipend Payment Garnishment Code.

(g) “Constitution” means the Constitution of the Band, which was adopted by the Citizens on November 1, 2005 and became effective on December 16, 2005, as amended.

(h) “Effective Date” means the date of enactment of this Code by the Tribal Council.

(i) “Elders” means a Citizen at least 55 years of age.

(j) “Elders Stipend Payments” means payments made by the Band to Elders in accordance with the Elders Stipend Policy.

(k) “Elders Stipend Policy” means the policy adopted by the Tribal Council on February 29, 2016 by Res. No. 16-02-29-06, as may be amended.

(l) “Gaming Revenue Allocation Plan” means the code enacted by the Tribal Council on October 12, 2005 through adoption of Res. No. 05-10-12-02, as amended.

(m) “Garnishment” means: (1) the legal process set forth in this Code pursuant to which the Tribal Court may enter an order of garnishment authorizing the Band to withhold and redirect Per Capita Payments and Elders Stipend Payments for payment of a Judgment in favor of the Band or Chi Ishobak; or (2) the legal process set forth in this Code pursuant to which the Tribal Court may enter an order authorizing the Band to comply with a Notice of Levy in accordance with applicable federal law.

(n) “Judgment” means any final judgment, decree or order awarding damages, money or restitution; or imposing costs, fees, fines, or penalties in favor of the Band or awarding damages, costs or fees in favor of Chi Ishobak.

(o) “Notice of Levy” means written notice from a department or agency of the United States Government, including but not limited to, the Internal Revenue Service, ordering the Band to surrender certain property, or rights to property, in the Band’s possession, including Per Capita Payments and Elders Stipend Payments payable to a Citizen, to satisfy amounts owed to the department or agency by the Citizen.

(p) “Office of General Counsel” means the Band’s Office of General Counsel.

(q) “Per Capita Payments” means payments by the Band to Citizens in accordance with the Gaming Revenue Allocation Plan.

(r) “Supplemental Assistance Program Act” means the Supplemental Assistance Program Act enacted by Tribal Council on April 3, 2007 by adoption of Tribal Council Resolution No. 07-04-03-06, as amended.

(s) “Total Amount of Judgment Outstanding” means the total amount of money awarded pursuant to a Judgment, plus any permitted post-Judgment interest and costs, less any post-Judgment payments made to date.

(t) “Tribal Council” means the governing body of the Band established pursuant to Article X of the Constitution.

(u) “Tribal Court” means the Band’s Tribal Court.

(v) “Tribal Court Code” means the Band’s Tribal Court Code established by the Tribal Council on June 26, 2000 by adoption of Tribal Council Resolution Number 00-06-26-02, as amended.

CHAPTER 2

Jurisdiction of Tribal Court; Payments Subject to Garnishment; Exemptions from Garnishment; and Enforceability

Section 2.01 Jurisdiction of Tribal Court

(a) The Tribal Court shall have original subject matter jurisdiction over all proceedings arising under this Code.

(b) The personal jurisdiction of the Tribal Court for purposes of a Judgment, including recognition or entry of a Judgment pursuant to Tribal Court rules, shall continue in all proceedings arising under this Code.

Section 2.02 Payments Subject to Garnishment

Except as specifically provided in Section 2.03:

(a) all Per Capita Payments to be made to Citizens, whether such payment is to be made directly to the Citizen or to an independent institutional trustee under the Gaming Revenue Allocation Plan, shall be subject to Garnishment; and

(b) all Elders Stipend Payments to be made to Elders, whether such payment is to be made directly to the Elder or made to a proper legal guardian, conservator, or trustee under the Elders Stipend Policy, shall be subject to Garnishment.

Section 2.03 Exemptions from Garnishment

(a) Per Capita Payments to an irrevocable minor’s trust and Per Capita Payments in such irrevocable minor’s trust pursuant to subsection 8(A) of the Gaming Revenue Allocation Plan shall not be subject to Garnishment except as otherwise required under applicable federal law, in which case any Garnishment must proceed in accordance with this Code.

