

TITLE 12
CIVIL PROCEDURE

Oklahoma Statutes

Civil procedure, generally, see 12 O.S. § 1 et seq.

Code of Federal Regulations

Courts of Indian Offenses and Law and Order Code,

Appellate proceedings, see 25 C.F.R. § 11.800 et seq.

Application and jurisdiction, see 25 C.F.R. § 11.100 et seq.

Civil actions, see 25 C.F.R. § 11.500 et seq.

Domestic relations, see 25 C.F.R. § 11.600 et seq.

Probate proceedings, see 25 C.F.R. § 11.700 et seq.

Tribal reassumption of jurisdiction over child custody proceedings, see 25 C.F.R. § 13.1 et seq.

CHAPTER 1

ADOPTION OF FEDERAL RULES OF CIVIL PROCEDURE—FEDERAL RULES OF EVIDENCE

Cross References

Resignation of registered agent not coupled with appointment of successor; absence of registered agent, see 18 CNCA § 26.

United States Code

Federal Rules of Civil Procedure, see FRCP Rule 1 et seq., 28 U.S.C.

Federal Rules of Evidence, see FRE Rule 1 et seq., 28 U.S.C.

§ 1. Federal Rules of Civil Procedure—Federal Rules of Evidence

A. The Federal Rules of Civil Procedure shall be used in Cherokee Nation courts in all suits of a civil nature whether cases at law or in equity unless superseded by a Cherokee Nation rule of civil procedure.

B. The Federal Rules of Evidence shall be used in Cherokee Nation courts in all suits of a civil nature whether cases at law or in equity unless superseded by a Cherokee Nation rule of evidence.

Library References

Indians <KEY>401.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

CHAPTER 2

STATUTE OF LIMITATIONS

Oklahoma Statutes

Limitation of actions, see 12 O.S. § 91 et seq.

§ 11. Express or implied contracts

Judgment shall not be rendered upon any written contract, obligation, or note of hand, in any suit brought before the Courts of this Nation, unless such suit be instituted thereafter as required by law within five (5) years next after the time at which the cause of action shall have accrued to the person bringing the same, or to the person through whom he claims. Nor shall any judgment be rendered upon any contract or obligation express or implied not in writing in any suit brought before the Courts of this Nation, unless suit be instituted thereafter as required by law within three (3) years next after the time at which the cause of action shall have accrued to the person bringing the same, or to the person through whom he claims.

Library References

Indians <KEY>508.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 12. Property injury—Personal injury

Judgment shall not be rendered for the recovery of any claim or demand for trespass upon real property, taking, detaining or injuring personal property, including actions for the specific recovery of personal property, for injury to the rights of others, and for relief on the ground of fraud, except as provided in the preceding sections, in any suit brought before the Courts of this Nation, unless such suit be instituted for the recovery thereof, as required by law, within two (2) years next after the time at which the cause of action shall have been accrued to the person bringing the same, or to

the person through whom he claims. Nor shall any judgment be rendered for the recovery of any claim for libel, slander, assault, battery, malicious prosecution, or false imprisonment unless such suit be instituted for the recovery thereof, as required by law, within one (1) year next after the time at which the cause of action shall have been accrued to the person bringing the same, or to the person through whom he claims.

Library References

Indians <KEY>508.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 13. Tolling of period for minors or incompetents

The statutory limitations period shall not begin to run against minors until they reach their majority or against persons "non compos mentis" until their disability is removed. However, it is made the duty of every administrator, guardian, and executor to bring suit for the claims or demands due any estate or ward, within the time herein above specified; and any administrator, executor or guardian, neglecting or failing to do so, shall be liable to the parties in interest for such failure or neglect. However, any suit alleging neglect of duty against an administrator, guardian or executor must be brought within five (5) years.

Library References

Indians <KEY>508.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 14. Action for relief not provided for

An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

Library References

Indians <KEY>508.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

CHAPTER 3

INTEREST ON JUDGMENTS

Oklahoma Statutes

Interest on judgments, see 12 O.S. §§ 727, 727.1.

§ 21. Interest on judgments

All promissory notes, executes, or judgments, payable in cash, shall bear interest at an annual rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Court Clerk of Cherokee Nation by the Treasurer of Cherokee Nation on the first regular business day in January of each year, plus four (4) percentage points.

Library References

Indians <KEY>526.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

CHAPTER 4

CHANGE OF NAME

Oklahoma Statutes

Change of name, see 12 O.S. § 1631 et seq.

§ 31. Right to petition for change of name

Any citizen of Cherokee Nation, who has been domiciled in the Nation for more than thirty (30) days, and has been an actual resident of the county next preceding the filing of the action, may petition for a change of name in a civil action in the District Court. If the person be a minor, the action may be brought by guardian or next friend as in other actions.

Library References

Indians <KEY>507.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 32. Petition

The petition shall be verified and shall state:

1. The name and address of the petitioner;
2. The facts as to domicile and residence;
3. The date and place of birth;
4. The birth certificate number, and place where the birth is registered, if registered;
5. The name desired by petitioner;
6. A clear and concise statement of the reasons for the desired change;
7. A positive statement that the change is not sought for any illegal or fraudulent purpose, or to delay or hinder creditors.

Library References

Indians <KEY>511.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 33. Notice—Protest—Hearing date—Continuance

Notice of filing of such petition shall be given, in the manner provided for publication notice in civil cases, by publishing the same one (1) time at least ten (10) days prior to the date set for hearing in some newspaper authorized by law to publish legal notices printed in the county where the petition is filed. The notice shall contain the style and number of the case, the time, date and place where the same is to be heard, and that any person may file a written protest in the case prior to the date set for the hearing. The hearing date may be any day after completion of the publication. The Court or Judge, for cause, may continue the matter to a later date.

Library References

Indians <KEY>519.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 34. Evidence—Determination

The material allegations of the petition shall be sustained by sworn evidence, and the prayer of the petition shall be granted unless the Court or Judge finds that the change is sought for an illegal or fraudulent purpose, or that a material allegation in the petition is false.

Library References

Indians <KEY>520, 534.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 35. Judgment

The judgment shall recite generally the material facts and the change granted, or if denied, the reasons for the denial. A certified or authenticated copy of such judgment may be filed in any office, where proper to do so, and shall be regarded as a judgment in a civil action.

Library References

Indians <KEY>526.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 36. Illegal or fraudulent purpose

Any person who obtains a judgment under this act, willfully intending to use change his or her name except as provided in 12 CNCA §§ 31 to 35 inclusive, other than by marriage or decree of divorce or by adoption.

CHAPTER 5

CIVIL PROTECTIVE ORDERS

§ 501. Short title

This act shall be known and may be cited as the "Civil Protective Order Act."

History

Source. LA 33–05, eff. November 12, 2005.

§ 502. Definitions [Reserved]

§ 503. Jurisdiction for civil protective orders

A. Exclusive jurisdiction. The Cherokee Nation District Court shall exercise exclusive jurisdiction:

1. Upon any restricted individual Indian allotment within Cherokee Nation Tribal Jurisdiction Service Area.
2. Under any other established theory of exclusive jurisdiction.

B. Concurrent jurisdiction. The Cherokee Nation District Court may exercise concurrent jurisdiction:

1. When the respondent is a citizen or member of a federally-recognized tribe and is domiciled or found within the exterior reservation boundaries of the original patent to Cherokee Nation; and
2. Over Indian Country within the exterior boundaries of Cherokee Nation Tribal Jurisdiction Service Area.
3. When any act of domestic violence occurs either:
 - a. upon lands owned by Cherokee Nation,
 - b. upon lands within a dependent Indian community or developed by the Housing Authority of Cherokee Nation,
 - c. upon lands within the exterior reservation boundaries of the original patent of Cherokee Nation.
4. When the Court is being asked to recognize and enforce a valid protective order of another court of competent jurisdiction; and
5. Over any proceedings for protective orders until such time as an alternative choice of forum shall have been decided.

C. Courts shall construe this section liberally to exercise maximum jurisdiction.

D. This section is not exclusive of the situations in which the Court may exercise jurisdiction.

History

Source. LA 33-05, eff. November 12, 2005.

Legislative History: Exclusive jurisdiction over civil protective order proceedings at subsection (A) is based upon exercise of exclusive tribal jurisdiction over crimes and civil matters on Indian lands which are not embodied in the Assimilative Major Crimes Act. Exclusive jurisdiction may alternatively be based upon case law based upon the individual facts in the case. Concurrent jurisdiction provisions at subsection (B) state the alternative grounds for jurisdiction: subject

matter jurisdiction over a Cherokee respondent or Indian Country; subject matter jurisdiction over Cherokee lands where the exercise of police power is desirable for the health and safety of Cherokee citizens and the orderly administration of justice; enforcement of foreign protective orders; and interstitial jurisdiction pending the determination of the proper forum or forums. Subsection (C) mandates the Court to exercise jurisdiction where it can be liberally interpreted, under the sovereign power of Cherokee Nation to protect its citizens and the non-citizens within Cherokee Nation, against harm. Subsection (D) describes the Court's authorization to utilize jurisdictional theory to respond appropriately in light of many complex factual considerations which have been addressed by evolving case law, for example.

