



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Legislation Text

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TITLE 12 CIVIL PROCEDURE (INCLUDES 2016 POCKET PART)

Chapter

1. Civil Procedure

TITLE 12 CIVIL PROCEDURE

2. Unfair and Deceptive Practices
3. Interest on Judgments
4. Change of Name
5. Civil Protective Orders
6. Garnishment
7. Declaratory Judgments
8. Uniform Arbitration Act
9. Cherokee Nation Judgment Fund Act

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.

Section

1. Short title
2. Jurisdiction-General
3. Law to be applied

CHAPTER 1 CIVIL PROCEDURE

4. Force of the Cherokee Common Law
5. Federal Rules of Civil Procedure-Federal Rules of Evidence
6. Legislative purpose 7-10. Reserved
11. Limitations of actions
12. Reserved
13. Parens patriae
14. Wrongful death
15. Joint tortfeasors
16. Class actions
17. Permissive joinder
18. Limitation of new action after reversal or failure otherwise than on merits
19. Interlocutory appeals
20. Appeal

§ 1. Short title

This chapter shall be known and may be cited as the Code of Civil Procedure of the Cherokee Nation.

11 CNCA § 1

CIVIL PROCEDURE

Source. LA 16-16, eff. April 21, 2016.

§ 2. Jurisdiction-General

History

The Courts of the Cherokee Nation may exercise jurisdiction on any basis consistent with the Cherokee Nation Constitution.

History

Source. LA 16-16, eff. April 21, 2016.

Cross References

Jurisdiction of District Court. see Const. Art. VIII, § 6; 20 CNCA § 24. Jurisdiction of Supreme Court, see Const. Art. VIII, § 4; 20 CNCA § 51.

Library References

Indians 401. Westlaw Topic No. 209.
C.J.S. Indians §§ 60, 64.

§ 3. Law to be applied

The courts shall apply the laws of the Cherokee Nation. The laws of the Cherokee Nation shall include the Constitution of the Cherokee Nation, all statutes heretofore and hereafter enacted by the Tribal Council and the Cherokee common law. The Cherokee common law consists of the traditional customs and usages of the Cherokee people since time immemorial. In matters arising under the common law, the courts may request the advice of tribal elders, scholars and counselors familiar with the same. No state, or federal law, including any state or federal regulations, shall be binding upon the courts unless specifically incorporated into statute by the Tribal Council or adopted as common law by a decision of the court. Notwithstanding, in matters which cannot be resolved through the application of Cherokee law, the courts may apply any federal or state law, including any regulation promulgated by the United States Department of Interior, which would be cognizable in a court of general jurisdiction therein.

Source. LA 16-16, eff. April 21, 2016.

History

Indians 401. Westlaw Topic No. 209.
C.J.S. Indians §§ 60, 64.

Library References

§ 4. Force of the Cherokee Common Law

The Cherokee Common Law, as modified by the Constitution of the Cherokee Nation, statutes, judicial decisions, and the condition and wants of the people, shall remain in full force and effect within the Cherokee Nation in like force with any statute of the Cherokee Nation insofar as the common law is not so modified, but all Cherokee Nation laws shall be liberally construed to promote their objective.

CIVIL PROCEDURE

12 CNCA § 11

Source. LA 16-16, eff. April 21, 2016.

History

Indians 401. Westlaw Topic No. 209.
C.J.S. Indians §§ 60, 64.

Library References

§ 5. 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 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 at law or in equity, unless superseded by a Cherokee Nation Rule of Evidence.

Source. LA 16-16, eff. April 21, 2016.

History

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.

Library References

Indians 401. Westlaw Topic No. 209.
C.J.S. Indians §§ 60, 64.

§ 6. Legislative purpose

This Act shall be construed so as to protect and ensure the political integrity, the economic security, and the health and welfare of the tribe.

History

Source. LA 16-16, eff. April 21, 2016.

Library References

Indians 400. Westlaw Topic No. 209.
C.J.S. Indians §§ 60, 64.

§§ 7 to 10. Reserved

§ 11. Limitations of actions

A. Civil actions other than for the recovery of real property can only be brought within the following periods after the cause of action shall have accrued and not afterwards:

1. Within five (5) years: An action upon any contract, agreement, or promise in writing;
2. Within three (3) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute other than a forfeiture or penalty; and an action on a foreign judgment;

12 CNCA § 11

CIVIL PROCEDURE

3. Within five (5) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud-the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud, an action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or negligence of another;

4. Within one (1) year: An action for libel, slander, malicious prosecution. or false imprisonment; an

action upon a statute for penalty or forfeiture. except where the statute imposing it prescribes a different limitation;

5. Within five (5) years: An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by the statute.

B. No statute of limitations shall apply to the Cherokee Nation as a party plaintiff.

C. Nothing herein expressly, or impliedly, waives the Cherokee Nation's sovereign immunity.

D. Statute of limitations shall begin to run from the date when the plaintiff knew, through the exercise of reasonable diligence, of all the elements of the particular cause of action. Whether a plaintiff knew of a particular element is a fact question to be determined by a jury.

History

Source. LA 16-16, eff. April 21, 2016.

Library References

Indians 508. Westlaw Topic No. 209.

§ 12. Reserved

§ 13. *Parens patriae*

A. The Cherokee Nation Attorney General may bring a civil action in the name of the Cherokee Nation as *parens patriae* on behalf of tribal members of the Cherokee Nation to secure monetary relief for injuries and damages sustained by such persons by reason of any violation of law, including but not limited to, violations of the Cherokee Nation Unfair & Deceptive Practices Act. Aggregate data and evidence shall be deemed admissible if found by the court to be relevant. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief:

1. Which wholly duplicates amounts which have been awarded for the same injury to tribal members of the Cherokee Nation; or
2. Which is properly allocable to natural persons who have excluded their claims pursuant to subsection (C)(2) of this section.

B. The court shall award the Cherokee Nation as monetary relief threefold the total damage sustained, and the cost of suit, including a reasonable

CIVIL PROCEDURE

12 CNCA § 13

attorney's fee. The court may award under this section interest on the total damage for the period beginning on the date of filing of Cherokee Nation's pleading setting forth a claim of *parens patriae* and ending on the date of judgment at a rate of twenty percent (20%) compounding continuously. In determining whether an award of interest under this paragraph for any period is just in the circumstances the court shall only consider:

1. Whether Cherokee Nation or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;
2. Whether, in the course of the action involved, the Cherokee Nation or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and
3. Whether Cherokee Nation or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

C. Notice; exclusion election; final judgment

1. In any action brought under subsection (A)(1) of this section the Attorney General shall, at such times in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case;
2. Any person on whose behalf an action is brought under subsection (A)(1) of this section may

elect to exclude from adjudication the portion of the Cherokee Nation claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection;

3. The final judgment in an action under subsection (A)(1) of this section shall be *res judicata* as to any claim under this Title by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

D. Attorney's fees in any action under subsection (A) of this section:

1. The amount of the plaintiffs' attorneys fees shall be determined by the court; and
2. The court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding by clear and convincing evidence that the Attorney General has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

Source. LA 16-16, eff. April 21, 2016.

History

12 CNCA § 13

CIVIL PROCEDURE

Indians 216, 237, 533. Westlaw Topic No. 209.
C.J.S. Indians §§ 33 to 34, 42, 55.