(b) Distributions from an irrevocable minor’s trust pursuant to subsections 8(B), (D), and (E) of the Gaming Revenue Allocation Plan, and Per Capita Payments to be made pursuant to Section 11 of the Gaming Revenue Allocation Plan, shall not be subject to Garnishment except as otherwise required under applicable federal law, in which case any Garnishment must proceed in accordance with this Code.

(c) Elders Stipend Payments made pursuant to Section 9 of the Elders Stipend Policy shall not be subject to Garnishment except as otherwise required under applicable federal law, in which case any Garnishment must proceed in accordance with this Code.

Section 2.04 Enforceability

(a) A Judgment against a Citizen in favor of the Band or Chi Ishobak, which is issued by the Tribal Court, and a Judgment of any foreign court, which has been recognized by the Tribal Court pursuant to Tribal Court rules, shall be enforceable against the Per Capita Payments and Elders Stipend Payments of such Citizen.

(b) A Notice of Levy regarding a Citizen shall be enforceable against the Per Capita Payments and Elders Stipend Payments of such Citizen if required under applicable federal law.

CHAPTER 3

Petition for Order of Garnishment; Filing Notice of Levy; Order of Garnishment; Objection to Order of Garnishment; and Motion to Reduce Order of Garnishment

Section 3.01 Petition for Order of Garnishment

(a) If the Band or Chi Ishobak is awarded a Judgment against a Citizen, and the Citizen has failed to pay the Total Amount of Judgment Outstanding within twenty-eight (28) calendar days of either the entry or recognition of the Judgment by the Tribal Court, then the Band or Chi Ishobak, as applicable, may petition the Tribal Court for an order of garnishment to withhold and redirect Per Capita Payments and Elders Stipend Payments of the Citizen to satisfy the Judgment, subject to the exceptions stated in Section 2.03 of this Code.

(b) The petition for order of garnishment shall:

- (1) be entitled: “Petition for Order of Garnishment”;
- (2) identify the “Petitioner”;
- (3) identify the Citizen as “Respondent”;
- (4) state the address of Respondent;
- (5) state the Band enrollment number of the Respondent;

- (6) state that a Judgment was entered in favor of Petitioner against Respondent;
- (7) state the date of the Judgment;
- (8) state the amount of:
 - (A) the Judgment;
 - (B) post-Judgment interest accrued to date;
 - (C) post-Judgment costs accrued to date;
 - (D) post-Judgment payments made to date; and
 - (E) the Total Amount of Judgment Outstanding;
- (9) if seeking to garnish Per Capita Payments, state that Respondent is receiving Per Capita Payments pursuant to the Gaming Revenue Allocation Plan;
- (10) if seeking to garnish Per Capita Payments, state that Garnishment of the Citizen's Per Capita Payments is necessary to satisfy the Judgment and that such Garnishment is permitted pursuant to Section 13 of the Gaming Revenue Allocation Plan;
- (11) if seeking to garnish Elders Stipend Payments, state that the Respondent is receiving Elders Stipend Payments pursuant to the Elders Stipend Policy;
- (12) if seeking to garnish Elders Stipend Payments, state that the Garnishment of the Elder's Elders Stipend Payments is necessary to satisfy the Judgment and that such Garnishment is permitted pursuant to Section 11 of the Elders Stipend Policy;
- (13) request that the Tribal Court enter an order of garnishment authorizing the Chief Financial Officer to withhold and redirect Respondent's Per Capita Payments and Elders Stipend Payment, as applicable, to satisfy the Total Amount of Judgment Outstanding and all post-petition interest, until paid in full;
- (14) if seeking to garnish Per Capita Payments, request that the order of garnishment prohibit the Citizen from disclaiming a Per Capita Payment pursuant to subsection 6(D) of the Gaming Revenue Allocation Plan, except for a disclaimer executed pursuant to Section 5 of the Supplemental Assistance Program Act;
- (15) if seeking to garnish Elders Stipend Payments, request that the order of garnishment prohibit the Elder from disclaiming an Elders Stipend Payment pursuant to subsection 4(c) of the Elders Stipend Policy, except for a disclaimer executed pursuant to Section 5 of the Supplemental Assistance Program Act;

(16) contain the following signed and dated declaration: “I declare that the statements above are true to the best of my information, knowledge, and belief.”; and

(17) have attached thereto a copy of the Judgment and proof of post-Judgment costs; provided if a court other than the Tribal Court entered the Judgment, then an authenticated copy of the Judgment shall be attached to the petition.

