

Cherokee Nation Code Annotated

Title 12: Civil Procedure

Chapter 6: Garnishment

§ 1172.2. Garnishment summons—Payment of funds by garnishee

Cite as: 12 CNCA § 1172.2

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

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

C. Any funds paid to the Court Clerk on a judgment, whether or not pursuant to a garnishment summons shall be paid to the judgment creditor's attorney, or to the judgment creditor if there is no attorney within twenty-one (21) days from receipt by the Court Clerk,

notwithstanding the various times set forth above unless otherwise directed by the Court. No order of disbursement shall be necessary. In distribution of funds to the judgment creditor's attorney or judgment creditor, if received pursuant to a garnishment, the Court shall not have the duty to determine whether or not the garnishee has complied with the mailing or hand-delivery required of this section or be held liable for complete or partial noncompliance with the notice delivery requirement by the garnishee.

Historical Data

LA 10–07, eff. March 17, 2007.