§ 14. Wrongful death

Library References

A. A claim for wrongful death may be brought against a person who, by his negligence or by willful wanton or reckless acts, causes the death of another under such circumstances that the deceased could have recovered damages for personal injuries if death had not resulted.

B. A person shall be liable for the negligence or the willful, wanton or reckless act of his agents or servants to the same extent and subject to the same limits as he would be liable under this section for his own act.

C. An action to recover damages under this section shall be commenced within five (5) years from the date of death, or within five (5) years from the date when the deceased's executor or next of kin knew, or in the exercise of reasonable diligence, should have known of all the elements for a cause of action.

D. The damages recoverable in actions for wrongful death as provided in this section shall include the following:

1. Medical and burial expenses which shall be distributed to the person who paid the expenses or to the decedent's estate if paid by the estate;
2. The loss of consortium and the grief of the surviving spouse, which shall be distributed to the surviving spouse;
3. The mental pain and anguish suffered by the decedent, which shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent;
4. The pecuniary loss to the survivors based upon properly admissible evidence with regard thereto including, but not limited to, the age, occupation, earning capacity, health habits, and probable duration of the decedent's life, which must inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin, and shall be distributed to them according to their pecuniary loss;
5. The grief and loss of companionship of the children and parents of the decedent, which shall be distributed to them according to their grief and loss of companionship;
6. The fair monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of the reasonably expected income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice of the decedent to the persons entitled to the damages recovered;
7. Punitive or exemplary damages may also be recovered against the person proximately causing

the wrongful death or his representative if such person be deceased, in such case as the decedent's death was caused by the malicious, willful, wanton or reckless conduct of the defendant or by the gross negligence of the defendant. Such damages, if recovered, shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

CIVIL PROCEDURE

12 CNCA § 16

E. Where the recovery is to be distributed according to a person's pecuniary loss or loss of companionship, the judge shall determine the proper division;

F. The above-mentioned distributions shall be made after the payment of legal expenses and costs of the action.

History

Source. LA 16-16, eff. April 21, 2016.

Library References

Indians O508.

§ 15. Joint tortfeasors

Chapter

10. Civil Procedure

TITLE 12 CIVIL PROCEDURE

- 11. Unfair and Deceptive Practices
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C.F.R. § 11.700 et seq.

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

Section

- 7. Short title
- 8. Jurisdiction-General
- 9. Law to be applied

CHAPTER 1 CIVIL PROCEDURE

- 10. Force of the Cherokee Common Law
- 11. Federal Rules of Civil Procedure-Federal Rules of Evidence
- 12. Legislative purpose 7-10. Reserved
- 21. Limitations of actions
- 22. Reserved
- 23. Parens patriae
- 24. Wrongful death
- 25. Joint tortfeasors
- 26. Class actions
- 27. Permissive joinder
- 28. Limitation of new action after reversal or failure otherwise than on merits
- 29. Interlocutory appeals
- 30. Appeal

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CIVIL PROCEDURE

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§ 2. Jurisdiction-General

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Cross References

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Library References

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§ 3. Law to be applied

The courts shall apply the laws of the Cherokee Nation. The laws of the Cherokee Nation shall include the Constitution of the Cherokee Nation, all statutes heretofore and hereafter enacted by the Tribal Council and the Cherokee common law. The Cherokee common law consists of the traditional customs and usages of the Cherokee people since time immemorial. In matters arising under the common law, the courts may request the advice of tribal elders, scholars and counselors familiar with the same. No state, or federal law, including any state or federal regulations, shall be binding upon the courts unless specifically incorporated into statute by the Tribal Council or adopted as common law by a decision of the court. Notwithstanding, in matters which cannot be resolved through the application of Cherokee law, the courts may apply any federal or state law, including any regulation promulgated by the United States Department of Interior, which would be cognizable in a court of general jurisdiction therein.

Source. LA 16-16, eff. April 21, 2016.

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Indians 401. Westlaw Topic No. 209.
C.J.S. Indians §§ 60, 64.

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§ 4. Force of the Cherokee Common Law

The Cherokee Common Law, as modified by the Constitution of the Cherokee Nation, statutes, judicial decisions, and the condition and wants of the people, shall remain in full force and effect within the Cherokee Nation in like force with any statute of the Cherokee Nation insofar as the common law is not so modified, but all Cherokee Nation laws shall be liberally construed to promote their objective.

CIVIL PROCEDURE

12 CNCA § 11

Source. LA 16-16, eff. April 21, 2016.

History

Indians 401. Westlaw Topic No. 209.
C.J.S. Indians §§ 60, 64.

Library References

§ 5. Federal Rules of Civil Procedure-Federal Rules of Evidence

C. The Federal Rules of Civil Procedure shall be used in Cherokee Nation courts in all suits of a civil nature, whether at law or in equity, unless superseded by a Cherokee Nation Rule of Civil Procedure.

D. The Federal Rules of Evidence shall be used in Cherokee Nation courts in all suits of a civil nature, whether at law or in equity, unless superseded by a Cherokee Nation Rule of Evidence.

Source. LA 16-16, eff. April 21, 2016.

History

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.

Library References

Indians 401. Westlaw Topic No. 209.
C.J.S. Indians §§ 60, 64.

§ 6. Legislative purpose

This Act shall be construed so as to protect and ensure the political integrity, the economic security, and the health and welfare of the tribe.

History

Source. LA 16-16, eff. April 21, 2016.

Library References

Indians 400. Westlaw Topic No. 209.
C.J.S. Indians §§ 60, 64.

§§ 7 to 10. Reserved

§ 11. Limitations of actions

E. Civil actions other than for the recovery of real property can only be brought within the following periods after the cause of action shall have accrued and not afterwards:

1. Within five (5) years: An action upon any contract, agreement, or promise in writing;
2. Within three (3) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute other than a forfeiture or penalty; and an action on a foreign judgment;

12 CNCA § 11

CIVIL PROCEDURE

3. Within five (5) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud-the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud, an action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or negligence of another;

4. Within one (1) year: An action for libel, slander, malicious prosecution, or false imprisonment; an action upon a statute for penalty or forfeiture, except where the statute imposing it prescribes a different limitation;

5. Within five (5) years: An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by the statute.

F. No statute of limitations shall apply to the Cherokee Nation as a party plaintiff.

G. Nothing herein expressly, or impliedly, waives the Cherokee Nation's sovereign immunity.

H. Statute of limitations shall begin to run from the date when the plaintiff knew, through the exercise of reasonable diligence, of all the elements of the particular cause of action. Whether a plaintiff knew of a particular element is a fact question to be determined by a jury.

History

Source. LA 16-16, eff. April 21, 2016.

Library References

Indians 508. Westlaw Topic No. 209.

§ 12. Reserved

§ 13. Parens patriae

E. The Cherokee Nation Attorney General may bring a civil action in the name of the Cherokee Nation as *parens patriae* on behalf of tribal members of the Cherokee Nation to secure monetary relief for injuries and damages sustained by such persons by reason of any violation of law, including but not limited to, violations of the Cherokee Nation Unfair & Deceptive Practices Act. Aggregate data and evidence shall be deemed admissible if found by the court to be relevant. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief:

1. Which wholly duplicates amounts which have been awarded for the same injury to tribal members of the Cherokee Nation; or
2. Which is properly allocable to natural persons who have excluded their claims pursuant to subsection (C)(2) of this section.

