

No. SC-SP-01-13

SUPREME COURT OF THE NAVAJO NATION

In the Matter of the Promulgation of
Navajo Garnishment Act Rules of Procedure

ORDER ADOPTING THE NAVAJO GARNISHMENT ACT RULES OF PROCEDURE

Before YAZZIE, H., Chief Justice, and SHIRLEY, E. Associate Justice.

Derrick Burbank, Staff Attorney, Shiprock, Navajo Nation, for the Petitioner Judicial Branch of the Navajo Nation.

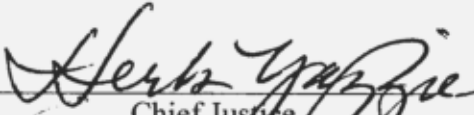
This matter comes before the Court upon a hearing to consider the Petition of the Judicial Branch of the Navajo Nation to adopt the Navajo Garnishment Act Rules of Procedure governing the collection of judgments for actions arising under the Navajo Nation Ethics in Government Law Garnishment Act of 2005. The Court, having reviewed the matter, issued the proposed rules for garnishment proceedings on May 7, 2013. A copy of the proposed rules was sent to the Attorney General of the Navajo Nation, the Chief Legislative Counsel, the President of the Navajo Nation Bar Association, the executive director of the Ethics and Rules Office and the Chief Hearing Officer of the Office of Hearings and Appeals. The proposed rules were also posted on the Navajo Nation Judicial Branch website for public comment. The public comment period ended May 21, 2013. Few comments were received. Upon consideration of the comments, the Court amended its previous proposed rules by adding Rule 11(c), and the final rules are henceforth ready for adoption by the Supreme Court.

In addition to the final rules, standard forms have been developed for implementation of the Act in the most practical manner. The standard forms for use by litigants and Courts of the Navajo Nation shall be independently adopted pursuant to 7 N.N.C. §§ 601(C) and 601(D).

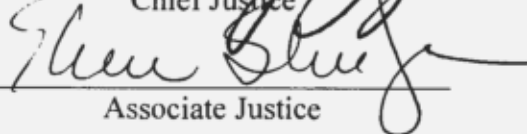
Pursuant to 7 N.N.C. § 601(A) (as amended by Navajo Nation Council Resolution No. CO-72-03 (October 24, 2003)), authorizing the Supreme Court to adopt rules of pleading, practice, and procedure applicable to all proceedings in the Courts of the Navajo Nation, the Court hereby adopts the attached "Navajo Garnishment Act Rules of Procedure."

The Clerk of the Supreme Court shall distribute copies of this order to each Navajo Nation Judicial District, the Office of Legislative Counsel, the Navajo Nation Department of Justice, the Navajo Nation Bar Association, the Ethics and Rules Office, and the Office of Hearings and Appeals. The Clerk shall also place the order and the adopted rules on the website.

IT IS SO ORDERED this 17th day of June, 2013.



Chief Justice



Associate Justice

Navajo Garnishment Act Rules of Procedure

RULE 1. Scope of Rules

- 1(a) **Scope.** These Rules govern the collection of judgments for actions arising under the Navajo Nation Ethics in Government Law Garnishment Act of 2005 (the Garnishment Act), 2 N.N.C. § 3800 *et seq.* These Rules, adopted on June 17, 2013 shall be construed to effectuate the purposes of the Act in a just, speedy, and economical manner and shall be cited as N.G.A.R.P.
- 1(b) **Rules of Civil Procedure.** Matters not covered by these Rules shall proceed according to Navajo Nation Rules of Civil Procedure (N.N.R.C.P.).
- 1(c) **Garnishment Act.** These Rules supplement the Garnishment Act and are secondary to it.

RULE 2. Jurisdiction

- 2(a) **General.** The judicial district court has exclusive jurisdiction over the remedy of garnishment pursuant to a judgment, i.e. order or decision, duly issued by the Ethics and Rules Committee or the Office of Hearings and Appeals under the Garnishment Act, involving public elected officials and Navajo Nation employees.
- 2(b) **Application.** Pursuant to 2 N.N.C. § 3803, the collection of civil damages, restitution, fines, and/or penalties may be ordered out of non-restricted earnings, assets, monies or personal property of the judgment debtor in the Garnishee's possession including deferred compensation and stipends; and shares, securities or proprietary interest of a corporation belonging to the judgment debtor, if the Garnishee is a corporation.
- 2(c) **Statute of Limitations.** A petition for writ of garnishment may be filed at any time within ten (10) years after entry of judgment, after which time none shall be accepted.
- 2(d) **Separate Writs.** Separate petitions shall be filed, and separate writs obtained, for each Garnishee.
- 2(e) **Multiple Writs.** As many writs of garnishment as are necessary to collect the entire amount of the judgment may be filed.

