

CHAPTER 2-2 CIVIL ACTIONS

JURISDICTION

2-2-1 Jurisdiction Generally

The Court shall have jurisdiction of all suits involving persons residing within the Tribal jurisdiction as defined by this Code and all other suits in which a party is deemed to have consented to the jurisdiction of the Court, or in which the events giving rise to the action occurred within the Tribal jurisdiction as defined by this Code.

COMPLAINTS

2-2-30 Complaints—Elements

A complaint filed in the Tribal Court shall contain:

- (a) The title of the cause, the name of the Court, and the names of the plaintiff and defendant;
- (b) A statement of the facts constituting the cause of action;
- (c) A request for whatever relief the party wants, including the amount, if monetary damages are requested;
- (d) The signature of the plaintiff, witnessed by a member of the Court staff or a licensed Notary Public.

(Amended 8/2/82, Resolution 1982-445)

2-2-31 Limitation on Filing of Complaint

No complaint shall be filed in a civil action unless the events shall have occurred within a three (3) year period prior to the date of filing the complaint: provided, that this general statute of limitations shall not apply to suits filed to recover public moneys or public property intentionally or erroneously misspent, misappropriated, or misused in any way; and further provided that this general statute of limitations shall not apply to any debt owed the Tribes or any of its agencies, arms, or instrumentalities, whether organized or not under tribal law.

(Amended 12/20/90, Resolution 1990-681)
(Certified 10/31/91)

2-2-32 Filing Fees

In all civil suits the plaintiff shall be required to pay to the Court a filing fee of \$30.00. The fee may be waived by the Court upon a show of good cause. No fee shall be charged if the Tribe is the plaintiff.

2-2-33 Answers

An answer filed in the Tribal Court shall contain:

- (a) A general or specific denial or admission of the allegations in the complaint;
- (b) A statement of any new matter constituting a defense or counterclaim, in ordinary and clear language.

The answer is to be filed no later than twenty (20) days after the defendant has been served the summons and complaint, unless good cause for later filing is shown.

NOTIFICATION

2-2-70 Notice and Service

Civil actions may be instituted either by voluntary appearance and agreement of the parties or by service upon the defendant of a true copy of the filed complaint and notice either personally by a person not a party in the action or as provided herein. The notice shall be attached to the copy of the complaint, and cite the defendant to answer in writing, by filing with the Court and serving a copy on the plaintiff, not less than

twenty (20) days from the date of service of the complaint and notice. The service may be made by means of certified mail, return receipt requested. Evidence of the receipt of notice shall be kept as part of the record in the case.

2-2-71 **Substituted Service**

(a) Upon a showing by the plaintiff to the Court that diligent efforts were made to serve the Notice and Complaint on the defendant and that for sufficient reasons service could not be made, the judge may allow substituted service pursuant to CTC §2-2-71(b). Diligent efforts shall include an attempt of service by certified mail to the defendant's last known address. If the defendant is a tribal member and the plaintiff is the Tribe, or a tribal entity or program (including CTEC and related businesses), then there shall be an attempt of service by certified mail to the defendant's address used for enrollment purposes.

(b) Substituted service shall be made as follows:

(1) Copies of the Notice and Complaint shall be posted in two public places on the Reservation for three (3) weeks. One copy shall be posted at the Tribal Headquarters Building. The other copy shall be posted in the Reservation district where the defendant last resided. If the defendant does not reside on or near the Reservation, then for the purposes of this subsection, defendant shall be deemed to reside in the Nespelem District.

(2) Service must also be made by publication of a copy of the Notice once a week for three (3) consecutive weeks in a newspaper of general circulation in the Reservation District where the defendant resides. If the defendant does not reside on the Reservation, then the Notice must be published for three (3) consecutive weeks in a newspaper of general circulation in the Reservation District where the cause of action arose. Publication for two (2) consecutive issues in the Tribal Tribune may be substituted for publication in a newspaper of general circulation. The Notice, when published, shall state the general nature of the case and the nature of the relief requested.

(Adopted 01/12/89, Resolution 1989-46)

CIVIL PROCEDURE

2-2-100 **Standard of Proof**

The plaintiff in a civil case shall have the burden of proving his case by the greater weight of the evidence.

2-2-101 **Jury**

Civil actions, other than appeals, shall be tried by a jury upon written request filed by any party at least fourteen (14) days before the trial date and upon such party's posting of a fee or other security in the amount of \$75.00 to cover costs, disbursements and jury fees in the case. The fee may be waived by the Court upon a showing of good cause.

