

**CITIZEN POTAWATOMI NATION
CIVIL PROCEDURE
TITLE 9**

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PREFACE

Section 9-0-001 Scope of This Act

This Act governs procedure in all suits of a civil nature whether at law or in equity. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

Section 9-0-002 Jurisdiction in Civil Actions

- (A) The Tribal Court may exercise jurisdiction over any person or subject matter on any basis consistent with the Constitution of the Tribe, and any specific restrictions or prohibitions contained in Federal law.
- (B) The Citizen Potawatomi Nation maintains civil and criminal jurisdiction over its members and others who enter into a voluntary relationship with the Nation.
- (C) Citizenship or membership in the Citizen Potawatomi Nation is voluntary. Anyone who chooses to disassociate himself or herself from the Nation may do so by withdrawing from the tribal rolls. Therefore, those individuals who maintain membership in the Citizen Potawatomi Nation do so knowing that they voluntarily “assume tribal relations” with the Nation
- (D) Individuals who voluntarily “assume tribal relations” with the Citizen Potawatomi Nation through voluntary tribal membership, intermarriage, Residence, or other substantial activities are subject to the criminal and civil jurisdiction of the Citizen Potawatomi Nation. Criminal and civil jurisdiction over tribal members shall not be dependent upon the location or jurisdiction of their residence.

Section 9-0-003 Title of this Act

This Act shall be known as the Code of Civil Procedure.

Section 9-0-004 Force of the Tribal Common Law

The customs and traditions of the Tribe, to be known as the Tribal Common Law, as modified by the Tribal Constitution and statutory law, judicial decisions, and the condition and wants of the people, shall remain in full force and effect in like force with any statute insofar as the common law is not modified, but all Tribal statutes shall be liberally construed to promote their object.

Section 9-0-005 Definitions

- (A) “Chief Executive Officer” shall mean the Chairman of the Tribe.

- (B) “Other Indian Tribe” shall mean any Federally recognized Indian Tribe.
- (C) “Real Property” or “non-trust interest in real property” shall mean any interest in real property within the Tribal jurisdiction other than Indian trust title or fee title subject to a restriction upon alienation by the United States. Nothing in this Act shall be construed as affecting or attempting to affect the trust or restricted title to trust or restricted Indian land.
- (D) “Reservation” means the recognized treaty reservation boundaries.
- (E) “Tribal Legislative Body” means the Constitutional Legislature.
- (F) “Tribal jurisdiction” means all Indian Country as defined in 18 U.S.C. §1151 and all other jurisdiction consistent with Federal law.

Section 9-0-006 No Effect Upon Sovereign Immunity

Nothing in this Act contained shall be construed to be a waiver of sovereign immunity of the Tribe, its officers, employees, agents, or political subdivisions or a consent to any suit beyond limits now or hereafter specifically stated by Tribal law.

Section 9-0-007 Declaratory Judgment

The Court, in any actual controversy shall have the authority to declare the rights of the parties even though a money judgment or equitable relief is not requested or due. The Court may issue its declaratory judgment recognizing Tribal common law marriages and divorces, and provide for the custody of children and division of property in such divorces.

Section 9-0-008 Court Costs Not Charged to Tribe

The Tribe, its officers, employees, agents, or political subdivisions acting in their official capacity shall not be ordered to pay Court costs or attorney fees but if these entities prevail, the cost may be charged to the losing party.

Section 9-0-009 Laws Applicable to Civil Actions

- (A) In all civil cases, the Tribal District Court shall apply:
 - (1) The Constitution, Statutes, and Common Law of the Tribe not prohibited by applicable Federal law, and, if none, then
 - (2) The Federal law including Federal common law, and, if none, then
 - (3) The laws of any State or other jurisdiction which the Court finds to be compatible with the public policy and needs of the Tribe.

- (B) No Federal or state law shall be applied to a civil action pursuant to paragraphs (2) and (3) of Subsection (A) if inconsistent with the laws or public policy of the Tribe.
- (C) Where any doubt arises as to the customs and usages of the Tribe, the Court, on its own motion or the motion of any party, may subpoena and request the advice of elders and councilors.

Section 9-0-010 through 9-0-011 Reserved

Section 9-0-012 Court Action When No Procedure Provided

In any case in which no specific procedure is provided by Tribal law or Court rule the Court may proceed in any lawful fashion not inconsistent with Tribal law, the rules of the Court, or the Indian Civil Rights Act.

**CHAPTER ONE
PLEADINGS, MOTIONS, AND ORDERS**

Section 9-1-101 Commencement of Action

A civil action is commenced by filling a complaint.

Section 9-1-102 One Form of Action

There shall be one form of action to be known as a “civil action”.

Section 9-1-103 “Claim” Defined

The term “claim” means any right of action which may be asserted in a civil action or proceeding.

Section 9-1-104 Constructive Notice of Pendency of Action

Upon the filing of a complaint in the District Court, the action gives constructive notice to third persons of its pendency. While an action is pending, no third persons shall acquire an interest in the subject matter of the suit against plaintiff’s title, except as provided in Sections 9-1-105 and 9-1-106.

Section 9-1-105 Notice of Pendency Contingent Upon Service

Notice of the pendency of an action shall have no effect unless service of process is made upon the defendant within one hundred twenty (120) days.

Section 9-1-106 Special Notice for Actions Pending in Other Court

No action pending in either state, federal or other Tribal Court shall constitute notice to any real property or personal property located within Tribal jurisdiction until a notice of pendency, identifying the case and the court and giving the legal description of the land or the description of the personal property and its location is filed with the Court Clerk.

Section 9-1-107 Pleadings Allowed: Form of Motions

- (A) There shall be a complaint and an answer; a reply to a counterclaim; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person not an original party is summoned under Section 9-1-117; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except the Court may order a reply to an answer or a third-party answer.
- (B) **Motions and Other Papers.**
 - (1) An application for an Order shall be by motion which, unless made during shall:
 - (a) Be made in writing,
 - (b) State particular grounds and
 - (c) State the relief or order sought.

The requirement is fulfilled if stated in a written notice of the motion hearing.

- (2) The rules applicable matters of form apply to all papers filed.

Section 9-1-108 General Rules of Pleading

- (A) **Claims for Relief:** A claim for relief, whether an original, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement showing the pleader is entitled to relief, and (2) a demand for judgment alternative relief may be demanded.
- (B) **Defenses; Form of Denials:** A party shall state in short and plain terms his defenses and shall admit or deny the allegations. He may make his denials or generally denies. A pleader may deny only a part or a qualification; they shall specify what is true and deny the remainder. When they intend to controvert all, including the Court's jurisdiction, he may do so by general denial subject to Section 9-1-111. If they is without knowledge or information sufficient to form a belief, he shall so state.
- (C) **Affirmative Defenses:** A party shall state defense relied upon:

- (1) Accord and satisfaction;
- (2) Arbitration and award;
- (3) Assumption of risk;
- (4) Contributory negligence;
- (5) Discharge in bankruptcy;
- (6) Duress;
- (7) Estoppel;
- (8) Failure of consideration;
- (9) Fraud;
- (10) Illegality;
- (11) Injury by fellow servant;
- (12) Laches;
- (13) License;
- (14) Payment;
- (15) Release;
- (16) Res judicata;
- (17) Statute of Frauds;
- (18) Statute of Limitations;
- (19) Waiver;
- (20) Any other matter.

If a defense is designated as a counterclaim or counterclaim as a defense, the Court, shall treat the pleading as if properly designated. If a defense is not raised it is deemed waived.

- (D) **Effect of Failure to Deny:** Allegations other than as to the amount of damage are admitted when not denied. Allegations to which no responsive pleading is required shall be taken as denied or avoided.
- (1) A party may state and rely upon two or more statements of a claim or defense or hypothetically, either in one or in separate counts or defenses. When two or more alternative statements are made and one independently would be sufficient, the pleading is not insufficient by one or more of the alternative statements. A party may state separate claims or defenses regardless of consistency and grounds. All statements shall be made subject to Section 9-1-111.
- (E) **Construction of Pleadings:** All pleadings shall be liberally construed to do substantial justice.

Section 9-1-109 Pleadings Special Matters

- (A) **Capacity:** It is not necessary to state the capacity or the authority of a representative party to sue or be sued or the legal existence of an association made a party, except to show the jurisdiction of the Court. When a party the legal existence of any party or capacity the party is representative capacity to sue or be sued he shall so specifically state and include particulars within the pleader's knowledge, and shall have the burden of proof.
- (B) **Fraud, Mistake, Condition of the Mind:** In all allegations of fraud or mistake, the circumstances shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind may be generally alleged.
- (C) **Conditions Precedent:** In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally all conditions precedent have occurred. A denial of performance or occurrence of conditions precedent shall be particularly plead.
- (D) **Official Document or Act:** It is sufficient to assert an official document or act was issued or done lawfully.
- (E) **Judgment:** It is sufficient to assert the judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer without showing jurisdiction to render it.
- (F) **Time and Place:** Assertions of time and place are material and shall be considered like other materials matters.
- (G) **Special Damage:** Special damages shall be specific, but amounts need not be alleged to obtain judgment.

Section 9-1-110 Form of Pleadings, Motions, and Briefs

- (A) **Caption; Names of Parties:** Every pleading shall contain the name of the Court, title of the action, file number, and a designation in Section 9-1-107 (A) terms. The title of the action shall include names of all parties; in later pleadings it is sufficient to state the first party on each side with an indication of other parties. In the initial third party complaint, counterclaim, cross-claim, motion and petition in intervention or a pleading suing or being sued in a representative capacity, designations of all parties shall be made. Thereafter, papers may contain only the name of the first party in each category with an indication of other parties.
- (B) **Paragraphs; Separate Statements:** All assertions shall be made in numbered paragraphs, each shall be limited to a single set of circumstance; and may be referred to by number in all succeeding filings. Claims founded upon a separate transaction or occurrence and defenses other than denials shall be stated separately.
- (C) **Adoption b Reference; Exhibits:** Statements in filings may be adopted by reference. A copy of any written instrument which is a filed exhibit is part thereof for all purposes.

Section 9-1-111 Signing of Pleadings

- (A) Every pleading by an attorney or advocate shall be signed by an attorney or advocate of record including address and telephone number.
- (B) A party shall sign and state his address and telephone number except when specifically provided pleadings need not be verified or accompanied by affidavit.

Section 9-1-112 Defenses and Objections – When and How Presented – By Pleadings or Motions – Motion for Judgment on the Pleadings

- (A) **When Presented:**
 - (1) A defendant shall serve his answer within 20 days after service of summons and complaint, except when service is made under Section 9-2-116, 9-2-118 or 9-2-121 and a different time is prescribed by order of Court, or Tribal Law.

A Party served with a cross-claim shall serve an answer within 20 days after service. The plaintiff shall serve his reply to a counterclaim within 20 days after service of the answer, or, if a reply is ordered by the Court, within 20 days after service unless otherwise directed. The Tribe or an officer or agency shall serve an answer to the complaint or cross-claim, or counterclaim, within 60 days after service upon the Tribal attorney (or Chief

Executive Officer if no Tribal attorney) of the pleading, no default judgment shall be entered against the Tribe.

The service of a motion under this Section alters time periods, unless fixed by Court order. (1) If the Court denies the motion or postpones its disposition until trial, the response shall be served within 10 days after notice of the Court's action. (2) If the Court grants a motion for a more definite statement the response shall be served within 10 days after the service.

- (2) Within the time an answer may be served, a defendant may file any entry of appearance and reserve twenty (20) additional days to answer or defend. Any entry of appearance shall extend the time to respond twenty (20) days from the last date for answering and is a waiver of all defenses numbered 2, 3, 4, 5, and 9 of paragraph (B) provided a waiver of sovereign immunity shall not be implied under number 9 of paragraph (B).

(B) **How Presented:** Every defense, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading if one is required, except the following defenses may be made by motion:

- (1) Lack of subject matter jurisdiction;
- (2) Lack of personal jurisdiction;
- (3) Improper venue or forum non conveniens;
- (4) Insufficiency of process;
- (5) Insufficiency of service of process;
- (6) Failure of state a claim upon which relief can be granted;
- (7) Failure to join a party under Section 303;
- (8) Another action pending between the same parties and claim;
- (9) Lack of capacity to be sued; and
- (10) Lack of capacity to sue.

No defense or objection is waived by being joined with one or more defenses or objections a claim which the adverse party is not required to serve a responsive pleading, he may assert at trial any defense. If, a motion asserting number (6) to dismiss matters outside the pleading are presented and not excluded by the Court, the motion shall be treated as a summary judgment as provided in Section 9-9-105, and parties shall present all materials made pertinent

by Section 9-9-105. Every motion to dismiss shall be accompanied by a brief in support unless waived by the Court.

- (C) **Motion for Judgment on the Pleadings:** After pleadings are closed, any party may move for judgment on the pleadings. If matters outside the pleadings are presented and not excluded, the motion shall be treated as one for summary judgment and parties shall be given opportunity to present all materials made pertinent by Section 9-9-105. Every motion to dismiss shall be accompanied by a brief in support unless waived by the Court.
- (D) **Preliminary Hearing:** The defenses enumerated in subdivision (B) and the motion for judgment in subdivision (C) shall be heard and determined before trial on application unless the Court orders the hearing and determination be deferred.
- (E) **Motion for More Definite Statement:** A pleading to which a response is permitted is so vague or ambiguous a party cannot be required to respond, he may move for a more definite statement. The motion shall point out defects and the details desired. If the motion is granted and the order is not obeyed within 10 days after notice or within time fixed, the Court may strike the pleading and make such order as just. Such motions are not favored.
- (F) **Motion to Strike:** Upon motion before responding to a pleading or, if no response pleading is permitted upon motion made within 20 days after service of the pleading or upon the Court's own initiative, the Court may order stricken any insufficient defense or redundant, immaterial, impertinent, or scandalous matter. A motion to strike an insufficient defense if matters outside the pleadings are presented and not excluded, the motion shall be treated as partial summary judgment and parties shall be given opportunity to present all materials made pertinent by judgment rules.
- (G) **Waiver or Preservation of Certain Defenses:**
 - (1) A defense of lack of jurisdiction over the person, improper venue or an inconvenient form, insufficiency of process, insufficiency of service or process or lack of capacity to sue is waived (A) if omitted as described in subdivision (G), or (B) if neither made by motion nor in a responsive pleading or an amendment permitted (Section 9-1-118 (A) or (C)) if a permissive counterclaim is filed (Section 9-1-114 (B)).
 - (2) A defense of failure to state a claim failure to join a party indispensable (Section 9-3-103), and an objection of failure to state a legal defense and a defense of another action pending may be made in any pleading permitted or ordered (Section 9-1-107 (A)), or by motion for judgment on the pleadings, or at the trial.

- (3) The Court may, permit additional defenses or objections at any time prior to a decision.

Section 9-1-113 Final Dismissal on Failure to Amend

Upon dismissing a claim for relief, the Court shall grant leave to amend and shall specify the time for filing which should normally be ten (10) days. If not filed timely, final judgment of dismissal with prejudice shall be entered on motion except for excusable neglect. Within the time for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

Section 9-1-114 Counterclaim and Cross-Claim

- (A) **Compulsory Counterclaims:** A pleading shall state a counterclaim against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of opposing party's claim and does not require the presence of third parties of whom the Court cannot acquire jurisdiction. The pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action or (2) the opposing party brought suit by attachment or other process by which the Court did not acquire jurisdiction pleading a compulsory counterclaim does not waive any defenses which are properly raised.
- (B) **Permissive Counterclaims:** A pleading may state a counterclaim not arising out of the transaction or occurrence that is the subject matter of opposing party's claim.
- (C) **Counterclaim Exceeding Opposing Claim:** A counterclaim may diminish, defeat, exceed or be different from that sought by opposing party.
- (D) **Counterclaim Against the Tribe:** This Act shall not enlarge limits on the right to assert counterclaims or to claim credits against the Tribe or an officer or agency. A compulsory counterclaim does not waive the defenses of sovereign immunity when made by the Tribe or an officer or an agency thereof. A permissive counterclaim waives the defense of sovereign immunity for the purpose of determining the permissive counterclaim stated by the Tribe, its officer, or agency, but does not waive such defenses for any other purpose.
- (E) **Counterclaim Maturing or Acquired After Pleading:** A claim which matured or was acquired may, with permission be presented by supplemental pleading.
- (F) **Omitted Counterclaim:** When a pleader omits counterclaim when justice requires, he may by permission be allowed an amendment with leave of the Court (Section 9-1-118 (A)).
- (G) **Cross-claim Against Co-party:** A pleading may state a cross-claim against a co-party arising out of the transaction or occurrence that is the subject matter either

of the original action or of a counterclaim or relating to any property the subject matter of the original action. Such cross-claim may include a claim the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

- (H) **Joinder of Additional Parties:** Persons may be made parties to a counterclaim or cross-claim (Section 9-3-103 and 9-3-104).
- (I) **Separate Trials; Separate Judgments:** If the Court orders separate trials (Section 9-7-105 (B)), judgment on a counterclaim, cross-claim, or third party claim may be rendered (9-9-101 (B)) even if claims of the opposing party have been dismissed or disposed.

Section 9-1-115 Counterclaim: Effect of the Statutes of Limitation

- (A) Where a counterclaim and the claim of the opposing party arise out of the same transaction or occurrence, the counterclaim shall not be barred by a statute of limitation and the counterclaimant shall not be precluded from recovering an affirmative judgment.
- (B) Where a counterclaim and the claim of the opposing party:
 - (1) Do not arise out of the same transaction or occurrence; and
 - (2) Both claims are for money judgments; and
 - (3) Both claims occurred before either was barred by a statute of limitation; and
 - (4) The counterclaim is barred by a statute of limitation, the counterclaim may be asserted only to reduce the opposing party's claim.
- (C) Where a counterclaim was barred by a statute of limitation before the claim of the opposing party arose; the barred counterclaim cannot be used for any purpose.

Section 9-1-116 Counterclaims Against Assigned Claims

A party, other than a holder in due course, who acquired a claim takes the claim subject to any defenses or counterclaims that could have been asserted against the original claimant, but the recovery of a counterclaim may be asserted against the assignee only to reduce the recovery of the opposing party.

Section 9-1-117 Third-Party Practice

- (A) **When Defendant May Bring in Third Party:** A defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person

not a party who may be liable to him for all or part of plaintiff's claim or who may be liable to him on a claim arising out of the transaction or occurrence the subject matter of any claim(s). The third-party plaintiff need not obtain leave to make service if he files the third-party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave upon notice to all parties. The person served with the summons and third-party complaint; hereinafter the third-party defendant shall make his defenses to the third-party plaintiff's claim, counterclaims and cross-claims against other third-party defendants. The third-party defendant may assert any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant shall assert his defenses and counterclaims and cross-claims.

- (B) **Party Defendants in Real Property Actions:** In an action involving real property, any person appearing in the title, or claiming or appearing to claim some interest in the real property, may be included as a party defendant by using substantially the following "said defendant named herein claims some right, title, lien, estate, encumbrance, claim, assessment, or interest in and to the real property involved herein, adverse to plaintiff which constitutes a cloud upon the title of plaintiff and defendant has no right, title, lien, estate, encumbrance, claim, assessment, or interest, either in law or in equity, in and to the real property involved herein", that same is insufficient to include any and all claims, known or unknown, that such defendant may have in and to the real property involved in such case, it not being necessary to set out the reason for such claim or claims or other pleading for such person.

Section 9-1-118 Amended and Supplemental Pleadings

- (A) **Amendments:** A party may amend once before a responsive pleading is served or, if the pleading is one which no responsive pleading is permitted and has not been placed upon the trial calendar, amend within 20 days after it is served, including adding omitted counterclaims or cross-claims or to add or drop parties. Otherwise a party may amend only by leave of Court or by written consent of the adverse party; and leave shall be freely. A party shall respond to an amended pleading within the time remaining for the original pleading or within 10 days after service of the amendment whichever period is longer, unless otherwise ordered.
- (B) **Amendments to Conform to the Evidence:** When issues not plead are tried by express or implied consent of parties, they shall be treated as if plead Amendment may be necessary to conform to the evidence and may be made upon motion at any time, even after judgment; but failure to amend does not affect the result. If

evidence is objected to on the ground it is not within the issues plead the Court may allow amendment and shall do so freely when the actions merited and the admission of such evidence would not prejudice the Court. The Court may grant a continuance to the objecting party. Where the pretrial conference order has superseded the pleadings, the pre-trial order is controlling and is sufficient to amend the order and the pleadings need not be amended.