Library References

Indians <KEY>501.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§§ 504 to 510. Reserved

§ 511. Change of Judge for civil protective orders

- A. Motions for a change of Judge must be filed within five (5) days of service upon the perpetrator.
- B. Relationship by blood or marriage is not sole cause for a change of Judge.

History

Source. LA 33–05, eff. November 12, 2005.

§ 512. Availability of civil protective orders

A. Any of the following persons may seek relief under this chapter by filing a civil petition with the Court alleging that interpersonal or domestic violence has been committed by the respondent. The person may petition for relief on behalf of any victim including minors within the family or household members:

1. Any person claiming to be the victim of recent domestic violence;
2. Any family member or household member of a person claimed to be the victim of domestic violence on behalf of the alleged victim;
3. A police officer;
4. A victim advocate; and/or

5. The Tribal Prosecutor.

B. There is no minimum requirement of residency to petition for a protective order.

History

Source. LA 33–05, eff. November 12, 2005.

Library References

Indians <KEY>507.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 513. Procedures for filing civil petitions for protective orders

A. No filing fees shall be required for filing a petition nor shall a bond be required to obtain relief under this chapter.

B. Petitioner, or the victim on whose behalf a petition has been filed, is not required to obtain an annulment, separation or divorce as a prerequisite to obtaining a protective order.

C. Standard petition forms with instructions for completion shall be available upon request from the Court Clerk or investigating Marshal.

D. A protective order does not preclude the rights of any party or child that are to be adjudicated at subsequent hearings in the proceeding.

History

Source. LA 33–05, eff. November 12, 2005.

Library References

Indians <KEY>511.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 514. Procedures for issuance of temporary and permanent protective orders

A. If the Court has a reasonable belief that the petitioner or the person on whose behalf the petition is filed is the victim of an act of interpersonal or domestic violence committed by the respondent,

the Court shall immediately grant a temporary ex parte protective order based upon the facts contained within the verified statement or affidavit.

B. Within fourteen (14) days of the issuance of a temporary ex parte protective order, excluding holidays and weekends, unless by agreement, a hearing shall be held to determine whether the order should extend for an additional period of time, made permanent or modified in any respect.

C. Service must be made upon the respondent at least five (5) days prior to the hearing. If service cannot be made, the Court may set a new date.

D. Service shall be pursuant to the procedure set forth in Cherokee Nation Code Annotated and the District Court Rules.

E. The Court may issue protection to both parties only if each party has completed a petition pursuant to the provisions of this Code and the Court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.

F. Any protective order granted pursuant to this chapter shall be forwarded by the Court to the Cherokee Nation Marshal Service dispatcher within twenty-four (24) hours of issuance. In the case of a temporary emergency ex parte protective order issued in accordance with 12 CNCA § 518 or a temporary ex parte protective order, it shall be filed immediately upon issuance. The Marshal's Office shall make information available to each officer as to the existence and status of every protective order issued under this chapter.

History

Source. LA 33–05, eff. November 12, 2005.

Library References

Indians <KEY>534.

Protection of Endangered Persons <KEY>70 to 83.

Westlaw Topic Nos. 209, 315P.

C.J.S. Breach of the Peace §§ 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence §§ 2 to 4, 7 to 34, 36 to 45.

C.J.S. Indians §§ 151 to 179.

§ 515. Content of a protective order in general

A. A petition shall briefly describe the incident(s) of domestic violence and shall be a verified petition or supported by an affidavit made under oath stating the facts and circumstances justifying the requested order.

B. In addition to any other required information, the petition for a protective order must contain a statement listing each civil or criminal action involving both parties.

C. Protective orders shall include provisions:

1. Restraining the respondent from committing any acts of domestic violence;
2. Restraining the respondent from harassing, stalking, threatening telephoning or otherwise contacting the petitioner directly or indirectly, personally or through another person, or engaging in any other conduct that would place any named family or household members in reasonable fear of bodily injury;
3. Prohibiting the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury;
4. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon in the respondent's immediate possession or control or subject to the respondent's immediate control, so that the Respondent will not use, display or threaten to use the firearm or other dangerous weapon in any acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to law enforcement;
5. Requiring that an accounting be made to the Court for all authorized transfers, encumbrances, dispositions and expenditures; and
6. Notifying the parties involved that the knowing violation of any provision of the order may constitute contempt of court punishable by fines, imprisonment or both.

D. Where the Court in its protective order makes findings of any of the following behaviors, it shall order counseling, which shall include the development of behavior-specific relationship skills.

1. Using coercion and threats, such as:
 - a. making and/or carrying out threats to do something to hurt another person;
 - b. threatening to leave a spouse, to commit suicide, to report a spouse to welfare;
 - c. threatening to file false domestic violence, restraining order or child sexual abuse charges;
 - d. making a spouse to drop charges;

- e. making a spouse do illegal things;
- f. denying or refusing access to needed medical care or refusing to take prescribed medications.

2. Counseling should include development in skills of negotiation and fairness:

- a. seeking mutually satisfying resolutions to conflict;
- b. accepting change;
- c. being willing to compromise.

3. Using intimidation, such as:

- a. making a spouse afraid by using looks, actions, gestures;
- b. smashing things;
- c. destroying the property belonging to a spouse, relative or family member;
- d. displaying weapons (such as knives).

4. Counseling should include developing skills in non-threatening behavior, such as:

- a. talking and acting so that family members feel safe and comfortable expressing themselves and doing things.

5. Using economic abuse, such as:

- a. refusing to contribute income to basic expenses;
- b. making a spouse or family member ask for money;
- c. giving the victim(s) an allowance to limit their economic participation;
- d. taking a spouse's money;
- e. not letting a spouse or family member know about or have access to family income;
- f. forcing a spouse to take higher-paying, more hazardous, less satisfying job;
- g. preventing a spouse from getting or keeping a job.

6. Counseling should include developing skills in economic partnership:

- a. making money decisions together;

- b. making sure both partners benefit from financial arrangements;
- c. expecting all family members to contribute in good faith to the financial success of the family.

7. Using emotional abuse, such as:

- a. putting someone down;
- b. making someone feel bad about herself or himself;
- c. using sex as a weapon;
- d. calling someone names;
- e. making someone think they are crazy;
- f. playing mind-games;
- g. humiliating someone;
- h. making someone feel guilty.

8. Counseling should include building skill in respect:

- a. listening to others non-judgmentally;
- b. being emotionally affirming and understanding;
- c. sharing responsibility for mutually-satisfying intimacy;
- d. valuing opinions.

9. Using gender privilege, such as:

- a. treating someone like a servant;
- b. treating someone as just a wallet;
- c. making all the big decisions;
- d. acting like the "master or mistress of the house";
- e. being the only one who defines the male and female roles.

10. Counseling should include the development of skills in shared responsibility:

a. mutually agreeing on a fair distribution of work;

b. making family decisions together.

11. Using isolation, such as:

a. controlling what someone does, who that person sees and talks to, what that person reads, where someone goes;

b. limiting a spouse's or family member's outside involvement;

c. using jealousy to justify actions.

12. Counseling should include the development of skills in trust and support:

a. supporting your partner's goals in life;

b. respecting your partner's right to his own feelings, friends, activities and opinions.

13. Using children, such as:

a. making a spouse feel guilty about the children;

b. using the children to relay messages;

c. alienating children from a parent;

d. using visitation to harass a parent;

e. threatening to take the children away;

14. Counseling should include developing skills in responsible parenting:

a. sharing parental responsibilities;

b. being a positive non-violent role model for the children;

15. Minimizing, denying and blaming, such as:

a. making light of the abuse and not taking the other person's concerns about it seriously;

b. saying the abuse didn't happen;

c. shifting responsibility for abusive behavior;

- d. saying that the victim deserved it;
- e. saying that the victim caused it;
- f. saying it was the only way the victim would pay attention.

16. Counseling should include developing skills in honesty and accountability:

- a. accepting responsibility for self;
- b. acknowledging past use of violence;
- c. admitting being wrong;
- d. communicating openly and truthfully.

