

CHAPTER TEN

LIMITATION OF ACTIONS

Section 1001. Limitations Applicable

Civil actions can only be commenced within the periods prescribed in this Chapter after the cause of action shall have accrued; but where, in special cases, a different limitation is prescribed by statute, the action shall be governed by such limitation. There shall be no statute of limitations applicable against civil actions brought by the Tribe on its own behalf except to the extent that a statute of limitation is expressly stated to be applicable to the Tribe by this Code or some Tribal statute.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1001]

Section 1002. Limitation of Real Actions

Actions for the recovery of real property or for the determination of any adverse right or interest therein, can only be brought within the periods hereinafter prescribed, after the claim shall have accrued, and at no other time thereafter.

(a) An action for the recovery of non-trust interest in real property sold on execution, or for the recovery of real estate partitioned by judgment in kind, or sold, or conveyed pursuant to partition proceedings, or other judicial sale, or an action for the recovery of real estate distributed under decree of the Court, in administration or probate proceedings, when brought by or on behalf of the execution debtor or former owner, or his or their heirs, or any person claiming under him or them by title acquired after the date of the judgment or by any person claiming to be an heir or devisee of the decedent in whose estate such decree was rendered, or claiming under, as successor in interest, any such heir or devisee, within five (5) years after the date of the recording of the deed made in pursuance of the sale or proceeding, or within five (5) years after the date of entry of the final judgment of partition in kind where no sale is had in the partition proceedings; or within five (5) years after the recording of the decree of distribution rendered by the Court in an administration or probate proceeding; provided, however, that where any such

action pertains to real estate distributed under decree of the Court in administration or probate proceedings and would at the passage of this Title be barred by the terms thereof, such action may be brought within five (5) years after passage of this Title.

(b) An action for recovery of real property sold by executors, administrators, or guardians, upon an order or judgment of the Court directing such sale, brought by the heirs or devisees of the deceased person, or the ward of his guardian, or any person claiming under any or either of them, by the title acquired after the date of judgment or order, within five (5) years after the date of recording of the deed made in pursuance of the sale.

(c) An action for the recovery of real property sold for taxes, within five (5) years after the date of the recording of the tax deed.

(d) An action for the recovery of real property not hereinbefore provided for, within twenty (20) years.

(e) An action for the forcible entry and detention or forcible detention only of real property, within three (3) years.

(f) Paragraphs a, b, and c shall be fully operative regardless of whether the deed or judgment or the precedent action or proceeding upon which such deed or judgment is based is void or voidable in whole or in part, for any reason, jurisdictional or otherwise; provided that this paragraph shall not be applied so as to bar causes of action which have heretofore accrued, until the expiration of five (5) years for and after its effective date.

(g) Nothing in this Section should be construed to impose any statute of limitation upon the enforcement of a right to possession of real property held by the United States in trust for any Indian or Indian Tribe under any law of the United States or restricted against alienation by any law of the United States in conformity to the laws of the United States relating to such real property.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1002]

Section 1003. Persons under Disability - In Real Property Actions

Any person entitled to bring an action for the recovery of real property, who may be under any legal disability when the cause of action accrues, may bring his action within two (2) years after the disability is removed.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1003]

Section 1004. Limitation of Other Actions

Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

(a) Within seven (7) years: An action upon any contract, agreement or promise in writing.

(b) Within five (5) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute including a forfeiture or penalty except where the statute imposes a different limitation and an action on a foreign judgment.

(c) Within three (3) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract except as otherwise provided in building construction tort claims, and not hereinafter enumerated; an action for relief on the ground of fraud - the cause of action is such case shall not be deemed to have accrued, until the discovery of the fraud.

(d) Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment.

(e) An action upon the official bond or undertaking of an executor, administrator, guardian, Tribal Police Officer, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued.

(f) An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1004]

Section 1005. Persons Under Disability in Actions Other Than Real Property Action

If a person entitled to bring an action other than for the recovery of real property be, at the time the cause of action accrued, under any legal disability, every such person shall be entitled to bring such action within one (1) year after such disability shall be removed.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1005]

Section 1006. Absence or Flight of Defendant

When a cause of action accrues against a person and that person is out of the Tribal jurisdiction or has concealed himself, the period limited for the commencement of action shall not begin to run until he comes into the Tribal jurisdiction, or while he is concealed. If, after a cause of action accrues against a person and that person leaves the Tribal jurisdiction or conceals himself, the time of this absence or concealment shall not be computed as any part of the period within which the action must be brought. Provided, however, that if any statute which extends the exercise of personal jurisdiction of the Court over a person or corporation based upon service outside the Tribal jurisdiction, state, or nation, or based upon service by publication permits the Court of this Tribe to acquire personal jurisdiction over the person, the period of his absence or concealment shall be computed as part of the period within which the action must be brought.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1006]

Section 1007. Limitation of New Action After Failure

If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fail in such action otherwise than upon the merits, the plaintiff, or, if he should die, and the cause of action survive, his representatives may commence a new action within two (2) years after the reversal or failure although the time limit for commencing the action shall have expired before the new action is filed. An appeal of any judgment or order against the plaintiff other than on the merits as above stated shall toll the two (2) year period during the pendency of the appeal.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1007]

Section 1008. Extension of Limitation

In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same shall have been made, an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1008]

Section 1009. Statutory Bar Absolute

When a right of action is barred by the provisions of any applicable statute, it shall be unavailable either as a cause of action or ground of defense, except as otherwise provided with reference to a counterclaim, setoff, or cross claim.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1009]

Section 1010. Law Governing Foreign Claims

The period of limitation applicable to a claim accruing outside of the Tribal jurisdiction shall be that prescribed

either by the law of the place where the claim accrued or by the law of this Tribe whichever last bars the claim.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1010]

Section 1011. Limitation of Building Construction Tort Claims

No action in tort to recover damages:

(a) For any deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property,

(b) For injury to property, real or personal, arising out of any such deficiency, or

(c) For injury to the person or for wrongful death arising out of any such deficiency,

shall be brought against any person owning, leasing, or in possession of such an improvement or performing or furnishing the design, planning, supervision or observation of construction or construction of such an improvement more than ten (10) years after substantial completion of such an improvement.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1011]

CHAPTER ELEVEN

FAMILY RELATIONS

Section 1101. Recording of Marriages and Divorces

All marriages and divorces to which an Indian person is a part, whether consummated in accordance with the State law or in accordance with Tribal law or custom, shall be recorded in writing executed by both parties thereto within three (3) months at the office of the Clerk of the Tribal District Court in the marriage record and a copy thereof delivered to the Bureau of Indian Affairs agency of the jurisdiction in which either or both of the parties reside for the agency records.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1101]

Section 1102. Tribal Custom Marriage and Divorce

(a) Indians who desire to become married or divorced by the custom and common law of the Tribe shall conform to the custom and common law of the Tribe. Indians who assume or claim a divorce by Tribal common law and custom shall not be entitled to remarry until they have complied with the Tribal common law and remain separated for six (6) months as in the case of statutory divorces, nor until they have recorded such divorce at the office of the Clerk of the Tribal District Court with a copy delivered to the Bureau of Indian Affairs agency for agency records.