F. The court shall award the Cherokee Nation as monetary relief threefold the total damage sustained, and the cost of suit, including a reasonable

CIVIL PROCEDURE

12 CNCA § 13

attorney's fee. The court may award under this section interest on the total damage for the period beginning on the date of filing of Cherokee Nation's pleading setting forth a claim of *parens patriae* and ending on the date of judgment at a rate of twenty percent (20%) compounding continuously. In

determining whether an award of interest under this paragraph for any period is just in the circumstances the court shall only consider:

1. Whether Cherokee Nation or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;
2. Whether, in the course of the action involved, the Cherokee Nation or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and
3. Whether Cherokee Nation or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

G. Notice; exclusion election; final judgment

1. In any action brought under subsection (A)(1) of this section the Attorney General shall, at such times in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case;
2. Any person on whose behalf an action is brought under subsection (A)(1) of this section may elect to exclude from adjudication the portion of the Cherokee Nation claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection;
3. The final judgment in an action under subsection (A)(1) of this section shall be *res judicata* as to any claim under this Title by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

H. Attorney's fees in any action under subsection (A) of this section:

1. The amount of the plaintiffs' attorneys fees shall be determined by the court; and
2. The court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding by clear and convincing evidence that the Attorney General has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

Source. LA 16-16, eff. April 21, 2016.

History

12 CNCA § 13

CIVIL PROCEDURE

Indians 216, 237, 533. Westlaw Topic No. 209.
C.J.S. Indians §§ 33 to 34, 42, 55.

§ 14. Wrongful death

Library References

G. A claim for wrongful death may be brought against a person who, by his negligence or by willful wanton or reckless acts, causes the death of another under such circumstances that the deceased could have recovered damages for personal injuries if death had not resulted.

H. A person shall be liable for the negligence or the willful, wanton or reckless act of his agents or servants to the same extent and subject to the same limits as he would be liable under this section for his own act.

I. An action to recover damages under this section shall be commenced within five (5) years from the date of death, or within five (5) years from the date when the deceased's executor or next of kin knew, or in the exercise of reasonable diligence, should have known of all the elements for a cause of action.

J. The damages recoverable in actions for wrongful death as provided in this section shall include the

following:

1. Medical and burial expenses which shall be distributed to the person who paid the expenses or to the decedent's estate if paid by the estate;
2. The loss of consortium and the grief of the surviving spouse, which shall be distributed to the surviving spouse;
3. The mental pain and anguish suffered by the decedent, which shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent;
4. The pecuniary loss to the survivors based upon properly admissible evidence with regard thereto including, but not limited to, the age, occupation, earning capacity, health habits, and probable duration of the decedent's life, which must inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin, and shall be distributed to them according to their pecuniary loss;
5. The grief and loss of companionship of the children and parents of the decedent, which shall be distributed to them according to their grief and loss of companionship;
6. The fair monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of the reasonably expected income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice of the decedent to the persons entitled to the damages recovered;
7. Punitive or exemplary damages may also be recovered against the person proximately causing the wrongful death or his representative if such person be deceased, in such case as the decedent's death was caused by the malicious, willful, wanton or reckless conduct of the defendant or by the gross negligence of the defendant. Such damages, if recovered, shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

CIVIL PROCEDURE

12 CNCA § 16

K. Where the recovery is to be distributed according to a person's pecuniary loss or loss of companionship, the judge shall determine the proper division;

L. The above-mentioned distributions shall be made after the payment of legal expenses and costs of the action.

History

Source. LA 16-16, eff. April 21, 2016.

Library References

Indians O508.

§ 15. Joint tortfeasors

satisfy the judgment, in all respects as if the surety had recovered the judgment;

1. Costs awarded by the trial court shall be added to the judgment for purposes of determining the bond amount;
2. Attorney fees awarded shall be added to the judgment for purposes of determining the bond amount.

B. A decision of the Supreme Court of the Cherokee Nation shall lift the stay and the bond shall be released to the prevailing party immediately.

History

Source. LA 16-16, eff. April 21, 2016.

Library References

Indians 541. Westlaw Topic No. 209.

CHAPTER 2

UNFAIR AND DECEPTIVE PRACTICES

- 21. General provisions
- 22. Construction and definitions
- 23. Deceptive practices
- 24. False advertising
- 25. Unfair Competition Law
- 26. Remedies and procedures
- 27. Reserved

§ 21. Short title

This chapter shall be known and may be cited as the Cherokee Nation Unfair & Deceptive Practices Act (“CNUDPA” or “Act”).

History

Source. LA 16-16, eff. April 21, 2016.

§ 22. Purpose

The purpose of this Act is to enhance the protections against unfair, deceptive and illegal marketing, advertising and unfair competition relating to transactions of goods and services.

Source. LA 16-16, eff. April 21, 2016.

History

Library References

Antitrust and Trade Regulation 128. Westlaw Topic No. 29T.
C.J.S. Credit Reporting Agencies; Consumer Protection §§ 34, 36, 128, 137.

§ 23. General provisions

C.J.S. Trade-Marks, Trade-Names, and Un-fair Competition § 392.

A. The provisions of this Act must be construed as cumulative to existing law and not as new enactments;

B. Any waiver by a person of the provisions of this Act including, but not limited to, arbitration provisions that waive a person’s right to seek redress through the courts or proceed as a class action, is contrary to public policy and shall be unenforceable and void;

C. The provisions of this Act are not exclusive. The remedies provided herein for violation of any section of this Act or for conduct proscribed by any section of this Act shall accrue in addition to any other procedures or remedies for any violation or conduct provided for in any other law. Nothing in this Act shall limit any other statutory, customary or common law rights. Nothing in this Act shall limit the right of the Attorney General or any other person to bring class actions or other lawsuits. If any act or practice proscribed under

UNFAIR AND DECEPTIVE PRACTICES

12 CNCA § 24

this Title also constitutes a cause of action in common law, customary law, or pursuant to another statute, the person or Attorney General may also assert such common law or statutory causes of action under the procedures and with the remedies provided for in such law.

History

Source. LA 16-16, eff. April 21, 2016.

Library References

§ 24. Construction and definitions

C.J.S. Credit Reporting Agencies; Consumer Protection § 33.

A. This Act shall be liberally construed and applied to promote its underlying purposes, which are to protect the Cherokee Nation and persons against unfair and deceptive acts and practices and to provide efficient and economical procedures to secure such protection.