- (C) **Relation Back of Amendments:** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence in the original pleading, the amendment or supplemental pleading relates back to the date of the original pleading. An amendment changing the party relates back if the foregoing provision is satisfied and, within the period provided for commencing the action the party brought in (1) has received notice of the action he will not be prejudiced in maintaining his defense, and (2) know or should have known, but for a mistake identity the action would have been against him.

The delivery or mailing of process by the Tribal Attorney, his designee, or Attorney General, or an agency or officer to a proper defendant satisfies clauses (1) and (2) with respect to the Tribe.

- (D) **Supplemental Pleadings:** Upon motion the Court may, upon reasonable notice and just terms permit service of supplemental; pleadings of transactions or occurrences happening since the date of the original pleading. Permission may be granted though the original pleading's claim for relief or defense is defective. The Court may order an adverse party to respond.

Section 9-1-119 Pre-Trial Procedure; Formulating Issues

- (A) The Court may direct attorneys to appear for a conference to:
- (1) Simplify issues;
 - (2) Amend or supplement pleadings;
 - (3) Obtain admissions of acts and documents;
 - (4) Limiting expert witnesses;
 - (5) Consider submission of issues to a master for findings to be used as evidence when a jury trial;
 - (6) Consider other matters.
- (B) The Court shall make an order reciting action taken amendments allowed and agreements made which limits issues to those not disposed of by admissions or

agreements; and such order when entered controls, unless modified at trial to prevent injustice. The Court may establish by Rule a pre-trial calendar.

Section 9-1-120 Lost Pleadings

If a pleading is lost or withheld, the Court may allow substitution.

Section 9-1-121 Tenders of Money or Property

When a tender of money or property is alleged, it shall not be necessary to deposit the same in Court at filing but it shall be sufficient if deposited at trial, or when ordered.

Section 9-1-122 Dismissal of Actions

(A) Voluntary Dismissal: Effect Thereof:

- (1) By Plaintiff: An action may be dismissed without Court Order (Section 9-3-107) or (Section 9-8-102).
 - (a) By filing a notice of dismissal before service by the adverse party of an answer or motion of summary judgment, or
 - (b) By filing a stipulation of dismissal signed by all parties who have appeared. Unless stated the dismissal is without prejudice, except a notice of dismissal without the consent of the defendants operates as an adjudication upon the merits when filed by a plaintiff who has once voluntarily dismissed, without consent of defendants, in any Tribal, State or Federal Court, an action based on or including the same claim, unless the dismissal was entered due to inability to obtain personal jurisdiction over an indispensable party or lack of subject matter jurisdiction. If the plaintiff claims the exceptions, it shall so state in its notice of dismissal and shall apply to the District Court, upon notice for an order determining the previous dismissal was within the exceptions and the plaintiff is entitled to dismiss is without prejudice. The Court may grant such application with regard for costs, attorney fees, and inconveniences, and any motive to harass, embarrass, or delay the defendants.
- (2) By Court order Except as in paragraph (1) an action shall not be dismissed at the plaintiff's instance save upon Court order and terms and conditions the Court deems proper. If a counterclaim has been plead prior to service of plaintiff's motion to dismiss, the action shall not be dismissed against defendant's objection unless the counterclaim remains pending for independent adjudication.

Unless specified, a dismissal is without prejudice.

- (B) **Involuntary Dismissal:** Upon plaintiff's failure to prosecute or comply with this Act, rule, or order defendant may move for dismissal. After plaintiff, in a bench trial has completed presentation of evidence, the defendant, without waiving his right to offer evidence may move for dismissal on the ground plaintiff has shown no right to relief. The Court may then render judgment against plaintiff or may decline. If the Court renders judgment against plaintiff, the Court shall make findings. Unless the Court order specifies, a dismissal other than a dismissal for lack of jurisdiction, or for failure to join a party is an adjudication upon the merits.
- (C) **Dismissal of Counterclaim, Cross-Claim, or Third Party Claim:** This section applies to the dismissal of any counterclaim, cross-claim, or third-party claim.

CHAPTER TWO PROCESS, SUMMONS FILING OF PLEADINGS AND OTHER PAPERS

Section 9-2-101 Issuance of Summons

Upon filing of complaint, the Court Clerk shall issue a summons and deliver it for service with a copy for plaintiff's attorney, Chief of Tribal Police or person specially appointed to serve it. Upon request of plaintiff, separate or additional summons shall issue against any defendants.

Section 9-2-102 Form of Summons

The summons shall be signed by the Court Clerk under the seal of the Court, contain the Court's name and names of parties, be directed to the defendant, state name and address of plaintiff's attorney, if any, otherwise plaintiff's address, and time within which defendant is to appear, and notify him that his failure may result in judgment by default. When service is made, the summons, or notice, or order in lieu of summons shall correspond to that required.

Section 9-2-103 Personal Service

- (A) Process including a subpoena, if served in person, shall be served by the Chief of the Tribal Police or his deputy, a person licensed, or a person specially appointed by the Court.
- (B) When process has been served and return filed with the Court Clerk, a copy of the return shall be sent to the serving party's attorney within three (3) days.
- (C) Process, other than subpoena, shall not be served by a party's attorney except (Section 9-2-104). A pro se party may make service in the same manner and to the same extent.

- (D) The Court shall freely make special appointments.

Section 9-2-104 Service by Mail

- (A) A summons and petition, and a subpoena, may be served by mail by plaintiff's attorney, or any person authorized.
- (B) Service is obtained by mailing the subpoena, or copy of summons and petition, by certified mail, return receipt requested and delivery restricted to the addressee.
- (C) Service shall not be the basis for a default judgment unless the record contains a return receipt showing acceptance or returned envelope showing refusal of process by the defendant. If delivery is refused, upon notice of refusal and at least ten (10) days before applying for entry of default judgment, the person serving process shall mail defendant by first-class a copy of the summons and petition and a notice that despite refusal the case will proceed and judgment will be rendered. A copy of said notice and proof of mailing shall be filed prior to the entry of a judgment. Any such judgment shall be set aside upon defendant's motion, the return receipt was signed, or delivery was refused by an unauthorized person. Such motion shall be filed within one (1) year after the defendant has notice of default.
- (D) Concerning a legal entity (Section 9-2-117 (C)) acceptance or refusal by any officer or by employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal.
- (E) Concerning a governmental organization acceptance or refusal by an employee of the office (Section 9-2-117) who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal.

Section 9-2-105 Service by Publication

Publication is permitted when stated in the petition, verified by plaintiff or attorney, or in a separate affidavit that with due diligence service cannot be made by any other method.

Section 9-2-106 Publication Service Upon Parties and the Unknown Successors of Named Parties

- (A) Service of summons upon named parties, their unknown successors named decedent, or dissolved partnership, corporation, or other association may be made by publication when stated in the complaint, verified by plaintiff or attorney, or in a separate affidavit that the verified or affiant does not know, and with due diligence cannot ascertain.

- (1) Whether a person is alive, and, if dead, the names or whereabouts of his successors;
 - (2) The names or whereabouts of a party and unknown successors, of the named decedent or other parties.
 - (3) Whether a partnership, corporation, or other association continues to have legal existence or the name or whereabouts of its officers or successors.
 - (4) Whether any person designated as trustee continues as trustee; or names or whereabouts of successors, or
 - (5) The names or whereabouts of owners or holder of special assessment or any bonds, or bills or similar instruments.
- (C) Service shall be made by notice, signed by the Court Clerk, in a newspaper authorized to publish legal notices within Pottawatomie County and of general circulation at a last known address.
- (D) All named parties, unknown successors, and other persons may be included in one notice. The notice shall state:
- (1) The name of the Court,
 - (2) The names of the parties,
 - (3) Designate parties whose unknown successors are being served,
 - (4) That the named parties and their unknown successors have been sued and must answer on or before a date certain not less than thirty-one (31) days from date of publication or a described judgment, will be rendered,
 - (5) Notice need not state the judgment will include recovery of costs.
- (E) If jurisdiction is based on property, any real property and property or debts to be attached or garnished must be described.
- (F) Service is complete upon publication.

Section 9-2-107 Publication Notice for Recovery of Money

It is not necessary to state separate items but the total money amount claimed must be stated. It is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid.

Section 9-2-108 Publication Notice in Quiet Title Actions

In real property quiet title actions it is not necessary to state the nature of the claim or interest of either party, and in describing the requested judgment should defendant fail to answer, it is sufficient to state a decree quieting plaintiff's title to the described property will be entered. It is not necessary to state a decree barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer. In quiet title actions notice shall be published twice. The second publication shall not be less than seven nor more than forty-five days after the first publication. The answer shall be due thirty-one days after the second publication, and service is complete upon the second publication.

Section 9-2-109 Completion of Publication Service

Service by publication shall be proved by the affidavit of any person having knowledge of the publication with a copy of the published notice. No default judgment may be entered until proof of service by publication is filed and approved by the Court.

Section 9-2-110 Entry of Default on Party Served by Publication

Before entry of a default judgment or order, the Court shall conduct an inquiry whether the plaintiff, or someone acting on their behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of parties. Before entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or association, the Court shall conduct an inquiry to ascertain whether the requirements of publication procedure have been satisfied.

Section 9-2-111 Vacating Default Judgments Where Service is by Publication

- (A) A Party against whom a default judgment or order has been rendered, may, at any time within three (3) years after the date of the judgment or order, have the judgment or order opened.
- (B) Before a judgment or order is opened, the applicant shall notify the adverse party, and shall
 - (1) File a full answer,
 - (2) Pay all costs if required and,
 - (3) Satisfy the Court by affidavit or evidence that during the pendency he had no actual notice in time to appear and defend.
- (C) The title to any property which passed to a purchaser in good faith by or in consequence of the judgment or order to be opened shall not be affected by this proceeding. Nor shall proceedings affect the title of any property sold before judgment under an attachment.

- (D) The adverse party shall be allowed to present evidence against the application.

Section 9-2-112 Certain Technical Errors Not Grounds for Vacating Judgment

- (A) No judgment against unknown heirs or devisees shall be construed, or held to be, either void or voidable upon the ground that an affidavit of the plaintiff that the names of heirs or devisees, and their residences, are unknown was not annexed to his complaint if one affidavit is on file and all judgments, if not void, are declared to be valid and binding.
- (B) No judgment against any person or party served by publication shall be construed or held to be void or voidable because the affidavit on file was made by plaintiff's attorney or because the complaint or other pleading was verified, by plaintiff's attorney or party seeking such service. It shall be conclusively presumed, if otherwise sufficient, the allegations and statements made by such attorney shall have the same force and effect as if actually made by plaintiff.

Section 9-2-113 Meaning of "Successors" for Publication Purposes

"Successors" includes all heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, of a named individual, partnership, corporation, or association.

Section 9-2-114 Minimum Contacts Required for Effective Long Arm Service

Service outside of Tribal jurisdiction does not give the Court personal jurisdiction over a defendant not subject to the Tribe's jurisdiction, or who has not, in person or through an agent, submitted to the jurisdiction either by appearance, consent, or entered into sufficient contacts with the Tribe, its members, or territory to justify tribal jurisdiction consistent with due process and federal Indian law.

Section 9-2-115 Consent is Effective Substitute for Service

Acknowledgment on the back of summons or voluntary appearance of defendant equals service.

Section 9-2-116 Reserved

Section 9-2-117 Manner of Making Personal Service

The summons and complaint shall be served together. The plaintiff shall furnish necessary certified copies. If the complaint is not served with summons, the case shall not be dismissed but time to answer may be extended upon motion. The person serving shall state on

the copy the date service is made. Where service is made by mail, the summons shall state on the copy the date of mailing. These provisions are not jurisdictional. If failure to comply prejudices the party served, the Court may extend the time to answer. Service of summons, complaint and subpoenas shall be made:

- (A) Upon an individual, not an infant or incompetent, by delivering to them personally or by leaving copies at their dwelling or usual place of abode with some person fifteen (15) years of age or older then residing therein or by delivering to an appointed agent.
- (B) Upon an infant or minor, by delivering a copy to either parent, legal guardian, or person with whom they reside if under fourteen years. If over fourteen years, by serving either parent or legal guardian, or person with whom they reside and by serving personally if the legal guardian cannot be located.
- (C) Upon a corporation, partnership or unincorporated association, by delivering or mailing a copy to an officer, manager or agent. Service may be had by delivering the summons and complaint to a place of business and leaving a copy with the person in charge at the time.
- (D) Upon the United States, by delivering a copy to the United States Attorney's office for the Western District of Oklahoma and by sending a copy registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy by registered or certified mail to such officer or agency.
- (E) Upon any office or agency of the United States, by serving the United States and by delivering a copy of the summons and complaint to such office or agency.
- (F) Upon a state, municipal corporation, any other Indian Tribe or governmental organization subject to suit, by delivering copy of the summons and complaint to the Chief Executive Officer or by serving prescribed by law of that state or Tribe.
- (G) Upon the Tribe, Tribe offices or agency by delivering a copy of the summons and complaint to the Chief Executive Officer or officer, and by registered or certified mail, return requested, to the Tribal Attorney and in any action attacking the validity of an order of an officer or agency of the Tribe not made a party, by also sending a copy by registered or certified mail return receipt request to such officer.

Section 9-2-117.1 Effect of Service of Some of Several Defendants

- (A) Against multiple defendants, and not all are served, plaintiffs may:

- (1) Against defendants jointly indebted upon contract, tort, or other cause plaintiff may proceed against defendants served, and if judgment (is recovered), it may be entered against: (a) all defendants only as may be enforced against the joint property of all, and (b) against defendants served as may be enforced against the separate property and if subject to arrest, against defendants served.
 - (2) Against defendants severally liable, plaintiff may, without prejudice against those not served, proceed against defendants served as if the only defendants.
- (B) A judgment against defendants served shall not bar judgment against those not served.

Section 9-2-118 Service Upon Party Not Inhabitant of or Found Within the Reservation

- (A) Whenever an ordinance or Tribal order provided for service of summons, or notice, or order in lieu of summons upon a party not an inhabitant of or found within the jurisdiction of the Tribe service may be made as prescribed, or, if no provision exists prescribing the service by following this act.
- (B) Against a foreign corporation or association where service is authorized upon a Tribal Officer, and the party elects to serve the Tribal Officer, service shall be made:
- (1) The Court Clerk shall issue a summons and shall mail or personally serve copies with a copy of the complaint and service fee to the Tribal Officer. The Court Clerk shall indicate the date copies were delivered. Within three (3) working days, the Tribal Officer shall send copies to such foreign corporation or association, by registered or certified mail, return receipt requested, at its office by the latest information filed. The summons shall state the last known address by due diligence. The Tribal Officer shall maintain one copy.
 - (2) The original summons served on the Tribal Officer shall be in form and substance the same as suits against residents. The summons shall state an answer date not less than forty-five (45) days or more than sixty (60) days from the date issued.

Section 9-2-119 Territorial Limits of Effective Service

- (A) All process may be served anywhere within the territorial jurisdiction of the Nation, and when authorized by an ordinance of the Tribe, or by this Act, or by Order of the Court, beyond these territorial limits.

- (B) Persons brought in as parties, or as additional parties or counterclaim or cross-claim, may be served at all places outside the reservation of the Tribe but within the United States, and persons not tribal members required to respond to an order of commitment for civil contempt may be served, but not arrested. Tribal members may be served and arrested.
- (C) When the jurisdiction is authorized, service of summons and complaint may be made outside this reservation:
 - (1) By personal delivery;
 - (2) In the place's lawful manner where service is made;
 - (3) By publication;
 - (4) As directed by the foreign authority or Court.

Section 9-2-120 Return of Service of Process

- (A) The server shall make proof of service within the response time. If service is other than the police Chief or deputy, or an attorney by mail, he shall make affidavit. Return of receipt shall be attached to the proof of service. A copy of each publication of notice shall be attached to the return of service. Failure to make proof of service does not affect the validity of service.
- (B) The person serving summons shall state on the copy served and the return, the date of service. Where service is by mail, the person shall state the date of mailing. These provisions are not jurisdictional, if failure to comply prejudices the party served, the Court may extend time to answer.

Section 9-2-121 Alternative Provisions for Service in a Foreign Country

- (A) **Manner:** When the service is upon a party in a foreign country, it is sufficient if service of the summons and complaint is made: (1) in the lawful manner of the Tribe, state, or foreign country; or (2) as directed by the foreign authority; or (3) upon an individual, personally, and a corporation, partnership or association, officer, managing or general agent; or (4) by mail, requiring a signed receipt, dispatched by the Clerk; or (5) as directed by Court order. Service (3) or (5) above may be made by persons not a party and 18 years of age or designated by order of the District Court or the foreign Court. On request, the Clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign Court or officer who will make service.
- (B) **Return:** Proof of service may be made by the law of the Tribe, state, or foreign country, or by order of the Court. When service is made by mail proof of service shall include a receipt signed by the addressee or other evidence of the delivery.

Section 9-2-122 Subpoena

- (A) **For Attendance of Witnesses; Form; Issuance:** Every subpoena shall be issued by the Clerk, shall state the name of the Court and the title of the action, and shall command each person to attend and give testimony at a time and place specified. The Clerk shall issue a subpoena or a subpoena for the production of documentary or physical evidence signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.
- (B) **For Production of Documentary Evidence:** A subpoena may command a person to produce books, papers, documents, or tangible things designated. The Court, upon motion at or before the time specified for compliance may (1) quash or modify if unreasonable and oppressive or (2) condition denial of the motion upon the payment of reasonable costs.
- (C) **Service:** A subpoena may be served by the Police Chief, deputy, or by authorized person not a party and 18 years of age. Fees and mileage may be charged. When issued on behalf of the Tribe, fees and mileage need not be tendered, but fees paid shall be charged to such Tribal Officer or agency. A subpoena may be served if accepted by the addressee. All subpoena service expenses may be recovered as costs.
- (D) **Subpoena for Taking Depositions; Place of Examination:**
- (1) Proof of service to take a deposition or presentation of notices attached constitutes sufficient authorization for the clerk's issuance of subpoenas. The subpoena may command the person to produce and permit inspection and copying of designated books, papers, documents, or tangible things permitted.
- The person may, within 10 days after service or on or before the time specified for compliance, if such time is less than 10 days serve upon the attorney written objection. If objected, the server shall not inspect and copy the materials except pursuant to Court order. The server may, move upon notice to the deponent for an order at any time.
- (2) A resident of Tribal jurisdiction may be required to attend an examination within the Tribal jurisdiction, may be required to attend in the country or district of residence or is employed or transacts his business, or at a convenient place by Court order. A nonresident may be required to attend in the county where served or resides or at a convenient place by Court order.
- (E) **Subpoena for Hearing or Trial:**

- (1) At a party's request subpoenas shall be issued by the Clerk and may be served within Tribal jurisdiction, or any place without the Tribal jurisdiction and, when provided the Court upon application and cause shown may authorize the service of a subpoena at any other place.
 - (2) A subpoena directed to a witness in a foreign country shall issue as may be provided by any Tribal statute.
- (F) **Contempt:** Failure by any person without adequate excuse to obey a subpoena or other order of the Court may be deemed a contempt of the Court.

Section 9-2-123 through 9-2-229 Reserved

Section 9-2-130 Summons, Time Limit for Service

- (A) If service of process is not made within one hundred twenty (120) days after filing and plaintiff cannot show good cause why such service was not made, the action shall be dismissed without prejudice upon the Courts own initiative with notice to the plaintiff or upon motion.
- (B) If service of process is not made within one hundred eighty (180) days after filing, the action shall be deemed dismissed without prejudice. This Section shall not apply to service in a foreign country.