E. A protective order may include any other relief the Court deems appropriate, including but not limited to:

1. Excluding the respondent from the residence of the victim (whether or not the respondent and the victim share the residence), school, place of employment or a specified place frequented by the petitioner and/or any named family or household member;
2. Awarding temporary child custody and/or establishing temporary visitation rights or restrictions with regard to the minor children of the parties;
3. If visitation is granted there shall be set rules for the exchange of the children for visitation. These rules may include, but are not limited to times, places and persons allowed to visit;
4. Ordering temporary use and possession of personal property, including motor vehicles, to either party;
5. Ordering the respondent to make timely payments on existing debts of the respondent or of the parties, including but not limited to mortgage or rental payments and necessary utilities in order to maintain the petitioner in their residence;
6. Ordering the respondent to pay child support in accordance with Cherokee Nation child support laws and guidelines;
7. Ordering the respondent to pay such support as may be necessary for the support of a party and any minor children of the parties and/or reasonable attorney fees and costs.
8. Ordering the respondent to surrender all firearms and weapons to the custody of law enforcement while the protective order is in effect;
9. When appropriate, restraining one or both parties from transferring, removing, encumbering,

mortgaging, concealing, disposing or altering property except as authorized by the Court; and

10. Ordering other lawful relief as the Court deems necessary for the protection of the victim of domestic violence, including orders or directives to law enforcement or other appropriate departments and programs; and

F. No order or agreement under this section affects title to any real property in any manner.

History

Source. LA 33–05, eff. November 12, 2005.

Library References

Indians <KEY>534.

Protection of Endangered Persons <KEY>70 to 83.

Westlaw Topic Nos. 209, 315P.

C.J.S. Breach of the Peace §§ 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence §§ 2 to 4, 7 to 34, 36 to 45.

C.J.S. Indians §§ 151 to 179.

§ 516. Duration and amendments to permanent protective orders in general

A. A protective order shall be enforced until further order of the Court but not to exceed three hundred sixty five (365) days and may be subject to amendment for extension at the discretion of the Court or at the request of one of the parties.

B. After thirty (30) days, the Court may, in its discretion, revoke, modify, extend or amend a protective order upon subsequent petition filed by either party.

History

Source. LA 33–05, eff. November 12, 2005.

Library References

Indians <KEY>534.

Protection of Endangered Persons <KEY>70 to 83.

Westlaw Topic Nos. 209, 315P.

C.J.S. Breach of the Peace §§ 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence §§ 2 to 4, 7 to 34, 36 to 45.

C.J.S. Indians §§ 151 to 179.

§ 517. Temporary emergency ex parte protective orders

A. During the hours that the Court is closed, the Court shall provide for the availability of a Judge or other authorized personnel who shall authorize the issuance of temporary emergency ex parte protective orders by any appropriate and effective method. The following conditions apply:

1. Temporary emergency ex parte orders will be issued upon a good cause showing that it is necessary to protect the applicant or others from interpersonal or domestic violence;
2. Immediate and present danger of interpersonal or domestic violence to the applicant or others constitutes good cause for purposes of this section;
3. Any order issued under this section expires seventy-two (72) hours after its issuance unless it is continued by the Judge or authorized personnel in the event of continuing unavailability of the Court. At any time, the applicant may seek a temporary ex parte protective order from the Court; and
4. Any order issued under this section and any documentation in support of the Order must be immediately certified to the Court.

B. If an officer cannot make an arrest, but there is probable cause to believe a person is in immediate and present danger of domestic violence, the Judge or other person authorized to issue temporary emergency ex parte protective orders may issue a temporary emergency ex parte protective order.

History

Source. LA 33–05, eff. November 12, 2005.

Library References

Indians <KEY>534.

Protection of Endangered Persons <KEY>70 to 83.

Westlaw Topic Nos. 209, 315P.

C.J.S. Breach of the Peace §§ 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence §§ 2 to 4, 7 to 34, 36 to 45.

C.J.S. Indians §§ 151 to 179.

§ 518. False allegations of domestic violence—Effect

If, after investigation, the Court finds that a party's allegations of domestic violence in a domestic violence protective order proceeding, divorce proceeding, child custody proceeding, child visitation proceeding, separation proceeding or termination of parental rights proceeding are false and not made in good faith, the Court shall order the party making the false allegations to pay court costs and reasonable attorney fees incurred by the other party in responding to the allegation.

History

Source. LA 33–05, eff. November 12, 2005.

Library References

Indians <KEY>534.

Protection of Endangered Persons <KEY>70 to 83.

Westlaw Topic Nos. 209, 315P.

C.J.S. Breach of the Peace §§ 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence §§ 2 to 4, 7 to 34, 36 to 45.

C.J.S. Indians §§ 151 to 179.

§ 519. Foreign domestic violence protective orders—Full faith and credit recognition and enforcement

A. Subject to registration, a domestic violence protective order issued by a court of competent jurisdiction of another state, Indian tribe, the District of Columbia or a commonwealth, territory or possession of the United States must be accorded full faith and credit by the Cherokee Nation Court and enforced as if the order was issued by the Cherokee Nation Court.

1. A foreign domestic violence protective order is enforceable in the Cherokee Nation's jurisdiction, and as extended by cross-deputization or cooperative enforcement agreements, if all of the following are satisfied:

a. The respondent received notice of the protective order in compliance with requirements of the issuing jurisdiction;

b. The protective order is in effect in the issuing jurisdiction;

c. The issuing court had jurisdiction over the parties and the subject matter;

d. The respondent was afforded reasonable notice and opportunity to be heard sufficient to protect that person's right to due process. In the case of ex parte protective orders, notice and opportunity to be heard must have been provided within the time required by the law of the issuing jurisdiction and in any event within a reasonable time after the protective order was issued, sufficient to protect the respondent's due process rights. Failure to provide reasonable notice and opportunity to be heard is an affirmative defense to any prosecution for violation of the foreign protective order or any process filed seeking enforcement of the protective order; and

e. If the protective order also provides protection for the respondent, a petition, application or other written pleading must have been filed with the issuing court seeking such a protective order and the issuing court must have made specific findings that the respondent was entitled to the protective order.

B. A person entitled to protection under a foreign domestic violence protective order may file the foreign protective order in the Clerk of Court's office. The person filing the protective order shall also file an affidavit with the Clerk of Court certifying the validity and status of the foreign protective order and attesting to the person's belief that the protective order has not been amended, rescinded or superseded by any other orders from a court of competent jurisdiction. If a foreign protective order is filed under this section, the Clerk of Court shall transmit a copy of the protective order to the Cherokee Marshal Service. Filing of a foreign protective order under this Section is not a prerequisite to the order's enforcement by Cherokee Nation. A fee for filing the foreign protective order shall not be assessed.

C. A law enforcement officer may rely upon any foreign domestic violence protective order that has been provided to the officer by any source. The officer may make arrests for violation of the protective order in the same manner as for violation of a protective order issued by Cherokee Nation. A law enforcement officer may rely on the statement of the person protected by the protective order that the protective order is in effect and that the respondent was personally served with a copy of the protective order. A law enforcement officer acting in good faith and without malice in enforcing a foreign protective order under this section is immune from civil or criminal liability for any action arising in connection with the enforcement of the protective order.

D. Any person who intentionally provides a law enforcement officer with a copy of a foreign domestic violence protective order known by that person to be false or invalid or who denies having been served with a protective order when that person has been served with such an order is guilty of a crime.

History

Source. LA 33-05, eff. November 12, 2005.

Library References

Indians <KEY>534.

Protection of Endangered Persons <KEY>70 to 83.

Westlaw Topic Nos. 209, 315P.

C.J.S. Breach of the Peace §§ 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence §§ 2 to 4, 7 to 34, 36 to 45.

C.J.S. Indians §§ 151 to 179.

§ 520. Tribal registry for protective orders

A. The Court shall maintain a registry of all orders for protective orders issued by the Court. The Clerk of Court shall provide the Cherokee Nation Marshal's Office with certified protective orders within twenty-four (24) hours after issuance.

B. The Clerk of Court shall also provide the Cherokee Nation Marshal's Office with any modifications of, revocations of, withdrawal of and/or expiration of protective orders.

C. The information contained in the registry is available at all times to the Court, law enforcement agencies and domestic violence shelters.

D. Facsimile copies shall be recognized.

History

Source. LA 33–05, eff. November 12, 2005.

Library References

Indians <KEY>534.

Protection of Endangered Persons <KEY>70 to 83.

Westlaw Topic Nos. 209, 315P.

C.J.S. Breach of the Peace §§ 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence §§ 2 to 4, 7 to 34, 36 to 45.

C.J.S. Indians §§ 151 to 179.

CHAPTER 6

GARNISHMENT

Oklahoma Statutes

Garnishment, see 12 O.S. § 1170 et seq.