Section 3.02 Filing Notice of Levy

(a) Any Notice of Levy which is received by the Band, and may be enforced under this Code, shall be promptly forwarded to the Office of General Counsel for review.

(b) If the Office of General Counsel determines that the Band must comply with the Notice of Levy under applicable federal law, then it shall forward the Notice of Levy to the Tribal Court along with a statement containing the full name, address and Band enrollment number of the Citizen and whether the Citizen is receiving Per Capita Payments pursuant to the Gaming Revenue Allocation Plan and whether the Citizen is receiving Elders Stipend Payments pursuant to the Elders Stipend Policy.

Section 3.03 Order of Garnishment

(a) If the Band or Chi Ishobak files a petition for order of garnishment pursuant to Section 3.01 of this Code, the Tribal Court shall issue an order of garnishment against a Citizen’s Per Capita Payments and an Elder’s Elders Supplemental Stipend Payments, as applicable, which shall:

- (1) identify the Petitioner;
- (2) state the name of Respondent;
- (3) state the address of Respondent;
- (4) state the Band enrollment number of the Respondent;
- (5) state the Total Amount of Judgment Outstanding;
- (6) state that the Total Amount of Judgment Outstanding shall continue to accrue interest at the interest rate applicable to the Judgment until the Judgment is paid in full;
- (7) state the percentage of the Per Capita Payment to be withheld, if applicable;
- (8) state the percentage of Elders Stipend Payment to be withheld, if applicable;
- (9) if applicable, prohibit Respondent from disclaiming a Per Capita Payment pursuant to subsection 6(D) of the Gaming Revenue Allocation Plan, except for a disclaimer executed pursuant to Section 5 of the Supplemental Assistance Program Act;

(10) if applicable, prohibit Respondent from disclaiming an Elders Stipend payment pursuant to subsection 4(c) of the Elders Stipend Policy, except for a disclaimer executed pursuant to Section 5 of the Supplemental Assistance Program Act;

(11) authorize the Chief Financial Officer to withhold and redirect Respondent's Per Capita Payments and Elders Stipend Payments, as applicable, to satisfy the Total Amount of Judgment Outstanding until paid in full;

(12) inform Respondent that he or she has fourteen (14) days after being served to file an objection to order of garnishment with the Tribal Court, and that failure to do so will result in the Chief Financial Officer withholding and redirecting his or her Per Capita Payments and Elders Stipend Payments, as applicable, to satisfy the Total Amount of Judgment Outstanding, and all post-petition interest, until paid in full; and

(11) have attached thereto a copy of the petition for an order of garnishment.

(b) If a Notice of Levy and statement are forwarded to the Tribal Court pursuant to Section 3.02 of this Code, the Tribal Court shall issue an order of garnishment against a Citizen's Per Capita Payments and Elders Stipend Payments, as applicable, which shall:

(1) identify the department or agency of the United States Government as Petitioner;

(2) state the name of Respondent;

(3) state the address of Respondent;

(4) state the Band enrollment number of Respondent;

(5) state the percentage of the Per Capita Payment to be withheld pursuant to the Notice of Levy, if applicable;

(6) state the percentage of the Elders Stipend Payment to be withheld pursuant to the Notice of Levy, if applicable;

(6) authorize the Chief Financial Officer to withhold and redirect Respondent's Per Capita Payments and Elders Stipend Payment, as applicable, to satisfy the Notice of Levy;

(7) inform Respondent that he or she has fourteen (14) days after being served to file an objection to order of garnishment with the Tribal Court, and that failure to do so will result in the Chief Financial Officer withholding and redirecting his or her Per Capita Payments and Elders Stipend Payments, as applicable, to satisfy the Notice of Levy; and

(8) have attached thereto a copy of the Notice of Levy.