(b) The validity of Indian custom marriage and divorce shall continue to be recognized as heretofore.

(c) In any case wherein the marital status of an Indian person is at issue, the Court shall have full authority to determine the marital status of the parties to any purported Tribal common law marriage or divorce and enter its declaratory judgment thereon.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1102]

Section 1103. Tribal Custom Adoption

Tribal custom adoptions shall continue to be recognized and shall be fully recognized by the Court, without the necessity of filing any document, when proven for the purpose of establishing extended family status in child custody actions, determining child custody, the obligation to support children, and other family matters. However, Tribal common law adoptions shall not be recognized for the purpose of probate of decedent's estates unless, prior to death of the decedent, the common law adoption was formalized by action of the Tribal District Court, or in the case of adults by a writing acknowledging such adoption filed in the Tribal Court. A Tribal common law adoption as a child of another does not terminate parental rights of the parents, nor deprive the natural parents of their ultimate right to the custody of a child who is adopted by another pursuant to the Tribal common law.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1103]

Section 1104. Determination of Paternity and Support

The Tribal District Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Department of the Interior or by the Tribal District Court.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1104]

Section 1105. Determination of Heirs

(a) When any member of the Tribe dies within the Tribal jurisdiction or while owning a non-trust interest in land within the Tribal jurisdiction, leaving property other than an allotment or other trust property subject to the jurisdiction of the United States, any person claiming to be an heir of the decedent may bring suit in the Tribal District Court to determine the heirs of the decedent and to divide among the heirs such property of the decedent. No determination of heirs shall be made unless all the possible heirs known to the Court, to the superintendent of the Indian Agency, and to the claimant

have been notified of the suit as in service of summons and given full opportunity to come before the Court and defend their interests. Possible heirs who are not residents of the Tribal jurisdiction may be notified by certified mail, return receipt requested, and if said notice is returned refused or otherwise unclaimed, by further first class mail containing a copy of the original notice and an additional notice stating to the recipient that the action will proceed ten (10) days after mailing of the second notice. A copy of every such notice must be preserved in the record of the case.

(b) In the determination of heirs the Tribal District Court shall apply the written laws of the Tribe or the custom of the Tribe as to inheritance if such custom is proved and no written law exists. Otherwise, the Court shall apply state law in deciding what relative of the decedent are entitled to by his heirs.

(c) Where the estate of the decedent includes any interest in restricted allotted lands or other property held in trust by the United States, over which the administrative law judge would have jurisdiction, the Tribal District Court may distribute only such property as does not come under the jurisdiction of the administrative law judge.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1105]

Section 1106. Approval of Wills

When any member of the Tribe dies while domiciled within the Tribal jurisdiction or while owning a non-trust interest in land within the Tribal jurisdiction, leaving a will disposing of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Tribal District Court shall, at the request of any person named in the will or any other interested party, determine the validity of the will after giving notice and full opportunity to appear in Court to all persons who might be heirs of the decedent, as under the preceding Section. A will shall be deemed valid if the decedent had a sane mind and understood what he was doing when he made the will and was not subject to any undue influence of any kind from another person, and if the will was made in accordance with Tribal law or custom or made in writing and signed by the decedent in the presence of two witnesses who also signed the will. If the Court determines the will to be validly executed,

it shall order the property described in the will to be given to the persons named in the will or to their heirs; but no distribution of property shall be made in violation of a Tribal law or proven Tribal custom which restricts the privilege of Tribal members to distribute property by will.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1106]

SUBCHAPTER A

STATUTORY DIVORCE

Section 1111. Grounds for Divorce

The Tribal District Court may grant a divorce for any of the following causes:

(a) Abandonment for one (1) year.

(b) Adultery.

(c) Impotency.

(d) When the wife at the time of her marriage was pregnant by another than her husband.

(e) Extreme cruelty.

(f) Fraudulent contract.

(g) Incompatibility.

(h) Habitual drunkenness.

(i) Gross neglect of duty.

(j) Imprisonment of the other party in a State or Federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed.

(k) Insanity for a period of five (5) years. The fact and duration of insanity being proved by the testimony of two (2) physicians. Such divorce does not relieve the sane spouse from the obligation and support and shall not be granted unless a guardian has been appointed.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1111]

Section 1112. Residence of Plaintiff or Defendant

Either the plaintiff or the defendant in an action for divorce must have been an actual resident, in good faith, of the

Tribal jurisdiction for three (3) months next preceding the filing of the petition, or a member of the Tribe.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1112]

Section 1113. Personal Jurisdiction

The Tribal District Court may exercise personal jurisdiction over a person, whether or not a resident of the Tribal jurisdiction who lived within the Tribal jurisdiction in a marital or parental relationship, or both, as to all obligations for alimony and child support where the other party to the marital relationship continues to reside in the Tribal jurisdiction. When the person who is subject to the jurisdiction of the Court has departed from the Tribal jurisdiction he may be served outside of the Tribal jurisdiction by any method that is authorized by the statutes of the Tribe. In all other cases, the Court may grant a divorce but may not enter a personal judgment for alimony or child support.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1113]

Section 1114. Custody of Children, Disposition of Property

That the parties appear to be in equal wrong shall not be a basis for refusing to grant a divorce. If a divorce is granted it shall be granted to both parties. In any such case or where the Court grants alimony without a divorce or in any case where a divorce is refused, the Court may for good cause shown make such order as may be proper for the control and equitable division and disposition of the property of the parties, or of either of them, as may be proper, equitable and just, having due regard to the time and manner of acquiring such property, whether the title thereto be in either or both of said parties. In making a property settlement, the Court shall have due regard for the needs of the family and justice to the parties.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1114]

Section 1115. Orders Concerning Property, Children, Support and Expenses

After a petition has been filed in any action for divorce and alimony, or for alimony alone, the Tribal District Court may make and enforce by attachment or otherwise, such order to restrain the disposition of the property of the parties or of either of them, and for the use, management, and control thereof, or for the control of the children and support of the wife or husband during the pendency of the action, as may be right and proper; and may also make such order relative to the expenses of the suit as will insure an efficient preparation of the case; and, on granting a divorce the Court may require the husband or wife to pay such reasonable expenses of the other in the prosecution or defense of the action as may be just and proper considering the respective parties and the means and property of each; provided further, that the Court may in its discretion make additional orders relative to the expenses of any such subsequent actions, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys. Provided, no ex parte orders shall be issued until the opposing party is granted an opportunity to be heard, unless such ex parte order provides that instead of performing thereunder the opposing party may appear on a date certain, not more than twenty (20) days thereafter, and show good cause as to why he should not comply with said order.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1115]

Section 1116. Care and Custody of Children

A petition or cross petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the marriage. If there are such children, the Court shall make provision for guardianship, custody, support and education of the minor children, and may modify or change any order in this respect, whenever circumstances render such change proper either before or after final judgment in the action.