§ 1170. Definitions

A. For the purposes of this section and 12 CNCA §§ 1171.2 through 1171.4:

1. "**IV-D agency**" means an agency of a state or federally-recognized tribe entering, enforcing, or collecting child support payments under Subchapter IV of Chapter 7 of the Social Security Act found in Title 42 of the United States Code.
2. "**Arrearage**" means the total amount of unpaid support obligations.
3. "**Child support**" means and includes all payments or other obligations due and owing to the person entitled by the obligor pursuant to a child support order, including but not limited to medical insurance or health care premiums and other medical expenses, current child care obligations, child care arrearages and any fixed child care obligations and such other expenses and requirements as determined by the District Court.
4. "**Delinquency**" means any payment under an order for support which becomes due and remains unpaid.
5. "**Disposable income**" means income or earnings less any amounts required by law to be withheld, including, but not limited to, federal, state, and local taxes, Social Security, and public assistance payments.
6. "**Income**" or "**earnings**" means any form of payment to an individual regardless of source including, but not limited to, wages, gaming winnings, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district, or any entity created by law.
7. "**Income assignment**" is a provision of a support order which directs the obligor to assign a portion of the monies, income, or periodic earnings due and owing to the obligor to the person entitled to the support or to another person designated by the support order or assignment for payment of support or arrearages or both. The assignment shall be in an amount which is sufficient to meet the periodic support arrearages or other maintenance payments or both imposed by the Court order or administrative order. The income assignment shall be made a part of the support order.
8. "**Notice of income assignment**" means the standardized form prescribed by the United States Secretary of Health and Human Services that is required to be used in all cases to notify a payor of an order to withhold for payment of child support and other maintenance payments.

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

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

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

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

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

History

Source. LA 10–07, eff. March 17, 2007.

§ 1171. Right to garnishment

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

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

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

1. Prejudgment garnishments, which shall consist only of general garnishments pursuant to 12 CNCA § 1173.3; and

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

a. Income assignment for child support pursuant to the provisions of 12 CNCA § 1171.2;

b. Noncontinuing earnings garnishment pursuant to 12 CNCA § 1173;

- c. Garnishment for collection of child support pursuant to 12 CNCA § 1173.2;
- d. General garnishment pursuant to 12 CNCA § 1173.3; and
- e. Continuing earnings garnishment pursuant to 12 CNCA § 1173.4.
- f. Automatic gambling winnings garnishment pursuant to 12 CNCA §§ 1197 and 1198.

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1171.1. Money earned from prejudgment garnishment—Exemption

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

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1171.2. Child support payments—Garnishment—Filing fee

A. Any person awarded custody of and support for a minor child by a court of competent jurisdiction or awarded periodic child support payments by the Office of Child Support Enforcement, or the IV–D agency of another state or tribe on behalf of a recipient of Temporary Assistance for Needy Families or on behalf of a person not receiving Temporary Assistance for Needy Families, upon proper application, shall be entitled to proceed to collect any current child support and child support due and owing through income assignment pursuant to the provisions of this section and 12 CNCA §§ 1171.3 and 1171.4 or by garnishment, if the minor child is in the custody and care of the person entitled to receive the child support or as is otherwise provided by the Court or administrative order at the time of the income assignment or garnishment proceedings.

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

1. fifty percent (50%) of such person's disposable earnings for that week, if such person is supporting his spouse or a dependent child other than the child with respect to whose support such order is used; and

2. sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child. The fifty percent (50%) specified in paragraph 1 of this subsection shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph 2 of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a support order with respect to a period which is prior to the twelve- (12) week period which ends with the beginning of such work week.

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1171.3. Income assignments

A. In all child support cases arising out of an action for divorce, paternity or other proceedings, the Court shall order the payment of child support as provided under 43 CNCA § 508.

B. 1. A notice of income assignment shall be sent by the applicant to the payor on a standardized

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

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

3. Each pay period the payor shall withhold the amounts specified in the notice from the obligor's income and earnings. The amount withheld by the payor shall not exceed the limits on the percentage of an obligor's income which may be assigned for support pursuant to 12 CNCA § 1171.2.

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

5. All payments shall be made through the centralized support registry as provided in 43 CNCA § 502.

6. If the amount of support due under all income assignments against the obligor exceeds the maximum amount authorized by 12 CNCA § 1171.2, the payor shall pay the amount due up to the statutory limit, and the payor shall send written notice to the person or agency designated to receive payments that the amount due exceeds the amount subject to withholding. If the payor wrongfully fails to pay or notify as required in this subsection, the payor may be liable for an amount up to the accumulated amount due upon receipt of the notice.

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

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

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

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

notice; or

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

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

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

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

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

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

15. The payor may not discipline, suspend, discharge, or refuse to promote an obligor because of an income assignment executed pursuant to this section. Any payor who violates this section shall be liable to the obligor for all income, wages, and employment benefits lost by the obligor from the period of unlawful discipline, suspension, discharge, or refusal to promote until the time of reinstatement or promotion. Violation of this subsection may result in a fine of up to Two Hundred Dollars (\$200.00) against the payor for each violation.

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

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

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

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

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

2. In all child support cases arising out of an action for divorce, paternity, or other proceeding in which services are not being provided under the Nation's IV-D program, the Court shall order the income of any parent ordered to pay child support to be subject to immediate income assignment regardless of whether child support payments are in arrears at the time of the order, unless:

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

i. a written determination and explanation by the Court of why implementing immediate income assignment would not be in the best interests of the child; and

ii. proof of timely payment of previously ordered support in cases involving modification of support orders; or

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

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

I. Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which the payments which the noncustodial parent has failed to make under a tribal support order are at least equal to the support payable for one (1) month.

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

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

History

Source. LA 10-07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1172. Affidavit—Contents

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

1. The name(s) of the plaintiff(s);
2. The name(s) of the defendant(s);
3. In the case of prejudgment garnishments, the amount of the plaintiff's original claim against the defendant or defendants over and above all offsets;
4. In the case of postjudgment garnishments, the amount of the interest-bearing balance;
5. In the case of postjudgment garnishments, the rate and the date the interest begins to accrue; and
6. That the plaintiff verily believes that some person who is subject to the jurisdiction of Cherokee Nation, naming him, whether within or without the Nation, is indebted to or has property in his possession or under his control belonging to the defendant, or either or any of the defendants, in the action or execution and that the indebtedness or property is, to the best of the knowledge and belief of the person making such affidavit, not by law exempt from seizure or sale upon execution.

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

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1172.1. Prejudgment and postjudgment summons—Procedure

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

1. Defendant has been served with a notice, to which the affidavit required by 12 CNCA § 1172 is attached, which notifies the defendant that the issuance of a garnishee summons is requested and that the defendant may object to the issuance of the summons by filing a written objection with the Court Clerk and delivering or mailing a copy to the plaintiff's attorney within five (5) days of the service of the notice. The service of the notice on the defendant satisfies the notice requirement of 12 CNCA § 1174;

2. If no written objection is filed within the five- (5) day period, and if the undertaking has been executed as provided herein, the Court Clerk shall issue the garnishee summons;

3. Should a written objection be filed within the five- (5) day period, the Court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If, at the hearing, the plaintiff proves the probable merit of the plaintiff's cause and the truth of the matters asserted in the affidavit and if the plaintiff executes an undertaking, as provided herein, the Court may issue the garnishee summons; and

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

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

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

History

Source. LA 10-07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1172.2. Garnishment summons—Payment of funds by garnishee

A. When a garnishment summons is issued in any action after the judgment is filed, the Court Clerk shall attach to the garnishment summons a notice of garnishment and exemptions required by 12 CNCA § 1174(C) and an application for the defendant to request a hearing. If the garnishee is indebted to or holds property or money belonging to the defendant, the garnishee shall immediately mail by first-class mail a copy of the notice of garnishment and exemptions and the application for hearing to the defendant at the last-known address of the defendant shown on the records of the garnishee at the time the garnishment summons was served on the garnishee. If more than one address is shown on the records of the garnishee at the time of service of the summons, the garnishee shall discharge the duty by mailing the required items to any one of the addresses shown on its records. In lieu of mailing, the garnishee may hand-deliver a copy of the notice of garnishment and exemptions and the application for hearing to the defendant. The garnishee shall have no liability except for willful failure to mail or hand-deliver the copy of the notice of garnishment and exemptions and the application for hearing to the defendant. The answer of the garnishee shall contain a statement indicating substantial compliance with this section. If the application requesting a hearing is filed, the Court shall set the matter for hearing within not less than two (2) nor more than ten (10) days from receipt of the returned application, and the Court Clerk shall give notice of the hearing to each of the parties by first-class mail. The defendant shall have the burden of proof to show that some or all of the assets subject to the garnishment are exempt. The Court shall issue an order determining the exemption and directing distribution of funds, as appropriate. The Court may direct such other orders to the judgment creditor as are necessary to prevent subsequent garnishment of the exempt property.

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

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

History

Source. LA 10-07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1173. Garnishee summons

A. Any judgment creditor may obtain a noncontinuing lien on earnings. For the purposes of this section, "**earnings**" means any form of payment to an individual including, but not limited to, salary, commission, gambling winnings, or other compensation, but does not include reimbursements for travel expenses.

B. A noncontinuing earnings garnishment shall be commenced by filing the affidavit provided for by 12 CNCA § 1172.

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

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

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

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

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

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

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

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

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

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

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

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

I. 1. When a postjudgment noncontinuing earnings garnishment under 12 CNCA § 1173 or a continuing earnings garnishment under 12 CNCA § 1173.4 is issued against a defendant already subject to an income assignment for child support, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of 12 CNCA § 1171.2 and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under the income assignment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).