Section 9-2-131 Service and Filing of Pleadings and Other Papers

- (A) **Service: When Required:** Except as otherwise provided every order pleading, discovery papers, written motion notice, appearance, demand, offer of judgment, designation of record and similar paper shall be served upon the parties. No service need be made on parties in default for failure to appear except pleadings asserting new or additional claims shall be served in the manner provided.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession at the time of seizure, and any person then known to claim an ownership interest.

- (B) **Service: How Made:** Service shall be made upon the party's attorney unless otherwise ordered, which shall be made by delivering or by mailing a copy, if no address is known, by leaving it with the Clerk who shall mail a copy to the party's last address. Delivery of a copy means: handing it to the attorney or party; or leaving it at his office with his Clerk or other person in charge; or leaving it in a conspicuous place; or if no office leaving it at his dwelling or place of abode with some person fifteen years of age or older resident.

- (C) **Service: Numerous Defendants:** If there are unusual numbers of defendants, the Court, upon motion or on its own, may order service of defendant's pleadings and replies need not be made between defendants and any cross-claim, counterclaim, or matter constituting an avoidance by other parties and the filing of such pleading and service upon plaintiff constitutes due notice to the parties. A copy of such order shall be served upon the parties.
- (D) **Filing:** All papers after the complaint shall be filed either before service or within a reasonable time. Discovery materials need not be filed except by Court order.
- (E) **Filing with the Court Defined:** The filing of pleadings and papers shall be made with the Clerk. A Judge may permit filing with them, they shall note the date and transmit them.

Section 9-2-132 through 9-2-139 Reserved

Section 9-2-140 Computation and Enlargement of Time

- (A) **Computation:** In computing any period of time, the day of the event, act or default shall not be included in the designated period. The last day shall be included, unless a Saturday, Sunday, or legal holiday, or any day when the Clerk's office is closed before 4:00 p.m. The period runs until the next day which is not Saturday, Sunday or legal holiday or any other day when the Clerk's office is closed before 4:00 p.m. When the period of time 7 days or less, Saturdays, Sundays, and legal holidays or any day the Clerk's office is closed before 4:00 p.m. shall be excluded. "Legal holiday" includes any day appointed as a holiday by the United States President or Congress or the Tribe.
- (B) **Enlargement:** The Court for cause shown may (1) with or without motion or notice order the period enlarged if a request is made before the expiration of the period or (2) upon motion after the expiration, permit the act where the failure was the result of excusable neglect; but it may not extend the time for, except under their conditions.
- (C) **For Motions – Affidavits:** A written motion and notice of the hearing shall be served 5 days before the hearing, unless a different period is fixed. Such order may be made ex parte. When a motion is supported by affidavit, the affidavit shall be served with the motion; and except opposing affidavits may be served 1 day before the hearing.
- (D) **Additional Time After Service by Mail:** Whenever notice or paper is served upon 2 parties by mail, 3 days shall be added to the prescribed period.

Section 9-2-141 General Cases in Which Extraterritorial Service Authorized

Service of summons and complaint, third party complaints, and other Process by which an action is instigated may be made outside the territorial limits described in Section 9-2-119.

Section 9-2-142 Legal Newspaper

All newspapers published weekly for two years prior to publication of a notice within the Jurisdiction or any adjacent county and the Tribal newspaper shall be a legal newspaper for the publication of notice.

CHAPTER THREE PARTIES

Section 9-3-101 Parties, Plaintiff, and Defendant: Capacity

- (A) **Real Party in Interest:** Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee, a party with whom or in whose name a contract has been made for the benefit of another, or authorized party may sue in their own name.

No action shall be dismissed because it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall be retroactive to the action's commencement.

- (B) **Capacity to Sue or Be Sued:** Every person, corporation, partnership, or incorporated association shall have the capacity to sue or be sued in its own name.
- (C) **Infants or Incompetent Persons:** Whenever an infant or incompetent persons has a representative, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative they may sue by next friend or by a guardian ad item. The Court shall appoint a guardian ad item for an infant or incompetent person or shall make other order for their protection.
- (D) **Assignment of Tort Claims Prohibited:** Claims arising in tort may not be assigned and must be brought by the injured party; this shall not preclude subrogation for any party, who have compensated the injured party.

Section 9-3-102 Joinder of Claims, Remedies, and Actions

- (A) **Joinder of Claims:** A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable as they may have.

- (B) **Joinder of Remedies; Fraudulent Conveyances:** Whenever a claim is cognizable only after another claim has been concluded, the two claims may be joined in a single action; but the Court shall grant relief only in accordance with the relative substantive rights of the parties. Plaintiff may state a claim for money and a claim to set aside a fraudulent conveyance, without first having obtained a judgment establishing the claim for money.
- (C) **Joinder of Actions By the Court:** Whenever separate actions are pending between the same parties, or involving the same facts or law, the Court may, without prejudicing the parties, order said actions joined for all, or a portion of, the proceedings.

Section 9-3-103 Joinder of Persons Needed for Just Adjudication

- (A) **Persons to Be Joined if Feasible:** A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter shall be joined if:
- (1) In their absence complete relief cannot be accorded, or
 - (2) They claim an interest to the subject and the disposition in their absence may:
 - (a) Impair or impeded their ability to protect that interest, or
 - (b) Leave any of the persons already parties subject to a substantial risk of double, multiple, or otherwise inconsistent obligations by reason of their claims interest.

If they have not been joined, the Court shall order them be made a party. If they should join as a plaintiff but refuses, he may be made a defendant, or an involuntary plaintiff.

- (B) **Determination by Court Whenever Joinder Not Feasible:** If a person cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties, or should be dismissed, the absent person being regarded as indispensable. The factors to be considered include:
- (1) To what extent a judgment rendered in the person's absence might be prejudicial to them or existing parties;
 - (2) The extent to which, by protective provisions by shaping of relief, or other measures, the prejudice can be lessened or avoided;
 - (3) Whether a judgment in the person's absence will be adequate; and

- (4) Whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.
- (C) **Pleading Reasons for Non-joinder:** A pleading asserting a claim for relief shall state the names, if known, of any persons who are not joined, and the reasons why they are not joined.

Section 9-3-104 Permissive Joinder of Parties

- (A) **Permissive Joinder**
 - (1) All persons may join in one action if they assert any right jointly or severally arising out of the same series of transactions, or occurrence, or if any question or fact common to all will arise, or if the claims are connected with the subject matter.
 - (2) All persons may be joined in one action as defendants if there is asserted jointly, severally, any right to relief arising out of the same series of transaction or occurrences, or if any question of law or facts in common will arise, or if connected with the subject matter.
 - (3) A plaintiff or defendant need obtain or defend against all relief demanded. Judgment may be given for one or more of the plaintiff's rights to relief, and against one or more defendant's liabilities.
- (B) In actions to quiet title or actions to enforce mortgages or other liens upon property, persons who assert an interest in the property may be joined although their interest does not arise from the same transaction or occurrence.
- (C) **Separate Trials:** The Court may prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim, or who asserts no claim against him, and may order separate trials or prevent delay or prejudice.

Section 9-3-105 Misjoinder and Non-joinder of Parties

Misjoinder of parties is not ground for dismissal. Parties may be dropped or added by Court order on motion or its own initiative at any stage. Leave shall not be required when the pleader amends his pleadings within the time period for amendment. Any claim may be severed and proceed separately.

Section 9-3-106 Interpleader

- (A) Claims against the plaintiff may be joined as defendants and required to interplead when the plaintiff is or may be exposed to multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on

which their claims depend do not have common origin or are not identical but are adverse to and independent of one another, or that the plaintiff declares they are not liable in whole or in part to of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. These provisions supplement and do not limit the joinder or parties.

- (B) These provisions shall be applicable to actions brought against a Tribal policeman or other officer for the recovery of personal property under execution or for the proceeds sold by them; and the defendant shall be entitled to the benefit of this section against the party obtaining the execution.
- (C) The Court may order safekeeping of the subject or for payment or delivery into the court or Court directed person. The Court may order the interpleader to give a bond, conditioned upon compliance with future orders or judgments. Where the interpleader claims no interest in the subject and the subject has been deposited. The Court should discharge them from liability to claims of other parties with costs and, may grant reasonable attorney fee.
- (D) In cases of interpleader, costs may be adjudged for or against any party.

Section 9-3-107 Class Actions

- (A) **Prerequisites to a Class Action:** One or more members of a class may sue or be sued as representative parties on behalf of all only if:
 - (1) The class is so numerous that joinder of all members is impracticable,
 - (2) There are questions of law or fact common to the class,
 - (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class, and
 - (4) The representative parties will fairly and adequately protect the interests of the class.
- (B) **Class Actions Maintainable:** Additionally:
 - (1) The prosecution of separate actions by or against individual members of the class would create a risk of:
 - (a) Inconsistent or varying adjudications to individuals which would establish incompatible standards of conduct for the respondent; or
 - (b) Adjudications to individuals which would be dispositive of the interests of other non-party members or substantially impair or impede their ability to protect their interests; or

- (2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, making final injunctive relief or declaratory relief appropriate to the class as a whole; or
 - (3) The Court finds the question of law or fact in common predominate over questions affecting only individuals and that a class action is superior for fair and efficient adjudication. The matters pertinent to the findings include:
 - (A) The interest of members in individually controlling the prosecution or defense of separate actions;
 - (B) The extent and nature of any litigation concerning the controversy already commenced by or against members;
 - (C) The desirability or undesirability of concentrating the litigation in the particular forum;
 - (D) The difficulties likely to be encountered in the management of a class action.
- (C) Determination by Order Whether Class Action to be Maintained, Notice, Judgment, Actions Conducted Partially as Class Actions.
- (1) As soon as practicable the Court shall determine by order whether a class action is maintained. An order may be conditional, and may be altered or amended before the decision.
 - (2) In any class action maintained the Court shall direct to the members the best notice practicable, including individual members who can be identified through reasonable effort. The notice shall advise each member;
 - (a) The Court will exclude them if they request by a specific date;
 - (b) The judgment, will include all members who do not request exclusion; and
 - (c) Any member who does not request exclusion may, enter an appearance through counsel.
 - (3) The judgment shall include and describe those to be members of the class. The judgment shall include and specify or describe those to whom the notice was directed, and who have not requested exclusion, and whom the Court finds to be members of the class.
 - (4) When appropriate
 - (a) An action may be brought or maintained as a class action with respect to particular issues, or

- (b) A class may be divided into subclasses and each subclass treated as a class, and the provisions of this Section shall be construed and applied accordingly.
 - (5) Where the class contains more than five hundred (500) members who can be identified, it shall be necessary to direct individual notice but members to whom individual notice is not directed shall be given notice as the Court directs, which may include publishing notice, posing reasonably calculated to bring notice provided the cost of such notice shall be reasonable in view of the amounts that may be recovered. Members to whom individual notice was not directed may request exclusion from the class before liability is determined, and commencing an individual action before the issue or liability is determined shall be equivalent of requesting exclusion.
- (D) **Orders in Conduct of Actions:** The Court may make appropriate orders:
- (1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;
 - (2) Requiring, for the protection of members or fair conduct, notice be given to some or all of the members at any step or of the proposed extent of the judgment, or of the opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses;
 - (3) Imposing conditions on the representative parties or on interveners;
 - (4) Requiring the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly.

The orders may be combined and may be altered or amended.

- (E) **Dismissal or Compromise:** A class action shall not be dismissed or compromised without the approval of the Court and notice of the proposed dismissal or compromise shall be given as the Court directs.

Section 9-3-108 Derivative Actions by Shareholders and Members

- (A) In a derivative action the complaint shall be verified and allege:
- (1) The plaintiff was a shareholder or member at the time of the transaction of which he complains or that their share or membership thereafter was transferred by operation of law, and

- (2) The action is not collusive to confer jurisdiction, which the Court would not otherwise have. Allege with particularity plaintiff's efforts, to obtain action he desires and reasons for failure to obtain action or for not making the effort.
- (B) The derivative action may not be maintained if plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated. The action shall not be dismissed or compromised without the Court's approval and notice of the proposed dismissal or compromise shall be given to shareholders or members. The Court shall not take jurisdiction concerning internal affairs of corporations or other entities organized under another jurisdiction's law absent the consent of all parties or some compelling reason.
- (C) An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if the representative parties will fairly and adequately protect the interests of the association and its members.

Section 9-3-109 Intervention

- (A) **Intervention of Right:** Upon timely application anyone shall be permitted to intervene: (1) When Tribal Law confers an unconditional right to intervene; or (2) When the applicant claims an interest relating to the property or transaction and the disposition may impair or impede their ability to protect that interest, unless their interest is adequately represented by existing parties.
- (B) **Permissive Intervention:** Upon timely application anyone can be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party's claim or defense relies upon any statute or executive order by a Tribal, Federal, or State officer or agency or upon any regulation, order, requirement or agreement issued or made, the officer or agency may be permitted to intervene. The Court shall consider whether the intervention will unduly delay or prejudice the adjudication.
- (C) **Procedure:** A person shall serve a motion to intervene upon the parties. The motion shall state grounds and shall be accompanied by a pleading setting forth the claim or defense. If granted, other parties may serve a responsive pleading upon leave of the Court.
- (D) **Intervention By the Tribe:** In any action, which the Tribe, where the constitutionality or enforceability of any Tribal statute affecting the public interest is questioned, the parties, or the Court shall certify such fact to the Chief Executive Officer of the Tribe, the Tribal Attorney, and Tribal Legislative Body and the Court shall permit the Tribe to intervene. The Tribe shall, have all rights of a party, and be subject to the – as to court costs only to the extent necessary for a proper presentation of the facts and law. It shall be the duty of the party raising

such issue to promptly give notice to the Court either orally upon the record or by written notice filed and served, and to state when and how notice will be or has been certified to the Tribe.

Section 9-3-110 Substitution of Parties

(A) Death:

- (1) If a party dies, the motion for substitution may be made by any party or by the successors or representatives of the deceased and, together with the notice of hearing, shall be served and upon persons not parties and may be served within or without the Tribal jurisdiction. Unless the motion is made within 90 days after death, the action shall be dismissed as to the deceased party.
- (2) If one or more of the plaintiffs or of the defendant's dies in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be stated upon the record and the action shall proceed in favor of or against the surviving parties.
- (3) Actions for liable, slander, and malicious prosecution shall abate at the death of the defendant.
- (4) Other actions, including actions for wrongful death shall survive the death of a party.

(B) Incompetency: If a party becomes incompetent, upon motion served the Court may allow the action to be continued by or against his representative.

(C) Transfer of Interest: In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided.

(D) Public Officers; Death or Separation From Office:

- (1) When a public officer is a party and ceases to hold office, the action does not abate. His successor is automatically substituted. Proceedings shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered.
- (2) When a public officer sues or is sued, he may be described by his official title rather than by name but the Court may require his name to be added.

CHAPTER FOUR DEPOSITIONS AND DISCOVERY

Section 9-4-101 General Provisions Governing Discovery

- (A) **Discovery Methods:** Depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. The frequency of these methods is not limited except, by Protective Order. Discovery may be obtained in aid of execution upon a judgment.
- (B) **Scope of Discovery:** Unless otherwise limited, the scope of discovery is:
- (1) Parties may obtain discovery regarding any matter, not privileged, relevant to involved subject matter whether to the claim or defense, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible if reasonably calculated to lead to admissible evidence.
 - (2) Insurance agreements: A party may obtain the existence and contents of any insurance agreement under which an insurance business may satisfy a judgment or indemnify or reimburse for payments. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence. An application for insurance shall not be treated as part of an insurance agreement.
 - (3) Trial preparation: A party may obtain documents and tangible things otherwise discoverable under in anticipation of litigation or trial by or for another party or that other party's representative only upon a showing of substantial need in case preparation and they are unable without undue hardship to obtain the substantial equivalent by other means. In ordering discovery the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, non-party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. A statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a

substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation: Experts: Discovery of facts known and opinions held by experts, otherwise discoverable under and acquired or developed in anticipation of litigation or trial may be obtained only as follows:

(a) A party may through interrogatories require any other party to identify each person to be called as an expert witness, to state the substance of the facts and opinions and a summary of the opinion's grounds.

(b) Upon motion, the Court may order further discovery by other means, subject to restrictions.

(c) A party may discover facts known or opinions held by an expert employed by another party in anticipation of litigation or preparation for trial who is not expected to be called as a witness, only as provided or upon a showing of exceptional circumstances under which it is impracticable to obtain facts or opinions by other means.

(d) Unless manifest injustice would result, the court shall require the party seeking discovery to pay a reasonable fee for time spent in responding to discovery.

(C) **Protective Orders:** Upon motion and good cause shown, the Court may protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including the following: (1) No discovery; (2) Specify terms and conditions; (3) An alternative method of discovery; (4) Limit matters or the scope or; (5) Discovery be conducted with designated person; (6) A sealed deposition be opened only by Court order; (7) A trade secret or confidential research development, or commercial information not be disclosed or be disclosed in a designated way; (8) The parties simultaneously file specified sealed documents or information to be opened as directed.

(D) **Sequence and Timing of Discovery:** Unless the Court upon motion, orders otherwise, discovery may be used in any sequence and the fact a party is conducting discovery, shall not operate to delay any other party's.

(E) **Supplementation of Responses:** A party who has responded that was complete when made is under no duty to supplement to include information thereafter acquired, except

(1) To supplement any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the

identity of each person to be called as an expert witness the subject matter, and substance of his testimony.

- (2) To amend if he obtains information the basis of which (A) he knows the response was incorrect when made, or (B) he knows the response though correct when made is no longer true and that a failure to amend is in substance a knowing concealment.
- (3) A duty to supplement may be imposed by Court order agreement of the parties, at any time prior to trial.

Section 9-4-102 Depositions Before Action or Pending Appeal

(A) Before Action:

- (1) **Petition:** A person may file a verified petition in the District Court if the tribal jurisdiction is the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (1) That the petitioner expects to be a party to an action but is presently unable to bring it or cause it to be brought, (2) The subject matter of the expected action and interest, (3) The fact desired, (4) The names or description of the persons he expects will be adverse parties and their addresses so far as known, and (5) The names and addresses of the persons to be examined and the substance expected and shall ask for an order to take depositions of persons named.
- (2) **Notice and Service:** The petitioner shall serve a notice upon each person named with a copy of the petition, stating that the petitioner will apply, at a time and place named therein, for an order. At least 20 days before the hearing the notice shall be served either within or without the Tribal jurisdiction. If personal service cannot with due diligence be made, the Court may order service by publication or otherwise.
- (3) **Order and Examination:** If the court is satisfied perpetuation of the testimony may prevent a failure or delay of justice, it shall order designating or describing whose depositions may be taken specifying subject matter and whether by oral examination or written interrogatories.
- (4) **Use of Deposition:** If a deposition is taken or if, although not so taken, it would be admissible in the Courts of the jurisdiction in which taken, it may be used in any action involving the same subject matter subsequently brought in the District Court.

- ### **(B) Pending Appeal:**
- If an appeal has been taken or if the time therefore has not expired, the court may allow the taking of the depositions of witnesses for use in the event of further proceedings. The party may motion the District Court to take

the depositions, upon the same notice and service as if the action was pending. The motion shall show (1) The names and addresses of persons and the substance of the testimony. (2) The reasons for perpetuating their testimony. If the Court grants the motion to avoid a failure or delay of justice, it may allow depositions and may make orders and the depositions may be taken and used under the same conditions as actions pending in the District Court.

- (C) **Perpetuation by Action:** This Section does not limit the power of a Court to perpetuate testimony.