Any child, not emancipated and declared an adult by Court order, shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If the Court

determines that the parents are unable to provide for the support of the children, it may order any person obligated to support the children by the Tribal common law to be brought into the action by service of summons, and may enter an order requiring said person to contribute to the support of the children within their means.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1116]

Section 1117. Preference of Child

In any divorce action in which the Tribal District Court must determine custody, the child may express a preference as to which of its parents the child wishes to have custody. The Court may determine whether the best interest of the child will be served by the expression of preference and if the Court so finds then the Court may consider the expression of the preference by the child in determining custody. Provided however, the Court shall not be bound by that choice and may take other facts into consideration in awarding custody.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1117]

Section 1118. Paternity Determination

In an action for a divorce, legal separation, or annulment where there are children born to the parties, the Tribal District Court may determine if the parties to the action are the parents of the children, although the Court finds that the parties are not married; and if the parties to the action are the parents of the children, the Court may determine which party should have custody of said children, and it may award child support to the parent to whom it awards custody, and make an appropriate order for payment of costs and attorney's fees.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1118]

Section 1119. Interest on Delinquent Payments

When ordered by the Court, court ordered child support payments and court ordered payments of suit monies shall draw

interest at the rate of ten percent (10%) per year from the date they become delinquent, and the interest shall be collected in the same manner as the payments upon which the interest accrues.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1119]

Section 1120. Restoration of Wife's Maiden Name

When a divorce is granted, the wife shall be restored to her maiden or former name if she so desires.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1120]

Section 1121. Disposition of Property

The Tribal District Court shall enter its decree confirming in each spouse the property owned by him or her before marriage and the undisposed of property acquired after marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the Court shall think reasonable, having due regard to the value of such property at the time of the divorce. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the Court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the Court shall make such division between the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to pay such sum as may be just and proper to effect a fair and just division thereof having due regard to the needs of the family. The Court may set apart a portion of the separate estate of a spouse to the other spouse for the support of the children of the marriage where custody resides with that spouse.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1121]

Section 1122. Effect of Divorce

A divorce granted at the instance of one party shall operate as a dissolution of the marriage contract as to both, and shall be a bar to any claim of either party in or to the property of the other, except in cases where actual fraud shall have been committed by or on behalf of the successful party.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1122]

Section 1123. Remarriage and Cohabitation

It shall be unlawful for either party to an action for divorce whose former husband or wife is living to marry a person other than the divorced spouse within six (6) months from date of the decree of divorce or to cohabit with such other person during said period and if an appeal be commenced from said decree, it shall be unlawful for either party to such cause to marry any other person and cohabit with such person until the expiration of thirty (30) days from the date on which final judgment shall be rendered pursuant to such appeal. Any person violating the provisions of this Section by such marriage shall be deemed guilty of bigamy. Any person violating the provisions of this Section by such cohabitation shall be deemed guilty of adultery.

An appeal from a judgment granting or denying a divorce shall be made in the same manner as in any other civil case.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1123]

Section 1124. Punishment for Certain Remarriage and Cohabitation

Every person convicted of bigamy as such offense is defined in the foregoing Section shall be punished by imprisonment in the Tribal jail for a term of not more than six (6) months.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1124]

Section 1125. Remarriage within Six Months

A marriage wherein one of the parties had not been divorced for six (6) months shall hereafter be ground for annulment of marriage by either party.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1125]

Section 1126. Time When Judgment Final

Every decree of divorce shall recite the day and date when the judgment was rendered. If an appeal be taken from a judgment granting or denying a divorce, that part of the judgment does not become final and take effect until the appeal is determined. If an appeal be taken from any part of the judgment in a divorce action except the granting of the divorce, the divorce shall be final and take effect from the date the decree of divorce is rendered, provided neither party thereto may marry another person until six (6) months after the date the decree of divorce is rendered; that part of the judgment appealed shall not become final and take effect until the appeal be determined.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1126]

Section 1127. Avoidance of Marriage of Incompetents

When either of the parties to a marriage shall be incapable, from want of age or understanding, or contracting such marriage, the same may be declared void by the Tribal District Court, in an action brought by the incapable party or by the parent or guardian of such party; but the children of such marriage begotten before the same is annulled, shall be legitimate. Cohabitation after such incapacity ceases, shall be a sufficient defense to any such action.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1127]

Section 1128. Alimony Without Divorce

The wife or husband may obtain alimony from the other without a divorce, in an action brought for that purpose in the Tribal District Court, for any of the causes for which a divorce may be granted. Either may make the same defense to such action as he might to an action for divorce, and may, for sufficient cause, obtain a divorce from the other in such action.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1128]

Section 1129. Evidence

No divorce shall be granted without proof taken upon the record as in other cases.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1129]

Section 1130. Setting Aside of Divorce Decrees

When a decree of divorce has been issued by the Tribal District Court, said Court is hereby authorized to dissolve said decree at any future time, provided that both parties to the divorce action file a petition, signed by both parties, asking that said decree be set aside and held for naught. And further provided that both parties seeking to have the decree set aside shall make proof to the Court that neither one has married a third party during the time since the issuance of the decree of divorce.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1130]

Section 1131. Termination of Money Payments

(a) In any divorce decree which provides for periodic alimony payments, the Court shall plainly state, at the time of entering the original decree, what dollar amount of all or a portion of each such payment is designated as support, and what dollar amount of all or a portion of such payment is a payment pertaining to a division of property. Upon the death of the recipient, the payments for support, if not already accrued,

shall terminate, but the payments pertaining to a division of property shall continue until completed; and the decree shall so specify. The payments pertaining to a division of property shall be irrevocable. Upon the presentation of proper proof of death of such recipient, the Court shall order the judgment for the payment of support to be terminated, and the lien thereof released unless a proper claim shall be made for any amount of past due support payments by any executor, administrator or heir within ninety (90) days from the date of death of the recipient. The Court shall also provide in the divorce decree that any such payment of support shall terminate after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not rendered payment of the same inequitable. Provided however, that unless the recipient shall commence an action for such determination within ninety (90) days of the date of such remarriage, the Court shall, upon proper application, order the payment of support terminated and the lien thereof discharged.

(b) An order for continuing the payments of support shall not be a lien against the real property of the person ordered to make such payments unless the Court order specifically provides for a lien on real property or an arrearage in such payments of support has been reduced to a judgment.