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

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§§ 1173.1, 1173.2. Reserved

§ 1173.3. General garnishment

A. A general garnishment shall be commenced by filing the affidavit provided for by 12 CNCA § 1172.

B. The summons required by this section shall be on a form prescribed by the Judicial Branch of Cherokee Nation.

C. The summons required by subsection (B) of this section shall be served upon the garnishee together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and request for hearing, and claim for exemptions in the manner provided for by the laws or court rules of Cherokee Nation and shall be returned with proof of service within ten (10) days of its date.

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

E. Within ten (10) days after service of the garnishment, the garnishee shall file its answer with the court clerk and pay or deliver to the judgment creditor's attorney or to the judgment creditor if there is no attorney the indebtedness or property belonging to or owed to the defendant, together with a copy of the answer which shall state:

1. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

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

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant,

or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

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

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

F. The garnishment summons and affidavit served on the garnishee under this section are a lien on the defendant's property due at the time of service of the summons to the extent the property is not exempt from garnishment.

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1173.4. Continuing lien on earnings—Definitions

A. Any judgment creditor may obtain a continuing lien on earnings. For the purposes of this section, "**earnings**" means any form of payment to an individual including, but not limited to, salary, wages, commission, gaming winnings, or other compensation, but does not include reimbursements for travel expenses.

B. A continuing earnings garnishment shall be commenced by filing the affidavit provided for by 12 CNCA § 1172.

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

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

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

Nation.

F. Within seven (7) days after the end of each pay period, or, if the judgment debtor does not have regular pay periods, after any payment by the garnishee to the judgment debtor, the garnishee shall file an answer with the Court Clerk, and pay the amount withheld to the judgment creditor's attorney or to the judgment creditor, if there is no attorney, together with a copy of the answer which shall state:

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

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

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

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

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

G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons, to the extent the property is not exempt from garnishment. This lien attaches to subsequent nonexempt earnings until one of the following occurs:

1. the total earnings subject to the lien equals the balance of the judgment against the defendant owing to the plaintiff;

2. the employment relationship is terminated;

3. the judgment against the defendant is vacated, modified, or satisfied in full;

4. the summons is dismissed; or

5. one hundred eighty (180) days from the date of service of the affidavit and summons have

elapsed; provided, an affidavit and summons shall continue in effect and shall apply to a pay period beginning before the end of the one hundred eighty- (180) day period even if the conclusion extends beyond the end of the period.

H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee during the period it is in effect, regardless of whether the amounts withheld by the garnishee are reduced by the Court or by agreement of the parties, except for a garnishment lien or garnishment summons issued for the collection of child support.

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

b. The subsequent summons is not effective if a summons or lien on the same cause of action is pending at the time of service unless the subsequent summons in the same cause of action is served after the one-hundred-fiftieth (150th) day of the previous garnishment lien.

I. 1. When a postjudgment wage garnishment under 12 CNCA § 1173 or a continuing earnings garnishment under this section is issued against a defendant already subject to an income assignment for child support, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of 12 CNCA § 1171.2 and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under the income assignment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).

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

J. A continuing earnings garnishment may be suspended or modified for a specific period of time within the effective period of the garnishment by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the Clerk of the Court in which the judgment was entered, and a copy of which shall be mailed by first-class mail, postage prepaid by the judgment creditor to the garnishee.

K. Any garnishment issued against a debtor already subject to a continuing or noncontinuing earnings garnishment shall take effect immediately upon the conclusion of the prior garnishment, and shall be effective for its full period of time or as otherwise provided in this section.

History

Source. LA 10-07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1174. Notice to defendant of garnishment proceedings

A. In all cases of garnishment before judgment, the defendant in the principal action shall be given notice of the issuance in said action of any garnishee summons, the date of issuance of said summons, and the name of the garnishee.

B. In all cases of garnishment for the collection of child support, the defendant shall be given notice as required by this section.

C. In all cases of postjudgment garnishment, the Court Clerk shall attach notice, in a form prescribed by the Judicial Branch of Cherokee Nation, with the garnishment, in the manner provided by 12 CNCA § 1172.2 that the defendant may be entitled to claim an exemption for any assistance received pursuant to the terms of the federal or Oklahoma Social Security Act and other exemptions that may be available to the defendant, and that any such claim should be filed with the Court Clerk within five (5) days from receipt of notice in a form prescribed by the Judicial Branch of Cherokee Nation, requesting a hearing as to the status of any assets which the defendant asserts are exempt. Any proceeding to claim an exemption initiated subsequent to five (5) days after receipt of notice shall be by motion unless otherwise agreed by the parties.

D. Said notification may be accomplished by:

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1175. Subsequent proceedings

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1176. Reserved

§ 1177. Trial of issue—Judgment on answer

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

defendant, if the defendant shall also answer, for such judgment to which the judgment creditor shall be entitled, but any such judgment shall be no bar beyond the facts stated in the answer.

History

Source. LA 10-07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1178. Affidavit required of garnishee

A. For the purposes of this section, "**earnings**" means any form of payment to an individual including, but not limited to, salary, wages, commission, gaming winnings, or other compensation, but does not include reimbursement for travel expenses.

B. Where the garnishment summons is on earnings and is issued under 12 CNCA § 1173, the garnishee shall, within seven (7) days after the end of defendant's present pay period or where a payment of earnings is due, or thirty (30) days from the service of the summons, whichever is earlier, file an affidavit with the Clerk of the Court in which the action is pending and deliver or mail a copy thereof to the judgment creditor or the judgment creditor's attorney of record. The affidavit shall state:

1. Whether the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages, specifying, as applicable, the beginning and ending dates of the pay period existing at the time of the service of the garnishee summons, the total amounts earned in the pay period, and all of the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;
2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to such property, the facts and circumstances in the affidavit;
3. At the garnishee's option, any claim of exemption from execution on the part of the defendant, or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;
4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant, or any other person, makes claim, at the garnishee's option, the names and addresses of such other claimants and, so far as known, the nature of the claims; and

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

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1178.1. Summons for collection of support—Affidavit—Garnishee's answer

A. For the purposes of this section, "**wages**" or "**earnings**" means any form of payment to an individual including, but not limited to, salary, commission, or other compensation, but does not include reimbursement for travel expenses.

B. Where the garnishment summons is for the collection of support and is issued under 12 CNCA § 1173.2, the garnishee shall, within ten (10) days from the service of the garnishee's summons or within seven (7) days after the end of defendant's current pay period or thirty (30) days from the date of service of this summons, whichever is earlier, file an affidavit with the Clerk of the Court in which the action is pending and deliver or mail a copy thereof to the judgment creditor's attorney or to the judgment creditor if there is no attorney. The affidavit shall state:

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

2. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

3. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to

such property, the facts and circumstances in the affidavit;

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

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

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

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

History

Source. LA 10-07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1178.2. Garnishment summons not on earnings or for collection of child support— Affidavit—Garnishee's answer

A. Where the garnishment summons is not on earnings, is not for the collection of child support and is issued under 12 CNCA § 1173.3, the garnishee shall, within ten (10) days from the service of the garnishee's summons, file an affidavit with the Clerk of the Court in which the action is pending and deliver or mail a copy thereof to the judgment creditor's attorney or to the judgment creditor if there is no attorney. The affidavit shall state:

1. Whether the garnishee was indebted or under any liability to the defendant named in the notice in any manner or upon any account specifying if indebted or liable, the amount, the interest thereon, the manner in which evidenced, when payable, whether an absolute or contingent liability and all of the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

2. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or

control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

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

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

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

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

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

History

Source. LA 10-07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1179. Failure of garnishee to answer

If any garnishee, having been duly summoned, shall fail to file and deliver or mail the answer as required by 12 CNCA § 1172.2, 1178, 1178.1 or 1178.2, to appear for deposition or to answer interrogatories as provided in 12 CNCA § 1183, the Court shall enter an order to the garnishee to file and deliver or mail the answer, to appear for deposition, or to answer the interrogatories within a time prescribed by the Court, not to be less than seven (7) days, in the order and also to deliver within the same period of time to the Court or the judgment creditor any money or property of defendant that the garnishee is required to pay or deliver under this title. The Court shall also direct the manner in which notice of the order shall be given to the garnishee. The order for giving notice shall specify a manner of giving notice which is calculated to be most likely to give actual notice to the garnishee or its managing officers, directors, or agents. The order shall specifically inform the garnishee that the garnishee has failed to respond to the summons and shall specifically advise the

garnishee that judgment will be rendered against it in the principal amount of the judgment against the defendant plus costs, which amounts will be specified, upon failure to conform with the requirements of the order. If the garnishee shall fail to file and deliver or mail the answer affidavit as required in the order, appear for deposition, or to answer interrogatories as provided in the order, then the Court shall render judgment against the garnishee for the amount of the judgment and costs due the judgment creditor from the defendant in the principal action together with the costs of the garnishment, including a reasonable attorney fee to the judgment creditor for prosecuting the garnishment. The garnishee may also be subject to punishment for contempt; provided, however, the Court shall have power to vacate or modify any order issued pursuant to this section in the manner provided for under the statutes or court rules of Cherokee Nation.