(c) The Petitioner shall serve the order of garnishment and a copy of the petition for an order of garnishment filed under Section 3.01 of this Code, upon Respondent and the Chief Financial Officer pursuant to Section 7 of the Tribal Court Code. The Petitioner or the Office of General Counsel shall serve the order of garnishment and a copy of the Notice of Levy forwarded to the Tribal Court under Section 3.02 upon Respondent and the Chief Financial Officer.

Section 3.04 Objection to Order of Garnishment

(a) Except as provided in subsection 3.05(a), a Respondent's objections challenging an order of garnishment issued under subsection 3.03(a) of this Code (relating to a Judgment) shall be filed with a request for a hearing within fourteen (14) calendar days of the date of service of the order of garnishment by the Petitioner and shall not contest the validity of the Judgment, but rather shall be based solely on one or more of the following:

- (1) the Garnishment is precluded by the pendency of bankruptcy proceedings;
- (2) the Garnishment was not properly issued or is otherwise invalid;
- (3) the Garnishment will result in extraordinary financial hardship; or

(4) the Total Amount of Judgment and all accrued post-Judgment interest have been paid in full.

(b) A Respondent's objections challenging an order of garnishment issued under subsection 3.03(b) of this Code (relating to a Notice of Levy) shall be filed with a request for a hearing within fourteen (14) calendar days of the date of service of the order of garnishment by the Petitioner or the Office of General Counsel, as applicable, and shall be based solely on one or more of the following:

- (1) the department or agency of the United States Government lacked personal or subject matter jurisdiction;
- (2) the Respondent was deprived of notice or hearing required under law, including notice and demand, notice of intent to levy, or collection due process; or
- (3) the department of agency of the United States Government released the levy or the levy has been paid in full.

(c) The Tribal Court shall hold a hearing on an objection to the order of garnishment within twenty one (21) calendar days of the date of filing.

(d) In all cases where Respondent alleges extraordinary financial hardship under subsection 3.04(a)(3), Respondent shall file with the objection to the order of garnishment a financial disclosure statement on a form approved by the Tribal Court.

(e) The Respondent shall serve a copy of the objection to the order of garnishment, a notice of hearing and the financial disclosure statement, as applicable, upon Petitioner and the Chief Financial Officer pursuant to Section 7 of the Tribal Court Code.

Section 3.05 Motion to Reduce Order of Garnishment

(a) Respondent may file a motion to reduce an order of garnishment issued under Section 3.03(a) of this Code (relating to a Judgment) based upon one or more of the reasons stated in subsection 3.04(a)(1), (3) or (4) of this Chapter after the time stated in subsection 3.04(a), but such filing shall not delay or stop withholding or redirecting of Per Capita Payments and Elders Stipend Payments, as applicable, pursuant to subsection 4.01(a) of this Code, except as otherwise ordered by the Tribal Court.

(b) The Tribal Court shall hold a hearing on the motion to reduce an order of garnishment within twenty one (21) calendar days of the date of filing.

(c) In all cases where Respondent alleges extraordinary financial hardship under subsection 3.04(a)(3), Respondent shall file with the motion to reduce an order of garnishment a financial disclosure statement on a form approved by the Tribal Court.

(d) The Respondent shall serve a copy of the motion to reduce an order of garnishment, the order of garnishment, a notice of hearing and the financial disclosure statement, as applicable, upon Petitioner pursuant to Section 7 of the Tribal Court Code.

