

Judicial Council of California

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INVITATION TO COMMENT

W15-01

Title	Action Requested
Civil Forms: Notice of Application for Recognition and Entry of Tribal Court Money Judgment	Review and submit comments by January 23, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt form EJ-115	July 1, 2015
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Patricia M. Lucas, Chair	Anne M. Ronan, Legal Services 415-865-8933, anne.ronan@jud.ca.gov

Executive Summary and Origin

The proposed *Notice of Application for Recognition and Entry of Tribal Court Money Judgment* (form EJ-115) is mandated by the Legislature in the recently enacted Tribal Courts Civil Money Judgment Act. See Senate Bill 406 (Stats. 2014, ch. 243). That new law provides for the enforcement of certain tribal court money judgments in state courts. The statute requires that the judgment creditor in the tribal court action use a form prescribed by the Judicial Council to serve the judgment debtor with notice of filing the application for recognition of the judgment, and serve the form in the same manner as service of a summons. The proposed form is intended to comply with those requirements.

Background

Because tribes are sovereign, a party seeking enforcement of a civil tribal court judgment in a California superior court has been required to do so under the Uniform Foreign-Country Money Judgments Recognition Act. Because that process can be a time-consuming and expensive procedure, in which parties sometimes must unnecessarily re-litigate what has already been decided by the tribal court, costing both the parties and the state courts unnecessary time and expense, the new procedures of the Tribal Courts Civil Money Judgment Act (SB 406) were enacted. The new law, which was sponsored by the Judicial Council, prescribes a more straightforward procedure for applying for recognition and entry of a judgment based on a tribal court money judgment, sets out the procedure and grounds for objecting to the entry of judgment, and describes the bases upon which the court may refuse to enter the judgment or grant a stay of enforcement. The law also requires the Judicial Council to prescribe a form for the notice to be served on the judgment debtor, informing him or her that an application for

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

recognition of the tribal court money judgment has been filed and the procedure for objecting to it.

The Proposal

The Civil and Small Claims Advisory Committee proposes that new form *Notice of Application for Recognition and Entry of Tribal Court Money Judgment* (form EJ-115) be adopted in compliance with SB 406.

The provisions of the Tribal Court Civil Money Judgment Act require a party seeking enforcement of a tribal court judgment in superior court to file an application for entry of judgment. The petitioner must include certain enumerated information regarding the parties and the tribal court judgment and must attach an authenticated copy of the tribal court judgment, along with a copy of the pertinent tribal court rules of procedure and a declaration that the case that resulted in the judgment was conducted in compliance with those rules. (See new Code of Civil Procedure section 1734.¹) Promptly after filing the application, the applicant is to serve on the respondent a notice that the application has been filed and a copy of the application itself with all its attachments, including a copy of the underlying tribal court judgment. (Section 1735(a).) The notice must be on a form prescribed by the Judicial Council, must inform the respondent that he or she has 30 days from service of the notice in which to file objections, and must provide the name and address of the applicant and applicant's attorney, if any. The form must also include the full text of new sections 1736 and 1737, which provide that judgment will be entered if timely objections are not filed, and describe the grounds for such objections. (*Id.*)

The new statute also provides that service of the notice must be made in the same manner as provided for service of summons. Section 1735(b).

The proposed *Notice of Application for Recognition and Entry of Tribal Court Money Judgment* (form EJ-115) was drafted to comply with the requirements described above.

- The top box of the caption provides spaces for name and address of attorney or self-represented petitioner, plus a space for address of a petitioner with an attorney.
- The text of the notice starts with the information that an application for state court recognition of a tribal court judgment has been filed and that the party being served has 30 days after service of the notice to file objections or a judgment will be entered against him or her. That information is bolded to make it easier for the party to see.
- The full text of new section 1736 is set out in the paragraph titled "Entry of Judgment."
- The full text of new section 1737 is set out in the paragraph entitled "How to Object." This code section is expressly identified in the prior paragraph, so that a party who wants to see the statute will know where to find it.

¹ All statutory references herein are to the new Code of Civil Procedure provisions in SB 406, which will go into effect in January 2015. The text of the act is at http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0401-0450/sb_406_bill_20140822_chaptered.pdf

Because the notice is to be served in the same manner as a summons as provided in Code of Civil Procedure section 415.10 and following, the notice has been set up to be issued by the clerk, with a court seal attached. Items are included on the form under the clerk's signature where the server will be able to provide notice to the person served of which specific code section the notice is being served under (on the person as an individual, as representative of a corporation or a fictitious business, etc.), and a proof of service done in the manner of a summons is provided on the back of the form.

This format, with clerk's signature and seal at the bottom of the notice and proof of service on the back, is the same format used in the *Notice of Entry of Judgment on Sister State Judgment* (form EJ-110), which form was designed to comply with service provisions identical to those in the new act. (Cf. new section 1735(b) and existing section 1710.30.)

Alternatives Considered

The advisory committee is proposing this notice form because it is mandated by the new statute. The new statute does not mandate an application form, but the committee is considering the alternative of developing a form for that purpose also. The committee seeks public comment on whether such a form, providing for all the pieces of information and statements required in the application under new Code of Civil Procedure section 1734, would be helpful to parties and to courts. The committee also seeks comments on whether a form response, listing the grounds for possible objections, and an information sheet with instructions for both sides, should be developed by the committee.

