

CHAPTER 3 RECOGNITION AND ENFORCEMENT OF FOREIGN COURT JUDGMENTS

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CHAPTER 3 RECOGNITION AND ENFORCEMENT OF FOREIGN COURT JUDGMENTS

Section 3.000 Purpose and Definitions

3.001 Purpose. The purpose of this Chapter is to facilitate, improve and extend by reciprocal legislation or court rule, the enforcement and/or recognition of judgments between the State of Michigan, the various American Indian tribes within Michigan and any other Tribe or State with a reciprocal/similar court rule, as well as to make uniform the law relating thereto.

3.002 Definitions. When used in this Chapter, unless the content otherwise indicates:

(A) "Attorney" means an individual who is a current member of the State Bar of Michigan or some other State. The term "attorney" is synonymous with the term "lawyer." Further, a lawyer must be admitted to practice before this Court pursuant to Chapter 1 herein.

(B) "Court" means the Tribal Court of Little River Band of Ottawa Indians.

(C) "Foreign Court" means all other courts including federal, state, or tribal courts and courts of a foreign country excepting the Little River Band of Ottawa Indians.

(D) "Foreign Judgment" means any judgment, decree, or order by any United States federal court, state court, other tribal court or Court of a foreign country which is final in the rendering jurisdiction, regardless of whether such judgment is for money, injunctive, declaratory, or other relief.

(E) "Judgment Creditor" means one who has had a judgment rendered in his or her favor; judgment creditor is synonymous with the term judgment holder.

(F) "Judgment Debtor" means the party against whom a judgment has been rendered.

(G) "Judgment Holder" means one who has had a judgment rendered in his or her favor; judgment holder is synonymous with the term judgment creditor.

(H) "Lawyer" is synonymous with the term "attorney". Further, a lawyer must be admitted to practice before this Court pursuant to Chapter 3 herein.

(I) "Lay Advocate" means a person who is a non-lawyer and who has been qualified by this Court to serve as an advocate on behalf of a party. Further, a lay advocate must be admitted to practice before this Court pursuant to Chapter 3 herein.

(J) "Rendering Jurisdiction" means the jurisdiction in which the foreign judgment was entered.

(K) "Rules" mean the Rules of the Little River Band of Ottawa Indians Court

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(L) "Tribe" means the Little River Band of Ottawa Indians.

Section 3.100 Recognition and Enforcement

3.101 Michigan Court Records and Judgments. The judgments of a Michigan state court shall have the same full recognition and enforcement in the Court(s) of this Tribe, provided that:

(A) The applicable Michigan state court and/or Michigan legislature provides reciprocal recognition and enforcement to the judgments of the Little River Band of Ottawa Indians; and

(B) The person seeking recognition and enforcement complies with the conditions and procedures set forth in Section 3.200 hereunder whenever a judgment from a Michigan state court is involved.

3.102 Tribal Court Records and Proceedings. The judgments of another tribal court of a federally recognized tribe shall have the same full recognition and enforcement in the Court(s) of the Little River Band of Ottawa Indians, provided that:

(A) The applicable tribal court provides reciprocal full recognition and enforcement to the judgments of this Tribe; and

(B) The person seeking recognition and enforcement complies with the conditions and procedures set forth in Section 3.200 hereunder whenever a judgment from a tribal court is involved.

3.103 Federal Court and other State Court Proceedings.

The judgments of a U.S. federal court or other state court (with the exception of Michigan state courts wherein Section 3.101 shall apply) may have, in the discretion of this Court, the same recognition and enforcement in the Court(s) of the Little River Band of Ottawa Indians, provided that:

(A) The applicable federal court or other state court provides reciprocal full recognition and enforcement to the judgments of this Tribe; and

(B) The person seeking recognition and enforcement complies with the conditions and procedures set forth in Section 3.200 hereunder whenever a judgment from a U.S. federal court or other state court is involved.

This Court shall have full discretion as to whether recognition and enforcement shall be granted and shall be guided by the best interests of this Tribe and the parties, which are supplementary to the provisions set forth above in this Section 3.103.

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3.104 Court Records and Proceedings of a Foreign Country.

The judgments of a court in a foreign country may have, in the discretion of this Court, the same recognition and enforcement in the Court of the Little River Band of Ottawa Indians, provided that:

- (A) The applicable court of a foreign country provides reciprocal recognition and enforcement to the judgments of this Indian Tribe; and
- (B) The person seeking recognition and enforcement complies with the conditions and procedures set forth in Section 1.200 hereunder whenever a judgment from a court of a foreign country is involved.

This Court shall have full discretion as to whether recognition and enforcement shall be granted and shall be guided by the best interests of this Tribe and the parties, which are supplementary to the provisions set forth above in this Section 3.104.

Section 3.200 Recognition and/or Enforcement of Foreign Judgments

3.201 Application of Recognition and Enforcement to Final and Conclusive Judgments. In accordance with the recognition and enforcement provisions set forth in Sections 3.101 through 3.104, a foreign judgment that is final and conclusive is enforceable in this Court pursuant to the following Section.