(c) The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the Court shall have jurisdiction to reduce or terminate support payments upon proof of substantial change of circumstances relating to need for support or ability to support. As used herein, cohabitation shall mean the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a marriage according to law, or not necessarily meeting all the standards of a common law marriage. The petitioner shall make application for modification and shall follow notification procedures as used in other divorce decree modification actions.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1131]

Section 1132. Mailing of Alimony and Support Payments

If a judicial order, judgment or decree directs that the payment of child support, alimony, temporary support or any similar type of payment be made through the office of the Court Clerk, then it shall be the duty of the Court to transmit such payments to the payee by first class United States mail, if requested to do so by the payee. Such payments shall be mailed to the payee at the address specified in writing by the payee. In the event of a change in address of the payee, it shall be the duty of the payee to furnish to the Court Clerk in writing the new address of the payee.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1132]

Section 1133. Modification of Decree

Notwithstanding that a decree of divorce has become final, the Tribal District Court may modify its judgment relative to child support or alimony at any time in the interest of justice and equity, having due regard for the needs of the family or families of the parties, upon motion for modification filed in the original action and served with summons requiring a answer to said motion within twenty (20) days. Such motions shall be heard as if they were an independent proceeding and discovery may be had. The order of the Court determining the motion for modification shall be a final appealable order.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1133]

Section 1134. Effect on Common Law Divorce

This subchapter shall not be interpreted in derogation of the Tribal common law of Divorce, but is intended for use by those who prefer the statutory method of divorce or who cannot agree as to child custody and support, spousal support, property division, or other similar matters upon which agreement is necessary to effectuate a Tribal common law divorce.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1134]

CHAPTER TWELVE

FORCIBLE ENTRY AND DETAINER

Section 1201. Forcible Entry and Detention

The Tribal District Court shall have jurisdiction to try all actions for the forcible entry and detention, or detention only, of real property, and claims for the collection of rent or damages to the premises may be included in the same action, but other claims may not be included in the same action. A judgment in an action brought under this Title shall be conclusive as to any issues adjudicated therein, but it shall not be a bar to any other action brought by either party.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1201]

Section 1202. Powers of Court

The Court shall have power to inquire in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who, having a lawful and peaceable entry into land or tenements, unlawfully and by force hold the same, and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands and tenements are held unlawfully, then the Court shall cause the party complaining to have restitution thereof.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1202]

Section 1203. Extent of Jurisdiction

Proceedings under this Chapter may be had in all cases against tenants holding over their terms and, incident thereto, to determine whether or not tenants are holding over their terms; in sales or real estate on executions, orders or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made; in sales by executors, administrators, guardians and on partition, where any of the parties to the partition were in possession at the commencement

of the suit, after such sales, so made, on execution or otherwise, shall have been examined by the Court, and the same adjudged valid; and in the cases where the defendant is a settler or occupier of lands and tenements without color of title, and to which the complainant has the right of possession. This section is not to be construed as limiting the provisions of the preceding Section.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1203]

Section 1204. Issuance and Return of Summons

The summons shall be issued and returned as in other cases, except that it shall command the Chief of the Tribal Police or other person serving it, to summon the defendant to appear for trial at the time and place specified therein, which time shall be not less than five (5) days nor more than ten (10) days from the date that the summons is issued. The summons shall apprise the defendant of the nature of the claim that is being asserted against him; and there shall be endorsed upon the summons the relief sought and the amount for which the plaintiff will take judgment if the defendant fails to appear. In all cases, pleadings may be amended to conform to the evidence.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1204]

Section 1205. Service of Summons

The summons may be served as in other cases except that such service shall be at least three (3) days before the day of trial and the return day shall not be later than the day of trial, and it may also be served by leaving a copy thereof with some person over fifteen (15) years of age, residing on the premises, at least three (3) days before the day of trial; or if service cannot be made by the exercise of reasonable diligence on the tenant or on any person over the age of fifteen (15) years residing on the premises, the same may be served by registered mail with return receipt postmarked at least three (3) days before the date of trial.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1205]

Section 1206. Constructive Service of Summons

If, in the exercise of reasonable diligence, service cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen (15) years of age, then in lieu of service by registered mail, service may be obtained for the sole purpose of adjudicating the right to restitution of the premises by the Tribal Police's posting said summons conspicuously on the building on the premises, and if there be no building on said premises, then by posting the same at some conspicuous place on the premises sought to be recovered at least ten (10) days prior to the date of trial, and by the claimant's mailing a copy of said summons to the defendant at his last known address by registered or certified mail at least seven (7) days prior to said date of trial. Such service shall confer no jurisdiction upon the Court to render any judgment against the defendant for the payment of money nor for any relief other than the restoration of possession of the premises to the claimant. Such service shall not be rendered ineffectual by the failure of the defendant to actually receive or sign a return receipt for such mailed process.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1206]

Section 1207. Answer or Affidavit by Defendant

(a) In all cases in which the defendant wishes to assert title to the land or that the boundaries of the land are in dispute, he shall, before the time for the trial of the cause, file a verified answer or an affidavit which contains a full and specific statement of the facts constituting his defense of title or boundary dispute. If the defendant files such a verified answer or affidavit, the action shall proceed as one in ejectment before the Tribal District Court. If the defendant files and affidavit he shall file answer within ten (10) days after the date the affidavit is filed.

(b) In all cases in which the cause of action is based on an asserted breach of a lease by the defendant, or the termination or expiration of a lease under which the defendant claims an interest in the property in a verified answer or affidavit, the plaintiff may proceed with the forcible entry and detainer action instead of an ejectment action.

(c) No answer by the defendant shall be required before the time for trial of the cause.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1207]

Section 1208. Trial by Court

All cases for forcible entry and detainer or detainer only shall be tried by the Court unless the rent and damages prayed for exceeds ten thousand dollars (\$10,000.00).

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1208]

Section 1209. Procedure Where No Jury Available

If a jury be properly demanded by either party, and no jury is available from the general panel, the Judge shall immediately direct that an open venire be issued to the Chief of the Tribal Police or one of his deputies, for such number of jurors as may be deemed necessary, to be selected without resorting to the jury wheel. The persons selected shall have the qualifications of jurors.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1209]

Section 1210. Attorney Fee

A reasonable attorney fee shall be allowed by the Court to the prevailing party.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1210]

Section 1211. Writ of Execution - Form - New Trial

If judgment be for plaintiff, the Court shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in substantially the following form:

[HEADING]

The [Tribe] to the Chief of the Tribal Police:

Whereas, in a certain action for the forcible entry and detention (or for the forcible detention as the case may be) of the following described premises, to wit:

_____ tried before me, wherein,
 _____ was plaintiff, and
 _____ was defendant,
 judgment was rendered on the _____ day of _____, 20____, that the plaintiff have restitution of said premises; and also that he recover rent, attorney fees and costs in the sum of _____; you, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises and the said plaintiff to have restitution of the same; also that you levy on the goods and chattels of the said defendant, and made the cost aforesaid, and all accruing costs, and of this writ, make legal service and due return.

Witness my hand this _____ day of _____, 20____.

A. B. Judge

A motion for a new trial may be filed only within three (3) days of judgment but shall not operate to stay execution.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1211]

Section 1212. Stay of Execution

If no supersedeas bond be posted within the time provided herein, the officer shall forthwith restore the plaintiff to possession of the premises by executing the writ prescribed in the preceding section and shall make levy to collect the amount of the judgment and all accruing costs. The officer's return shall be as upon other executions.