B. As used in this Act:

1. **"Goods"** means any tangible chattels bought or leased for use primarily for any purpose, including personal, family, medical or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property;
2. **"Services"** means any work, labor, and services for a commercial or business use, including services furnished in connection with the sale or repair of goods;
3. **"Person"** means an individual, partnership, corporation, limited liability company, association, or other group, however organized;
4. **"Person"** means any individual, group of individuals, business entity, or the Cherokee Nation, who seeks or acquires, by purchase or lease, any goods or services for any purpose;
5. **"Consumer"** means any individual or group of individuals, who is a buyer of goods or services for personal use;
6. **"Transaction"** means any delivery and acceptance of goods and services. Transactions include, but are not limited to, the sale of goods, services, drugs and medical devices to the Cherokee Nation for the use and benefit of tribal recipients, regardless of whether the manufacturer sold directly to the consumer or used a third party;
7. **"Senior citizen"** means a person who is sixty-five (65) years of age or older;
8. **"Disabled person"** means any person who has a physical or mental impairment that substantially limits one or more major life activities;
9. **"Physical or mental impairment"** means any of the following:
 - a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs;

12 CNCA § 24

CIVIL PROCEDURE

respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine:

b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. "Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

10. **"Major life activities"** mean functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;
11. **"Sell"** includes selling, offering for sale or advertising for sale;
12. **"Give"** includes giving, offering to give or advertising the intent to give;
13. **"Article or product"** includes any article, product, commodity, thing of value, service or output of a service trade;
14. **"Vendor"** includes any person who performs work upon, renovates, alters or improves any personal property belonging to another person;
15. **"Cost"** as applied to production includes the cost of raw materials, labor, and all overhead expenses of the producer. Cost as applied to distribution means the invoice or replacement cost, whichever is lower, of the article or product to the distributor and vendor, plus the cost of doing business by the distributor and vendor and in the absence of proof of cost of doing business a markup of six (6) percent on such invoice or replacement cost shall be *prima facie* proof of such cost

of doing business. Cost as applied to warranty service agreements includes the cost of parts, transporting the parts, labor, and all overhead expenses of the service agency. Discounts granted for cash payments shall not be used to reduce costs;

16. A “supplier” is any person engaged in the business of making a consumer product directly or indirectly available to consumers.

History

Source. LA 16-16, eff. April 21, 2016.

Library References

Antitrust and Trade Regulation 125. Westlaw Topic No. 29T.

§ 25. Deceptive practices

C.J.S. Credit Reporting Agencies; Consumer Protection § 33.

A. Deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

B. It shall be a violation of this Act, whether or not any person is in fact misled, deceived or damaged thereby, for any person to engage in, *inter alia*, the following deceptive acts or practices:

1. Passing off goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

UNFAIR AND DECEPTIVE PRACTICES

12 CNCA § 25

3. Misrepresenting the affiliation, connection, or association with, or certification by another;
4. Using deceptive representations or designations of geographic origin in connection with goods or services;
5. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have;
6. Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or second-hand;
7. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model if they are of another;
8. Disparaging the goods, services, or business of another by false or misleading representation of fact;
9. Using innuendo or ambiguity as to a material fact, which has a tendency to mislead;
10. Advertising goods or services with intent not to sell them as advertised;
11. Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity;
12. Advertising furniture without clearly indicating that it is unassembled if that is the case;
13. Advertising the price of unassembled furniture without clearly indicating the assembled price of that furniture if the same furniture is available assembled from the seller;
14. Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions;
15. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
16. Representing that a part, replacement, or repair service is needed when it is not;
17. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not;
18. Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction;
19. Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer;
20. Inserting an unconscionable provision in a contract;
21. Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (a) the total price is set forth in the advertisement, which may include, but is not limited

to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (b) the specific price plus a specific percentage of that

12 CNCA § 25

CIVIL PROCEDURE

price represents a markup from the seller's costs or from the wholesale price of the product;

22. The home solicitation of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of this Act;

23. Charging or receiving an unreasonable fee to prepare, aid, or advise any prospective applicant, applicant, or recipient in the procurement, maintenance, or securing of Cherokee Nation or other public social services. For purposes of this paragraph, the following definitions shall apply:

a. **"Social services"** means those activities and functions of government involved in providing aid or services, or both, including health care services and medical assistance, to those persons who are in need of that aid or those services and may benefit from them;

b. **"Unreasonable fee"** means a fee that is exorbitant and disproportionate to the services performed. Factors to be considered, when appropriate, in determining the reasonableness of a fee, are based on the circumstances existing at the time of the service and shall include, but not be limited to, all of the following:

(i) The time and effort required;

(ii) The novelty and difficulty of the services;

(iii) The skill required to perform the services;

(iv) The nature and length of the professional relationship;

(v) The experience, reputation, and ability of the person providing the services;

(vi) Paragraph (22) shall not apply to attorneys licensed to practice law, who are subject to Rules of Professional Conduct.

24. Failing to adequately warn or instruct of the potential risks, side effects, or allergic reactions that the manufacturer or distributor knew or reasonably should have known about;

25. Violation of any law affecting or impacting on consumer goods, supplies, and services enacted by the United States;

26. Any other act or practice determined by the court to be deceptive.

C. Remedies

1. Each violation of any of the provisions of this Act is punishable by a fine not exceeding Ten Thousand Dollars (\$10,000.00) in addition to any other remedy provided by law;

2. In any action under this Act in which judgment is entered against the defendant the plaintiff shall be awarded a reasonable attorney fees together with the costs of suit;

3. The remedies or penalties provided by this Act are cumulative to each other and to the remedies or penalties available under all other laws of the Cherokee Nation.

UNFAIR AND DECEPTIVE PRACTICES

12 CNCA § 26

Source. LA 16-16, eff. April 21, 2016.

History

Library References

Antitrust and Trade Regulation 134. Westlaw Topic No. 29T.
C.J.S. Credit Reporting Agencies; Consumer Protection §§ 40, 139, 144.

§ 26. False advertising

C.J.S. Postal Service and Offenses Against Postal Laws § 34.

C.J.S. Trade-Marks, Trade-Names, and Un- fair Competition §§ 399, 434.

A. It is unlawful for any individual, entity, association, or any employee or agent thereof with intent directly or indirectly to sell products, to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before in the Cherokee Nation, or to make or disseminate or cause to be made or disseminated from the Cherokee Nation, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, including over the internet, any statement, concerning that product, real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, which fails to adequately warn, or which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised;

B. It is unlawful for any person to solicit a sale or order for sale of goods or services at the residence of a prospective buyer, in person or by means of telephone, without clearly, affirmatively and expressly revealing at the time the person initially contacts the prospective buyer, and before making any other statement, except a greeting, or asking the prospective buyer any other questions, that the purpose of the contact is to effect a sale, by doing all of the following:

1. Stating the identity of the person making the solicitation;
2. Stating the trade name of the person represented by the person making the solicitation;
3. Stating the kind of goods or services being offered for sale;
4. And, in the case of an "in person" contact, the person making the solicitation shall, in addition to meeting the requirements of paragraphs (1), (2) and (3), show or display identification which states the information required by paragraphs (1) and (2) as well as the address of the place of business of one of such persons so identified.

C. It is unlawful for any person, in soliciting a sale or order for the sale of goods or services at the residence of a prospective buyer, in person or by telephone, to use any plan, scheme, or ruse which misrepresents his true status

12 CNCA § 26

CIVIL PROCEDURE

or mission for the purpose of making such sale or order for the sale of goods or services;

D. In addition to any other penalties or remedies applicable to violations of this section, the intentional violation of this section shall entitle persons bound to a contract, when there was a sales approach or presentation or both in which such intentional violation of this Act took place, to damages of three times the amount of the sale;

E. Each violation of any of the provisions of this section is punishable by a fine not exceeding Ten Thousand Dollars (\$10,000.00) in addition to any other remedy provided by law;

F. In any action under this section in which judgment is entered against the defendant the plaintiff shall be awarded a reasonable attorney's fee together with the costs of suit;

G. The remedies or penalties provided by this Act are cumulative to each other and to the remedies or penalties available under all other laws of Cherokee Nation.