Section 9-4-103 Persons Before Whom Depositions May Be Taken

- (A) **Within the Tribal Jurisdiction:** Within the Tribe's jurisdiction, depositions shall be taken before an Office authorized to administer oaths, or Court appointed person. A person so appointed has power to administer oaths and take testimony.
- (B) **Outside Tribal Jurisdiction:** Depositions may be taken (1) on notice before a person authorized, where the examination is held, or (2) before a person commissioned to administer oaths and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms. A finding the taking of the deposition in any other manner is impracticable or inconvenient is not required and both may designate the person before whom the deposition is to be taken. A letter rogatory may be addressed "To the Appropriate Authority in (Here Name of Tribe, State, or Country)." Evidence obtained need not be excluded for the reason it is not a verbatim transcript or the testimony was not taken under oath or for any similar departure from the requirements for depositions within Tribal jurisdiction.
- (C) **Disqualification for Interest:** No deposition shall be taken before a person who is a relative, employee, attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Section 9-4-104 Stipulations Regarding Discovery Procedure

Unless the Court orders otherwise, the parties may by stipulation (1) provide depositions be taken before any person, time or place, upon any notice, and manner and be used like other depositions, and (2) modify procedures except stipulations extending time must be Court approved.

Section 9-4-105 Depositions Upon Oral Examination

- (A) **Depositions May Be Taken:** After commencement any party may take testimony of any person, including a party, by oral deposition. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks a deposition prior to 30 days after service of the summons and complaint or service made by publication, leave is not required (1) if defendant has served a notice of

deposition or otherwise sought discovery, or (2) if special notice is given. The attendance of witnesses may be compelled. A person confined in prison may be deposed only by Leave of Court.

(B) **Notice of Examination:** General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization.

(1) A party desiring oral examination shall give reasonable notice to all parties. The notice shall state time, place and name and address of each person if known, and, if not known, a general description to identify them or the particular class or group. If a subpoena is to be served, the designation of the materials to be produced shall be attached or included in the notice.

(2) Leave of Court is not required by plaintiff if the notice (A) states the person to be examined is about to go out of Tribal jurisdiction, or of the United States, and will be unavailable unless the deposition is taken before the 30 day period, and (B) sets forth facts to support the statement. Plaintiff's attorney shall sign the notice, and his signature constitutes a certification to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions are applicable to the certification.

If a party shows when served he was unable through due diligence to obtain counsel at the deposition, the deposition may not be used against him.

(3) The Court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The Court may upon motion order the testimony at a deposition be recorded by other than stenographic means; the order shall designate the manner of recording, preserving, and filing the deposition, and include provisions to assure testimony will be accurate and trustworthy. A party may have a stenographic transcript made at his own expense.

(5) The notice to a party deponent may be accompanied by a request for the production of documents and tangible things at the deposition.

(6) A party's notice and subpoena may name a public or private corporation or partnership or association or governmental agency and describe with particularity the matters on which examination is requested. The organization shall designate officers, or other persons who consent to testify and the matters on which they will testify. A subpoena shall advise a non-party organization of its duty to make a designation. [(B)(6)] does not preclude. A deposition by any other procedure is not precluded.

- (C) **Examination and Cross-Examination; Record of Examination; Oath; Objections:** Examinations and cross-examination may proceed as at trial. The officer before whom the deposition is taken shall put the witness on oath and shall record the testimony. The testimony shall be taken stenographical or recorded by other means ordered.

All objections to the qualifications of the officer or the manner or evidence or conduct of any party, and any other objection shall be noted upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participation parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall ask and record the answers.

- (D) **Motion to Terminate or Limit Examination:** At any time on motion of a party or deponent and upon a showing the examination is being conducted in bad faith or unreasonable manner to annoy, embarrass, or oppress the deponent or party, the District Court may order the officer to cease or limit the scope and manner. If terminated, the examination shall be resumed only by District Court order. Upon demand of the objecting party, or deponent, the deposition shall be suspended for the time necessary to motion for an order.

- (E) **Submission to Witness; Changes; Signing:** When the testimony is transcribed the deposition shall be submitted to the witness for examination unless are waived. Any changes which the witness desires shall be entered upon the deposition with a statement of reasons given by the witness. The deposition shall be signed by the witness within 30 days of submission to him, the officer shall sign it and state on the record the waiver or illness or absence of the witness or the refusal to sign with the reason. The deposition may then be used as though signed unless on a motion to suppress the Court holds the reasons given for refusal to sign require rejection.

- (F) **Certification and Filing by Officer; Exhibits; Copies; Notice of Filing:**

- (1) The officer shall certify the witness was sworn and the deposition is a true record of the testimony. He shall than seal the deposition endorsed with the title of the action and marked "Deposition of name of witness" and shall promptly file it or send it by registered or certified mail to the Clerk.

Documents and things produced for inspection during the examination of the witness, shall upon request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except (A) the persons producing the materials may substitute copies marked for identification, if all parties have fair opportunity to verify the copies by comparison, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to

the person and the materials may then be used as if annexed and returned with the deposition. Any party may move for an order the original be annexed and returned with the deposition.

- (2) Upon payment of reasonable charges, the officer shall furnish a deposition copy to any party or to deponent. The Court may, establish the maximum charges which are reasonable.
- (3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(G) Failure to Attend or to Serve Subpoena; Expenses:

- (1) If the party giving notice of the deposition fails to attend and another party attends in person or by attorney, the Court may order the party giving notice to pay the expenses incurred in attending, including reasonable attorney's fees.
- (2) If the party giving notice of a deposition fails to serve a subpoena and the witness does not attend, and if another party attends or by attorney, the Court may order the party giving the notice to pay the reasonable expenses incurred in attending, including reasonable attorney's fees.

Section 9-4-106 Depositions Upon Written Questions

- (A) Serving Questions; Notice:** After commencement, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by subpoena. The depositions of a prison inmate may be taken only by leave of Court.

A party deposing upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer, if known, and if not known, a general description sufficient to identify him or his particular class or group and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or partnership or association or governmental agency.

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve re-cross questions upon all other parties. The Court may enlarge or shorten the time.

- (B) Officer to Take Responses and Prepare Record:** A copy of the notice and copies of all questions served shall be delivered by the party to the officer designated, who

shall proceed to take testimony in response to the questions and prepare, certify, and file or mail the deposition, attaching the copy of the notice and the questions.

- (C) **Notice of Filing:** When the deposition is filed the party taking it shall promptly give notice to all other parties.

Section 9-4-107 Use Of Depositions In Court Proceedings

- (A) **Use of Depositions:** At trial or motion hearing or an interlocutory proceeding, any part or all of a deposition, so far as admissible applied as though the witness were present and testifying, may be used against any party who was present or represented at the deposition or who had reasonable notice, in accordance with any of the following:

- (1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent.
- (2) The deposition of a party or of anyone who at the time of the deposition was an officer, or a person designated to testify may be used by an adverse party for any purpose.
- (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court find: (A) The witness is dead; or (B) The witness is outside the jurisdiction and cannot be served to testify unless the absence of the witness was procured by the party offering the deposition; or (C) The witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) Upon application and notice, that exceptional circumstances exist in the interest of justice and with regard to presenting the testimony of witnesses orally in open court to allow the deposition to be used.
- (4) If part of the deposition is offered in evidence, an adverse party may require him to introduce any other part, and any party may introduce any other parts, subject to Rules of Evidence.

Substitution of parties does not affect the right to use depositions and, when an action in any Indian Tribe, United States, or State has been dismissed and another same subject matter and parties action is brought or their representatives or successors in the District Court, all depositions lawfully taken and duly filed in the former action may be used in the latter.

- (B) **Objections to Admissibility:** Objections may be made at trial or hearing to receiving any deposition which would require exclusion of the evidence if the witness were testifying.

(C) **Effect of Errors and Irregularities in Depositions:**

- (1) **Notice:** All errors and irregularities in the notice are waived unless written objection is promptly served.
- (2) **Disqualification of Officer:** Objection because of disqualification of the officer before whom taken is waived unless made before the taking of the deposition begins or as soon thereafter as disqualification becomes known or could be discovered with reasonable diligence.
- (3) **Taking of Deposition:**
 - (a) Objections to the competency of a witness or the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the deposition, unless the ground is one which might have been obviated or removed if timely presented.
 - (b) Errors and irregularities occurring at the oral examination in the manner, in the form of questions or answers, in the oath or affirmation, or in conduct and errors which might be obviated, removed or cured if promptly presented, are waived unless seasonable objection is made.
 - (c) Objections to the form of written questions are waived unless served in writing within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.
- (4) **Completion and Return of Deposition:** Errors and irregularities in the manner the testimony is transcribed, prepared, or otherwise dealt with are waived unless a motion to suppress is made with reasonable promptness after such defect is, or with due diligence might have been ascertained.

Section 9-4-108 Interrogatories to Parties

- (A) **Availability; Procedures for Use:** Any party may serve upon any other party written interrogatories. Interrogatories may, without leave be served upon the plaintiff after commencement of the action and any other party with or after service of the summons and complaint.

Each interrogatory shall be answered in writing under oath. If objected to, the reasons shall be stated in lieu of an answer. The full text of the interrogatory shall immediately precede the answer. The answers are to be signed by the person and the objections signed by the attorney. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, within 30 days after service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint. The Court

may allow a shorter or longer time. The party submitting the interrogatories may move for an order concerning objection or other failure to answer.

- (B) **Scope; Use at Trial:** Interrogatories may relate to any matters which are proper and answers may be used as permitted by the Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

- (C) **Option to Produce Business Records:** Where the answer may be derived or ascertained from the business records or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary and the burden of deriving the answer is substantially the same for both parties, it is sufficient to specify the records and give the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and make copies, compilations, abstracts or summaries.

Section 9-4-109 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

- (A) **Scope:** Any party may serve on any other party a request (1) to produce and permit the party to inspect and copy designated documents (including other data compilations from which information can be obtained or translated by the respondent through detection devices), or to inspect and copy or sample any tangible things which constitute or contain matters and which are in the possession, custody or control of the party or (2) to permit entry upon designated land or other property in the possession or control of the party for the purpose of inspection, measuring, or sampling of any designated object or operation.
- (B) **Procedure:** The request may, without leave of court, be served upon the plaintiff and upon any other party with or after service of the summons and complaint. The request shall set for the items to be inspected, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing related acts.

The served party shall serve a written response within 30 days after service, except a defendant may serve a response within 45 days after service the summons and complaint. The court may allow a shorter or longer time. The response shall state, that inspection and related activities will be permitted and if the request is objected to, the reasons for objection. The party submitting may move for an order.

- (C) **Persons Not Parties:** This Section does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Section 9-4-110 Physical and Mental Examination of Persons

- (A) **Order for Examination:** When the mental or physical condition (including DNA blood group) of a party, or of a person in the custody or legal control of a party, is in controversy, the Court may order the party to submit to physical or mental examination or to produce the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice and to all parties and shall specify the item, place, manner, conditions, and scope of the examination and the person or persons examining.
- (B) **Report of Examining Physician:**
- (1) If requested by the party or person examined, they shall receive to him a copy of a examining physician's report setting out findings, including test results, diagnoses and conclusions, with reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive a like report of any examination made, of the same condition, unless, in the case of a report or examination of a person not a party, the party shows that he is unable to obtain it. The Court on motion may order requiring delivery of a report and if a physician fails or refuses to make a report the court may exclude testimony at trial.
 - (2) By requesting and obtaining a report of the examination or by taking the deposition of the examiner, the party examined waives any privilege he may have involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.
 - (3) This subdivision applies to examinations made by agreement of the parties, unless the provided otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician otherwise available.

Section 9-4-111 Requests for Admission

- (A) **Request for Admission:** A party may serve upon any other party a written request for admission, for the pending action only, of the truth of any matters set forth that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents. Copies of documents shall be served with the request unless they have been furnished or made available. The plaintiff may, without leave of Court, be served after commencement of the action and upon any other party with or after service of the summons and complaint.

Each admission requested shall be separate. The matter is admitted unless, within 30 days after service or within such time as the Court may allow the respondent serves upon the party a written answer or objection, signed or by him or his attorney, unless the Court shortens the time, a defendant shall not be required to serve answers or objections before 45 days after service. If objection is made, reasons shall be stated. The answer shall specifically deny the matter or detail the reasons why the answering party cannot truthfully admit or a denial shall meet the substance of the requested admission, and when good faith requires a party qualify his answer or deny, he shall specify what is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as reasons for failure to admit or deny unless he states he has made reasonable inquiry and the information known or readily obtainable by him is insufficient. A party who considers an admission matter presents a trial issue may not, on that ground alone, object he may, deny or state reasons why he cannot admit or deny it.

The requesting party may move to determine sufficiency of answers or objections. Unless the Court determines an objection is justified, it shall order an answer be served. If the Court determines an answer does not comply with this Section, it may order the matter admitted or an amended answer be served. The Court may, determine that final disposition of the request be made at a pre-trial conference or a designated time prior to trial.

- (B) **Effect of Admission:** Any matter admitted is conclusively established unless the Court permits withdrawal or amendment. The Court may permit withdrawal or amendment when the merits will be served and the party who obtained the admission fails to satisfy the Court withdrawal or amendment will prejudice him. An admission made by a party for the pending action is not an admission for any other purpose and may not be used against him in other proceedings.

Section 9-4-112 Failure to Make Discovery: Sanctions

- (A) **Compelling Discovery:** A party, upon reasonable notice to other parties and all persons affected may apply for an order compelling discovery as follow:
- (1) **Appropriate Court:** An application for an order may be made to the District Court, or, on matters relating to a deposition, to the court in the jurisdiction where the deposition is taken if necessary. An application for an order to a deponent who is not a party may be made to the Court in the jurisdiction where the deposition is taken.
 - (2) **Motion:** If a deponent fails to answer a question or submitted or a corporation or other entity fails to make a designation or Section or a party fails to answer or a party fails, to respond or permit inspection the discovering party may move for an order compelling an answer, or

designation, or compelling inspection. When taking an oral deposition the proponent may complete or adjourn the examination before he applies for an order.

- (3) **Evasive or Incomplete Answer:** An evasive or incomplete answer is a failure to answer.
- (4) **Award of Expenses of Motion:** If the motion is granted, the Court shall, after hearing, require the party or deponent whose conduct necessitated the motion or party or attorney advising such conduct or both to pay the reasonable expenses incurred, including attorney's fees, unless the Court finds the opposition was justified or an award is unjust.

If the motion is granted and denied in part, the Court may apportion the reasonable expenses.

(B) **Failure to Comply with Order:**

- (1) **Sanctions by Court in Jurisdiction Where Deposition is Taken.** If a deponent fails to be sworn or answer a question after being directed by the court in which the deposition is taken, sanctions imposed by any foreign court shall be given full faith and credit and promptly enforced. The Tribal Court may modify the sanctions.
- (2) **Sanction by Court In Which Action is Pending.** If a party or an officer, director, or managing agent of a party or a person designated fails to obey an order, the Court in which the action is pending may:
 - (a) Order the matters or facts shall be established in accordance with party's claim.
 - (b) Not allow the disobedient party to support or oppose designated claims or defenses, or prohibit them from introducing matters.
 - (c) Strike pleadings or stay proceedings until the order is obeyed, or dismissing the action or proceeding, or rendering a judgment by default.
 - (d) Additionally, issue an order treating as contempt the failure to obey any orders except an order to submit to a physical or mental examination.

Additionally the Court shall require the party failing to obey or attorney advising or both to pay expenses, including attorney's fees, unless the Court finds the failure was substantially justified or an award of expenses is unjust.

- (C) **Expenses on Failure to Admit:** If a party fails to admit the genuineness of any document or the truth of any matter, and if the party requesting the admissions proves the genuineness of the document or the truth of the matter, they may apply for an order requiring the other party to pay expenses incurred, including reasonable attorney's fees. The Court shall make the order unless it finds (1) the request was held objectionable (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe they might prevail or (4) other good reason.
- (D) **Failure of a Party to Attend Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection:** If a party or an officer, director, or managing agent of a party or a person designated fails (1) to appear before the officer after being served or (2) to serve answers to objections to interrogatories or (3) to serve a written response to a request for inspection. The District Court may make orders and it may take any action authorized in addition the court shall require the party or the attorney advising or both to pay expenses, including attorney's fees, unless the Court finds the failure justified or make an award is unjust.

The failure to act may not be excused on the ground the discovery sought is objectionable unless the party has applied for a protective order.

CHAPTER FIVE

SECTION ONE WITNESSES

Section 9-5-101 Issue and Service of Subpoena for Witnesses

The clerk shall, on application issue a subpoena for a witness. The clerk may issue separate subpoenas, or one subpoena carrying names of all persons, or may issue subpoenas in blank. A subpoena may be served by Tribal Police, the party, or any other person. When a subpoena not served by Police, proof of service shall be shown by affidavit; costs of service shall be allowed when served by Tribal Police, a licensed process server, or a person serving by special appointment.

Section 9-5-102 Subpoenas - Contents

The subpoena shall be directed to the person named, requiring them to attend at a particular time and place and it may direct the witness to bring any book, writing or other thing, which he is bound by law to produce.

Section 9-5-103 Subpoena for Deposition

When the attendance before any officer authorized to take depositions, is required, the subpoena may be issued by such officer.

Section 9-5-104 Subpoena for Agency Hearings

When the attendance is required before any Tribal Agency authorized to issue a subpoena, the subpoena may be issued by any office of the agency or person authorized.

Section 9-5-105 Witness May Demand Fees - Exception

A witness may demand travel and attendance fees set by Court rule, when the subpoena is served and if not paid, the witness shall not be obliged to obey.

The fact of such demand and non-payment shall be stated in the return. Witnesses subpoenaed by any Tribal department, or body authorized to issue subpoenas shall be paid when testimony is concluded. A witness may not refuse because they were not paid in advance when issued by Tribal agencies.

Section 9-5-106 Disobedience of Subpoena

Disobedience of a subpoena, or refusal to be sworn or answer when lawfully ordered, may be punished as contempt.

Section 9-5-107 Attachment of Witness

When a witness fails to attend, the Court or officer may issue an attachment to the Chief of Police, commanding them to arrest and bring the person before the Court or officer, at a time and place fixed in the attachment, to answer for the contempt. If the attachment is not for immediate appearance, the witness may give surety not to exceed Two Hundred Fifty Dollars (\$250.00); such sum shall be indorsed on the back and if no sum is fixed, it shall be Two Hundred Fifty Dollars (\$250.00). If the witness is not personally served, the Court may, order them to show cause why an attachment should not issue against him.

Section 9-5-108 Punishment for Contempt

- (A) If the witness fails to attend; the Court or officer may fine the witness not exceeding Three Hundred Dollars (\$300.00). If the witness attends but refuses to be sworn or testify, the Court or officer may fine the witness exceeding Three Hundred Dollars (\$300.00) or may imprison him to remain until he be sworn, testify, or give his deposition. The fine imposed shall be paid into the Tribal treasury, and that imposed at a deposition shall be to the party issuing the subpoena. The witness shall, be liable to the party injured for any damages.
- (B) The punishment provided shall not apply where the witness refuses to subscribe a deposition. The punishment provided is civil and shall not be interpreted as a

criminal punishment, nor shall the person be deemed convicted of any criminal offense.

- (C) When the witness purges, the Court, officer, or agency may suspend any punishment.

Section 9-5-109 Discharge When Imprisonment Illegal

A witness so imprisoned by an officer may apply to the Tribal Court who shall have power to discharge him.

Section 9-5-110 Requisites of Attachment – Order of Commitment

Every attachment for arrest or commitment of a witness must be under the seal of the Court or officer, and must specify the cause and if the commitment be for refusing to answer a question such question must be stated.

Section 9-5-111 Examination of Prisoner

A person confined in Tribal jail may by order be required to be produced for oral examination at a hearing but in all other cases his examination must be by deposition.

Section 9-5-112 Prisoner’s Custody During Examination

While a prisoner’s deposition is being taken, he shall remain in the custody of the officer having him in charge who shall afford reasonable facilities for the taking of the deposition.

Section 9-5-113 Witness Privileged

A witness shall not be liable to be sued in the Tribal Court if he does not reside within the Tribal jurisdiction by being served with a summons while going, returning, or attending in obedience to a subpoena.

Section 9-5-114 Witness May Demand Fees Each Day - Exception

At the commencement of each day after the first day, a witness may demand his fees and if be not paid, he shall not be required to remain, except witnesses subpoenaed by any Tribal body.

Section 9-5-115 Special Provisions for Tribal Agencies

- (A) No Tribal agent or employee may be required to attend and testify in their official capacity for any private party absent consent of their Department head or higher ranking superior.