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1180. Persons authorized to make answer

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1181. Mutual defense by garnishee and defendant

At any time before final order or judgment against the garnishee, the defendant may in all cases, by answer duly verified defend the proceedings against any garnishee, upon the ground that the indebtedness of the garnishee, or any property held by him, is exempt from execution against such defendant, or for any other reason is not liable to garnishment; or upon any ground upon which a

garnishee might defend the same; and may participate in the trial of any issue between the plaintiff and garnishee for the protection of his interests. The garnishee may at his option, defend the principal action for the defendant, if the latter does not, but shall be under no obligations so to do.

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1182. Proceedings deemed actions—Judgment and enforcement—Trial and dismissal—Unmatured or unliquidated debts

The proceedings against a garnishee shall be deemed an action by the judgment creditor against garnishee and defendant, as parties defendant, and all of the provisions for enforcing judgment shall be applicable thereto. No trial shall be had of the garnishee action until the judgment creditor shall have judgment in the principal action, and if the defendant have judgment, the garnishee action shall be dismissed with costs, unless the judgment creditor shall perfect an appeal according to law, in which event the garnishment proceeding shall be continued until the disposition of the appeal, and it shall not be necessary to appeal the garnishment proceedings, or make the garnishee a party to the appeal. The Court shall render such judgment in all cases as shall be just to all of the parties and shall properly protect their respective interests, and may adjudge the recovery of any indebtedness, the conveyance, transfer, or delivery to the appropriate law enforcement official, or any officer appointed by the judgment, of any property disclosed or found to be liable to be applied to the judgment creditor's demand, or by the judgment pass the title thereto; and may therein, or by its order when proper, direct the manner of making sale and of disposing of the proceeds thereof, or of any money or other things paid over or delivered to the Clerk or officer. The judgment against a garnishee shall acquit and discharge from all demands by the defendant or the defendant's representatives for all moneys, goods, effects, or credits paid, delivered or accounted for by the garnishee by force of such judgment; provided, it shall be no defense to proceedings against a garnishee that the debt owing by the garnishee to the defendant was unliquidated or was not due.

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1183. Examination of garnishee by deposition or interrogatories

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1184. Disclaimer by garnishee—Interpleading interested party

When the answer of the garnishee shall disclose that any other person than the defendant claims the indebtedness or property in his hands, and the name and residence of such claimant, the Court may, on motion, order that such claimant be interpleaded, as a defendant to the garnishee action; and that notice thereof, setting forth the facts, with a copy of such order, in such form as the Court shall direct, be served upon him; and that after such service shall have been made, the garnishee may pay or deliver to the officer or the Clerk such indebtedness or property, and have a receipt therefore, which shall be a complete discharge from all liability to any party for the amount paid or property so delivered. Such notice shall be served in the manner required for service of a summons in a civil action, and may be made without the state, or by publication thereof, if the order shall so

direct. Upon such service being made, such claimant shall be deemed a defendant to the garnishee action and within ten (10) days shall answer, setting forth his claim or any defense which the garnishee might have made. In case of default, judgment may be rendered, which shall conclude any claim upon the part of such defendant.

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1185. Garnishee's liability

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1186. No judgment upon garnishee's liability under certain circumstances

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

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

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

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

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1187. No action against garnishee until termination of garnishee action

No action shall be commenced by the defendant or his assignee against a garnishee upon any claim or demand liable to garnishment, or to recover any property garnished, or execution be issued upon a judgment in favor of defendant against such garnishee subsequent to the service of the garnishee summons upon him, until the termination of the garnishee action; and if an action shall have been commenced or an execution issued, it shall be stayed by the Court or a Judge thereof, upon the garnishee's application; except that upon cause shown, the Court or a Judge may by order permit the commencement of such an action, or the issue of an execution, or the further prosecution of one stayed.

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1188. Defendant's bond

The defendant may, at any time after the garnishment affidavit is filed, and before judgment, file with the Clerk of the Court an undertaking, executed by at least two sureties, authorized to issue bonds by Cherokee Nation, to the effect that they will, on demand, pay to the plaintiff the amount of the judgment that may be recovered against such defendant in the action, with all costs not exceeding a sum specified, which sum shall not be less than double the amount demanded by the complaint on file, or in such less sum as the Court shall, upon application, direct. The sureties shall justify their responsibility by affidavit annexed stating a sum which each is worth, in property, over and above all his debts and liabilities and property exempt from execution, the aggregate of which sums shall be double the amount specified in the undertaking. The defendant shall serve a copy of such undertaking, with a notice where and when the same was filed, on the plaintiff. Within three (3) days after the receipt thereof the plaintiff shall give notice to the defendant that he excepts to the sufficiency of the sureties, or he shall be deemed to have waived all objections to them.

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1189. When plaintiff excepts, sureties appear for justification—Discharge of garnishee

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

justification.

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1190. Costs

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

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

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

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

D. In addition to sums otherwise due pursuant to a judgment, a judgment creditor, if represented by an attorney, shall be entitled to an attorney fee of Fifty Dollars (\$50.00) for prosecuting a garnishment pursuant to subparagraphs b, c, and d of paragraph 2 of subsection (B) of 12 CNCA § 1171, and an attorney fee of One Hundred Dollars (\$100.00) for prosecuting a garnishment pursuant to 12 CNCA § 1171(B)(2)(e), not to exceed a total of One Hundred Fifty Dollars (\$150.00) in any twelve- (12) month period.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1191. Reserved

§ 1192. Garnishment—Employees of Cherokee Nation or its business entities

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1193. Summons when Cherokee Nation employee is garnisheed

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1194. Cherokee Nation as garnishee—Judgments

No judgment shall be rendered against Cherokee Nation as garnishee, but judgment may be rendered against any person served pursuant to 12 CNCA § 1193, who shall willfully fail, neglect or refuse to answer garnishment summons; provided, no person employed by Cherokee Nation shall be held personally liable unless the failure, neglect, or refusal to answer is willful.

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1195. Garnishment bond not required when Nation is plaintiff

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1196. Judgment—Garnishee liability to defendant

If the plaintiff takes issue with the answer of the garnishee, the plaintiff may have a copy of the garnishee's answer and a copy of the plaintiff's notice which takes issue with the answer served on the defendant. If the defendant is served copies of the garnishee's answer and the plaintiff's notice, the determination of the Court as to the liability of the garnishee to the defendant will be binding

on the defendant in any future action involving him and the garnishee whether or not the defendant participates in the trial of the issues raised by the garnishee's answer.

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1197. Garnishment of gaming winnings

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

History

Source. LA 10–07, eff. March 17, 2007.

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1198. Withholding gaming winnings

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

B. In circumstances where a patron is awarded a non-monetary prize and owes a child support arrearage, the patron shall be afforded the following options: 1) accept the cash equivalent of the prize offered minus the arrearage; or 2) pay the arrearage in cash or guaranteed funds and then take possession of the prize. After five (5) business days, the day of the prize winning event not included, if the patron has not made his/her election, CNE shall award the cash equivalent of the prize but withhold and remit the child support arrearage to the Office of Child Support Enforcement or as directed by said Office, and then make any remaining funds available to the patron in accordance with CNE unclaimed jackpot procedures. The amount retained by CNE to pay the child support arrearage shall not exceed seventy-five percent (75%) of the net amount of the prize. Net amount is the amount of the prize after all deductions required by law are made not including the child support arrearage.

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

Library References

Indians <KEY>539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

CHAPTER 7

DECLARATORY JUDGMENTS

Oklahoma Statutes

Declaratory judgments, see 12 O.S. § 1651 et seq.

§ 1201. Short title

This act shall be known as the "Cherokee Nation Declaratory Judgment Act of 2009".

History

Source. LA 06–09, eff. April 22, 2009.

Library References

Indians <KEY>537.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1202. Purpose

The purpose of this act is to establish authority for the Judicial Branch to exercise declaratory judgments.

History

Source. LA 06–09, eff. April 22, 2009.

Library References

Indians <KEY>537.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1203. Determination of rights, status or other legal relations—Exceptions

The District Court may, in cases of actual controversy, determine rights, status, or other legal relations, including but not limited to a determination of the construction or validity of any foreign judgment or decree, deed, contract, trust, or other instrument or agreement or of any statute, municipal ordinance, or other governmental regulation, whether or not other relief is or could be claimed, except that no declaration shall be made concerning liability or non-liability for damages on account of alleged tortious injuries to persons or to property either before or after judgment or for compensation alleged to be due under workers' compensation laws for injuries to persons. The determination may be made either before or after there has been a breach of any legal duty or obligation, and it may be either affirmative or negative in form and effect; provided however, that a Court may refuse to make a determination where the judgment, if rendered, would not terminate the controversy, or some part thereof, giving rise to the proceeding.