Source. LA 16-16, eff. April 21, 2016.

History

Library References

Antitrust and Trade Regulation 163. Westlaw Topic No. 29T.

§ 27. Unfair Competition Law

C.J.S. Credit Reporting Agencies; Consumer Protection §§ 65 to 66.

A. The Cherokee Nation declares that the purpose of this section is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented;

B. As used in this Act, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any other act prohibited by this Act;

C. Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this section, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Any person may pursue representative claims or relief on behalf of others or they may be brought by the Attorney General of the Cherokee Nation;

D. The court may, in its discretion, include in any injunction against a violation of this chapter such other restraint as it may deem expedient in order to deter the defendant from, and insure against, his committing a future violation of this Act;

UNFAIR AND DECEPTIVE PRACTICES

12 CNCA § 28

E. Any injunction against a violation of this Act, whether interim or final, shall cover every article or product and not merely the particular article or product involved in the action;

F. It is not necessary for the plaintiff, in any action under this chapter, to provide or file any undertaking or bond for the issuance of any interim or final injunction;

G. Acts of selling or giving away any article or product below cost or at discriminatory prices together with proof of the injurious effect of such acts, is presumptive evidence of the purpose or intent to injure competitors or destroy competition;

H. Any violation of the provisions of this Act is punishable by a fine not exceeding Ten Thousand Dollars (\$10,000.00) in addition to any other remedy provided by law;

I. In any action under this Act in which judgment is entered against the defendant the plaintiff shall be awarded a reasonable attorney fee together with the costs of suit;

J. The remedies or penalties provided by this Act are cumulative to each other and to the remedies or penalties available under all other laws of Cherokee Nation.

Source. LA 16-16, eff. April 21, 2016.

History

Library References

Antitrust and Trade Regulation 10. Westlaw Topic No. 29T.

§ 28. Remedies and procedures

C.J.S. Trade-Marks, Trade-Names, and Un- fair Competition §§ 24 to 27, 142 to 146, 160 to 172.

In addition to the specific remedies above, the below remedies shall also govern:

A. Any person who engages, has engaged, or proposes to engage in violations of this Act shall be liable for each violation, which shall be assessed and recovered in a civil action. The number of violations shall be computed based upon each item sold, each marketing material distributed and each prescription filled in violation of this Act. A single act may result in multiple violations of the CNUDPA. Penalties shall be cumulative for violations of each section of the CNUDPA;

B. The Cherokee Nation may bring an action for any violation of this Act on behalf of itself and tribal citizens for the recovery of damages, civil penalties, injunction and all other remedies available by law. Whenever the Attorney General has reason to believe that any person is using or is about to use

any act or practice declared to be unlawful, he may bring an action in the name of the Cherokee Nation against such person to restrain by temporary restraining order or preliminary or permanent injunction the use of such method, act or practice. The court may issue temporary restraining orders or preliminary or permanent injunctions and make such other orders or judgments as may be necessary to restore to the Cherokee

12 CNCA § 28

CIVIL PROCEDURE

Nation or any person who has suffered any loss by reason of the use or employment of such unlawful method, act or practice. If the court finds that a person has employed any act or practice which he knew or should have known to be unlawful, the court may require such person to pay to the Cherokee Nation a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each such violation and also may require the said person to pay the reasonable costs of investigation and litigation of such violation, including reasonable attorney fees. If the court finds any act or practice unlawful with regard to any security or any contract of sale of a commodity for future delivery, the court may issue such orders or judgments as may be necessary to restore any person who has suffered any a loss up to three but not less than two times that amount if the court finds that the use of the act or practice was a reckless violation, a civil penalty to be paid to the Cherokee Nation of not more than Ten Thousand Dollars (\$10,000.00) for each such violation, and also may require said person to pay the reasonable costs of investigation and litigation of such violation, including reasonable attorney fees;

C. Any person entitled to bring an action may, if the violation of this Act has caused similar injury to numerous other persons similarly situated and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the action on behalf of himself and such other similarly injured and situated persons; the court shall require that notice of such action be given to unnamed petitioners in the most effective practicable manner. Notice of any proposed settlement or compromise shall be given to all members of the class of petitioners in such manner as the court directs;

D. The court shall impose a civil penalty for each violation of this Act. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth;

E. In addition to any liability for a civil penalty pursuant, any person who violates this Act, and the act or acts are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed Twenty Thousand Dollars (\$20,000.00) for each violation, which may be assessed and recovered in a civil action;

F. Any court of competent jurisdiction hearing an action pursuant to this Act may make orders and judgments as may be necessary to restore to any person, senior citizen or disabled person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court. If the court determines that full restitution cannot be made to those disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a *pro rata* basis depending on the amount of loss;

UNFAIR AND DECEPTIVE PRACTICES

12 CNCA § 28

G. Any person who intentionally violates any injunction shall be liable for a civil penalty not to exceed Twenty Thousand Dollars (\$20,000.00) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. For the purposes of this section, the court issuing such an injunction or order shall retain jurisdiction, and the cause shall be continued, and in such case the Attorney

General acting in the name of the Cherokee Nation may immediately petition for recovery of such civil penalty;

H. Any person entitled to bring an action may bring an action against that person who used or employed any method, act, or practice declared to be unlawful, to recover or obtain any of the following:

1. Three times actual damages, or Five Thousand Dollars (\$5,000.00), whichever is higher;
2. An order enjoining the methods, acts, or practices;
3. Restitution of property;
4. Civil penalty;
5. Punitive damages;
6. Equitable relief; and
7. Any other relief that the court deems proper.

I. Any consumer who is a senior citizen or a disabled person may seek and be awarded, in addition to the remedies specified therein, up to Twenty Thousand Dollars (\$20,000.00) where the trier of fact finds all of the following:

1. That the consumer has suffered physical, emotional, or economic damage resulting from the defendant's conduct; and
2. That an additional award is appropriate.

J. In determining whether to impose a civil penalty and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

1. Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons;
2. Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: physical impairment or injury, loss or encumbrance of a primary residence, principal employment, or source of income: substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person;

12 CNCA § 28

CIVIL PROCEDURE

3. Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

K. In any action under this Act, it is not necessary to allege or prove actual damages or the threat thereof, or actual injury or the threat thereof, to the plaintiff. But, in no case shall the total award of damages in a class action be less than Five Thousand Dollars (\$5,000.00). In addition to injunctive relief, any plaintiff in any such action shall be entitled to recover three times the actual damages, if any, sustained by any person who has assigned to the plaintiff his claim for damages resulting from a violation of this Act;

L. Any action brought under the CNUDPA shall be commenced not more than six (6) years from the date of the last commission of such act or practice that is a violation of this Act;

M. Aggregate data and evidence shall be admissible if found by the court to be relevant.

Source. LA 16-16, eff. April 21, 2016.

History

Indians 534. Westlaw Topic No. 209.