- (B) No Tribal agent or employee may be paid a witness fee if on duty when required to attend unless they request leave without pay. When agents or employees appear and testify the normal witness fee shall be charged as costs for benefit of the Tribe and paid into the Tribal Treasury and the employee's supervisor may require prepayment as a condition of approval. Witnesses shall be entitled to receive their travel costs, from the party in advance.

Section 9-5-116 through 9-5-149 Reserved

**SECTION TWO
TESTIMONY UNDER PRIVILEGE AGAINST PROSECUTION**

Section 9-5-201 Privilege For Committee Testimony

No testimony before the Tribal Legislative Body, or any agency having power to subpoena, shall be used as evidence in any criminal proceeding except in a prosecution for perjury if such person is granted immunity. An official paper of record produced is not within this privilege.

Section 9-5-202 Procedure for Claiming Privilege

When two-thirds (2/3) of the full committee or agency shall grant immunity after having claimed their privilege against self-incrimination, to testify or produce such person shall be privileged. An Order may be issued upon application by an authorized representative the committee or agency accompanied by the written approval of the Tribal Legislative Body. The Court shall not grant immunity without first having notified the Tribal Attorney. The Tribal Attorney shall be given an opportunity to be heard prior to the Order of the District Court. No witness shall be exempt from prosecution for perjury or contempt Committed while giving testimony or producing evidence under compulsion as provided in this Section.

Section 9-5-203 Oaths

The Tribal Legislative Body, Chairman or equivalent officer of any committee or agency to issue subpoenas, and any officer or employee authorized is empowered to administer oaths.

Section 9-5-204 Penalties

- (A) Every person summoned as a witness by the Tribal Legislative Body or other tribal agency authorized under a grant of immunity who willfully defaults or refuses to answer shall be punishable by a civil fine of not more than Five Thousand Dollars (\$5,000.00) and commitment to be imposed by that body to the Tribal jail until testimony be given.
- (B) Additionally and alternatively the agency may proceed in Tribal Court for an order requiring such witness to testify and if such order is disobeyed the witness

shall be guilty of an offense, and may be fined not more than One Thousand Dollars (\$1,000.00), or imprisoned not exceeding six months or both.

Section 9-5-205 Disgrace as Ground for Refusal to Testify

No witness is privileged to refuse to testify or produce any paper, upon the ground his testimony may tend to disgrace or render him infamous, provided such fact or paper is reasonably related to the purpose of the hearing and the purpose of the hearing is reasonably related to the exercise of authority delegated by law.

Section 9-5-206 Prosecution

Whenever a body before whom a witness was granted immunity believes criminal prosecution should be instituted, it shall certify such to the Tribal Attorney General or prosecutor, who shall prosecute if the person has not purged their contempt within 48 hours.

Section 9-5-207 Fees and Mileage

- (A) Witnesses before legislative and administrative bodies compelled to attend by subpoena shall be paid the same fees and mileage as are paid in civil cases.
- (B) Witness fees and allowances for mileage shall be set by the Court. Mileage fees shall not exceed the Federal mileage rate.

**CHAPTER SIX
JURORS**

Section 9-6-101 Meeting for Selection of Jurors

- (A) At any time upon the Chief District Judge's order, shall select from a list all qualified jurors for service as necessary.
- (B) It shall be the duty of the following officer to provide the list of qualified prospective jurors to the Court Clerk:
 - (1) The Tribal Secretary shall supply a list of potential qualified jurors who are enrolled Tribal members over twenty-five (25) years of age who reside within a fifty mile radius of the Tribal Court located in Shawnee, Oklahoma, according to zip code or any portion of any zip code within a fifty mile radius, and shall have voted in one (1) of the previous two (2) regular or special tribal elections.
- (C) The list shall contain, the date of birth or age, name, address, and actual place of residence of each person.

(D) The list may be printed from a computer.

Section 9-6-102 Reserved

Section 9-6-103 Preparation of Jury Wheel

The Chief Judge shall direct the Information Technology Office to produce a computer generated list of eligible potential jurors. The Court Clerk will maintain this list in a safe and secure place. Only persons specifically authorized by the Court shall have access to the list. The expenses to be paid from the Court fund.

Section 9-6-104 Drawing General Jury Panel

(A) The Chief Judge shall, prior to each jury Trial determine approximately the number of jurors necessary and shall order the generation of this number to be known as the general panel of jurors.

(B) The Chief Judge shall direct the Information Technology Office to generate a list of persons for a jury panel. The persons are to be selected in any manner which is random and indiscriminate as ordered by the Court.

(C) The Court may excuse or discharge any person drawn and summoned.

Section 9-6-105 Use of Jury Panel

The general panel of jurors shall be used to select juries tried during for the jury trial for which they were summoned.

Section 9-6-106 Certifying and Sealing Lists

The list of names for the general panel shall be kept by the Court Clerk to be the list for the jury docket, and shall be kept in an envelope endorsed “jurors for the jury docket of the Tribal District Court scheduled to commence on _____” (filling in the appropriate date).

Section 9-6-107 Oath and Delivery of Envelopes

The attending Judge shall administer to the Court Clerk and deputies an oath as follows: “You and each of you do solemnly swear that you will not disclose the jury list nor permit it to be disclosed, and you will not, directly or indirectly, converse or communicate with any one selected as juror concerning any case pending for trial in the Court, So help you God.”.

Section 9-6-108 Reserved

Section 9-6-109 Reserved

Section 9-6-110 Summoning Jurors

The summons shall be served by the Court Clerk by mailing such summons by registered or certified mail, or as directed by the Judge not less than ten (10) days before the day the person is to appear. The Court Clerk shall file a statement containing the date of mailing and type of mail used. This shall not prevent service by the Police Chief when Court directed.

Section 9-6-111 On-Call System Jurors

- (A) When an on-call system is implemented by the Chief Judge each juror subject to call shall be required to contact the Court for information as to the time and place of appearance.
- (B) “On-call” system means a method whereby the Chief Judge estimates the number of jurors required and jurors not needed are released subject to call.
- (C) Pursuant to summons for service on petit juries each qualified, nonexempt juror is retained for service subject to call.

Section 9-6-112 Drawing Trial Jurors From Panel

Prospective jurors for trial shall be drawn from the general panel by a computer random number generator and numbering each general panel member or by some form of random drawing approved by the Court. The initial jurors shall be drawn as shortly before the trial as is reasonably practical. As prospective jurors are removed or dismissed by challenge, the Clerk shall move to the next name from the general panel and be subject to voir dire.

Section 9-6-113 Qualifications and Exemptions of Jurors

- (A) All members of the Tribe and other citizens of the United States who are over twenty-five (25) years of age and have resided within the Tribal jurisdiction for a period of thirty (30) days, who are of sound mind and discretion and of good moral character are competent to act as jurors, except;
- (B) The following persons are not qualified:
 - (1) Justices of the Supreme Court or their employees
 - (2) Judges or Magistrates of the District Court, or their employees
 - (3) The Court Clerk, or their employees
 - (4) The Chief of the Tribal Police, deputies, and employees

- (5) Jailors or other tribal, state, or federal law enforcement officers
 - (6) Licensed Attorneys or Advocates
 - (7) Persons who have been convicted of any felony or crime involving moral turpitude, provided that when such conviction has been vacated, overturned upon appeal, or pardoned or when they have been fully restored to their civil rights by the jurisdiction wherein such conviction occurred, the person shall be eligible
 - (8) Elected Tribal Officials.
 - (9) Persons who are closer than a second cousin by blood or marriage to any defendant or litigant.
- (C) Persons over seventy (70) years of age, ministers, practicing physicians, optometrists, dentists, public school teachers, federal employees, regularly organized full time fire department employees, and women with otherwise unattended minor children not in school may be excused upon request.

Section 9-6-114 Substantial Compliance

Substantial compliance with this Chapter, shall be sufficient to prevent the setting aside of any verdict, unless the irregularity in drawing, and summoning, or empanelling resulted in depriving a party litigant of some substantial right; provided, such irregularity must be specifically presented at or before the time the jury is sworn.

Section 9-6-115 Oath to Jury

After selection and prior to the opening statements, the Court or Clerk shall place the jury under oath or affirmation to well and truly try and determine the action before them exclusively upon the evidence presented and the law as given by the Court, and to return their true verdict thereon without partiality for any unlawful cause or reason.

Section 9-6-116 through 9-6-120 Reserved

Section 9-6-121 Discharge of Employee for Jury Service - Penalty

Every person, firm, or corporation who discharges an employee or causes an employee to be discharged because of absence from employment by reason of having been required to serve as a juror shall be guilty of an Offense, and upon conviction, shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00).

Section 9-6-122 Civil Liability - Damages

Every person, firm, or corporation who discharges or causes to be discharged an employee because of absence from employment by reason of having been required to serve as a juror shall be liable in a civil action for both actual and punitive damages. Damages shall include all pecuniary losses suffered including, but not limited to, lost earnings, both past and future, mental anguish, and all reasonable damages incurred in obtaining other suitable employment, including the cost of relocation and retraining and a reasonable attorney fee.

CHAPTER SEVEN

SECTION ONE TRIALS

Section 9-7-101 Trial of Issues

Issues of law must be tried by the Court. Issues of fact, when a jury trial is provided, may be tried by a jury, if a jury trial is demanded, unless a reference is ordered. All other issues of fact shall be tried to the Court.

Section 9-7-102 Jury Trial of Right

- (A) **Right:** Any action may be tried by a jury upon demand, where the amount in controversy is over Ten Thousand Dollars (\$10,000.00) arising in contract or tort, except Title 10 actions.
- (B) **Demand:** Any party entitled to a jury trial may demand a trial by a jury by serving upon the other parties a demand after the commencement of the action and not later than forty-five (45) days before Trial. The demand shall not be effective unless, at the time of filing or at such later time as the Court shall allow, the party making such demand deposit with the Court Clerk a reasonable jury fee as the Court Administrator shall by rule determine. The amount shall be set as may be necessary to offset the costs without being unreasonable. The rules shall provide a waiver of the deposit for proceeding in forma pauperis.
- (C) **Same; Specification of Issues:** A party may specify issues; otherwise they shall be deemed to have demanded trial by jury for all issues. If trial by jury for some of the issues, any other party within ten (10) days after service of the demand or lesser time as the Court may order, may serve a demand for trial by jury of any other or all issues.
- (D) **Waiver:** The failure of a party to serve a demand and to file it constitutes a waiver. A demand for trial by jury may not be withdrawn without the consent of the parties. Even though previously demanded, the trial by jury may be waived by the parties, in actions arising on contract, and with the assent of the Court in other actions, in the following manner: By the consent of the party appearing, when the other party fails to appear at trial. By written consent, in person or by attorney, filed with the clerk; By oral consent, or in open court.

Section 9-7-103 Trial by Jury or by the Court

- (A) **By Jury:** When Trial by jury has been demanded the action shall be designated as a jury action. The trial of all issues so demanded shall be by jury, unless:
- (1) The parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open Court consent to trial without a jury;
 - (2) The Court upon motion or of its own initiative finds a right of trial by jury does not exist.
- (B) **By the Court:** Issues not demanded for trial by jury shall be tried by the Court; but, the Court in its discretion or upon motion may order a trial by jury of any or all issues properly triable to a jury.

Section 9-7-104 Assignment of Cases for Trial

The District Court shall place of actions on the trial calendar

- (1) Without request or
- (2) Upon request of a party and notice to the other parties or
- (3) In such other manner as the Court deems expedient.

Section 9-7-105 Consolidation; Separate Trials

- (A) **Consolidation:** When different actions involving a common question of law or fact are pending, the Court may order a joint hearing or trial to avoid unnecessary costs or delays.
- (B) **Separate Trials:** The Court may order a separate trial of any claim, cross-claim, counterclaim, or third-party, or of any separate issue or of any number of claims, cross-trial by jury.

Section 9-7-106 through 9-7-119 Reserved

**SECTION TWO
IMPANELING JURY**

Section 9-7-201 Causes for Challenging Jurors

Any juror, who has been convicted of any crime which disqualifies them or has been an arbitrator on either side, relating to the same controversy; or has an interest in the action; or who has an action pending between him and either party; or who has formerly been a juror on the same claim, or who is the employer, employee, counselor, agent, steward or attorney of either party; or who is subpoenaed as a witness; or who is of kin to either party within the second degree by blood or marriage, may be challenged for cause; it shall be considered as a principal challenge, and the validity decided by the Court; and any juror may be challenged on suspicion of prejudice or partiality, or any other cause; but a resident or taxpayer of the tribal jurisdiction, or a member of the Tribe or any municipality therein shall not be disqualified in actions in which the Tribe or such municipality is a party. The validity of all principal challenges and challenges for cause shall be determined by the Court.

Section 9-7-202 Examination of Jurors

The Court may permit the parties or their attorneys to conduct or may itself conduct the examination. In the latter event, the Court may permit the parties or their attorneys to supplement the examination as it deems proper or ask such additional questions submitted by parties or attorneys.

Section 9-7-203 Alternate Jurors

The Court may impanel not more than two additional jurors as alternate jurors. Alternate jurors shall be selected, treated and authorized as regular jurors. An alternate juror not used shall be discharged after the jury retires. Each side is entitled to one peremptory challenge in addition to those otherwise allowed for alternate jurors. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges shall not be used against an alternate juror.

Section 9-7-204 Order of Challenges

Plaintiff first, and afterward the defendant, shall complete his challenges for cause. They may then, in the same order, have the right to challenge, until each shall have peremptorily challenged three jurors, but no more.

Section 9-7-205 Challenges to Jurors – Filling Vacancies

After each challenge, the vacancy shall be filled before further challenges and any new juror thus introduced may be challenged for cause and peremptorily.

Section 9-7-206 Alternate Method of Selecting Jury

Notwithstanding other methods authorized, the trial judge may direct a jury be selected by calling and seating twelve prospective jurors and then examining them on voir dire; when twelve prospective jurors have been passed for cause, each side shall exercise its peremptory challenges out of the hearing of the jury by alternately striking three names each and the remaining six persons shall be sworn.

If there be more than one defendant and the trial judge determines on motion there is a serious conflict of interest he may, allow each defendant to strike three names from the list of jurors seated and passed for cause. In such case he shall appropriately increase the number of jurors initially called and seated.

Section 9-7-207 Oath of Jury

The jury shall be sworn to well and truly try the matters submitted to them in the case before them, and to give a true verdict, according to the law and the evidence.

Section 9-7-208 Juries of Less Than Six – Majority Verdict

All juries shall be six persons, and a unanimous verdict shall be required, except the parties may stipulate any number less than six and greater than three, or a verdict or a finding of a stated majority shall be taken as the verdict or finding.

Section 9-7-209 through 9-7-229 Reserved

**SECTION THREE
TRIAL PROCEDURE**

Section 9-7-301 Order of Trial

When the jury has been sworn or when the Court is ready the trial shall proceed in the following order, unless the Court for special reasons otherwise directs:

- (A) The party with the burden of proof may briefly state their case, and the evidence they expect to sustain it.
- (B) The adverse party may then briefly state their defense and the evidence they expect to offer. The adverse party may reserve opening statement until the presentation of evidence.
- (C) The party with whom rests the burden of proof the issues must first produce evidence; after the closing the adverse party may interpose a motion for a directed verdict upon the ground that no claim for relief or defense is proved. Judgment shall be rendered for the party whose motion is sustained.
- (D) If the motion for a directed verdict is overruled, the adverse party shall then produce evidence.
- (E) The parties will then be confined to rebutting evidence unless the Court permit them to offer evidence in the original case.

- (F) After the close of evidence, and when jury instructions have been finalized by the Court, the parties may then make their closing arguments as to the evidence proved and reasonable inferences to be drawn. The party having the burden of proof shall first present argument. Thereafter, the other party shall present his argument, and then, an opportunity for rebuttal argument. The Court may place reasonable limitation upon the time provided, each side should have the same total time for argument.
- (G) After closing arguments, the Court shall instruct the jury as to the law and shall give a copy of the written instructions to the jury.
- (H) The Court shall then place the bailiff or some other responsible person under oath to secure the jury against interference and the jury shall retire to determine its verdict.

Section 9-7-302 Taking of Testimony

- (A) **Form:** In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided.
- (B) **Affirmation in Lieu of Oath:** Whenever an oath is required a solemn affirmation may be accepted.
- (C) **Evidence on Motions:** When a motion is based on facts not appearing of record the Court may hear the matter on affidavits but the Court may direct the matter be heard on oral testimony or depositions.
- (D) **Interpreters:** The Court may appoint an interpreter of its own selection and fix compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct.

Section 9-7-303 Exceptions Unnecessary

Formal exceptions to rulings or orders of the Court are unnecessary; it is sufficient a party, at the time the ruling or order is made or sought. To make known the action desired or objection to Court the action and grounds and, if a party has no opportunity to object to a ruling or order at the time made, the absence of an objection does not thereafter prejudice him.

Section 9-7-304 Instruction to Jury - Objection

- (A) The time the Court directs, any party may file written requests the Court instruct the jury on the law. The Court shall inform counsel of its proposed action prior to their arguments to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error the giving or failure to give an instruction unless he objects or proposes the requested instruction before

the jury retires stating distinctly the matter to which he objects and the grounds. Opportunity shall be given to make the objection out of the hearing of the jury.

- (B) All instructions requested, and modifications shall be in writing, numbered, and signed asking the same and filed.
- (C) When either party asks special instructions be given the Court shall either give such instructions or positively refuse or gives instructions with modification so that it shall distinctly appear what instructions with modification so that it shall distinctly appear what instructions with modification were given and those refused so that either party may except.
- (D) All instructions given must be numbered, signed by the judge and filed together with those asked for by the parties.

Section 9-7-305 Uniform Jury Instructions

The Supreme Court, is authorized to promulgate uniform jury instructions which, shall be used unless the Court determines the instruction do not accurately state the law.

Section 9-7-306 Objections to Instructions – Copies to Parties

A party objecting to the instructions, or refusal shall not be required to file a formal bill of exceptions; but it shall be sufficient to make objection noting on the record out of the hearing of the jury, before the reading of all instructions, the number of the particular instruction that was requested, refused, and objected to, or the number of the particular instruction given by the Court. The Court shall furnish the instructions to Plaintiff and Defendant prior to giving said instructions.

Section 9-7-307 View by Jury

Whenever, it is proper for the jury to have a view of the subject property or place any material fact occurred, it may order them conducted, in a body, under the charge of an officer, which shall be shown by some person appointed by the Court. While the jury is absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

Section 9-7-308 Deliberations of the Jury

When the case is submitted to the jury, they shall retire for deliberation. When they retire, they must be kept together, in some convenient place, under charge of an officer, until they agree upon a verdict or be discharged by the Court. The Court may permit them to separate at night, and at meals. The officer having them under his charge shall not make nor suffer any communication to be made to them, except to ask if they are agreed upon their verdict, and to communicate a request by the jury to the Court in open Court, unless by order of the Court; and

they shall not, before their verdict is rendered, communicate the state of their deliberations, or the verdict.

Section 9-7-309 Admonition of Jury on Separation

If the jury is permitted to separate, they shall be admonished that it is their duty not to converse with, or allow themselves to be addressed by, any other person, on any subject of the trial, and not to form or express an opinion until the case is finally submitted.

Section 9-7-310 Information After Retirement

After the jury has retired for deliberation, if there be a disagreement or if they desire to be informed as to any part of the testimony, or if they desire to be informed as to any part of the law they may request the officer to conduct them to the Court, where the information on the point of law shall be given in writing, and the Court may give its recollections as to the testimony or cause the same to be read or played back by the reporter in the presence of, or after notice to, the parties. Upon motion the Court may order that other portions of the record relating to the same issue also be read or played back to the jury upon the questioned point.

Section 9-7-311 When the Jury May Be Discharged

The jury may be discharged by the Court on account of the sickness of a juror, or other accident or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it appears that there is no probability of their agreeing.

Section 9-7-312 Re-trial

In all cases where the jury is discharged it may be tried again immediately, or at a future time.