3.202 Registration of Foreign Judgment. A person seeking enforcement of a foreign judgment shall file:

- (A) A copy of the foreign judgment, which has been authenticated by the clerk or registrar of the foreign court in the following manner:
 - (1) The clerk or registrar of the foreign court must attest in writing that s/he:
 - (a) Is the Clerk or register of the subject foreign court;
 - (b) Is the custodian of the records of the subject foreign court; and
 - (c) Has compared an annexed copy of the foreign judgment from the case with the original(s) on file and of record in the foreign court, and has found the copy of the foreign judgment to be a true copy of the whole of such original(s).
 - (2) Upon completing the written attestation referenced in Section 3.202 (A)(1) above, the clerk or registrar of the foreign court must:
 - (a) Sign and date said attestation;
 - (b) Affix the seal of the foreign court to said attestation; and
 - (c) Annex a true copy of the foreign judgment to said attestation;

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(B) A sworn affidavit by the judgment holder, or his/ her lawyer or lay advocate, which includes the following:

- (1) The name and last known post office address of the judgment debtor and the judgment creditor;
- (2) That the judgment is final and that no appeal is pending;
- (3) That no subsequent orders vacating, modifying or reversing
- (4) the judgment have been entered in the rendering jurisdiction;
- (5) Proof that the person against whom the foreign judgment has been rendered (i.e., judgment debtor) is subject to the jurisdiction of this Court with regard to enforcement of said judgment; and
- (6) Proof that the court from which the foreign judgment was issued provides reciprocal full faith and credit to the judgments of this Tribe; and

(C) A filing fee for registering said foreign judgment in the amount of thirty-five (\$35) dollars.

3.203 Notice of Registration of Foreign Judgment. Upon the filing of the foreign judgment, attestation, affidavit and filing fee, the Clerk of the Court shall promptly mail notice of the filing of the foreign judgment along with a copy of the foreign judgment, attestation, and affidavit referenced in Section 3.202 to the judgment debtor at the address provided by the judgment creditor and shall make a note of the mailing in the docket and/or complete a proof of mailing.

The notice to the judgment debtor shall include the following:

(A) The name and post office address of the judgment holder and the judgment holder's lawyer or lay advocate, if any, in this Court; and

(B) A directive that an order entering the enforcement of the foreign judgment shall be entered by the Court within twenty-one (21) days of the same having been served on the judgment debtor unless the judgment debtor files written objections with the Court along with a request for a hearing on the same within said twenty-one (21) day period.

In addition, the judgment holder shall also mail a notice of the filing along with a copy of the foreign judgment, attestation, and affidavit referenced in Section 1.202 to the judgment debtor and shall file proof of mailing with the Clerk of the Court. Such notice shall be served on the judgment debtor in a manner consistent with the proof of service provision set forth in these Rules.

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3.204 Objections; Hearing; Entry of Order Where Objections. In the event that the judgment debtor files written objections within the twenty-one (21) day period set forth in Section 1.203 above along with a request for a hearing, the Clerk of the Court shall send by first-class mail a copy of said objections to the judgment holder or his/her lawyer. In addition, the Clerk of the Court shall send by first-class mail a notice of hearing setting forth the date and time of hearing to the judgment holder and judgment debtor, or their respective lawyer(s) or lay advocate(s). The judgment debtor at the hearing will be required to show cause why the foreign judgment shall not be enforced by this Court. At the scheduled hearing, after reviewing all the relevant evidence concerning the foreign judgment, the Court shall issue an order either granting or denying enforcement of the foreign judgment.

3.205 Entry of Order Where no Objections. In the event that the judgment debtor does not file any written objections within the twenty-one (21) day time period set forth in Section 3.203 above, an order granting the enforcement of the foreign judgment shall be issued by the Court.

3.206 Not Enforceable or Non-recognizable Foreign Judgment. A foreign judgment is not enforceable or is non-recognizable under the following circumstances, including but not limited to:

- (A) The judgment was rendered by a process that does not assure the requisites of an impartial administration of justice including but not limited to due notice and a hearing;
- (B) The foreign court did not have both personal jurisdiction over the judgment debtor and jurisdiction over the subject matter;
- (C) The judgment was obtained by fraud;
- (D) The cause of action on which the judgment is based is repugnant to the public policy or tribal custom of the Tribe;
- (E) The judgment involves enforcement of child custody provisions, and
 - (1) The foreign court did not have jurisdiction over the child(ren); or
 - (2) The provisions of the Indian Child Welfare Act [25 USC Sections 1901-1963], if applicable, were not properly followed; or
 - (3) Due process was not provided to all interested persons participating in the foreign court proceeding; or
 - (4) The foreign court proceeding violated the public policies, customs or common law of the Tribe; or
- (F) The judgment involves enforcement of a criminal judgment wherein the Court has the authority to otherwise adjudicate a criminal proceeding against a Defendant.

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3.207 Appeal; Stay of Execution; Stay of Proceedings. If the judgment debtor satisfies the Court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Court may stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

3.208 Post Judgment Proceedings regarding Foreign Judgment; no Waiver of Immunity.

(A) The entry of the order enforcing the foreign judgment by this Court shall entitle the judgment holder to enforce its judgment against the judgment debtor in any manner currently available for judgment creditors or judgment holders in this Rule.

(B) The Tribe does not waive its immunity from suit with regard to the enforcement of a foreign judgment in any post judgment proceedings even when said Tribe is served as a garnishee Defendant for the wages or property of an employee who is a judgment debtor.

Section 3.300 Construction of Rule

3.301 Construction of Rule. This Rule shall be so construed as to effectuate its general purpose to make uniform the law of those jurisdictions which enact it.

Section 3.400 Short Title

3.401 Short Title. This Rule shall be known and may be cited as the "Recognition and Enforcement of Tribal, State and Other Judgments".

Section 3.500 Effective Date

3.501 EFFECTIVE DATE. This Rule becomes effective on January 26, 1999 (Court Order 99-0126)
Amended October 9 , 2009 (Administrative Order)