The defendant shall have three (3) days after the date of judgment to post supersedeas bond conditioned as provided by law. This time limit may be enlarged by a trial judge's order to not more than ten (10) days after the date of judgment. The posting of a supersedeas bond shall not be construed to relieve

the defendant of his duty to pay current rent as it become due while the appeal is pending. The rent shall be paid into the Court Clerk's office together with poundage. If there be controversy as to the amount of rent, the Judge shall determine by order how much shall be paid in what time intervals. Withdrawal by the plaintiff of rent deposited in the Court Clerk's office pending appeal shall not operate to estop him from urging on appeal his right to the possession of the premises. Failure to pay current rentals while the appeal is pending shall be considered as abandonment of the appeal.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1212]

Section 1213. Forcible Entry and Detainer Action on Small Claims Docket

An action for forcible entry and detainer brought pursuant to procedures prescribed otherwise in this Title standing alone and when joined with a claim for recovery of rent, damages to the premises, where the total recovery sought, exclusive of attorney's fees and other court costs, does not exceed the jurisdictional amount for the small claims court, shall be placed on the small claims docket of the Tribal District Court. The Court Clerk shall in connection with such actions prepare the affidavit, by which the action is commenced, and the summons and generally assist the unrepresented plaintiffs to the same extent that he is now required so to do under the Small Claims Procedure Act.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1213]

Section 1214. Affidavit Form

The actions for unlawful entry and detainer standing alone or when joined with a claim for collection of rent or damages to the premises, or both, shall be commenced by filing an affidavit in substantially the following form with the Clerk of the Court:

IN THE TRIBAL DISTRICT COURT
[NAME OF TRIBE]

_____)
 Plaintiff)
 vs.) Case No. _____
 _____)
 Defendant)

FORCIBLE ENTRY AND DETAINER
AFFIDAVIT

[Name of Reservation])
 [Name of Tribe]) ss.

_____, being duly sworn, deposes and says:

The defendant resides at _____, and defendant's mailing address is _____.

The defendant is indebted to the plaintiff in the sum of \$_____ for rent and for the further sum of \$_____ for damages to the premises rented by the defendant; the plaintiff has demanded payment of said sum(s) but the defendant refused to pay the same and no part of the amount sued for herein has been paid,

and/or

The defendant is wrongfully in possession of certain real property within the Tribal jurisdiction described as _____; the plaintiff is entitled to possession thereof and has made demand on the defendant to vacate the premises, but the defendant refused to do so.

Plaintiff

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public (Clerk or Judge)

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1214]

Section 1215. Summons - Form

The summons to be issued in an action for forcible entry and detainer shall be in the following form:

SUMMONS

The [Name of Tribe] to the within named defendant:

You are hereby directed to relinquish immediately to the plaintiff herein total possession of the real property described as _____ or to appear and show cause why you should be permitted to retain control and possession thereof.

This matter shall be heard at _____ [Name or address of Courthouse], in _____ [Town], [Tribe], at the hour of _____ o'clock on the _____ day of _____ month, 20____, or at the same time and place three (3) days after service hereof, whichever is the latter. (This date shall be not less than five (5) days from the date summons is issued.) You are further notified that if you do not appear on the date shown, judgment will be given against you as follows:

For the amount of the claim for deficient rent and/or damages to the premises, as it is stated in the affidavit of the plaintiff and for possession of the real property described in said affidavit, whereupon a writ of assistance shall issue directing the Tribal Police to remove you from said premises and take possession thereof.

In addition, a judgment for costs of the action, including attorney's fees and other costs, may also be given.

Dated this ____ day of _____, 20____.

Clerk of the Court (or Judge)

Plaintiff or Attorney

Address

Telephone Number

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW# T 6 § 1215]

CHAPTER THIRTEEN

HABEAS CORPUS

Section 1301. Persons Who May Prosecute Writ

Every person restrained of his liberty, under any pretense whatsoever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint and shall be delivered therefrom when the restraint is illegal.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1301]

Section 1302. Application for Writ

Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

(a) By whom the person, in whose behalf the writ is requested, is restrained of his liberty, and the place where restrained, naming all the parties, if they are known, or describing them, if they are not known.

(b) The cause or pretense of the restraint according to the best of the knowledge and belief of the applicant.

(c) If the restraint be alleged to be illegal, in what the illegality consists.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1302]

Section 1303. Writ Granted

Writs of habeas corpus may be granted by any judge or magistrate of the Tribal District Court, either in open Court, or in vacation; and upon application the writ shall be granted without delay.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1303]

Section 1304. Direction and Command of Writ

The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the Court, or Judge, at such time and place as the Court or Judge shall direct, to show cause if any he has for the restraint imposed upon the person on whose behalf the writ is issued, to do and receive what shall be ordered concerning him and have then and there the writ in his possession.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1304]

Section 1305. Delivery to Tribal Police Chief

If the writ be directed to the Chief of the Tribal Police, it shall be delivered by the Clerk to him without delay.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1305]

Section 1306. Service on Party Other Than Tribal Police Chief

If the writ be directed to any other person, it shall be delivered to the Chief of the Tribal Police and shall be by him served by delivering the writ to such person without delay.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1306]

Section 1307. Service When Person Not Found

If the person to whom such writ is directed cannot be found, or shall refuse admittance to the Chief of the Tribal Police, the same may be served by leaving it at the residence of the person to whom it is directed, or by affixing the same on some conspicuous place, either of his dwelling house or where the party is confined under restraint.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1307]

Section 1308. Return and Enforcement of Writ

The Chief of the Tribal Police or other person to whom the writ is directed shall make immediate return thereof, and if he neglect or refuse, after due service, to make return, or shall refuse or neglect to obey the writ by producing the party named therein, and no sufficient excuse be shown for such neglect or refusal, the Court shall enforce obedience by attachment.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1308]

Section 1309. Manner of Return

The return must be signed and verified by the person making it, who shall state:

(a) The authority or cause of restraint of the party in his custody.

(b) If the authority be in writing, he shall return a copy and produce the original on the hearing.

(c) If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer.

He shall produce the party on the hearing, unless prevented by sickness or infirmity or other good cause, which must be shown in the return.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1309]

Section 1310. Proceedings in Case of Sickness or Infirmity

The Court or Judge, if satisfied with the truth of the allegation of sickness or infirmity or other good cause for not producing the body of the person, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance; the new matter shall be verified, except in cases of commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1310]

Section 1311. Hearings and Discharge

The Court or Judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuance thereof, shall discharge the party.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1311]

Section 1312. Limits on Inquiry

No Judge shall inquire into the legality of any judgment or process, whereby the party is in custody, or discharge him when the term of commitment has not expired in either of the cases following:

(a) Upon process issued by any Court or Judge of the United States, or of any State or where such Court or Judge has exclusive jurisdiction; or

(b) Upon any lawful process issued on any final judgment of a Court of competent jurisdiction; or

(c) For any contempt of any Court, officer, or body having authority to commit; but an order of commitment as for a contempt, upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications; or

(d) Upon a warrant or commitment issued from the Tribal District Court, or any other Court of competent jurisdiction, upon indictment or information.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1312]

Section 1313. Writ Upon Temporary Commitment

No person shall be discharged from an order of temporary commitment issued by any judicial or peace officer for want of

bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged want of probable cause; but in all such cases, the Court or Judge shall summon the prosecuting witnesses, investigate the criminal charges, and discharge, let to bail or recommit the prisoner, as may be just and legal, and recognize witnesses when proper.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1313]

Section 1314. Writ May Issue to Admit to Bail

The writ may be had for the purpose of letting a prisoner to bail in civil and criminal actions.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1314]

Section 1315. Notice to Interested Persons

When any person has an interest in the detention, the prisoner shall not be discharged until the person having such interest is notified.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1315]

Section 1316. Powers of Court

The Court or Judge shall have power to require and compel the attendance of witnesses and to do all other acts necessary to determine the case.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1316]

Section 1317. Officers Not Liable for Obeying Orders

No Tribal policeman or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge or enforcement made thereon.