RULE 3. Post-Judgment Interrogatories to Judgment Debtor

- 3(a) **Automatic Authority.** If the judgment creditor lacks information on where the judgment debtor works, banks, or owns personal property, including securities, chattels, cash, notes, and accounts receivables, the judgment creditor may, upon issuance of judgment, automatically serve on the judgment debtor the form

“Garnishment Act Interrogatories to Judgment Debtor” without further order of the Court.

3(b) The interrogatories to judgment debtor shall be served pursuant to N.N.R.C.P., Rule 4 for service of process.

3(c) **Time Limits.** The judgment debtor shall answer the interrogatories within five (5) business days of service or be subject to contempt of court.

3(d) **Petition for Order to Show Cause.** If the judgment debtor fails to answer the above interrogatories within the required time limit after being duly served, the form “Petition for Order to Show Cause” may be filed, together with a certified copy of the judgment to be enforced. The Court shall then proceed to contempt proceedings.

RULE 4. Commencement of Garnishment Proceedings

Once the judgment creditor has sufficient information on where the judgment debtor works, banks, or owns personal property, an action under the Garnishment Act may be properly commenced by the filing of a Petition for Writ of Garnishment, together with a certified copy of the judgment to be enforced, stating:

- (1) The belief that a named Garnishee is indebted to the Respondent and/or has earnings and/or assets of Respondent in his/her possession or control;
- (2) That the judgment debt is not exempt from garnishment; and
- (3) Describing what efforts have previously been made to collect the judgment debt informally which have failed, necessitating the garnishment action.

RULE 5. Parties

5(a) **Petitioner; Respondent.** The Petitioner may be the judgment creditor, or the Navajo Nation Office of Ethics and Rules on behalf of a judgment creditor. The Respondent is the judgment debtor.

5(b) **Garnishee.** The caption shall name the third party Garnishee.

5(c) **Intervenor.** Any party claiming an interest in a Respondent’s earnings and/or assets that are the subject of a garnishment action may intervene in the matter. No garnishment order or other judgment shall be rendered against the Garnishee until the intervention of any third parties is heard by the court. Intervention of third parties shall proceed pursuant to N.N.R.C.P., Rule 24.

RULE 6. Issuance of Writ; Fax Filings; Service; Answer; Response

6(a) **Issuance of Writ by Clerk of Court.** Upon filing of the petition and the certified judgment, the Clerk of the Court shall issue the form “Writ of

Garnishment” to the Garnishee directing the Garnishee under penalty of contempt not to pay, transfer and/or release non-restricted earnings or assets in the amount stated in the petition; directing the Garnishee to file an answer; and further directing the Garnishee to serve the writ and answer on the Petitioner and Respondent within ten (10) business days.

- 6(b) **Fax Filing.** Pleadings, certifications and documents subsequent to the Petition for Writ for Garnishment that are ten (10) pages or less, excluding the fax cover page, may be filed via fax to the Judicial District Court during court operational hours only. The Court’s fax number will be posted on the Judicial Branch website. The case docket number and page number styled “page # of [total pages]” shall be on the header of each page of the document faxed.
- 6(c) **Time for Filing.** The Petitioner shall serve the petition and writ on the Garnishee. Within ten (10) business days of service, the Garnishee shall file an answer, and serve the answer together with the writ on the Petitioner and Respondent.
- 6(d) **Objection or Response.** Either party may file an objection or response within ten (10) business days of service of the answer.
- 6(e) **Conclusive Defense.** It shall be a conclusive defense to show that the indebtedness was paid under judgment of the court in a garnishment proceeding.
- 6(f) **Method of Service.** All service under these rules shall be made pursuant to N.N.R.C.P., Rule 4 for service of process and Rule 5 for subsequent pleadings.

RULE 7. Undisputed Answer

If a Garnishee answers under oath that he or she is not at the time of answer, nor at the time of service of process, holding non-restricted, non-exempt monies, interests or personal property of the judgment debtor and that the judgment debtor is not an employee of the Garnishee entitled to future earnings, and if the Garnishee's answer is not disputed within ten (10) business days after being filed with the court, the petition for writ shall be dismissed against that Garnishee. A petition for writ may not name more than one garnishee.

RULE 8. Default; Order of Garnishment; Lien; Priority; Effect of Employment Termination.

