

Cherokee Nation Code Annotated

Title 12: Civil Procedure

Chapter 6: Garnishment

§ 1171.3. Income assignments

Cite as: 12 CNCA § 1171.3

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

B. 1. A notice of income assignment shall be sent by the applicant to the payor on a standardized form prescribed by the Secretary of the United States Department of Health and Human Services and available through the Office of Child Support Enforcement. The notice shall be sent by certified mail, return receipt requested or served according to law. The payor shall be required to comply with the provisions of this subsection and the provisions stated in the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. The payor may not discipline, suspend, discharge, or refuse to promote an obligor because of an income assignment executed pursuant to this section. Any payor who violates this section shall be liable to the obligor for all income, wages, and employment benefits lost by the obligor from the period of unlawful discipline, suspension, discharge,

or refusal to promote until the time of reinstatement or promotion. Violation of this subsection may result in a fine of up to Two Hundred Dollars (\$200.00) against the payor for each violation.

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

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

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

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

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

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

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

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

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

b. a written agreement is reached between the parties which provides for an alternative arrangement including in-kind payments. For purposes of this subparagraph, **"written agreement"** means a written alternative arrangement signed by both the custodial and

noncustodial parents which has been reviewed by the Court and entered into the record by the Court.

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

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

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

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

Historical Data

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