

Cherokee Nation Code Annotated

Title 12: Civil Procedure

Chapter 6: Garnishment

§ 1173. Garnishee summons

Cite as: 12 CNCA § 1173

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

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

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

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

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

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

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

2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances in the affidavit;
 3. At the garnishee's option, any claim of exemption from execution on the part of the defendant or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;
 4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of other claimants and, so far as known, the nature of the claims; and
 5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.
- G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons to the extent the property is not exempt from garnishment.
- H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee except for a garnishment lien or summons to collect child support.
2. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons and by giving the date when all previous garnishment liens or garnishment summonses are expected to end.
- I. 1. When a postjudgment noncontinuing earnings garnishment under 12 CNCA § 1173 or a continuing earnings garnishment under 12 CNCA § 1173.4 is issued against a defendant already subject to an income assignment for child support, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of 12 CNCA § 1171.2 and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under the income assignment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).
2. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this

section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

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

Historical Data

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