[History: L. 1993, January 6; R-30-92;

PUBLIC LAW # T 6 § 1317]

Section 1318. Issuance of Warrant of Attachment

Whenever it shall appear by affidavit that anyone is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the Court or Judge, or will suffer some irreparable injury before compliance with the writ can be enforced, the Court or Judge may cause a Warrant of Attachment to be issued, reciting the facts and directed to the Chief of the Tribal Police, commanding him to take the person thus held in custody or restraint, and forthwith bring him before the Court or Judge, to be dealt with according to law.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1318]

Section 1319. Arrest of Party Causing Restraint

The Court or Judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1319]

Section 1320. Execution of Warrant of Attachment

The officer shall execute the Warrant of Attachment by bringing the person therein named before the Court or Judge; and the like return and proceedings shall be required and had as in case of writs of habeas corpus.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1320]

Section 1321. Temporary Orders

The Court or Judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings that justice may require. The custody of any party

restrained may be changed from one person to another, by order of the Court or Judge.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1321]

Section 1322. Issuance and Service on Sunday

Any writ, warrant, or process authorized by this Chapter may be issued and served, in case of emergency, on any day including Saturdays, Sundays and holidays.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1322]

Section 1323. Issue of Process

All writs and other process, authorized by the provisions of this Chapter may be issued by the Clerk of the Court upon direction of a Judge, and except summons, sealed with the seal of such Court and shall be served and returned forthwith, unless the Court or Judge shall specify a particular time for any such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed and temporary commitments, when necessary.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1323]

Section 1324. Protection of Infants and Insane Persons

Writ of habeas corpus shall be granted in favor of parents, guardians, masters, husbands, and wives; and to enforce the rights and for the protection of infants and insane persons; and the proceedings shall, in all such cases, conform to the provisions of this Chapter.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1324]

Section 1325. Security for Costs not Required

No deposit or security for costs shall be required of an applicant for a writ of habeas corpus.

[History: L. 1993, January 6; R-30-92;
PUBLIC LAW # T 6 § 1325]

CHAPTER FOURTEEN

MANDAMUS

Section 1401. Functions of Mandamus

The writ of mandamus may be issued by the Supreme Court or the Tribal District Court, or any justice thereof to any inferior tribunal, corporation, board or person, to compel the performance of any act which the law specially enjoins as a duty resulting from an office, trust or station; but though it may require an inferior tribunal or officer to exercise its judgment or proceed to the discharge of any of its functions, it cannot control judicial discretion, or discretion committed to a Tribal Agency by law unless exercised in violation of law.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1401]

Section 1402. Writ Not Issued Where Remedy at Law

This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may be issued on the information of the party beneficially interested.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1402]

Section 1403. Forms and Contents of Writs

The writ is either alternative or peremptory. The alternative writ must state concisely the fact showing the obligation of the defendant to perform the act, and his omission to perform it, and command him that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed or show cause before the Court at a specified time and place, why he has not done so; and that he then and there return the writ with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

[History: L. 1993, January 6; R-30-92]

PUBLIC LAW # T 6 § 1403]

Section 1404. When Peremptory Writ to Issue

When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases, the alternative writ must be first issued. The peremptory writ should not be issued if there is any doubt that a valid excuse may exist.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1404]

Section 1405. Petition Upon Affidavit

The petition for the writ must be made upon affidavit, and the Court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1405]

Section 1406. Allowance and Service of Writ

The allowance of the writ must be endorsed thereon, signed by the Judge of the Court granting it, and the writ must be served personally upon the defendant; if the defendant, duly served, neglects to return the same, he shall be proceeded against as for contempt.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1406]

Section 1407. Answer

On the return day of the alternative writ, or such further day as the Court may allow, the party on whom the writ shall have been served may show cause, by answer made in the same manner as an answer to a complaint in a civil action.

[History: L. 1993, January 6; R-30-92]

PUBLIC LAW # T 6 § 1407]

Section 1408. Failure to Answer

If no answer be made, a peremptory mandamus must be allowed against the defendant; if answer be made, containing new matter, the same shall not, in any respect, conclude the plaintiff, who may, on the trial or other proceeding, avail himself of any valid objections to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1408]

Section 1409. Similarity to Civil Action

No other pleading or written allegation is allowed than the writ and answer; these are the pleadings in the case, and have the same effect, and are to be construed and may be amended in the same manner as pleadings in a civil action; and the issues thereby joined must be tried, and the further proceedings thereon had in the same manner as in a civil action.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1409]

Section 1410. Recovery by Plaintiff

If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the Court, or by referees, as in a civil action, and costs; and a peremptory mandamus shall also be granted to him without delay.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1410]

Section 1411. Damages Bar Further Actions

A recovery of damages, by virtue of this Chapter, against a party who shall have made a return to a writ of mandamus is a bar to any other action against the same party for the making of such return.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1411]

Section 1412. Penalty for Refusal or Neglect to Perform

(a) Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty specially enjoined by law, if it appear to the Court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the Court may impose a civil fine, not exceeding five hundred dollars (\$500.00), upon every such officer or members of such body or board. Such fine, when collected, shall be paid into the Tribal treasury.

(b) Whenever the peremptory writ of mandamus is directed to any private person commanding the performance of any private duty specifically enjoined by law, if it appear to the Court that such person has, without just excuse, refused or neglected to perform the duty so enjoined, the Court may impose a civil fine, not exceeding five hundred dollars (\$500.00) upon such person and may commit him to the custody of the Tribal Police for a term of sixty (60) days or until he shall perform or agree to perform such duty or otherwise purge his contempt. The Court may, in an appropriate case, order the Chief of the Tribal Police to perform the act required which performance shall have the same effect as if performed by the person to whom the peremptory writ was issued.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1412]

CHAPTER FIFTEEN

QUO WARRANTO

Section 1501. Quo Warranto - Relief Obtainable by Civil Action

The writ of quo warranto, and proceedings by information in the nature of quo warranto, are abolished and the remedies heretofore obtainable in those forms may be had by civil action; provided, that such cause of action may be instituted and maintained by the contestant for such office at any time after the issuance of the certificate of election by the Tribal Election Board, and before the expiration of thirty (30) days after such official is inducted into office; provided further, that all suits now pending, contesting such elections, shall not be dismissed because of the prematurity as to time of their commencement, which shall be deemed valid and timely, if commenced after the issuance of the election certificate or after twenty (20) days after the result of said election having been declared by such election board; and provided further, that this Chapter shall not apply to any primary election.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1501]

Section 1502. Grounds for Action

Such action may be brought in the Supreme Court by its leave or in the Tribal District Court, in the following cases:

