

Cherokee Nation Code Annotated

Title 12: Civil Procedure

Chapter 6: Garnishment

§ 1172.1. Prejudgment and postjudgment summons—Procedure

Cite as: 12 CNCA § 1172.1

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

1. Defendant has been served with a notice, to which the affidavit required by 12 CNCA § 1172 is attached, which notifies the defendant that the issuance of a garnishee summons is requested and that the defendant may object to the issuance of the summons by filing a written objection with the Court Clerk and delivering or mailing a copy to the plaintiff's attorney within five (5) days of the service of the notice. The service of the notice on the defendant satisfies the notice requirement of 12 CNCA § 1174;
2. If no written objection is filed within the five- (5) day period, and if the undertaking has been executed as provided herein, the Court Clerk shall issue the garnishee summons;
3. Should a written objection be filed within the five- (5) day period, the Court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If, at the hearing, the plaintiff proves the probable merit of the plaintiff's cause and the truth of the matters asserted in the affidavit and if the plaintiff executes an undertaking, as provided herein, the Court may issue the garnishee summons; and
4. An undertaking on the part of the plaintiff has been executed by one or more sufficient sureties, approved by the Clerk or the Court and filed in the Clerk's office, in a sum not less than double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay to the defendant all damages which the defendant may sustain by reason of the garnishment, together with a reasonable attorney fee, if the order be wrongfully obtained.

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

matters asserted in the affidavit. The Court Clerk may issue an order to pay the money into the Court after the hearing, at the direction of the Court.

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

Historical Data

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