Implementation Requirements, Costs, and Operational Impacts

There will be some training involved for court clerks and judicial officers regarding the new procedures under the Tribal Court Civil Money Judgment Act, and training about this form will need to be part of that. Because the form is mandated by legislation, it must be adopted in any event.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Would development of one or more of the following forms be of assistance to the courts and/or the parties in proceedings to enforce tribal court judgments in state courts, and, if so, should the forms be optional or mandatory:
 - An application form
 - A form for objections to entry of the tribal court judgment
 - An information sheet with instructions for each party

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments

1. Proposed *Notice of Application for Recognition and Entry of Tribal Court Money Judgment* (form EJ-115)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO:
 NAME:
 FIRM NAME:
 STREET ADDRESS:
 CITY: STATE: ZIP CODE:
 TELEPHONE NO.: FAX NO.:
 E-MAIL ADDRESS:
 ATTORNEY FOR (Name/Address):

FOR COURT USE ONLY

DRAFT
12/10/14

NOT APPROVED BY
JUDICIAL COUNCIL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
 STREET ADDRESS:
 MAILING ADDRESS:
 CITY AND ZIP CODE:
 BRANCH NAME:

APPLICANT:
 RESPONDENT:

NOTICE OF APPLICATION FOR RECOGNITION AND ENTRY OF TRIBAL COURT MONEY JUDGMENT

CASE NUMBER:

NOTICE: An application has been filed for this court to recognize and enter a tribal court money judgment against you. A copy of the application, **including a copy of the tribal court money judgment**, is being served with this notice. **Unless you file objections with the superior court named above within 30 days after service of this notice, the court will enter that judgment against you.**

Entry of Judgment. (a) If no objections are timely filed in accordance with the provisions below (and set forth in Code of Civil Procedure section 1737), the clerk shall certify that no objections were timely filed, and a judgment shall be entered.

(b) The judgment entered by the superior court shall be based on and contain the provisions and terms of the tribal court money judgment. The judgment shall be entered in the same manner, have the same effect, and be enforceable in the same manner as any civil judgment, order, or decree of a court of this state.

How to Object: (a) Any objection to the recognition and entry of the tribal court money judgment shall be served and filed within 30 days of service of the notice of filing. If any objection is filed within this time period, the superior court shall set a time period for replies and set the matter for a hearing. The hearing shall be held by the superior court within 45 days from the date the objection is filed unless good cause exists for a later hearing. The only grounds for objecting to the recognition or enforcement of a tribal court money judgment are the grounds set forth in subdivisions (b) and (c).

(b) A tribal court money judgment shall not be recognized and entered if the respondent demonstrates to the superior court that at least one of the following occurred: (1) The tribal court did not have personal jurisdiction over the respondent. (2) The tribal court did not have jurisdiction over the subject matter. (3) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

(c) The superior court may, in its discretion, decline to recognize and enter a tribal court money judgment on any one of the following grounds: (1) The defendant in the proceeding in the tribal court did not receive notice of the proceeding in sufficient time to enable the defendant to defend. (2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case. (3) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of the state or of the United States. (4) The judgment conflicts with another final and conclusive judgment. (5) The proceeding in the tribal court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that tribal court. (6) In the case of jurisdiction based on personal service only, the tribal court was a seriously inconvenient forum for the trial of the action. (7) The judgment was rendered under circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment. (8) The specific proceeding in the tribal court leading to the judgment was not compatible with the requirements of due process of law. (9) The judgment includes recovery for a claim of defamation, unless the court determines that the defamation law applied by the tribal court provided at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions. (d) If objections have been timely filed, the applicant has the burden of establishing that the tribal court money judgment is entitled to recognition. If the applicant has met its burden, a party resisting recognition of the tribal court money judgment has the burden of establishing that a ground for nonrecognition exists pursuant to subdivisions (b) or (c).

[SEAL]

Date: _____ Clerk, by _____, Deputy

4. NOTICE TO THE PERSON SERVED: You are served
- a. as an individual judgment debtor.
- b. under the fictitious name of (*specify*):
- c. on behalf of (*specify*):
- Under:
- | | |
|--|---|
| <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (individual) |
| <input type="checkbox"/> other: | |

(Proof of service on reverse)

PROOF OF SERVICE
(Use separate proof of service for each person served)

EJ-115

1. I served the *Notice of Application for Recognition and Entry of Tribal Court Judgment* and the application with all attachments as follows:
- a. on judgment debtor (*name*):
 - b. by serving judgment debtor other (*name and title or relationship to person served*):
 - c. by delivery at home at business
 - (1) date:
 - (2) time:
 - (3) address:
 - d. by mailing
 - (1) date:
 - (2) place:
2. Manner of service (*check proper box*):
- a. **Personal service.** By personally delivering copies. (CCP 415.10)
 - b. **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
 - c. **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) (**Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.**)
 - d. **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) (**Attach completed acknowledgment of receipt.**)
 - e. **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) (**Attach signed return receipt or other evidence of actual delivery to the person served.**)
 - f. Other (*specify code section*):
 Additional page is attached.
3. The "Notice to the Person Served" was completed as follows:
- a. as an individual judgment debtor.
 - b. as the person sued under the fictitious name of (*specify*):
 - c. on behalf of (*specify*):
under: CCP 416.10 (corporation) CCP 416.60 (minor) other:
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (individual)
4. At the time of service I was at least 18 years of age and not a party to this action.
5. Fee for service: \$
6. Person serving:
- a. California sheriff, marshal, or constable
 - b. Registered California process server
 - c. Employee or independent contractor of a registered California process server
 - d. Not a registered California process server
 - e. Exempt from registration under Bus. & Prof. Code 22350(b)
 - f. Name, address, and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date: _____

(SIGNATURE)

(SIGNATURE)