§ 29. Reserved

CHAPTER 3 INTEREST ON JUDGMENTS

30. Interest on judgments

§ 30. Interest on judgments

The Court may award interest on the total damages for the period beginning on the date of filing of a pleading setting forth a claim at a rate of twenty percent (20%) compounding continuously. In determining whether an award of interest under this paragraph for any period is just in the circumstances, the court shall only consider:

- A. Whether plaintiff or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;
- B. Whether, in the course of the action involved, plaintiff or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and
- C. Whether plaintiff or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

Source. LA 16-16, eff. April 21, 2016.

History

Oklahoma Statutes

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

Library References

Interest 1, 39(1). Westlaw Topic No. 219.
C.J.S. Architects §§ 39, 44.
C.J.S. Interest and Usury; Consumer Credit
§§ 1 to 4, 12 to 15, 104, 107 to 108, 111.

Section

CHAPTER 4 CHANGE OF NAME

- 33. Notice-Protest-Hearing date-Continuance
- 34. Evidence-Determination
- 35. Judgment
- 36. Illegal or fraudulent purpose
- 37. Exclusiveness of statutory remedy

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 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 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

CHANGE OF NAME

12 CNCA § 36

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 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 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 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.

Section

501. Short title

CHAPTER 5

CIVIL PROTECTIVE ORDERS

502. Definitions [Reserved]

503. Jurisdiction for civil protective orders 504 to 510. Reserved

511. Change of Judge for civil protective orders

512. Availability of civil protective orders

513. Procedures for filing civil petitions for protective orders

514. Procedures for issuance of temporary and permanent protective orders

515. Content of a protective order in general

516. Duration and amendments to permanent protective orders in general

517. Temporary emergency ex parte protective orders

518. False allegations of domestic violence-Effect

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

520. Tribal registry for 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.

CIVIL PROTECTIVE ORDERS

12 CNCA § 512

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.

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

History

and safety of Cherokee citizens and the orderly

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

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.

Indians 501. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§§ 504 to 510. Reserved

Library References

§ 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.

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

History

§ 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;

12 CNCA § 512

CIVIL PROCEDURE

4. A victim advocate; and/or
 5. The Tribal Prosecutor.
- B. There is no minimum requirement of residency to petition for a protective order.

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

History

Indians 507. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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 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.

CIVIL PROTECTIVE ORDERS

12 CNCA § 515

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

Protection of Endangered Persons 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

12 CNCA § 515

CIVIL PROCEDURE

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;

CIVIL PROTECTIVE ORDERS

12 CNCA § 515

- 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.

12 CNCA § 515

CIVIL PROCEDURE

- 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.

CIVIL PROTECTIVE ORDERS

12 CNCA § 517

- 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.

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

History

Indians O534.

Library References

C.J.S. Domestic Abuse and Violence §§ 2 to 4,
Protection of Endangered Persons 70 to 83. Westlaw Topic Nos. 209, 315P.
C.J.S. Breach of the Peace §§ 18, 24 to 28, 32 to 38.
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.

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

History

Indians O534.

Library References

C.J.S. Domestic Abuse and Violence §§ 2 to 4,
Protection of Endangered Persons 70 to 83. Westlaw Topic Nos. 209, 315P.
C.J.S. Breach of the Peace §§ 18, 24 to 28, 32 to 38.
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;

12 CNCA § 517

CIVIL PROCEDURE

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

Protection of Endangered Persons 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.

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

History

Indians O534.

Library References

C.J.S. Domestic Abuse and Violence §§ 2 to 4,
Protection of Endangered Persons 70 to 83. Westlaw Topic Nos. 209, 315P.
C.J.S. Breach of the Peace §§ 18, 24 to 28, 32 to 38.
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:

Westlaw Topic Nos.

CIVIL PROTECTIVE ORDERS

12 CNCA § 519

- 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.

12 CNCA § 519

CIVIL PROCEDURE

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

History

Indians 0534.

Library References

C.J.S. Domestic Abuse and Violence §§ 2 to 4,
Protection of Endangered Persons 70 to 83. Westlaw Topic Nos. 209, 315P.

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

Protection of Endangered Persons 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

Section

- 1170. Definitions
- 1171. Right to garnishment
 - 1171.1. Money earned from prejudgment garnishment-Exemption
 - 1171.2. Child support payments-Garnishment-Filing fee
 - 1171.3. Income assignments
- 1172. Affidavit-Contents
 - 1172.1. Prejudgment and postjudgment summons-Procedure
 - 1172.2. Garnishment summons-Payment of funds by garnishee
- 1173.1, 1173.2. Reserved
- 1173.3. General garnishment
- 1173.4. Continuing lien on earnings-Definitions
- 1174. Notice to defendant of garnishment proceedings
- 1175. Subsequent proceedings
- 1176. Reserved
- 1177. Trial of issue-Judgment on answer
- 1178. Affidavit required of garnishee
 - 1178.1. Summons for collection of support-Affidavit-Garnishee's answer
 - 1178.2. Garnishment summons not on earnings or for collection of child support-Affidavit-Garnishee's answer
- 1179. Failure of garnishee to answer
- 1180. Persons authorized to make answer
- 1181. Mutual defense by garnishee and defendant
- 1182. Proceedings deemed actions-Judgment and enforcement-Trial and dismissal-Unmatured or unliquidated debts
- 1183. Examination of garnishee by deposition or interrogatories
- 1184. Disclaimer by garnishee-Interpleading interested party
- 1185. Garnishee's liability
- 1186. No judgment upon garnishee's liability under certain circumstances
- 1187. No action against garnishee until termination of garnishee action
- 1188. Defendant's bond
- 1189. When plaintiff excepts, sureties appear for justification-Discharge of garnishee
- 1190. Costs
- 1191. Reserved
- 1192. Garnishment-Employees of Cherokee Nation or its business entities
- 1193. Summons when Cherokee Nation employee is garnisheed
- 1194. Cherokee Nation as garnishee-Judgments
- 1195. Garnishment bond not required when Nation is plaintiff
- 1196. Judgment-Garnishee liability to defendant
- 1197. Garnishment of gaming winnings

1198. Withholding gaming winnings

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

12 CNCA § 1170

CIVIL PROCEDURE

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.

GARNISHMENT

12 CNCA § 1171.1

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.

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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

12 CNCA § 1171.1

CIVIL PROCEDURE

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 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.

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

History

GARNISHMENT

12 CNCA § 1171.3

Library References

Indians 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.

12 CNCA § 1171.3

CIVIL PROCEDURE

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.

GARNISHMENT

12 CNCA § 1171.3

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.

12 CNCA § 1171.3

CIVIL PROCEDURE

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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.

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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 re- quired 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;

GARNISHMENT

12 CNCA § 1172.2

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 undertak- ing, 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.

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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

12 CNCA § 1172.2

CIVIL PROCEDURE

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.

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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

GARNISHMENT

12 CNCA § 1173

individual including, but not limited to, salary, commission, gambling win- nings, 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 garnish- ment 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 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 respect- ing 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.

12 CNCA § 1173

CIVIL PROCEDURE

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.

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.

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§§ 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.

GARNISHMENT

12 CNCA § 1173.4

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 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.

12 CNCA § 1173.4

CIVIL PROCEDURE

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:

GARNISHMENT

12 CNCA § 1173.4

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

12 CNCA § 1173.4

CIVIL PROCEDURE

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 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.