(a) When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or shall claim any franchise within the Tribal jurisdiction or any office in any corporation created by authority on this Tribe;

(b) Whenever any public officer shall have done or suffered any act which, by the provisions of law, shall work a forfeiture of his office;

(c) When an association or number of persons shall act within the Tribal jurisdiction as a corporation without being legally incorporated or domesticated;

(d) When any corporation does or admits acts which amount to a surrender or a forfeiture of its rights and privileges as a

corporation, or when any corporation abuses its power or intentionally exercises powers not conferred by law; or

(e) For any other cause for which a remedy might have been heretofore obtained by writ of quo warranto, or information in the nature of quo warranto.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1502]

Section 1503. Persons Who May Bring Action

When the action is brought by the Attorney General when directed to do so by competent authority, it shall be prosecuted in the name of the Tribe, but where the action is brought by a person claiming an interest in the office, franchise or corporation, or claiming any interest adverse to the franchisee, gift or grant, which is the subject of the action, it shall be prosecuted in the name and under the direction, and at the expense of such persons. Whenever the action is brought against a person for usurping an office by the Attorney General, he shall set forth in the petition the name of the person rightfully entitled to the office and his right or title thereto; when the action in such case is brought by the person claiming title, he may claim and recover any damage he may have sustained.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1503]

Section 1504. Judgment in Contest for Office

In every case contesting the right to an office, judgment shall be rendered according to the rights of the parties, and for the damages the plaintiff or person entitled may have sustained, if any, to the time of the judgment.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1504]

Section 1505. Judgment for Plaintiff

If judgment be rendered in favor of the plaintiff or person entitled, he shall proceed to exercise the functions of the

office, after he has been qualified as required by law; and the Court shall order the defendant to deliver over all the books and papers in his custody or within his power, belonging to the office from which he shall have been ousted.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1505]

Section 1506. Enforcement of Judgment

If the defendant shall refuse or neglect to deliver over the books and papers, pursuant to the order, the Court, or Judge thereof, shall enforce the order by attachment or imprisonment or both.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1506]

Section 1507. Separate Action for Damages

When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the action, have a separate action for the damages at any time within one (1) year after the judgment. The Court may give judgment of ouster against the defendant, and exclude him from the office, franchise or corporate rights; and in cases of corporations, may give judgment that the same shall be dissolved.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1507]

Section 1508. Corporations

If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the Court may cause the costs to be collected by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of the corporation, and may restrain any disposition of the effects of the corporation, appoint a receiver of its property and effects, take an account, and make a distribution thereof among the creditors and persons entitled.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1508]

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CHAPTER SIXTEEN

SMALL CLAIMS PROCEDURE

Section 1601. Small Claims

The following suits may be brought under the small claims procedure:

(a) Actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, where the amount sought to be recovered, exclusive of attorney's fees and other court costs, does not exceed two thousand dollars (\$2,000.00). Libel or slander actions may not be brought in the small claims court.

(b) Actions to replevy personal property where the value of the personal property sought to be replevied does not exceed two thousand dollars (\$2,000.00); where the claims for possession of personal property and to recover money are pleaded in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought to be recovered, exclusive of attorney's fees and other costs, does not exceed two thousand dollars (\$2,000.00).

No action may be brought under small claims procedure by any collection agency, collection agent or any assignee of a claim. In those cases which are uncontested the amount of attorney's fees allowed shall not exceed ten percent (10%) of the judgment.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1601]

Section 1602. Small Claims Affidavit

Actions under the small claims procedure shall be initiated by plaintiff or his attorney filing an affidavit in substantially the following form with the Clerk of the Court:

IN THE TRIBAL DISTRICT COURT OF
THE SAC AND FOX NATION OF MISSOURI
SMALL CLAIMS DIVISION

_____)	
Plaintiff)	
vs.)	Small Claims No. _____
_____)	
Defendant)	

SMALL CLAIMS AFFIDAVIT

SAC AND FOX NATION OF MISSOURI)	
SAC AND FOX RESERVATION)	SS.

_____, being duly sworn, deposes and says:

That the defendant resides at _____, (within)(without) the Tribal jurisdiction, and that the mailing address of the defendant is _____.

That the defendant is indebted to the plaintiff in the sum of \$ _____ for _____, which arose (within)(without) the Tribal jurisdiction that plaintiff has demanded payment of said sum, but the defendant refused to pay the same and no part of the amount sued has been paid.

and/or

That the defendant is wrongfully in possession of certain personal property described as _____ that the value of said personal property is \$ _____. That plaintiff is entitled to possession of said personal property, but that defendant wholly refused to do so.

Plaintiff

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public (Clerk or Judge)

My Commission Expires: _____

On the affidavit shall be printed:

ORDER

The People of the Sac and Fox Nation of Missouri, to the within named defendant:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers, and witnesses needed by you to establish your defense to said claim.

This matter shall be heard at Sac and Fox Nation Tribal District Court, [complete address of courthouse building], in [complete address of courthouse], at the hour of ___ o'clock __.m. of the ___ day of _____, 20____, or at the same time and place seven (7) days after service hereof, whichever is the latter. And you are further notified that in case you do not so appear, judgment will be given against you as follows:

For the amount of said claim as it is stated in said affidavit, for possession of the personal property described in said affidavit, and, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of this order.

Dated this ___ day of _____, 20____.

Clerk of the Court (or Judge)

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1602]

Section 1603. Preparation of Affidavit

The claimant shall prepare such an affidavit as is set forth in Section 1602 of this Chapter or, at his request, the Clerk of the Court shall draft the same for him. Such affidavit may be presented by the claimant in person or sent to the Clerk by mail. Upon receipt of said affidavit, properly sworn to, the Clerk shall fill in the blanks in the order printed on said copy and sign the order.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1603]

Section 1604. Service of Affidavit

Unless service by the Tribal Police Chief or other authorized person is requested by the plaintiff, the defendant shall be served by mail. The Clerk shall enclose a copy of the affidavit and the order in an envelope addressed to the

defendant at the address stated in said affidavit, prepay the postage, and mail said envelope to the defendant by certified mail and request a return receipt from addressee only. The Clerk shall attach to the original affidavit the receipt for the certified letter and the return card thereon or other evidence of service of said affidavit and order. If the envelope is returned undelivered and sufficient time remains for making service, the Clerk shall deliver a copy of the affidavit and order to the Tribal Police Chief who shall serve the defendant in the time stated in Section 1605.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1604]

Section 1605. Date for Appearance

The date for the appearance of the defendant as provided in the order endorsed on the affidavit shall not be more than thirty (30) days nor less than ten (10) days from the date of said order. The order shall be served upon the defendant at least seven (7) days prior to the date specified in said order for appearance of the defendant. If it is not served upon the defendant, the plaintiff must apply to the Clerk for a new alias order setting a new day for the appearance of the defendant, which shall not be more than thirty (30) days nor less than ten (10) days from the date of the issuance of the new order. When the Clerk has fixed the date for appearance of the defendant, he shall inform the plaintiff, either in person or by certified mail, of said date and order the plaintiff to appear on said date.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1605]