Section 9-7-313 Proof of Official Record

(A) Authentication:

- (1) **Domestic:** An official record kept within the United States, or any Indian Tribal jurisdiction, state, district, commonwealth, territory, or possession thereof, when admissible may be evidenced by an official publication or by a copy attested by the officer having legal custody or deputy, and accompanied by a certificate. The certificate may be made by a judge authenticated by the seal of the court, or may be made by any public office having official duties.
- (2) **Foreign:** A foreign official record or an entry therein, when admissible may be evidenced by an official publication or copy attested by an authorized person and accompanied by a certification as to the genuineness of the signature and official position.

- (a) Of the attesting person; or
 - (b) Of any foreign official whose certification of genuineness of signature and official position related to the attestation or is in a chain of certificate of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United State, or a diplomatic or consular official of the foreign county assigned or accredited to the United States. If opportunity has been given to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown;
 - (c) Admit an attested copy without final certification; or
 - (d) Permit the foreign official record to be evidenced by an attested summary with or without a final certification.
- (B) **Lack of Record:** A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated in the case of a domestic record, or for summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.
- (C) **Other Proof:** This Section does not prevent the proof of official records or of entry or lack of entry by any other method authorized by law.

Section 9-7-314 Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign jurisdiction shall give notice in his pleadings or other reasonable written notice. The Court, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Tribal Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law. The District Court shall take judicial notice of the law of any foreign jurisdiction within the United States published in an official publication of that jurisdiction upon reasonable notice. The term "foreign jurisdiction within the United States" includes every federally recognized Indian Tribe, every state, territory, or possession of the United States, the United States, and their political subdivisions and agencies.

Section 9-7-315 Appointment and Duties of Masters

- (A) **Appointment and Compensation:** The District Court with the concurrence of a majority of the Judges may appoint one or more standing masters, and the trial judge, may appoint a special master to act in a particular case. The word "master" includes a referee, an auditor, and an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the Court, and shall

be charged upon such of the parties or paid out of any fund or subject matter of the action. The master shall not retain his report as security for his compensation; but when the party ordered to pay does not pay after notice and within the time prescribed by the Court, the master is entitled to a writ of execution.

- (B) **Reference:** A reference to a master shall be the exception. In an action tried by jury, a reference shall be made only when the issues are complicated; in actions without a jury, a reference shall be made only upon a showing of exceptional condition.
- (C) **Powers:** The order of reference may specify or limit powers and direct a report upon particular issues or perform particular acts or to receive and report evidence and may fix the time and place for beginning and closing hearings and for the filing of the master's report. Subject to limitations stated the master shall exercise the power to regulate all proceedings and do all acts and measures necessary for performance of his duties. When a party requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations.
- (D) **Proceedings:**
 - (1) **Meetings:** The clerk shall furnish the master with the order. Upon receipt, the master shall set a time and place for the meeting of parties to be held within twenty (20) days after the date of the order with notification. The master shall proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply for Court order requiring the master to speed the proceedings and to make a report. If a party fails to appear the master may proceed ex parte, or, adjourn the proceedings to a future day, giving notice to the absent party.
 - (2) **Witnesses:** The parties may procure the attendance of witnesses by the issuance and service of subpoenas. If a witness fails to appear or give evidence, he may be punished for contempt and be subjected to consequences, penalties, and remedies.
 - (3) **Statement of Accounts:** When matters of accounting are in issue, they may prescribe the form accounts shall be submitted and may require or receive in evidence a statement by a certified public accountant called as a witness. Upon objection to any of the items submitted or upon a showing that the form is insufficient, the master may require a different form of statement, or accounts or items be proved by oral examination or upon written interrogatories or in other manner.
- (E) **Report:**

- (1) **Content and Filing:** The master shall prepare a report and file a transcript of the proceedings and evidence and original exhibits. The clerk shall mail notice of the filing.
- (2) **In Non-Jury Actions:** The Court shall accept the master's findings of fact unless clearly erroneous. Within ten (10) days after being served with notice of the report any party may serve written objections. Application to the Court for action upon the report is upon notice. The Court after a hearing may adopt the report or modify it or receive further evidence or recommit it with instructions.
- (3) **In Jury Actions:** The master shall not be directed to report the evidence. His findings are admissible and may be read to the jury, subject to the ruling of the Court upon any objections in point of law.
- (4) **Stipulation as to Findings:** The effect of a master's report is the same whether or not parties have consented to the reference; but, when the parties stipulate findings of fact shall be final, only questions of law shall be considered.
- (5) **Draft Report:** Before filing a master may submit a draft to all parties to receive suggestions.

Section 9-7-316 through 9-7-220 Reserved

SECTION FOUR VERDICT

Section 9-7-401 Findings by the Court

- (A) **Effect:** In all actions tried without a jury, the Court shall find the facts and state its conclusions of law and judgment shall be entered in granting or refusing interlocutory injunctions the Court shall set forth findings of fact and conclusions of law which constitute the grounds. Request for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous. The adopted findings of a master shall be considered the findings of the Court. If an opinion or memorandum of decision is filed, it will be sufficient if findings of fact and conclusions of law appear. Findings of fact and conclusions of law are unnecessary on decisions of motions.
- (B) **Amendment:** Upon motion of a party made not later than ten (10) days after entry of judgment the Court may amend its findings or make additional findings and may amend the judgment. The motion may be made with a motion for a new trial. When findings of fact are made in actions without a jury, the question of the sufficiency of the evidence to support the findings may be raised whether or not an objection or motion was made to amend them or a motion for judgment.

Section 9-7-402 Delivery of Verdict

The jury verdict will be rendered in open Court by the foreman. The verdict shall be written, signed by the foreman, read by the clerk and inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out. If there is no disagreement and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If, the verdict is defective in form it may be corrected by the Court with assent of the jury.

Section 9-7-403 Special Verdict and Interrogatories

- (A) **Special Verdicts:** The Court may require a jury to return a special verdict in the form of a finding upon each issue of fact. The Court may submit written questions requiring categorical or brief answers or may submit written forms of several special findings which might be made under the pleadings and evidence; or it may use other methods. The Court shall explain and instruction upon each issue. If the Court omits any issue of fact raised by the pleadings or by evidence, each party waived his right to a trial by jury unless before the jury retires he demands its submission on an issue omitted without demand, the Court may make a finding; or, if not it shall be deemed to have made a finding in accord with the judgment on the special verdict.
- (B) **General Verdict Accompanied by Answer to Interrogatories:** The Court may submit, with appropriate forms for a general verdict, written interrogatories upon issues of fact the decision of which is necessary to a verdict. The Court shall explain and give to answer and render a general verdict, and the Court shall direct the jury to make written answers and render a general verdict. When the general verdict and the answers are consistent judgment shall be entered but, when the answers are inconsistent with the general verdict, judgment may be entered in accordance with the answers, notwithstanding the general verdict, or the Court may return the jury for further consideration or order a new trial. When the answers are inconsistent with each other and inconsistent with the general verdict, judgment shall not be entered, the Court shall return the jury for further consideration or shall order a new trial.

Section 9-7-404 Jury Must Assess Amount of Recovery

When either party is entitled to recover money of the adverse party, the jury, in their verdict, must assess the amount of recovery.

Section 9-7-405 Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict

- (A) **Motion for Directed Verdict: When Made: Effect:** A party who moves for a directed verdict may offer evidence if the motion is not granted, without having reserved the right. A motion for directed verdict shall state the specific grounds.

The order of the Court granting a motion for a directed verdict is effective without jury assent.

- (B) **Motion for Judgment Notwithstanding the Verdict:** When a motion for a directed verdict is denied, the Court is deemed to have submitted the action to the jury subject to legal questions raised by the motion. Within ten (10) days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, may move for judgment in accordance with their motion for a directed verdict. A motion for a new trial may be joined. If a verdict was returned, the Court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of the judgment as if the requested verdict has been directed. If no verdict was returned the Court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.
- (C) **Same: Conditional Rulings on Grant of Motion:**
- (1) If the motion for judgment notwithstanding the verdict is granted, the Court shall also rule on the motion for a new trial, and shall specify the grounds for granting or denying the motion. If the motion for a new trial is conditionally granted, the order does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the Supreme Court.
 - (2) The party whose verdict has been set aside may serve a motion for a new trial not later than ten (10) days after entry of the judgment notwithstanding the verdict.
- (D) **Denial of Motion:** If the motion for judgment notwithstanding the verdict is denied, the party who prevailed may, on appeal, assert grounds entitling him to a new trial if the Supreme Court concludes the trial court erred in denying the motion for judgment notwithstanding the verdict. If the Supreme Court reverses the judgment, it may determine the appellee is entitled to a new trial, or direct the trial court to determine whether a new trial shall be granted.

Section 9-7-406 through 9-7-420 Reserved

**SECTION FIVE
MISCELLANEOUS TRIAL PROVISIONS**

Section 9-7-501 Provisions Applicable to Trials by Court

The provisions respecting trials by jury apply, to trials by the Court.

Section 9-7-502 Trial Docket

A trial docket may be made by the Clerk at least fifteen days before the first day of each jury or non-jury docket and the actions shall be set for particular days. The trial docket shall be mailed by the Clerk to each party or attorney of record.

Section 9-7-503 Trial Docket for Bar

The Clerk may make out a copy of the trial docket for the use of the bar, before the first day of the docket and will be available to the public.

Section 9-7-504 Order of Trial of Cases Docketed

The trial shall be in the order on the trial docket, unless by order of the Court, they are continued, placed at the heel of the docket, or otherwise directed. The Court may, hear at any time and may by rule prescribe the time for hearing motions.

Section 9-7-505 Time of Trial

- (A) Actions may be triable at the first trial docket, after or during which the issues are or shall have been made up and discovery completed. When the issues are made up and discovery completed, or when the defendant has failed to plead within the time fixed, the cause shall be placed on the trial docket, and shall stand for trial at such term twenty (20) days after the issues are made up and discovery completed, and shall, in case of default, stand for trial.
- (B) The Court shall arrange its business so that two non-jury trial dockets and two jury trial dockets are completed during each calendar year, the Court by order determine that additional trial dockets are necessary.

Section 9-7-506 Continuances

The trial shall not be continued upon the stipulation of the parties alone, but may be continued upon order of the Court.

Section 9-7-507 Bifurcated Jury Trials

- (A) The District Court may provide for the bifurcation of any jury trial in a tort civil action so the jury shall first hear evidence and render its verdict upon the issue of liability, and thereafter hear evidence and render its verdict upon the issue of the amount of damages.

- (B) In such bifurcated trials, evidence of insurance coverage or similar agreements by third parties to pay any party or a judgment, and the nature and extent of such coverage or agreement shall be admissible and relevant to the issue of damages
- (C) In any case not provided for by Court rule, the case may be determined in bifurcated proceedings by stipulation.

CHAPTER EIGHT

SECTION ONE

PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Section 9-8-101 Seizure of Person or Property

At commencement and during the course of an action, all remedies providing for seizure of a person or property for the purpose of securing satisfaction of the judgment to be entered are available under the circumstances and in the manner provided by the law of the Tribe.

Section 9-8-102 Receivers Appointed by Tribal Courts

An action where a receiver has been appointed shall not be dismissed except by Court order. The practice in the administration of estates by receivers or by other similar officers appointed shall be in accordance with Tribal probate law, or, if none, the practice followed in the courts of the United States or as provided in rules promulgated by the District Court. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by this Act.

Section 9-8-103 Deposit in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or any other thing capable of delivery, a party, upon notice and by leave of Court, may deposit with the Court all or any part of such sum or thing. Money paid into Court shall be deposited and withdrawn in accordance with Tribal law procedures.

Section 9-8-104 Process in Behalf of and Against Persons not Parties

When an order is made in favor of a person not a party, he may enforce obedience by the same process as if he were a party; and when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process as if he were a party.

Section 9-8-105 Security – Proceedings Against Sureties

Whenever Tribal law requires or permits the giving of security and security is given by bond or stipulation or other undertaking each surety submits them to the jurisdiction of the Court and irrevocable appoints the Clerk of the Court as their agent upon whom any papers affecting their liability on the bond or undertaking may be served. Their liability may be enforced on

motion without an independent action. The motion and such notice may be served on the Clerk of the Court, who shall mail copies to the sureties.

Section 9-8-106 Execution

- (A) **In General:** The Process to enforce a money judgment shall be by writ of execution, unless the Court directs otherwise. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor.

- (B) **Against Certain Public Officers:** When a judgment has been entered against an officer, or employee, or agency of the Tribe in their official capacity; or against an individual in his personal capacity who purported to act as an officer or employee of the Tribe, and the Court determines that the individual had probable cause to believe that their action was authorized execution shall not issue against the officer or his property but the final judgment may be provided by legislative appropriation. This section shall not be construed as a waiver of sovereign immunity.

Section 9-8-107 through 9-8-110 Reserved

**SECTION TWO
INJUNCTIONS**

Section 9-8-201 Injunction Defined

The injunction provided may be the final judgment or may be allowed as a provisional remedy, by Court order.

Section 9-8-202 Cause for Injunction – Temporary Restraining Order

When it appears, by verified complaint or affidavit the plaintiff is entitled to relief which consists of restraining the commission or continuance of some act, the commission or continuance of which, would produce injury to the plaintiff; or when, it appears the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights and tending to render judgment ineffectual, a temporary restraining order and preliminary injunction may be granted when, during an action, it shall appear, by affidavit or proof, the defendant threatens or is about to remove or dispose property with intent to defraud or render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted.

Section 9-8-203 Temporary Restraining Order: Notice: Hearing: Duration

A temporary restraining order may be granted after commencement without written or oral notice to the adverse party only if:

- (A) It clearly appears from specific facts shown by affidavit or by verified complaint immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard; and
- (B) The applicant's attorney certifies to the Court the efforts, to give notice and reasons notice should not be required.

Temporary restraining orders should not be granted except when urgent. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; be filed in the Clerk's office and entered of record; define the injury and state why it is irreparable and why the order was granted without notice; and shall expire after entry, not to exceed ten (10) days, unless the time for good cause shown, is extended or unless the adverse party consents it. The reasons for extension shall be of record. In case a temporary restraining order is granted without notice, the motion for preliminary injunction shall be set down at the earliest possible time and at the hearing the party who obtained the temporary restraining order shall proceed with the application for preliminary injunction and, if not the Court shall dissolve the temporary restraining order. On notice, as the Court may prescribe, to the party who obtained the temporary restraining order without notice, the adverse party may appear and move its dissolution or modification. The Court shall proceed to hear such motion expeditiously.

Section 9-8-204 Temporary Restraining Order - Service

Temporary restraining orders shall be served in the same manner as for service of summons and complaint.

Section 9-8-205 Preliminary Injunction

- (A) **Notice:** No preliminary injunction shall be issued without notice to the adverse party. Notice may be an order to appear at a designated time and place and show cause why a proposed preliminary injunction should not be issued, or in such form as the Court shall direct. The burden of showing the criteria for issuance of a preliminary injunction remains with the moving party.
- (B) **Consolidation of Hearing With Trial on Merits:** Before or after the commencement of the hearing for a preliminary injunction, the court may order the trial on the merits to be advanced and consolidated with the hearing of the application. When this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated.

Section 9-8-206 Preliminary Injunction - Criteria

- (A) There is a substantial likelihood that the moving party will prevail on the merits of their claim for a permanent injunction or other relief, and
- (B) The moving party will suffer irreparable injury unless the preliminary injunction issues. Irreparable injury means an injury which cannot be adequately remedied by a judgment for money damages, and
- (C) The threatened injury to the moving party outweighs whatever damage or injury the proposed preliminary injunction may cause the opposing party, and
- (D) The preliminary injunction, if issued, would not be adverse to the public interest, and would not violate the public policy of the Tribe.

Section 9-8-207 Form and Scope of Injunction or Restraining Order

Every order granting an injunction and every restraining order shall: set forth the reasons for its issuance; describe in detail, the act or acts sought to be restrained; and is binding only upon the parties, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice.

Section 9-8-208 Employer and Employee; Interpleader; Constitutional Cases

This section does not modify any statute relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee; or relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or any other case where temporary restraining orders or preliminary injunctions are expressly authorized or prohibited upon certain express terms or conditions.

Section 9-8-209 Security

- (A) No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, as the Court deems proper, for the payment of costs, damages, and a reasonable attorney fee as may be incurred or suffered by any part who is found to have been wrongfully enjoined or restrained. Security may be waived by the Court. No security shall be required of the Tribe or officer or agency thereof.
- (B) A party enjoined by a preliminary injunction may, at any time before final judgment, upon reasonable notice to the other party move the Court for additional security, and if it appear the surety has been removed from Tribal jurisdiction, or is insufficient, the Court may vacate the preliminary injunction unless sufficient surety be given.

Section 9-8-210 Use of Affidavits

On the hearing for a restraining order or preliminary injunction, each party may submit affidavits which shall be filed.

Section 9-8-211 Injunction by Defendant

A defendant may obtain a temporary restraining order or preliminary injunction upon filing his answer containing an appropriate counterclaim. He shall proceed in the prescribed manner.

Section 9-8-212 Injunction is Equitable

Relief by way of a restraining order, preliminary, or permanent injunction is equitable and shall be issued or refused in the discretion of the Court. No injunction shall issue to control the discretion or action of a Governmental officer or employee when delegated the authority to act.

Section 9-8-213 Modification of Preliminary Injunction

If the preliminary injunction is granted, the defendant, before trial, may apply, upon notice, to the Court to vacate or modify. The application may be made upon the complaint and affidavits upon which the injunction is granted, or upon affidavits or the party enjoined, with or without answer. The order of the judge, allowing, dissolving or modifying an injunction, shall be returned to the office of the clerk and recorded.

Section 9-8-214 Modification of Permanent Injunction

A final judgment containing a permanent injunction may be modified or dissolved by separate action upon a showing that the facts and circumstances have changed or the injunction is no longer needed.

Section 9-8-215 Injunctions Tried to the Court

All injunctive actions shall be tried to the Court and not to a jury.

Section 9-8-216 Enforcement of Restraining Orders and Injunctions

A restraining order or injunction granted may be enforced as the act of the Court. Disobedience may be punished as contempt. An attachment may be issued by affidavit or testimony, of the breach of the injunction, against the guilty party who may be required to make immediate restitution and give further security or, he may be committed to custody, until he shall fully comply with such requirements, or legally discharged, or be fined not exceeding two hundred dollars (\$200.00) for each day or separate act of, contempt, to be paid to the Court, or by confinement in jail not longer than sixty (60) days.

Section 9-8-217 through 9-8-230 Reserved

CHAPTER NINE

SECTION ONE JUDGMENT

Section 9-9-101 Judgments - Costs

- (A) **Definition; Form:** “Judgment” includes a final determination of the rights of the parties in an action, including those determined by a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.
- (B) **Judgment Upon Multiple Claims or Involving Multiple Parties:** When more than one claim is presented, the Court may direct the entry of a final judgment to fewer than all claims or parties only upon an express determination there is no reason for delay. Upon an express direction, any order or other decision, which adjudicates fewer than all claims, rights and liabilities of fewer than all parties shall not terminate the action as to other claims or parties. The order or decision is subject to revision at anytime before the entry of judgment adjudicating all the claims, rights and liabilities.
- (C) **Demand for Judgment; Default:** A judgment by default shall not be different or exceed the demand amount for judgment. Except a party against whom a default judgment is entered, every final judgment shall grant relief to the prevailing party.
- (D) **Costs:** Costs may be allowed to the prevailing party including attorney fees and authorization for damages or requirement for bonds or undertakings, its officers, and agencies shall be imposed as specifically permitted. Costs may be taxed by the clerk on one day’s notice. On motion served within ten (10) days, the action of the clerk may be reviewed by the Court.
- (E) **Applied to Probate Proceedings:** A judgment shall be considered a lawful debt in all proceedings held by the Department of Interior or by the Tribal District Court in the distribution of decedent’s estates.

