



Judicial Council of California

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Subject Details (With Text)

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Title: Judicial Council-Sponsored Legislation (Family Law) | Recognition of Tribal Court Orders Relating to the Division of Marital Assets (Action Required)

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Title

Judicial Council-Sponsored Legislation (Family Law) | Recognition of Tribal Court Orders Relating to the Division of Marital Assets (Action Required)

Summary

The Judicial Council Legislation Committee, California Tribal Court-State Court Forum, and Family and Juvenile Law Advisory Committee recommend sponsoring legislation to add section 1733.1 to the Code of Civil Procedure and amend sections 1731, 1733, and 1735-1737; add section 2611 to the Family Code; and amend section 70603 of the Government Code to ensure that final divorce or dissolution judgments issued by tribal courts that include division of pension or other deferred compensation assets are effective and, in particular, recognized as meeting the requirements of the Employee Retirement Income Security Act of 1974 (ERISA) and other similar statutes that restrict the transfer or division of such assets. The changes will also address an ongoing gap in the law by creating a simplified process to file--in California state court--a final order of a tribal court dividing pension and other similar deferred compensation assets to have that order recognized for purposes of legislation--such as ERISA--that restricts the division and transfer of such assets.

Recommendation

The Judicial Council Legislation Committee, California Tribal Court-State Court Forum, and Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2022, sponsor legislation to:

1. Add section 1733.1 to the Code of Civil Procedure and amend sections 1731, 1733, 1735, 1736, and 1737 to establish a process for the filing of a tribal court order that relates to the provision of child support, spousal support payments, or marital property rights to a spouse, former spouse, child, or other dependent from a pension plan or other form of deferred compensation covered by ERISA or other similar legislation that limits or restricts the division or transfer of such assets;
2. Add section 2611 to the Family Code specifying that an order filed and recognized under the above added and amended sections is a domestic relations order made under the domestic relations laws of this state for the purposes of legislation that restricts or limits the division and transfer of such assets; and
3. Amend section 70603 of the Government Code to align the fee provisions of this section with the proposed \$100.00 filing fee for a joint application filed under proposed Code of Civil Procedure section

1733.1.