Section 1606. Transfer of Actions

On motion of the defendant the action shall be transferred from the small claims docket to the general civil docket of the Court, provided said motion is filed and notice given to opposing party at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer and, provided further, that the defendant deposit the cost of filing a complaint in a civil action, and thereafter, the action shall proceed as other civil actions and shall not proceed under the small claims procedure. The Clerk shall enclose a copy of the

order transferring the action from the small claims docket to the general docket in an envelope addressed to the plaintiff, with postage prepaid. Within twenty (20) days of the date the transfer order is signed, the plaintiff shall file a civil complaint that conforms to the standards of civil pleadings and shall be answered and proceed to trial as in other civil actions. If the plaintiff ultimately prevails in the action so transferred by the defendant, a reasonable attorney's fee shall be allowed to plaintiff's attorney to be taxed as costs in the case.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1606]

Section 1607. Counterclaim or Setoff

No formal pleading, other than the claim and notice, shall be necessary, and there is no requirement to assert any counterclaim or cross claim, but if the defendant wishes to state new matter which constitutes a counterclaim or a setoff, he shall file a verified answer, a copy of which shall be delivered to the plaintiff or his attorney in person, and filed with the Clerk of the Court not later than forty-eight (48) hours prior to the hour set for the appearance of said defendant in such action. Such answer shall be made in substantially the following form:

COUNTERCLAIM OR SETOFF

IN THE TRIBAL DISTRICT COURT
FOR THE SAC AND FOX NATION OF MISSOURI
SMALL CLAIMS DIVISION

_____)	
Plaintiff)	
)	
vs.)	Small Claims No. _____
)	
_____)	
Defendant)	

CLAIM OF DEFENDANT

Sac and Fox Nation)	
)	ss.
Sac and Fox Reservation)	

_____, being first duly sworn, deposes and says:
That said plaintiff is indebted to said defendant in the sum of
\$ _____ for _____, which amount defendant
prays may be allowed as a claim against the plaintiff herein.

Defendant

Subscribed and sworn before me this _____ day of
_____, 20__.

Notary Public (or Clerk or Judge)

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1607]

**Section 1608. Actions for Amounts Exceeding in Excess of Two
Thousand Dollars**

If a claim, a counterclaim, or a setoff is filed for an amount in excess of two thousand dollars (\$2000.00), the action shall be transferred to the general civil docket of the Tribal District Court unless both parties agree in writing and file said agreement with the papers in the action that said claim, counterclaim or setoff shall be tried under the small claims procedure. If such an agreement has not been filed, a judgment in excess of two thousand dollars (\$2000.00) may not be enforced for the part that exceeds two thousand dollars (\$2000.00). The defendant shall deposit with the Clerk of the Court costs that are charged in other cases, less any sums that have been already paid to the Clerk, or his claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1608]

Section 1609. Attachment or Garnishment, Other Matters

No attachment or prejudgment garnishment shall issue in any suit under the small claims procedure. Proceedings to enforce or collect a judgment rendered by the trial court in a suit under the small claims procedure shall be in all respects as in other cases. No depositions shall be taken or interrogatories or other discovery proceedings shall be used under the small

claims procedure except in aid of execution. No new parties shall be brought into the action, and no party shall be allowed to intervene in the action.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1609]

Section 1610. Trial by Court

Actions under the small claims procedure shall be tried to the Court. Provided, however, if either party wishes a reporter, he must notify the Clerk of the Court in writing at least forty-eight (48) hours before the time set for the defendant's appearance and must deposit with said notice with the Clerk the sum of twenty dollars (\$20.00) against the costs of producing a record. The plaintiff and the defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, and the Judge may call such witnesses and order the production of such documents as he may deem appropriate. The hearing and disposition of such actions shall be informal with the sole object of dispensing speedy justice between the parties.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1610]

Section 1611. Payment of Judgment

If judgment be rendered against either party for the payment of money, said party shall pay the same forthwith, provided, however, the Judge may make such order as to time of payment or otherwise as may, by him, be deemed to be right and just.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1611]

Section 1612. Appeals

Appeals may be taken from the judgment rendered under small claims procedure to the Supreme Court of the Tribe in the same manner as appeals are taken in other civil actions, provided that any party which did not request a reporter as provided in

Section 1610 shall not be granted a new trial or other relief on appeal due to lack of a record.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1612]

Section 1613. Fees

A fee shall be charged and collected for the filing of the affidavit for the commencement of any action, for the filing of any counterclaim or setoff, for the mailing of the copy of the affidavit as determined by rules of the Court and, if the affidavit and order are served by the Tribal Police, the Clerk shall collect the usual police service fee, which shall be taxed as costs in the case. After judgment, the Clerk shall issue such process and shall be entitled to collect such fees and charges as are allowed by law for the like services in other actions. All fees collected hereunder shall be deposited with other fees that are collected by the Tribal District Court. Provided that any statute providing for an award of attorney's fees shall be applicable to the small claims division if the attorney makes an appearance in the case, whether before or after judgment or on hearing for disclosure of assets.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1613]

Section 1614. Costs

The prevailing party in an action is entitled to costs of the action, including the costs of service of the order for the appearance of the defendant and the costs of enforcing any judgment rendered therein.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1614]

Section 1615. Judgments Rendered Under Small Claims Procedure

(a) Except as otherwise provided herein, judgments rendered under the Small Claims Procedure shall not be entered upon the judgment docket. Such judgment shall not become a lien upon real property unless entered upon the judgment docket as hereinafter provided.

(b) Any small claims judgment, when satisfied by payment other than through the office of the Court Clerk or otherwise discharged, may be released by the Court upon written application to the Court by the judgment debtor and upon proof of due notice thereof having been mailed by the Court Clerk to the judgment creditor at his last known address at least ten (10) days prior to the hearing of the application. Payment of all costs necessary to accomplish said release shall be paid by the judgment debtor.

(c) Such judgment shall become a lien on any non-trust interest in real property of the judgment debtor within the Tribal jurisdiction only from and after the time a certified copy of the judgment has been filed in the office of the Court Clerk for entry in the Clerk's land tract records book. No judgment under the Small Claims Procedure Act shall be a lien on the real property of a judgment debtor until it has been filed in this manner. When a judgment is entered upon the judgment docket, the Court Clerk shall instruct the prevailing party of the manner in which to proceed to file such judgment for the purpose of obtaining a lien against the real property of the judgment debtor and the Court Clerk shall provide the proper certified copy of the judgment necessary to file.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1615]

Section 1616. Fee for Docketing Judgments

The Court Clerk shall, upon payment by the prevailing party of a fee established by Court rule, cause the judgment to be entered upon the judgment docket. Fees collected pursuant to this Section shall become part of the cost of the action.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1616]

Section 1617. Other Actions in Small Claims Court

By leave of the Court, and with the consent of all parties, other actions not provided for herein, or exceeding the maximum amount allowed to be claimed by Sections 1601 and 1608, except actions for liable and slander, may be tried under the small claims procedure. The motion for leave to file in such cases

shall contain the consent of the defendant endorsed thereon, or such consent shall be promptly filed upon the submittal for filing of the small claims affidavit.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 1617]