GARNISHMENT

12 CNCA § 1177

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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.

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1176. Reserved

Library References

§ 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.

12 CNCA § 1178

§ 1178. Affidavit required of garnishee

CIVIL PROCEDURE

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 to 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.

GARNISHMENT

12 CNCA § 1178.1

§ 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.

12 CNCA § 1178.1

CIVIL PROCEDURE

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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.

GARNISHMENT

12 CNCA § 1180

Library References

Indians 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.

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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.

12 CNCA § 1180

CIVIL PROCEDURE

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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 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.

GARNISHMENT

12 CNCA § 1184

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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 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

12 CNCA § 1184

CIVIL PROCEDURE

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 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 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

GARNISHMENT

12 CNCA § 1188

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 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.

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1188. Defendant's bond

Library References

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.

12 CNCA § 1188

CIVIL PROCEDURE

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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.

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1190. Costs

Library References

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.

GARNISHMENT

12 CNCA § 1193

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 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 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.

12 CNCA § 1193

CIVIL PROCEDURE

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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 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.

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

History

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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.

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

History

GARNISHMENT

12 CNCA § 1198

Library References

Indians 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 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

12 CNCA § 1198

CIVIL PROCEDURE

sufficient amount to require that a report be made to the Internal Revenue Service.

Library References

Indians 539. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

CHAPTER 7 DECLARATORY JUDGMENTS

1203. Determination of rights, status or other legal relations-Exceptions 1204. Pleading
1205. Parties-Venue
1206. Effect of determination-Review 1207. Further relief
1208. Issues of fact

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”.

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

History

Indians 537. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1202. Purpose

Library References

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

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

History

Indians 537. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

§ 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

12 CNCA § 1203

CIVIL PROCEDURE

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 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 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 537. Westlaw Topic No. 209.

DECLARATORY JUDGMENTS

12 CNCA § 1208

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.

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

History

Indians 537. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1207. Further relief

Library References

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.

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

History

Indians 537. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1208. Issues of fact

Library References

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.

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

History

Indians 537. Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Library References

Section

1301. Definitions
1302. Notice

CHAPTER 8 UNIFORM ARBITRATION ACT

1303. When chapter applies
1304. Effect of agreement to arbitrate-Nonwaivable provisions 1305. Application for judicial relief
1306. Validity of agreement to arbitrate 1307. Petition to compel or stay arbitration 1308. Provisional remedies
1309. Initiation of arbitration
1310. Consolidation of separate arbitration proceedings
1311. Appointment of arbitrator-Service as a neutral arbitrator 1312. Disclosure by arbitrator
1313. Action by majority
1314. Immunity of arbitrator-Competency to testify-Attorney fees and costs 1315. Arbitration process
1316. Representation by lawyer
1317. Witnesses-Subpoenas-Depositions-Discovery 1318. Judicial enforcement of preaward ruling by arbitrator 1319. Award
1320. Change of award by arbitrator
1321. Remedies-Fees and expenses of arbitration proceeding 1322. Confirmation of award
1323. Vacating award
1324. Modification or correction of award
1325. Judgment on award-Attorney fees and litigation expenses 1326. Jurisdiction
1327. Venue
1328. Appeals
1329. Uniformity of application and construction
1330. Relationship to Electronic Signatures in Global and National Commerce 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.

ARBITRATION

12 CNCA § 1303

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.

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

History

Library References

Alternative Dispute Resolution O259. Westlaw Topic Nos. 25T, 209.

§ 1303. When chapter applies

C.J.S. Arbitration §§ 117, 119.

C.J.S. Indians §§ 151 to 179.

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.

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

History

Library References

Alternative Dispute Resolution O130. 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.

12 CNCA § 1304

CIVIL PROCEDURE

§ 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.

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

History

Library References

Alternative Dispute Resolution O135. Westlaw Topic Nos. 25T, 209.

§ 1305. Application for judicial relief

C.J.S. Arbitration § 83.

C.J.S. Indians §§ 151 to 179.

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.

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

History

ARBITRATION

12 CNCA § 1307

Library References

Alternative Dispute Resolution O166, 250. 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.

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

History

Library References

Alternative Dispute Resolution O134. 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

12 CNCA § 1307

CIVIL PROCEDURE

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 O185, 197. Westlaw Topic Nos. 25T, 209.

§ 1308. Provisional remedies

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

C.J.S. Indians §§ 151 to 179.

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.

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

History

Library References

Alternative Dispute Resolution O156. Westlaw Topic Nos. 25T, 209.

§ 1309. Initiation of arbitration

C.J.S. Arbitration § 52.

C.J.S. Indians §§ 151 to 179.

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.

A. 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.

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

History

Library References

Alternative Dispute Resolution O259, 279. 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.

12 CNCA § 1311

CIVIL PROCEDURE

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.

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

History

Library References

Alternative Dispute Resolution O221. Westlaw Topic Nos. 25T, 209.

§ 1312. Disclosure by arbitrator

C.J.S. Arbitration § 92.

C.J.S. Indians §§ 151 to 179.

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).

ARBITRATION

12 CNCA § 1314

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

History

Library References

Alternative Dispute Resolution O221, 222. Westlaw Topic Nos. 25T, 209.

§ 1313. Action by majority

C.J.S. Arbitration §§ 92, 95 to 99.

C.J.S. Indians §§ 151 to 179.

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).

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

History

Library References

Alternative Dispute Resolution O228, 257, Indians 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

12 CNCA § 1314

CIVIL PROCEDURE

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 O247. Westlaw Topic Nos. 25T, 209.

§ 1315. Arbitration process

C.J.S. Arbitration § 109.

C.J.S. Architects § 17.

C.J.S. Indians §§ 151 to 179.

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.

ARBITRATION

12 CNCA § 1317

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

History

Library References

Alternative Dispute Resolution O251. Westlaw Topic Nos. 25T, 209.

§ 1316. Representation by lawyer

C.J.S. Arbitration § 114.

C.J.S. Indians §§ 151 to 179.

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 O261.

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

12 CNCA § 1317

CIVIL PROCEDURE

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.

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

History

Library References

Alternative Dispute Resolution O264. 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 O391. Westlaw Topic Nos. 25T, 209.

§ 1319. Award

C.J.S. Arbitration §§ 191 to 192.

C.J.S. Indians §§ 151 to 179.

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

ARBITRATION

12 CNCA § 1321

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 O301 to 310. Westlaw Topic Nos. 25T, 209.

§ 1320. Change of award by arbitrator

C.J.S. Arbitration §§ 137 to 151.

C.J.S. Indians §§ 151 to 179.

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 O342 to 344. 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

12 CNCA § 1321

CIVIL PROCEDURE

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.

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

History

Cross References

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

Library References

Alternative Dispute Resolution O353. Westlaw Topic Nos. 25T, 209.

§ 1323. Vacating award

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

C.J.S. Indians §§ 151 to 179.

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

ARBITRATION

12 CNCA § 1324

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 O360. 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;

12 CNCA § 1324

CIVIL PROCEDURE

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 O342 to 344. 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.

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

History

Cross References

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

Library References

Alternative Dispute Resolution O359. Westlaw Topic Nos. 25T, 209.

§ 1326. Jurisdiction

C.J.S. Arbitration §§ 247 to 253.