Section 9-9-102 Default

- (A) **Entry:** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend and that fact is made to appear by affidavit or otherwise, the clerk shall enter the default.
- (B) **Judgment:** Judgment by default may be entered as follows:
 - (1) **By the Clerk:** When the plaintiff’s claims against defendant is a sum certain or can be made certain, the clerk upon request of plaintiff and upon

affidavit of the amount due shall enter judgment for that amount and costs against defendant, if they have been defaulted for failure to appear and if they are not an infant or incompetent person.

- (2) **By the Court:** In all other cases the party entitled to a judgment by default shall apply no judgment by default shall be entered against an infant or incompetent person unless represented by a general guardian, conservator, or other representative who has appeared. If the party has appeared; they or their representative shall be served with written notice of the application for judgment at least five (5) days prior to the hearing. If it is necessary to take an account or to determine amount of damages or to establish the truth of any statement by evidence or to make an investigation the Court may conduct hearings or order references.
- (C) **Setting Aside Default:** For good cause shown the Court may set aside an entry of default and, if judgment by default has been entered, may set it aside.
- (D) **Plaintiff, Counterclaimants, Cross-Claimants:** The provisions apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim.
- (E) **Judgment Against the Tribe:** No judgment by default may be entered against the Tribe, its officers, or agencies unless sixty (60) days written notice has been served upon the Chief Executive Officer and the Tribal Legislative Authority. During such sixty (60) day period, if the Tribe is without counsel, no default may be entered until thirty (30) days after approval of an attorney contract. During such period, the Tribe, its agencies, or officers shall be allowed to cure any default.

Section 9-9-103 Offer of Judgment

More than ten (10) days before trial, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for money or property or effect specified in his offer, with costs. If within ten (10) days after service of the offer the adverse party serves written notice that the offer is accepted, either party may file the offer and notice of acceptance together with proof of service and the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making the offer. The fact an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined but the amount or extent of the liability, remains to be determined, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer before trial if served not less than ten (10) days prior to the commencement of hearings to determine amount or extent of liability.

Section 9-9-104 Judgment for Specific Act – Vesting Title

If a judgment directs a party to execute a conveyance of land or deliver deeds or other documents or perform any other act and the party fails to comply, the Court may direct the act done at the cost of the disobedient party by Court appointment and the act becomes the party's act. On application the clerk shall issue a writ of attachment or sequestration against the property to compel obedience. The Court may also adjudge the party in contempt. If real or personal property is within Tribal jurisdiction, and the interest is not held in trust the Court in lieu of directing a conveyance of interest may enter a judgment divesting the interest from any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession the prevailing party is entitled to a writ of execution or assistance.

Section 9-9-105 Summary Judgment

- (A) **For Claimant:** A party seeking to recover a claim, counterclaim, or cross-claim or obtain a declaratory judgment may, after the expiration of twenty (20) days from the commencement or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment.
- (B) **For Defending Party:** A party against whom a claim, counterclaim, or cross-claim is asserted or declaratory judgment is sought may, move with or without supporting affidavits for a summary judgment.
- (C) **Motion and Proceedings:** The motion shall be served at least ten (10) days before the hearing. The adverse party prior to the hearing may serve opposing affidavits. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, with affidavits, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be entered on the issue of liability alone although there is a genuine issue of damages.
- (D) **Case Not Fully Adjudicated on Motion:** If on motion judgment is not rendered upon the whole case or for all the relief and a trial is necessary, the Court at the motion hearing examining the pleadings, evidence and interrogating counsel, shall ascertain what material facts exist without substantial controversy and what are in good faith controverted. It shall make an order specifying the facts without substantial controversy, including the amount of damages or other relief not in controversy, and directing further proceedings. At trial the facts specified shall be deemed established.
- (E) **Form of Affidavits; Further Testimony; Defense Required:** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth facts admissible in evidence, and shall show affirmatively the affiant is competent to testify. Sworn or certified copies of all papers or parts referred to shall be

attached or served. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. A motion for summary judgment by an adverse party may not rest upon the mere allegations or denial of his pleadings, but his response, by affidavits or as otherwise provided must set forth specific facts showing there is a genuine issue for trial. If he does not so respond, summary judgment shall be entered.

- (F) **When Affidavits are Unavailable:** When affidavits of a party opposing the motion stating they cannot present by affidavit facts essential to justify opposition, the Court may refuse the application for judgment or order a continuance to permit affidavits be obtained or depositions or discovery be had.
- (G) **Affidavits Made in Bad Faith:** Should it appear any affidavits are presented in bad faith or solely for delay, the Court shall order the party to pay the other party reasonable expenses including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Section 9-9-106 Declaratory Judgments

The existence of another adequate remedy does not preclude judgment for declaratory relief. The Court may order a speedy hearing of a declaratory judgment and may advance it on the calendar.

Section 9-9-107 Entry of Judgment

- (A) Subject to the Court shall approve the form of judgment, and the clerk shall enter it:
 - (1) Upon a Court decision a party shall recover only a sum certain, costs or all relief denied, the clerk, unless otherwise ordered shall prepare, sign, and enter the judgment without Court direction.
 - (2) Upon a Court decision granting other relief.
- (B) Every judgment shall be set forth on a separate document. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon Court direction.

Section 9-9-108 New Trials – Amendments of Judgments

- (A) **Grounds:** A new trial may be granted to any parties on the issues for the following reasons:
 - (1) Irregularity in the proceedings or prevailing party, or any order or abuse of discretion, which prevented a fair trial, or

- (2) Misconduct of the jury or prevailing party, or
- (3) Accident or surprise, which ordinary prudence could not have guarded against, or
- (4) Excessive or inadequate damages, given under the influence of passion or prejudice, or
- (5) Error in assessment of amount of, or
- (6) The verdict, or decision is not sustained by sufficient evidence, or is contrary to law, or
- (7) Newly-discovered evidence, which could not, with reasonable diligence, have been discovered and produced at the trial, or
- (8) Error of law occurring at trial, and objected to by the party making the application, or
- (9) When, without fault of the complaining party, it becomes impossible to make a record sufficient for appeal.

On a motion for a new trial tried without a jury, the Court may open an entered judgment take additional testimony amend findings of fact and conclusions, and direct entry of a new judgment.

- (B) **Time for Motion:** A new trial motion shall be served not later than ten (10) days after entry of judgment, except based upon newly discovered evidence within six (6) months of judgment.
- (C) **Time for Serving Affidavits:** When a new trial motion is based upon affidavits they shall be served with the motion. Opposing party has ten (10) days after service to serve opposing affidavits, which may be extended not exceeding twenty (20) days by the Court or the parties stipulation. The Court may permit reply affidavits.
- (D) **On Initiative of Court:** Not later than ten (10) days after entry of judgment the Court of its own initiative may order a new trial on motion of a party. After giving the parties notice and an opportunity to be heard the Court may grant a motion for new trial, for an unplead reason the Court shall specify the grounds.
- (E) **Motion to Alter or Amend and Judgment:** A motion to alter or amend judgment shall be served not later than ten (10) days after entry of judgment.

Section 9-9-109 Relief From Judgment or Order

- (A) **Clerical Mistakes:** Clerical mistakes record and errors arising from oversight or omission may be corrected by the Court on its own initiative or on motion of any party and after notice, if the Court orders. During the pendency of an appeal, mistakes may be corrected before the appeal is docketed and thereafter may be corrected with leave of the Supreme Court.
- (B) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.:** On motion the Court may relieve a party or legal representative from a final judgment, order, or proceeding for:
- (1) Mistake, inadvertence, surprise, or excusable neglect;
 - (2) Newly discovered evidence which due diligence could not have discovered in time to move for a new trial;
 - (3) Fraud misrepresentation, or misconduct of an adverse party;
 - (4) The judgment is void;
 - (5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or vacated, or it is no longer equitable; or
 - (6) Any reason justifying relief from operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered. A motion does not affect the finality of a judgment or suspend its operation. This section does not limit the Court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified or to set aside a judgment for fraud upon the Court. All previous procedural writs to correct errors or obtain relief from a judgment are abolished. The procedure for obtaining judgment relief shall be by motion or by an independent action.

Section 9-9-110 Harmless Error

No error in either the admission or exclusion of evidence and no error or defect in any ruling or order or anything done or omitted by the Court or by any of the parties is ground for granting a new trial or setting aside a verdict or vacating, modifying or otherwise disturbing a judgment or order unless the action appears inconsistent with substantial justice. The Court at every stage must disregard any error or defect which does not affect substantial rights of the parties.

Section 9-9-111 Stay of Proceedings to Enforce a Judgment

- (A) **Automatic Stay; Exceptions-Injunctions, Receiverships, and Patent Accountings:** No execution shall issue upon a judgment or proceedings for its enforcement until expiration of ten (10) days after entry. Unless ordered an interlocutory or final judgment for injunction or receivership or judgment or order directing an accounting, shall not be stayed after entry until an appeal or during the pendency of an appeal.
- (B) **Stay on Motion for New Trial or for Judgment:** In its discretion and for security of the adverse party the Court may stay execution of or proceedings to enforce a judgment pending a new trial motion or any motion to alter or amend a judgment.
- (C) **Injunction Pending Appeal:** When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court may suspend, modify, restore, or grant an injunction during the pendency upon, conditions as to provide security for the adverse party.
- (D) **Stay Upon Appeal:** The appellant by giving a bond may obtain a stay. The bond may be given at or after filing notice of appeal or the order allowing the appeal. The stay is effective when the supersedeas bond is approved by the Court.
- (E) **Stay in Favor of the Tribe or Agency Thereof:** When an appeal is taken by the Tribe or an officer or agency or by direction of the Government, the operation or enforcement of the judgment is stayed; no bond, obligation, or other security shall be required.
- (F) **Power of the Supreme Court Not Limited:** This Section does not limit any power of the Supreme Court or of a judge or justice to stay proceedings, or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or effectiveness of the judgment to be entered.
- (G) **Stay of Judgment as to Multiple Claims or Multiple Parties:** When the Court has ordered a final judgment the Court may stay enforcement until the entering of a subsequent judgment or judgments and may prescribe conditions as are necessary to secure the benefit to the prevailing party.

Section 9-9-112 Disability of a Judge

If a Trial judge is unable to perform duties after a verdict or findings are filed, then any other judge may perform those duties.

Section 9-9-113 Reserved

Section 9-9-114 Judgment Against Infant

It shall not be necessary to reserve the right of a minor to show cause against a judgment, after attaining full age; the minor, within two (2) years after the age of eighteen (18) may show cause against such order or judgment.

Section 9-9-115 Judgments as Liens

Judgments of the Tribal Court and the Courts of the United States shall be liens on real estate within Tribal jurisdiction from the time a certified copy of such judgment has been filed. A fifty dollar (\$50.00) fee shall be collected for each filing. No judgment shall be a lien until it has been filed. Execution shall be issued only by the Tribal Court.

Section 9-9-116 Discharge of Money Judgment Liens

An appeal from a money judgment, lien and any lien of an attachment issued and levied, shall cease upon the debtor or depositing, with the Court Clerk cash to cover the whole amount including interest, costs and attorney fees, with cost and interest on the appeal, accompanied by a written statement, the deposit is made to discharge the lien and any lien of an attachment issued and levied. The Court Clerk, upon receipt of a cash deposit and written statement, shall enter it upon the civil appearance docket, the judgment docket. The Court Clerk shall deposit it in a proper account pending final determination and, upon final determination will pay, or apply the same upon any judgment against the depositors, and refund any balance to the depositors, or, refund the whole amount.

Section 9-9-117 Additional Case Deposits

A judgment creditor may, upon reasonable notice to judgment debtors, move for the deposit of additional cash; and if it appears the deposit is insufficient including interest, costs and attorney fees, with costs and interest on appeal, the Court shall order the deposit of additional cash. If the additional cash is not deposited within a reasonable time, set by the Court, the judgment shall be revived and attachment may be issued.

Section 9-9-118 Reversal By Supreme Court

In the event of a reversal by the Supreme Court, no money deposited to discharge the lien of such judgment shall be refunded until final disposition.

Section 9-9-119 Interest on Money Judgments

All money judgments of the District Court shall bear interest at the rate of ten percent (10%) simple interest per annum, except authorized judgments against the Tribe, its political subdivisions, and agents which judgments shall not bear interest unless specifically provided when a rate of interest is specified in a contract, the rate therein shall apply to the judgment and be specified in the judgment if the rate does not exceed the lesser of any limitation imposed by Tribal law, or the law of the jurisdiction in which the contract was made, upon the amount of interest which may be charged.

Section 9-9-120 Exempt Property

The following property shall be exempt, except enforcement of contractual liens or mortgages, from garnishment, attachment, execution and sale, and other process for the payment of principal and interest, costs, and attorney fees upon judgment.

- (A) Three-fourths (3/4) of net wages earned per week or an amount equivalent to forty (40) times the federal minimum hourly wages per week, whichever is greater, except as may be provided for child support payments.
- (B) One automobile of fair market value not exceeding Three Thousand Dollars (\$3,000.00).
- (C) Tools, equipment, utensils, or books necessary to conduct the persons business but not including stock or inventory.
- (D) Actual trust or restricted title to any lands held in trust or subject to restrictions against alienation but not including leasehold and other possessory interests in such property.
- (E) Any dwelling used as the actual residence including up to five acres of land upon which such dwelling is located whether such dwelling is owned or leased.
- (F) Household good, furniture, wearing apparel, personal effects, but not including televisions, radios, sound systems, recorders, or portable home computers, (not otherwise exempt) more than two (2) firearms, works of art, and other recreational or luxury items.
- (G) One horse, one bridle, and one saddle.
- (H) All implements of husbandry used upon the homestead, not more than eight cows with their immature offspring, four hogs with their immature offspring, twenty chickens, and feed suitable and sufficient to maintain said livestock and fowls for a period of one year.
- (I) All ceremonial family Indian heirlooms or religious items.

Section 9-9-120.1 Payment of Judgments From Individual Indian Moneys

Whenever the court shall have ordered payment of money damages and the debtor refuses or neglects to make payment within the time set or when an execution is returned showing no property found, and when the debtor has sufficient funds to his credit at any Agency Office the Clerk upon request of the judgment creditor, shall certify the record to the superintendent and if directed the disbursing agent shall pay to the judgment creditor the amount of the judgment, or lessor amount as may be specified.

SECTION TWO FOREIGN JUDGMENTS

Section 9-9-201 Definition

“Foreign judgment” means any judgment, decree, or order of a Court of the United States, Indian Tribe, or of any other Court which is entitled to comity or full faith and credit in the Tribal Court. Such comity or full faith and credit shall be granted to a judgment, decree or order of a state court that recognizes the judgments, decrees and orders of this court.

Section 9-9-202 Filing and Status of Foreign Judgments

A copy of any foreign judgment authenticated may be filed. The Clerk shall treat the foreign judgment in the same manner as a judgment of the Tribal Court. A judgment so filed has the same effect and is subject to the same procedures and proceedings for reopening, vacating, or staying a judgment of Tribal District Court and may be enforced or satisfied in like manner.

Section 9-9-203 Grounds for Non-Recognition

- (A) A foreign judgment is not conclusive if:
 - (1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
 - (2) The foreign court did not have jurisdiction over the defendant; or
 - (3) The foreign court did not have jurisdiction over the subject matter.
- (B) A foreign judgment need not be recognized if:
 - (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
 - (2) The judgment was obtained by fraud;
 - (3) The cause of action on which the judgment is based is repugnant to the public policy of the Tribe;
 - (4) The judgment conflicts with another final and conclusive judgment;
 - (5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled; or
 - (6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of action.

Section 9-9-204 Grounds for Non-Refusal

- (A) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if:
 - (1) The defendant was served personally in the foreign jurisdiction;
 - (2) The defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
 - (3) The defendant prior to the commencement of the proceeding had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
 - (4) The defendant was domiciled in the foreign jurisdiction when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign jurisdiction;
 - (5) The defendant had a business office in the foreign jurisdiction and the proceedings in the foreign court involved a cause of action arising out of business done by defendant through that office, the foreign jurisdiction; or
 - (6) The defendant operated a motor vehicle or airplane in the foreign jurisdiction and the proceedings involved a cause of action arising out of such operation.
- (B) The Tribal District Court may recognize other bases of jurisdiction.

Section 9-9-205 Notice of Filing

- (A) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the Clerk of the Court an affidavit setting forth the name and last known post-office address of the judgment debtor, and of the judgment creditor.
- (B) Promptly upon filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of notice of filing by the clerk shall not affect the

enforcement proceedings if proof of mailing by the judgment creditor has been filed.

- (C) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until twenty (20) days after the date the judgment is filed with the Tribal District Court.

Section 9-9-206 Stay of Execution of Foreign Judgment

- (A) If judgment debtor shows the Tribal District Court that an appeal from the foreign judgment is pending or will be taken, or a stay of execution has been granted, the Court shall stay enforcement until the appeal is concluded, or until the time for appeal expires, or until the stay of execution expires or is vacated, upon proof the judgment debtor has furnished security for satisfaction of the judgment required by the law of the jurisdiction in which the judgment was rendered.
- (B) If the judgment debtor shows the Tribal District Court any ground upon which enforcement of a judgment of the Tribal District Court would be stayed, the Court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring security for satisfaction of the judgment which is required in the Tribal jurisdiction.

Section 9-9-207 Fees

Any person filing a foreign judgment shall pay to the Court Clerk those fees now and hereafter prescribed by statute or authorized by Court rule for the filing of an action in the Court. Fees for docketing, transcription, or other enforcement proceedings shall be the same as provided for judgments of the Tribal District Court.

Section 9-9-208 Optional Procedure

The right of a judgment creditor to bring an action to enforce his judgment in Tribal District Court instead of proceedings under this subchapter remains unimpaired in Tribal District Court.

SECTION THREE CONTRIBUTION

Section 9-9-301 Joint Debtors or Sureties

When property, liable to an execution against several persons, is sold and more than a due proportion is laid upon the property of one or one pays, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one, as security, and the surety pays the amount, he may compel repayment from the principal; the person paying or contributing, is entitled to the benefit of the judgment, to

enforce contribution or repayment, if within ten days after his payment he file notice of his payment and claim.

Section 9-9-302 Joint Tort-Feasors – Contribution – Indemnity – Exemptions – Release. Covenant Not to Sue. Etc.

- (A) When two or more persons become jointly or severally liable in tort for the same injury to person or property for the same wrongful death, there is a right of contribution though judgment has not been recovered against any.
- (B) The right of contribution exists only in favor of a tort-feasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount in excess of his pro rata share. No tort-feasor is compelled to make contribution beyond his pro rata share of the entire liability.
- (C) There is no right of contribution in favor of any tort-feasor who has intentionally caused or contributed to the injury or wrongful death.
- (D) A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor whose liability for the injury or wrongful death is not extinguished by settlement or any amount paid which is unreasonably excessive.
- (E) A liability insurer which has discharged, the liability of a tort-feasor and has thereby discharged in full its obligation as insurer, is subrogated to the tort-feasor's right of contribution to the extent it has paid in excess of the tort-feasor's pro rata share. This provision does not limit or impair any right of subrogation arising from any other relationship.
- (F) This act does not impair any right of indemnity under existing law. When a tort-feasor is entitled to indemnity the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.
- (G) This subchapter shall not apply to breaches of trust or of other fiduciary obligation.
- (H) When a release, not to sue or a similar agreement is given in good faith to persons liable in tort for the same injury or same wrongful death:
 - (1) It does not discharge any of the other tort-feasors from liability unless its terms provide; but it reduces the claim against others of any amount stipulated by the release or the covenant, or in the amount of the consideration whichever is greater; and

- (2) It discharges the tort-feasor from all liability for contribution to any other tort-feasor.

Section 9-9-303 through 9-9-310 Reserved

**SECTION FOUR
COSTS**

Section 9-9-401 Affidavit in Forma Pauperis

Any person who cannot afford to pay costs of an action may be allowed to proceed without paying costs upon the filing of an affidavit in forma pauperis. In the following form and attached to the petition, viz.:

[Name] in the District Court of [The Citizen Potawatomi] I do solemnly swear that the cause of action set forth in the petition is just, and I (or we) do further swear that by reason of my (or our) poverty, I am unable to give security for costs.