- 8(a) **Order of Garnishment.** If the answer shows that the Garnishee is holding non-exempt earnings and/or assets of the judgment debtor or that the judgment debtor is an employee of the Garnishee entitled to future earnings and if no objection to the writ of garnishment is filed, the court will, without hearing issue an order of garnishment immediately for the non-exempt earnings and/or assets held pursuant to 2 N.N.C. § 3809, and pursuant the maximum caps set forth at 2 N.N.C. § 3810, until the judgment is satisfied.

- 8(b) **Default.** If the Garnishee fails to answer the writ of garnishment under oath within ten (10) business days from the date of its service, the court may render judgment by default against the Garnishee for the full amount of the judgment originally rendered against the Respondent pursuant to the maximum caps set forth at 2 N.N.C. § 3810 until the judgment is satisfied.
- 8(c) **Lien.** An order of garnishment entered against a Garnishee is a lien on a Respondent's non-exempt earnings and/or assets that come due subsequent to the time of answer, until the judgment against the Garnishee is paid or until the employment relationship is terminated.
- 8(d) **Priority.** If the Respondent's earnings and/or assets are subject to more than one judgment lien, the liens shall be satisfied in the order in which the orders of garnishment are issued on the Garnishee. Orders of garnishment for child support shall take priority over orders issued under these rules regardless of the order served.
- 8(e) **Effect of Employment Termination.** If the Respondent's employment relationship with the Garnishee is terminated, the Garnishee's obligation under the order of garnishment shall remain enforceable until the Garnishee provides Petitioner written notice that the employment relationship with the Respondent has terminated.

RULE 9. Hearing

- 9(a) **Request for Hearing.** In order for the court to hold a hearing, a request for hearing must first be filed. A request for hearing may be made at the same time an objection or response to the writ of garnishment is filed.
- 9(b) **Expedited Hearing.** Upon the filing of a request for hearing, the court will hear the matter without a jury within ten (10) business days prior to issuing an order of garnishment or ordering the garnishment stopped. The hearing and resulting orders may proceed pursuant to the Navajo Nation Rules of Civil Procedure where not otherwise covered by these rules.

RULE 10. Possession Following Bond

- 10(a) **Payment of Bond.** At any time before an order of garnishment is issued, the Respondent may take possession of any earnings and/or assets withheld by the Garnishee by filing with the court:
- (1) A bond payable to the Garnishee in the amount, including any issuance or service costs and fees, set forth in the application for the writ of garnishment, or
 - (2) A bond payable to the Garnishee for the value of the earnings and/or assets to be garnished.

- 10(b) **Conditions.** The bond shall be conditioned upon the payment of any judgment that may be given against the Garnishee or for payment of the value of the assets garnished.
- 10(c) **Objections.** When the Respondent provides a bond, he or she may make any objection which the Garnishee could make in such action. With or without bond, the Respondent may assert any legal objections he or she may have to the writ of garnishment.
- 10(d) **Garnishment Against Respondent in Possession.** If the Respondent takes possession of property under this Section and an order of garnishment concerning the property is given in favor of the Petitioner, it shall be against the Respondent and the sureties on the Respondent's bond for the amount of the judgment.

RULE 11. Contempt

- 11(a) **Employment Termination.** No Garnishee may terminate any Respondent by reason of the fact that the Respondent's earnings are subject to garnishment. A Garnishee who willfully violates this Section shall be found in contempt upon motion and assessed a civil liability under the Garnishment Act of not more than one thousand dollars (\$1,000) payable to the Respondent in addition to any other liabilities that may be applicable under Navajo law.
- 11(b) **Failure to Deliver.** If the Garnishee fails to deliver the Respondent's earnings and/or assets, the Garnishee may be cited for contempt upon motion of the Petitioner. If the Garnishee does not show good cause for its failure to deliver the Respondent's earnings and/or assets, the Garnishee shall be punished for contempt and the court may render judgment against the Garnishee for the full amount of the Petitioner's judgment against the Respondent.
- 11(c) **Failure to Provide True, Accurate and Complete Answers to Interrogatories.** Any party failing to provide true, accurate and complete answers to interrogatories shall be subject to contempt of court.

RULE 12. Dismissal

A proceeding for writ of garnishment shall be dismissed if the Petitioner fails to prove the grounds on which the writ was issued.

RULE 13. Vacation of Order of Garnishment

An order of garnishment may be vacated upon satisfaction of judgment; separation of the judgment debtor from employment with the Garnishee; or for any other reason that is just and fair.

RULE 14. Attorney's Fees; Costs

Each party shall be responsible for his or her own attorney's fees. However, the court may award costs pursuant to N.N.R.C.P., Rule 54(c).