C.J.S. Indians §§ 151 to 179.

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

ARBITRATION

12 CNCA § 1329

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.

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

History

Library References

Alternative Dispute Resolution O355.

§ 1327. Venue

Westlaw Topic Nos. 25T, 209.

C.J.S. Indians §§ 151 to 179.

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

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

History

Library References

Alternative Dispute Resolution O355.

§ 1328. Appeals

A. An appeal may be taken from:

Westlaw Topic Nos. 25T, 209.

C.J.S. Indians §§ 151 to 179.

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.

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

History

Library References

Alternative Dispute Resolution O366. 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.

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

History

12 CNCA § 1329

CIVIL PROCEDURE

Library References

Alternative Dispute Resolution O114. 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.

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

History

United States Code

Exemption to preemption, see 15 U.S.C. § 7002. General rule of validity, see 15 U.S.C. § 7001.

B.

CHAPTER 9

CHEROKEE NATION JUDGMENT FUND ACT

1401. Short title

1402. Purpose

1403. Definitions

1404. Act governs

1405. Indemnification not waived-Gaming compact not affected 1406. Fund established

1407. Appropriations authorized 1408. Certification

1409. Claims allowed

of

1410. Dormancy period

§ 1401. Short title

This Act shall be known and may be cited as the Cherokee Nation Judgment Fund Act.

History

Source. LA 08-16, eff. May 11, 2016.

§ 1402. Purpose

The purpose of this Act is to create a fund from which judgment claims against the Cherokee Nation shall be paid in a fair and efficient manner and bar payment of the same by any department, agency or subdivision of the Cherokee Nation.

Source. LA 08-16, eff. May 11, 2016.

Indians 404, 535, 536. Westlaw Topic No. 209.

§ 1403. Definitions

History

Library References

As used in this Act, the following words have the following meanings:

1. **"Attorney General"** means the Attorney General of the Cherokee Nation, or his designee.
2. **"Certified Judgment"** means any judgment which has been certified by the Attorney General.
3. **"Claim"** means a right to payment under a certified judgment.
4. **"Claimant"** means the holder of valid, certified judgment.
5. **"Department"** means any department, agency or subdivision of the Cherokee Nation.
6. **"Fund"** means the Cherokee Nation Judgment Fund.
7. **"Indemnity"** means any contract, agreement or assurance held by the Cherokee Nation as security against an anticipated loss. This term shall

12 CNCA § 1403

CIVIL PROCEDURE

include any applicable insurance policy held by the Cherokee Nation for protection against risks and perils except those specifically enumerated.

8. **"Judgment"** means any final judgment, award, or compromise settlement payable in money for a sum certain against the Cherokee Nation. Judgment includes all interest and costs specified in the judgment, award, or compromise settlement, specifically including any attorney fees awarded against the Cherokee Nation.

9. **"Treasurer"** means the Treasurer of the Cherokee Nation.

History

Source. LA 08-16, eff. May 11, 2016.

§ 1404. Act governs

This Act governs all judgments, inclusive of attorney fees and interest, entered against the Cherokee Nation or any department, agency or subdivision thereof.

Source. LA 08-16, eff. May 11, 2016.

Indians 502. Westlaw Topic No. 209.

History

Library References

§ 1405. Indemnification not waived-Gaming compact not affected

Nothing in this Act shall serve to disavow, disclaim or otherwise waive the validity of any indemnification agreement held by the Cherokee Nation; nor shall anything in this Act prevent the payment of judgment claims from the same.

Nothing in this Act shall limit, alter or modify the respective obligations of the Cherokee Nation or the State of Oklahoma under the Cherokee Nation Tribal State Gaming Compact or any other applicable agreement.

Judgment claims paid through any applicable indemnity agreement shall be deemed fully satisfied and thus barred from certification for payment from the Fund.

Source. LA 08-16, eff. May 11, 2016.

History

Oklahoma Statutes

State-Tribal Gaming Act, see 3A O.S. § 261 et seq.

Library References

Indians 337(3). Westlaw Topic No. 209.

§ 1406. Fund established

There is hereby established a special fund of the Cherokee Nation to be known as the “Cherokee Nation Judgment Fund.” All monies accruing to the

JUDGMENT FUND ACT

12 CNCA § 1409

credit of the Fund are hereby appropriated, and shall be budgeted and expended by the Treasurer for the payment of eligible claims.

History

Source. LA 08-16, eff. May 11, 2016.

Indians 141(2). Westlaw Topic No. 209.

Library References

§ 1407. Appropriations authorized

For each fiscal year, the Tribal Council may appropriate such amounts to the Fund as the Tribal Council determines appropriate to satisfy certified judgments arising during such fiscal year in full. No other funding source shall be used to satisfy a properly certified judgment.

History

Source. LA 08-16, eff. May 11, 2016.

Indians 141(2). Westlaw Topic No. 209.

Library References

§ 1408. Certification of judgments

All judgment claims shall be presented to the Attorney General for review prior to submission for payment against the Fund. Whenever the Attorney General determines that no further judicial review shall be sought from a judgment, and that such judgment is otherwise unpaid, the Attorney General shall certify the judgment for payment from the Fund.

History

Source. LA 08-16, eff. May 11, 2016.

Indians 404, 534. Westlaw Topic No. 209.

§ 1409. Claims allowed

Library References

A. A Claimant in possession of a certified judgment shall be entitled to payment from the Fund by the Treasurer. All claims shall be presented on a form prescribed by the Treasurer.

B. The Treasurer shall pay all allowed claims under this section on a first come, first served basis.

C. The Treasurer shall not pay to any Claimant, in any single fiscal year, any amount which exceeds one-half (1/2) of the balance of the Fund at the time of payment. Any portion of a claim exceeding one-half of the balance of the Fund shall be deemed a disallowed claim.

D. If the Treasurer determines any portion of a claim is disallowed under this section, the Treasurer shall, at the same time the Treasurer pays the

12 CNCA § 1409

CIVIL PROCEDURE

amount of the allowed portion, notify the Claimant in writing of the amount of the disallowed claim and basis for the determination. Such written notification shall constitute recognition of the disallowed claim by the Treasurer.

E. Any disallowed claim shall constitute a new claim under subsection (A) above. Such new claim shall bear interest at the applicable rate. The holder of a disallowed claim may present the same to the Treasurer for payment in any subsequent fiscal year after the fiscal year in which the determination of the Treasurer was made.

F. The amount of the new claim under paragraph (C) above shall be an amount equal to the amount of the disallowed claim plus applicable interest allowed by law.

Source. LA 08-16, eff. May 11, 2016.

Indians 141(2). Westlaw Topic No. 209.

§ 1410. Dormancy period

History

Library References

A. The Attorney General shall not certify any judgment unless such judgment has been presented to him within one (1) year after the date of its issuance.

B. Any certified judgment shall become unenforceable and be of no effect if, within two (2) years after

the date of certification by the Attorney General, it has not be presented to the Treasurer for payment as claim.

C. Any disallowed claim shall become unenforceable and be of no effect if, within two (2) years after the date of disallowance by the Treasurer, it has not been presented to the Treasurer for payment as a new claim.

History

Source. LA 08-16, eff. May 11, 2016.

Indians 527. Westlaw Topic No. 209.

Library References

Westlaw Topic Nos.