Section 9-9-402 False Swearing in Such Case

Any person willfully swearing falsely in making the affidavit shall, on conviction, be adjudged guilty of perjury,

Section 9-9-403 Costs Where Defendant Disclaims

Where defendants disclaim having any title or interest in land or other property, the subject matter of action, they shall recover their costs, unless for special reasons the Court decides otherwise.

Section 9-9-404 Certain Costs Taxed at Discretion of Court

Unless otherwise provided the costs of motions, continuances, amendments, shall be taxed and paid as the Court, directs.

Section 9-9-405 Costs to Successful Party as Matter of Course

Where it is not otherwise provided costs shall be allowed to the prevailing party, in actions for recovery of money only, or for the recovery of specific, real or personal property.

Section 9-9-406 Costs in Other Cases

In other actions, the Court may award and tax costs, and apportions the same between the parties on the same or adverse sides.

Section 9-9-407 Several Actions on Joint Instrument

Where several actions are brought based on one instrument against several parties who have been joined as defendants no costs shall be recovered by the plaintiff in more than one action if the parties were, at the commencement of the previous action, openly within the Tribal jurisdiction or subject to suit and service of process in the Tribal District Court and the whereabouts of such persons were known or could have been ascertained with reasonable diligence.

Section 9-9-408 Clerk to Tax Costs

The Clerks shall tax the costs and insert the same in their respective judgments, subject to re-taxation by the Court, on motion of any person interested.

Section 9-9-409 Cost of Notice or Other Legal Publication

Whenever any notice, or other legal publication is required the costs of such publication shall be taxes or costs.

Section 9-9-410 Attorney Fees Taxable as Costs

- (A) In any civil action to recover on any account, note, bill, negotiable instrument, or contract relating to purchase or sale or for labor or services, the prevailing party shall be allowed a reasonable attorney fee to be taxed and collected as costs.
- (B) In any civil action to enforce payment or collect upon any instrument drawn on a bank, the party prevailing shall be awarded reasonable attorney's fee.
- (C) In any civil action or proceeding to recover for the overpayment of any charge for water, sanitary sewer, garbage, electric or natural gas service from any person, firm or corporation, or to determine the right of any person, firm or corporation to receive any such service, the prevailing party shall be allowed a reasonable attorney fee.
- (D) In any civil action brought to recover damages for breach or enforce terms of an express warranty against seller, retailer, manufacturer, manufacturer's representative or distributor, the prevailing party shall be allowed a reasonable attorney fee.
- (E) In any civil action to recover damages for the negligent or willful injury to property and any other incidental costs the prevailing party shall be allowed attorney's fees, Court costs and interest and collected as costs.

Section 9-9-411 Costs Defined

Costs include, in addition to expense specifically recoverable fees required for filing, expense for service of process, costs of transcripts, Tribal Police Fees and mileage, costs of

publication printing of brief's or documents required by the Court and items made recoverable as costs by Court rule.

Section 9-9-412 Authority of Court to Fix Cost Rates

The Court Chief District Judge as the Court Administrator shall set the fees and costs of any service performed by the Court Clerk. The fees and costs are not to exceed the fees and costs of similar services provided by State or Federal Court.

CHAPTER TEN LIMITATIONS APPLICABLE

Section 9-10-101 Limitations Applicable

Civil actions can only be commenced within the periods prescribed after the cause of action accrued. There shall be no statute of limitations applicable against civil actions brought by the Tribe.

Section 9-10-102 Limitation of Real Actions

Actions for the recovery of real property or for the determination of any adverse right or interest can only be brought within the periods prescribed;

- (A) An action for recovery of real property partitioned, sold, or conveyed pursuant to partition proceedings, or judicial sale, distributed in administration or probate proceedings, when brought by or on behalf of any person claiming by title acquired after the date of the judgment or claiming to be an heir or devisee or as successor in interest, within five (5) years after the recording of the deed or within five (5) years after the final judgment of partition where no sale is had or within five (5) years after the recording of the decree of distribution in an administration or probate proceedings;
- (B) An action for the recovery of real property sold by any person upon an order or judgment brought by the heirs or devisees or ward of his, or any person claiming as a successor by title after judgment or order, within five (5) years.
- (C) An action for the recovery of real property sold for taxes, within five (5) years after the date of the recording.
- (D) An action for the recovery of real property not provided for above, within ten (10) 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 whether the deed, judgment precedent action or proceeding is void or voidable in whole or part.
- (G) Nothing 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 or restricted conforming to Federal laws.

Section 9-10-103 Persons Under Disability – In Real Property Actions

Any person entitled who may be under legal disability when the cause of action accrues, may bring action within two (2) years after the disability is removed.

Section 9-10-104 Limitation of Other Actions

Civil actions other than recovery of real property can be brought after accrued;

- (A) Within five (5) years: Upon any contract, agreement or promise in writing.
- (B) Within five (5) years: Upon a contract express or implied not in writing; a liability created by statute including forfeiture or penalty and an action on a foreign judgment.
- (C) Within three (3) years: For trespass, for taking, detaining, or injuring personal property, specific recovery of personal property; for injury to the rights of another, not by contract except provided in building construction tort claims, an action for relief on the ground of fraud – the cause shall not be deemed to have accrued until 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, Police Officer, or officer, or upon the bond or undertaking given in attachment, injunction, arrest or in any case required by statute, can only be brought within three (3) years.
- (F) An action for relief, not provided, can only be brought within five (5) years after accrued.

Section 9-10-105 Persons Under Disability in Actions Other Than Real Property Action

If a person is, at the time accrued, under any legal disability, they shall be entitled to bring action within one (1) year after the disability is removed.

Section 9-10-106 Absence or Flight of Defendant

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

Section 9-10-107 Limitation of New Action After Failure

If any action is commenced within time, and judgment for plaintiff is reversed, or if the plaintiff fail other than upon the merits, the plaintiff, may commence a new action within two (2) years after reversal or failure although the time limit is expired. An appeal of any judgment or order against plaintiff other than on the merits shall toll the two (2) year period during the pendency.

Section 9-10-108 Extension of Limitation

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

Section 9-10-109 Statutory Bar Absolute

When a right of action is barred by statute, it shall be unavailable as a cause of action or defense, except as provided for counterclaim, setoff, or cross-claim.

Section 9-10-110 Law Governing Foreign Claims

The period of limitation accruing outside of Tribal jurisdiction shall be prescribed either by law where the claim accrued or Tribe whichever last bars the claim.

Section 9-10-111 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, in possession of or performing or furnishing the design, planning, supervision or observation of construction of such an improvement more than ten (10) years after substantial completion.

CHAPTER ELEVEN HABEAS CORPUS

Section 9-11-101 Persons Who May Prosecute Writ

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

Section 9-11-102 Application for Writ

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

- (A) The person restrained, and the place where restrained, naming all known parties, or describing them;
- (B) The cause or pretense of the restraint, according to the best of knowledge and belief;
- (C) If the restraint is alleged illegal, what is the illegality.

Section 9-11-103 Writ Granted

Writs of habeas corpus may be granted without delay by any judge or justice at any time.

Section 9-11-104 Direction and Command of Writ

The writ shall be directed to the officer or party having the person under restraint, commanding them to have person before the Court, at such time and place as the Court shall direct, to show cause they have for the restraint.

Section 9-11-105 Delivery to Tribal Police Chief

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

Section 9-11-106 Service on Party Other Than Tribal Police Chief

If directed to any other person, it shall be delivered to the Police Chief and shall be served upon the person without delay.

Section 9-11-107 Service When Person Not Found

If the person cannot be found, or refuse admittance it may be served by leaving it at the residence by affixing it at some conspicuous place, of house or where the party is confined under restraint.

Section 9-11-108 Return and Enforcement of Writ

The Police Chief or person shall make immediate return. If they neglect or refuse, to make return, or to produce the party and no sufficient excuse is shown, the Court shall enforce obedience.

Section 9-11-109 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 their custody;
- (B) If the authority is written, they shall return a copy and produce the original at the hearing;
- (C) If they had the party in custody or under restraint, and have transferred them, they shall state to whom, the time, place and cause of the transfer.

Section 9-11-110 Proceedings in Case of Sickness or Infirmary

The Court, if satisfied with the truth of the allegation of good cause for not producing the person, may proceed to decide on the return, or adjourn until the party can be produced. The plaintiff may except to the sufficiency of, or controvert the return or allege any new matter 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.

Section 9-11-111 Hearings and Discharge

The Judge shall proceed in a summary way to hear and determine the cause, and if no legal cause is shown shall discharge the party.

Section 9-11-112 Reserved

Section 9-11-113 Writ Upon Temporary Commitment

No person shall be discharged from an order of temporary commitment for lack of bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged lack of probable cause. In such cases, the court shall summon the prosecutor and inquire into the charge and discharge, let to bail or recommit the prisoner.

Section 9-11-114 Writ May Issue to Admit to Bail

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

Section 9-11-115 Notice to Interested Persons

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

Section 9-11-116 Powers of Court

The judge shall have power to require and compel the attendance of witnesses and to do all other acts necessary.

Section 9-11-117 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.

Section 9-11-118 Issuance of Warrant of Attachment

Whenever it shall appear by affidavit that anyone is illegally held in, and there is good reason to believe such person will be carried out of the jurisdiction or will suffer some irreparable injury, the Court, may cause a Warrant to be issued, reciting the facts, and directing to the Police Chief to take the person held in custody and bring him before the Court.

Section 9-11-119 Arrest of Party Causing Restraint

The judge may insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.

Section 9-11-120 Execution of Warrant of Attachment

The officer shall execute the Warrant by bringing the person before the Court and the like return and proceedings shall be required as in writs of habeas corpus.

Section 9-11-121 Temporary Orders

The Court may make any temporary orders that justice may require. The custody of any person restrained may be changed from one person to another, by Court order.

Section 9-11-122 Issuance and Service on Sunday

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

Section 9-11-123 Issue of Process

All writs and process, may be issued by the Clerk upon Court direction, and except summons, sealed and shall be served and returned unless the Court shall specify a particular time. No writ or process shall be disregarded for any defect if enough is shown to notify the officer or person of the process. Amendments and temporary commitments may be allowed.

Section 9-11-124 Protection of Infants and Insane Persons

Writ of habeas corpus will be granted in favor of parents, guardians, masters, husbands and wives; and to enforce the rights and protection of infants and insane persons.

Section 9-11-125 Security for Costs Not Required

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

CHAPTER TWELVE MANDAMUS

Section 9-12-101 Functions of Mandamus

A writ of mandamus may be issued to any entity or person, to compel the performance of any act which law specifically as a duty, resulting from an office, trust or station. It cannot control discretion.

Section 9-12-102 Writ Not Issued Where Remedy at Law

This writ may not be issued where a plain and adequate legal remedy exists.

Section 9-12-103 Forms and Contents of Writs

The writ is alternative or peremptory. The alternative writ must state, the obligation of defendant to perform the act, omission to perform and command upon receipt or specified time, to do the act required or show cause at a specified time and place, why they refuse. The peremptory writ must be in a similar form, except the show cause is omitted.

Section 9-12-104 When Peremptory Writ of Issue

When the right to require performance of the act is clear and it is apparent no valid excuse can be given for not performing, a peremptory mandamus may be issued.

Section 9-12-105 Petition Upon Affidavit

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

Section 9-12-106 Allowance and Service of Writ

The writ must be signed by the Court, and served personally upon defendant; if defendant, duly served, neglects to return he shall be proceeded against for contempt.

Section 9-12-107 Answer

On the alternative writ's return day the served party may show cause, by answer made as a civil action answer.

Section 9-12-108 Failure to Answer

If no answer is made, a peremptory mandamus is allowed; if answer is made containing new matter, the plaintiff may make objections to its sufficiency or oppose it.

Section 9-12-109 Similarity to Civil Action

No other pleading or written allegation is allowed other than the writ and answer. They may be amended; and the issues tried as in a civil action.

Section 9-12-110 Recovery by Plaintiff

If judgment is given for plaintiff, plaintiff shall recover damages as civil action, and costs; and a peremptory mandamus shall also be granted to him without delay.

Section 9-12-111 Damages Bar Further Actions

Recovery of damages, against a party who made a return to a writ of mandamus, is a bar to any other action against the same party.

Section 9-12-112 Penalty for Refusal or Neglect to Perform

- (A) Whenever a peremptory mandamus is directed to any public officer, body or board, if the officer or member, refuses or neglects to perform the duty, the Court may impose a fine, not exceeding One Thousand Dollars (\$1,000.00).
- (B) When the peremptory writ of mandamus is directed to any private person who refused or neglected to perform, the Court may impose a civil fine, not exceeding Five Hundred Dollars (\$500.00), and commit him for a term of sixty (60) days or until he shall perform or agree to perform or purge his contempt. The Court may,

order the Police Chief to perform the act required which shall have the same effect as if performed by the person.

CHAPTER THIRTEEN QUO WARRANTO

Section 9-13-101 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 may be obtained by civil action; the action may be instituted and filed by the contestant for office after the issuance of the certification of the election, and before thirty (30) days after induction. This Chapter shall not apply to any primary election.

Section 9-13-102 Grounds for Action

Action may be brought in the District Court, in the following cases:

- (A) When any person shall usurp, intrude or unlawfully hold or exercise any public office, or shall claim any franchise within Tribal jurisdiction or any office in any corporation created by Tribal authority;
- (B) Whenever any public officer shall have done or suffered any act which, by law, would be a forfeiture of office;
- (C) When any association or persons shall act within Tribal jurisdiction as a corporation without being legally incorporated or domesticated;
- (D) When any corporation does or admits acts which are a surrender or forfeiture of rights and privileges as a corporation, or any corporation abuses its power or intentionally exercises powers not conferred by law;
- (E) For any cause for which a remedy might have been obtained by writ of quo warranto, or information in the nature of quo warranto.

Section 9-13-103 Persons Who May Bring Action

When action is brought by the Tribal attorney general it shall be prosecuted in the name of the Tribe, but when brought by a person, it shall be prosecuted in name, direction, and expense of the person. When the action is brought against a person for usurping an office by the Tribal attorney general, he shall set forth the person rightfully entitled to office and his right or title, when the action is brought by the person claiming title, he may claim and recover any damage.

Section 9-13-104 Reserved

Section 9-13-105 Judgment for Plaintiff

If the plaintiff or person entitled prevails, he shall be installed in office. The Court shall order defendant to deliver all books and papers in their custody or within their power, belonging to the office.

Section 9-13-106 Enforcement of Judgment

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

Section 9-13-107 Separate Action for Damages

When the plaintiff prevails they may, if they have not claimed damages have a separate action for damages within one year. The Court may give judgment of ouster, franchise or corporate rights; and give judgment dissolving a corporation.

Section 9-13-108 Corporations

If judgment is rendered against any corporation, or persons claiming to be a corporation, the Court may order costs to be collected, and may restrain any disposition of the effects of the corporation, appoint a receiver, take an account, and make a distribution among the creditors and person entitled.

CHAPTER FOURTEEN SMALL CLAIMS PROCEDURE

Section 9-14-101 Small Claims

The following may be brought under the small claims procedure:

- (A) Actions for recovery of money based on contract or tort, including subrogation claims, where the amount sought exclusive of attorney's fees and other court costs, does not exceed Two Thousand Five Hundred Dollars (\$2,500.00). Libel or slander actions may not be brought in the small claims court.
- (B) Actions to replevy personal property where the value of personal property sought does not exceed two thousand five hundred dollars (\$2,500.00); 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 exclusive of attorney's fees and other costs, exceed Two Thousand Five Hundred Dollars (\$2,500.00);

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

Section 9-14-102 Small Claims Affidavit

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

In the District Court
Citizen Potawatomi Nation
Small Claims Division

Plaintiff
vs. Small Claims No. _____

Defendant

Citizen Potawatomi Nation)
) SS
Shawnee, Oklahoma)

_____, being duly sworn, deposes and says:

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

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

and/or

Defendant is wrongfully in possession of certain personal property described as _____ the value of said personal property is \$_____. Plaintiff is entitled to possession and has demanded defendant relinquish possession of said personal property, but defendant refused to do so.

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

Notary Public (or Clerk or Judge)

My Commission Expires:

On the affidavit shall be printed:

ORDER

The people of Citizen Potawatomi Nation to:

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

This matter shall be heard at _____ (name and address of building), in _____ (complete address of court house), at the hour of _____ o'clock of the _____ day of _____, 20_____, or you are further notified in case you do not appear judgment may given against you as follows:

For the amount of claim as stated in the affidavit, for possession of the personal property described in the affidavit.

And, in addition, costs of the action (including attorney fees), including costs of service of this order.

Date this _____ day of _____, 20_____.

Clerk of the Court

Section 9-14-103 Preparation of Affidavit

The claimant shall prepare an affidavit. The affidavit may be presented in person or by mail. Upon receipt of affidavit, the Clerk shall file and make a true and correct copy and the clerk shall fill in the blanks in the order printed and sign the order.

Section 9-14-104 Service of Affidavit

Unless the Police Chief or authorized person is requested, the defendant shall be served by mail. The Clerk shall enclose a copy of the affidavit and order addressed to defendant, and mail by certified mail and request a return receipt. The Clerk shall attach to the original affidavit the receipt for the certified letter and return card or other evidence of service. If returned undelivered the clerk shall deliver a copy to the Police Chief who shall serve the defendant.

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

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

Notary Public (or Clerk)

Section 9-14-108 Actions for Amounts Exceeding in Excess of Two Thousand Dollars

If a claim, a counterclaim, or a setoff is filed exceeding Two Thousand Five Hundred Dollars (\$2,500.00) the action shall be transferred to the general civil docket unless both parties agree. If no agreement a judgment in excess of two thousand five hundred dollars (\$2,500.00) may not be enforced for the part that exceeds Two Thousand Five Hundred Dollars (\$2,500.00). Plaintiff shall deposit with the Clerk cost charged in other cases, less sums already paid or their claim shall be dismissed and remaining claims, shall proceed under the small claims procedure.

Section 9-14-109 Attachment or Garnishment, Other Matters

No attachment or prejudgment garnishment shall issue under the small claims procedure. Proceedings to enforce or collect a judgment under the small claims procedure shall be in all respects as other cases. No depositions, interrogatories or discovery proceeding shall be used under small claims procedure except in aid of execution. No new parties shall be brought in and no party shall be allowed to intervene.

Section 9-14-110 Trial by Court

Actions shall be tried to the Court. If either party wishes a reporter, he must notify the Clerk in writing at least forty-eight (48) hours before defendant's appearance and must pay the entire costs. Plaintiff and defendant have the right to witnesses and the judge may call witnesses and order production of documents. The hearing and disposition shall be informal with the object of dispensing speedy justice.

Section 9-14-111 Payment of Judgment

If judgment is against either party, the party shall pay immediately. The judge may order time of payment.

Section 9-14-112. Appeals

Appeals may be taken to the Supreme Court in the same manner as civil actions.

Section 9-14-113 Fees

A fee shall be charged and collected for the filing of the affidavit counterclaim or setoff, mailing of the affidavit determined by the Court Administrator. If served by Tribal Police, the Clerk shall collect the usual police service fee. After judgment, the clerk shall issue such process and shall collect fees and charges allowed.

Section 9-14-114 Costs

The prevailing party is entitled to costs, including the costs of service and enforcing any judgment.

Section 9-14-115 Judgments Rendered Under Small Claims Procedure

- (A) Judgments shall not be entered upon the judgment docket. Such judgment shall not become a lien upon real property unless entered upon the judgment docket.
- (B) Judgment, satisfied by payment other than through the Clerk or may be released upon application by judgment debtor and proof of notice mailed by the Clerk to judgment creditor at last-known address at least ten (10) days prior to the hearing of the application. Payment of all costs shall be paid by judgment debtor.

Section 9-14-116 Fee for Docketing Judgments

The Clerk shall, upon fee payment enter the judgment. Fees collected shall become part of the cost.

Section 9-14-117 Other Actions In Small Claims Court

With Court permission and consent of all parties, other actions not provided or exceeding the maximum amount allowed except actions for liable and slander, may be tried under the small claims procedure. The motion for leave to file shall contain the consent of the defendant or such consent shall be promptly filed.