History

Source. LA 06–09, eff. April 22, 2009.

Library References

Indians <KEY>537.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1204. Pleading

A determination of rights, status, or other legal relations may be obtained by means of a pleading seeking that relief alone or as incident to or part of a petition, counterclaim, or other pleading seeking other relief, and when a party seeks other relief, a Court may grant declaratory relief where appropriate.

History

Source. LA 06–09, eff. April 22, 2009.

Library References

Indians <KEY>537.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1205. Parties—Venue

A. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

B. The venue of the action shall be established by existing statutes; provided, where the action involves an individual defendant, the venue shall be in the county of the defendant's residence or where the defendant may be served with summons. If the action involves two or more defendants who reside in different counties, the venue shall be in any county where any defendant resides or may be served with summons.

C. In any proceeding which involves the validity of a municipal ordinance or regulation, the municipality shall be made a party, and shall be entitled to be heard, and if a statute or regulation is alleged to be unconstitutional, the Attorney General of Cherokee Nation shall also be served with a copy of the proceeding and be entitled to be heard.

History

Source. LA 06–09, eff. April 22, 2009.

Library References

Indians <KEY>537.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1206. Effect of determination—Review

Any determination of rights, status, or other legal relations shall have the force and effect of a final judgment, and it shall be reviewable in the same manner as other judgments.

History

Source. LA 06–09, eff. April 22, 2009.

Library References

Indians <KEY>537.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1207. Further relief

Further relief based upon determination of rights, status, or other legal relations may be granted whenever such relief becomes necessary and proper after the determination has been made. Application may be made by petition to any Court having jurisdiction for an order directed to any party or parties whose rights have been determined to show cause why the further relief should not be granted forthwith, upon reasonable notice prescribed by the Court in its order.

History

Source. LA 06–09, eff. April 22, 2009.

Library References

Indians <KEY>537.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1208. Issues of fact

When a proceeding under this act involves the determination of an issue of fact, such issue must be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the Court in which the proceeding is pending.

History

Source. LA 06–09, eff. April 22, 2009.

Library References

Indians <KEY>537.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

CHAPTER 8

UNIFORM ARBITRATION ACT

Cross References

Workers' compensation, arbitration, see 85 CNCA § 47.

Oklahoma Statutes

Uniform arbitration act, see 12 O.S. § 1851 et seq.

§ 1301. Definitions

In this Uniform Arbitration Act:

1. "**Arbitration organization**" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.
2. "**Arbitrator**" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.
3. "**Court**" means a District Court of Cherokee Nation.
4. "**Knowledge**" means actual knowledge.
5. "**Person**" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.
6. "**Record**" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

History

Source. LA 25–03, eff. September 30, 2003.

§ 1302. Notice

A. Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

B. A person has notice if the person has knowledge of the notice or has received notice.

C. A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>259.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 117, 119.

C.J.S. Indians §§ 151 to 179.

§ 1303. When chapter applies

A. This chapter governs an agreement to arbitrate made on or after the effective date of this chapter.

B. This chapter governs an agreement to arbitrate made before the effective date of this chapter if all the parties to the agreement or to the arbitration proceeding so agree in a record.

C. On or after July 1, 2005, this chapter governs an agreement to arbitrate whenever made.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>130.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 17, 21, 30 to 31, 37, 45, 47 to 48.

C.J.S. Indians §§ 151 to 179.

§ 1304. Effect of agreement to arbitrate—Nonwaivable provisions

A. Except as otherwise provided in subsections (B) and (C), a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this Act to the extent permitted by law.

B. Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

1. waive or agree to vary the effect of the requirements of 12 CNCA § 1305(A), 12 CNCA § 1306(A), 12 CNCA § 1308, 12 CNCA § 1317(A), 12 CNCA § 1317(B), 12 CNCA § 1326, or 12 CNCA § 1328;

2. agree to unreasonably restrict the right under 12 CNCA § 1309 to notice of the initiation of an arbitration proceeding;

3. agree to unreasonably restrict the right under 12 CNCA § 1312 to disclosure of any facts by a neutral arbitrator, or

4. waive the right under 12 CNCA § 1316 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this act, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

C. A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or 12 CNCA § 1303(A) or (C), 12 CNCA § 1307, 12 CNCA § 1314, 12 CNCA § 1318, 12 CNCA § 1320(D) or (E), 12 CNCA § 1322, 12 CNCA § 1323, 12 CNCA § 1324, 12 CNCA § 1325(A) or (B), 12 CNCA § 1329 or 12 CNCA § 1330.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>135.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration § 83.

C.J.S. Indians §§ 151 to 179.

§ 1305. Application for judicial relief

A. Except as otherwise provided in 12 CNCA § 1328, an application for judicial relief under this chapter must be made by petition to the Court and heard in the manner provided by law or rule of court for making and hearing petitions.

B. Unless a civil action involving the agreement to arbitrate is pending, notice of an initial petition to the Court under this act must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>166, 250.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 38, 111, 128.

C.J.S. Indians §§ 151 to 179.

§ 1306. Validity of agreement to arbitrate

A. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

B. The Court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

C. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

D. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the Court, unless the Court otherwise orders.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>134.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 28 to 29, 33, 36.

C.J.S. Indians §§ 151 to 179.

§ 1307. Petition to compel or stay arbitration

A. On petition of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

1. if the refusing party does not appear or does not oppose the petition, the Court shall order the parties to arbitrate; and
2. if the refusing party opposes the petition, the Court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

B. On petition of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the Court shall proceed summarily to decide the issue. If the Court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

C. If the Court finds that there is no enforceable agreement, it may not pursuant to subsection (A) or (B) of this section order the parties to arbitrate.

D. The Court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

E. If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a petition under this section must be made in that court. Otherwise a petition under this section may be made in any court as provided in 12 CNCA § 1327.

F. If a party makes a petition to the Court to order arbitration, the Court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the Court renders a final decision under this section.

G. If the Court orders arbitration, the Court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the Court may limit the stay to that claim.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>185, 197.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 80 to 82, 134 to 135.

C.J.S. Indians §§ 151 to 179.

§ 1308. Provisional remedies

A. Before an arbitrator is appointed and is authorized and able to act, the Court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

B. After an arbitrator is appointed and is authorized and able to act:

1. the arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

2. a party to an arbitration proceeding may move the Court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

C. A party does not waive a right of arbitration by making a petition under subsection (A) or (B) of this section.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>156.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration § 52.

C.J.S. Indians §§ 151 to 179.

§ 1309. Initiation of arbitration

A. A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

B. Unless a person objects for lack or insufficiency of notice under 12 CNCA § 1315(C) not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>259, 279.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 117, 119.

C.J.S. Indians §§ 151 to 179.

§ 1310. Consolidation of separate arbitration proceedings

A. Except as otherwise provided in subsection (C) of this section, upon petition of a party to an agreement to arbitrate or to an arbitration proceeding, the Court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

1. there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
2. the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;
3. the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and
4. prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

B. The Court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

C. The Court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

History

Source. LA 25–03, eff. September 30, 2003.

§ 1311. Appointment of arbitrator—Service as a neutral arbitrator

A. If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the Court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

B. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>221.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration § 92.

C.J.S. Indians §§ 151 to 179.

§ 1312. Disclosure by arbitrator

A. Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

1. a financial or personal interest in the outcome of the arbitration proceeding; and
2. an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

B. An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

C. If an arbitrator discloses a fact required by subsection (A) or (B) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under 12 CNCA § 1323(A)(2) for vacating an award made by the arbitrator.

D. If the arbitrator did not disclose a fact as required by subsection (A) or (B) of this section, upon timely objection by a party, the Court under 12 CNCA § 1323(A)(2) may vacate an award.

E. An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under 12 CNCA § 1323(A)(2).

F. If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a petition to vacate an award on that ground under 12 CNCA § 1323(A)(2).

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>221, 222.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 92, 95 to 99.

C.J.S. Indians §§ 151 to 179.

§ 1313. Action by majority

If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under 12 CNCA § 1315(C).

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>228, 257, 268.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 101 to 103, 105, 115, 129 to 130.

C.J.S. Architects § 17.

C.J.S. Indians §§ 151 to 179.

§ 1314. Immunity of arbitrator—Competency to testify—Attorney fees and costs

A. An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a Judge of a Court of this Nation acting in a judicial capacity.

B. The immunity afforded by this section supplements any immunity under other law.

C. The failure of an arbitrator to make a disclosure required by 12 CNCA § 1312 does not cause any loss of immunity under this section.

D. In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a Judge of a Court of this Nation acting in a judicial capacity. This subsection does not apply:

1. to the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or
2. to a hearing on a petition to vacate an award under 12 CNCA § 1323(A)(1) or (2) if the petitioner establishes prima facie that a ground for vacating the award exists.

E. If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (D) of this section, and the Court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the Court shall award to the arbitrator, organization, or representative reasonable attorney fees and other reasonable expenses of litigation.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>247.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration § 109.