CHAPTER 4

Withholding of Payments; Monthly Reporting; Final Statement; and Priority of Garnishments

Section 4.01 Withholding of Payments

Beginning twenty-eight (28) calendar days from the date of service of the order of garnishment issued pursuant to this Code, the Chief Financial Officer shall withhold and redirect Respondent's Per Capita Payments and Elders Stipend Payments, as applicable, to satisfy, the Total Amount of Judgment Outstanding and all post-petition interest, until paid in full (in the case of a Judgment), or to satisfy the Notice of Levy unless:

(a) Respondent filed an objection to the order of garnishment pursuant to subsection 3.04(a) or 3.04(b) or this Code, as applicable, which was served upon the Chief Financial Officer pursuant to subsection 3.04(e) of this Code; or

(b) Respondent's Per Capita Payments or Elders Stipend Payments, as applicable, are subject to a Garnishment of higher priority pursuant to Section 4.04 of this Chapter.

Section 4.02 Monthly Reporting

(a) The Petitioner shall within ten (10) calendar days of withholding a Respondent's Per Capita Payment or Elders Stipend Payment pursuant to an order of garnishment involving a Judgment, file with the Tribal Court, a report stating the date and amount withheld and the remaining balance of the Total Amount of Judgment Outstanding and accrued post-order of garnishment interest. The Petitioner shall serve a copy of the report on the Respondent pursuant to Section 7 of the Tribal Court Code.

(b) The Band shall within ten (10) calendar days of withholding a Respondent's Per Capita Payment or Elders Stipend Payment pursuant to an order of garnishment involving a Notice of Levy, file with the Tribal Court a report stating the date and amount withheld pursuant to the Notice of Levy. The Band shall serve a copy of the report on the Respondent pursuant to Section 7 of the Tribal Court Code.

Section 4.03 Final Statement

(a) Within fourteen (14) days after satisfaction of the Total Amount of Judgment Outstanding, the Petitioner shall file with the Tribal Court, a final statement, which shall include:

- (1) the date of the order of garnishment;
- (2) the Total Amount of Judgment Outstanding;
- (3) the total amount of post-petition interest; and
- (4) the total amount of Per Capita Payments and Elders Stipend Payments, as applicable, withheld to satisfy the Total Amount of the Judgment Outstanding and post-order of garnishment interest.

(b) The Petitioner shall serve a copy of the final statement on the Respondent pursuant to Section 7 of the Tribal Court Code.

Section 4.04 Priority of Garnishments

(a) All orders of garnishments shall be paid according to the order in which they were received by the Chief Financial Officer pursuant to subsection 3.03(c) of this Code.

(b) Notwithstanding subsection 4.04(a) above:

(1) orders of garnishment for delinquent court ordered child support, which are authorized pursuant to Section 12 of the Gaming Revenue Allocation Plan and are not governed by this Code, shall be superior to all other orders of garnishments regardless of the priority of receipt, except as otherwise required under applicable federal law;

(2) orders of garnishment for delinquent court ordered child support, which are authorized pursuant to subsection 10(a) of the Elders Stipend Policy and are not governed by this

Code, shall be superior to all other orders of garnishments regardless of the priority of receipt, except as otherwise required under applicable federal law; and

(2) orders of garnishment in favor of the Band shall be superior to all orders of garnishment in favor of Chi Ishobak.

(c) If an order of garnishment with a higher priority is received by the Chief Financial Officer while an order of garnishment of lower priority is in effect, the Chief Financial Officer shall not withhold and redirect Per Capita Payments and Elders Stipend Payments, as applicable, pursuant to the lower priority order until the payment in full of the higher priority order.

LEGISLATIVE HISTORY

Per Capita Payment Garnishment Code, enacted December 14, 2011 by Res. No. 11-12-14-03; Amended February 18, 2013 by Res. No. 13-02-18-01; By Tribal Council Resolution Number 16-11-30-02, amendments throughout the Code were enacted, including the garnishment of elders stipend payments and amendments that eliminated requirements that the Tribal Court serve documents filed with the Court and placed such requirements on the Band, the Petitioner, or the Respondent, as applicable, and renamed the Code the Per Capita Payment and Elders Stipend Payment Garnishment Code; By Tribal Council Resolution Number 17-11-29-03, the Code was amended to permit the Office of General Counsel to facilitate service of process in regard to garnishments involving a Notice of Levy at subsections 3.03(c) and 3.04(b), and was amendment at subsection 1.09(1) and a new subsection 2.03(a) was added.