C.J.S. Architects § 17.

C.J.S. Indians §§ 151 to 179.

§ 1315. Arbitration process

A. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate

for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

B. An arbitrator may decide a request for summary disposition of a claim or particular issue:

1. if all interested parties agree; or

2. upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

C. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five (5) days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The Court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

D. At a hearing under subsection (C) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

E. If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with 12 CNCA § 1311 to continue the proceeding and to resolve the controversy.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>251.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration § 114.

C.J.S. Indians §§ 151 to 179.

§ 1316. Representation by lawyer

A party to an arbitration proceeding may be represented by a lawyer.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>261.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Indians §§ 151 to 179.

§ 1317. Witnesses—Subpoenas—Depositions—Discovery

A. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the Court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

B. In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

C. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

D. If an arbitrator permits discovery under subsection (C), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a Court could if the controversy were the subject of a civil action in this Nation.

E. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the

extent a Court could if the controversy were the subject of a civil action in this Nation.

F. All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this Nation.

G. The Court may enforce a subpoena or discovery-related order for the attendance of a witness within this Nation and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in a state or another Indian nation upon conditions determined by the Court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in a state or another Indian nation must be served in the manner provided by law for service of subpoenas in a civil action in this Nation and, upon motion to the Court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this Nation.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>264.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 123 to 124, 126 to 127, 223.

C.J.S. Indians §§ 151 to 179.

§ 1318. Judicial enforcement of preaward ruling by arbitrator

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under 12 CNCA § 1319. A prevailing party may make a motion to the Court for an expedited order to confirm the award under 12 CNCA § 1322, in which case the Court shall summarily decide the motion. The Court shall issue an order to confirm the award unless the Court vacates, modifies, or corrects the award under 12 CNCA § 1323 or 12 CNCA § 1324.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>391.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 191 to 192.

C.J.S. Indians §§ 151 to 179.

§ 1319. Award

A. An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

B. An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the Court. The Court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The Court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>301 to 310.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 137 to 151.

C.J.S. Indians §§ 151 to 179.

§ 1320. Change of award by arbitrator

A. On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

1. upon a ground stated in 12 CNCA § 1324(A)(1) or (3);
 2. because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
 3. to clarify the award.
- B. A motion under subsection (A) of this section must be made and notice given to all parties within twenty (20) days after the movant receives notice of the award.
- C. A party to the arbitration proceeding must give notice of any objection to the motion within ten (10) days after receipt of the notice.
- D. If a motion to the Court is pending under 12 CNCA § 1322, § 1323, or § 1324, the Court may submit the claim to the arbitrator to consider whether to modify or correct the award:
1. upon a ground stated in 12 CNCA § 1324(A)(1) or (3);
 2. because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
 3. to clarify the award.
- E. An award modified or corrected pursuant to this section is subject to 12 CNCA §§ 1319(A), 1322, 1323, and 1324.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>342 to 344.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 113, 177.

C.J.S. Indians §§ 151 to 179.

§ 1321. Remedies—Fees and expenses of arbitration proceeding

A. An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the

hearing justifies the award under the legal standards otherwise applicable to the claim.

B. An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

C. As to all remedies other than those authorized by subsections (A) and (B) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the Court is not a ground for refusing to confirm an award under 12 CNCA § 1322 or for vacating an award under 12 CNCA § 1323.

D. An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

E. If an arbitrator awards punitive damages or other exemplary relief under subsection (A) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

History

Source. LA 25–03, eff. September 30, 2003.

§ 1322. Confirmation of award

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the Court for an order confirming the award at which time the Court shall issue a confirming order unless the award is modified or corrected pursuant to 12 CNCA § 1320 or 1324 or is vacated pursuant to 12 CNCA § 1323.

History

Source. LA 25–03, eff. September 30, 2003.

Cross References

Workers' compensation disputes, see 20 CNCA App. I, Rule 150.

Library References

Alternative Dispute Resolution <KEY>353.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 178 to 181, 247 to 253.

C.J.S. Indians §§ 151 to 179.

§ 1323. Vacating award

A. Upon motion to the Court by a party to an arbitration proceeding, the Court shall vacate an award made in the arbitration proceeding if:

1. the award was procured by corruption, fraud, or other undue means;
2. there was:
 - a. evident partiality by an arbitrator appointed as a neutral arbitrator,
 - b. corruption by an arbitrator, or
 - c. misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
3. an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to 12 CNCA § 1315, so as to prejudice substantially the rights of a party to the arbitration proceeding;
4. an arbitrator exceeded the arbitrator's powers;
5. there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under 12 CNCA § 1315(C) not later than the beginning of the arbitration hearing; or
6. the arbitration was conducted without proper notice of the initiation of an arbitration as required in 12 CNCA § 1309 so as to prejudice substantially the rights of a party to the arbitration proceeding.

B. A motion under this section must be filed within ninety (90) days after the movant receives notice of the award pursuant to 12 CNCA § 1319 or within ninety (90) days after the movant receives notice of a modified or corrected award pursuant to 12 CNCA § 1320, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within ninety (90) days after the ground is known or by the exercise of reasonable care would have been known by the movant.

C. If the Court vacates an award on a ground other than that set forth in subsection A(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subsection A(1) or (2) of this section, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subsection A(3), (4), or (6) of this section, the rehearing may be before the

arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in 12 CNCA § 1319(B) for an award.

D. If the Court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

History

Source. LA 25–03, eff. September 30, 2003.

Cross References

Review without jury—Additional testimony, see 85 CNCA § 50.

Workers' compensation disputes, see 20 CNCA App. I, Rule 150.

Library References

Alternative Dispute Resolution <KEY>360.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 182, 187, 197, 199 to 201, 224 to 232, 245 to 253.

C.J.S. Indians §§ 151 to 179.

§ 1324. Modification or correction of award

A. Upon motion made within ninety (90) days after the movant receives notice of the award pursuant to 12 CNCA § 1319 or within ninety (90) days after the movant receives notice of a modified or corrected award pursuant to 12 CNCA § 1320, the Court shall modify or correct the award if:

1. there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
2. the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
3. the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

B. If a motion made under subsection (A) of this section is granted, the Court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is

pending, the Court shall confirm the award.

C. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

History

Source. LA 25–03, eff. September 30, 2003.

Cross References

Workers' compensation, review without jury—Additional testimony, see 85 CNCA § 50.

Library References

Alternative Dispute Resolution <KEY>342 to 344.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 113, 177.

C.J.S. Indians §§ 151 to 179.

§ 1325. Judgment on award—Attorney fees and litigation expenses

A. Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the Court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

B. A Court may allow reasonable costs of the motion and subsequent judicial proceedings.

C. On application of a prevailing party to a contested judicial proceeding under 12 CNCA § 1322, 1323, or 1324, the Court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

History

Source. LA 25–03, eff. September 30, 2003.

Cross References

Workers' compensation disputes, see 20 CNCA App. I, Rule 150.

Library References

Alternative Dispute Resolution <KEY>359.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 247 to 253.

C.J.S. Indians §§ 151 to 179.

§ 1326. Jurisdiction

A. A District Court of Cherokee Nation having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

B. An agreement to arbitrate providing for arbitration in Cherokee Nation confers exclusive jurisdiction on the Court to enter judgment on an award under this chapter.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>355.

Indians <KEY>501.

Westlaw Topic Nos. 25T, 209.

C.J.S. Indians §§ 151 to 179.

§ 1327. Venue

A motion pursuant to 12 CNCA § 1305 must be made in the District Court of Cherokee Nation.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>355.

Indians <KEY>501.

Westlaw Topic Nos. 25T, 209.

C.J.S. Indians §§ 151 to 179.

§ 1328. Appeals

A. An appeal may be taken from:

1. an order denying a motion to compel arbitration;
2. an order granting a motion to stay arbitration;
3. an order confirming or denying confirmation of an award;
4. an order modifying or correcting an award;
5. an order vacating an award without directing a rehearing; or
6. a final judgment entered pursuant to this chapter.

B. An appeal under this section must be taken as from an order or a judgment in a civil action.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>366.

Indians <KEY>542.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 215 to 222, 231, 237 to 244, 247 to 253.

C.J.S. Indians §§ 151 to 179.

§ 1329. Uniformity of application and construction

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states and tribal nations that enact it.

History

Source. LA 25–03, eff. September 30, 2003.

Library References

Alternative Dispute Resolution <KEY>114.

Indians <KEY>500.

Westlaw Topic Nos. 25T, 209.

C.J.S. Arbitration §§ 4 to 6.

C.J.S. Indians §§ 151 to 179.

§ 1330. Relationship to Electronic Signatures in Global and National Commerce Act

The provisions of this chapter governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7002.

History

Source. LA 25–03, eff. September 30, 2003.

United States Code

Exemption to preemption, see 15 U.S.C. § 7002.

General rule of validity, see 15 U.S.C. § 7001.