2-2-102 **Applicable Law**

In all civil cases the Court shall apply in the following order of priority, any applicable laws of the Colville Confederated Tribes, tribal case law, tribal customs, state statute, state common law, federal statutes, and federal custom law, and international law.

(Amended 12/21/82, Resolution 1982-775)

2-2-103 **Customs**

Where any doubt arises as to the customs of the Tribes the Court may request the advice of counselors familiar with those customs.

2-2-104 **Other Law**

Repealed by Tribal Resolution 1982-775 on December 21, 1982.

2-2-105 Evidence

The Court shall not be bound by common law rules of evidence, but shall use its own discretion as to what evidence it deems necessary and relevant to the action.

JUDGMENTS

2-2-140 Judgments—Generally

In all civil cases, judgment shall consist of an order of the Court awarding money damages to be paid to the injured person, or directing the surrender of certain property to the injured person, or the performance or prohibition of some other act.

2-2-141 Judgments—Compensation

The judgment shall fairly compensate the injured person for the loss he has suffered or shall follow any rules of compensation set out in any ordinance or section of this Code pursuant to which the action is brought.

2-2-142 Punitive Damages

If an injury is adjudged deliberately inflicted, the judgment may award punitive damages to the prevailing person.

2-2-143 Costs in Civil Actions

The judge may assess the accruing costs of the case against the person against whom judgment is given. Such costs shall include the expenses of voluntary witnesses for which either party may be responsible under this Code, and the fees of jurors in jury cases, and any further incidental expenses or fees connected with the procedure required by this Code as the judge may direct.

2-2-144 Judgments and Decedents' Estates

A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Court to distribute decedents' estates.

2-2-145 Judgments—Duration and Interest

A judgment of the Tribal Court shall be valid until satisfied in full, including interest upon the judgment. Interest on judgments shall accrue as follows:

(a) Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in the contracts. Provided, that said interest rate is set forth in the judgment.

(b) Except as provided under subsection (1) of this section, judgments shall bear interest from the date of entry at the maximum rate permitted under R.C.W. 19.52.020 on the date of entry thereof: Provided, that in any case where a judgment entered on verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

EXECUTION OF JUDGMENTS

2-2-170 Procedure

If, after the time for appeal has run, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or is not making payments in a manner agreed to by the parties or required by the Court, the judge shall order the judgment debtor to appear before him and answer under oath regarding his personal property. The judge shall then determine what property of the judgment debtor is available for execution and order the police to seize as much of the property as reasonably appears necessary to pay the

judgment Failure of the judgment debtor to appear may be deemed a contempt of court and the judge may proceed without his appearance.

2-2-171 Sale of Property

Sale of the seized property shall be at public auction conducted by the police after giving at least ten (10) days public notice posted in at least three public places on the Reservation. Property shall be sold in a commercially reasonable manner to the highest bidder. Payment for the property and transfer of title shall take place after the retention period has expired, as described below. If the sale results in a price higher than the debt plus expenses of sale, the debtor shall be given the surplus. The judgment shall continue in effect in the amount not recovered at the sale, plus expenses of the sale.

2-2-172 Exemption from Execution

The judge shall order seizure and sale of only such property of the judgment debtor as will not impose an immediate and substantial hardship on his immediate family. Only property of the judgment debtor himself may be subject to execution and not property of his family.

2-2-173 Redemption

At any time within fourteen (14) days after the sale under section 2-2-170 above, the judgment debtor may redeem the sold property by paying the judgment amount in full, plus expenses of the sale. Upon such payment, the property shall be returned to the judgment debtor and the purchaser shall be notified that the property has been redeemed.

2-2-174 Per Capita Payments/Dividends

Unless otherwise provided by the Business Council, the Tribal Court and all the judges thereof shall have the authority and power to order that all per capita payments/dividends of judgment debtors, as authorized by 25 U.S.C.A. §117b, be available for execution of judgment and to order appropriate tribal or federal officials to seize and all per capita payments/dividends of judgment debtors which may arise in the present or future, as much of said payments/dividends as appears necessary to satisfy any judgment of the Tribal Court where the Confederated Tribes of the Colville Reservation, as party plaintiff, was awarded money damages or money judgment for payment of contracted obligations, contracted indebtedness, or otherwise.

(Adopted 2/21/83, Resolution 1985-80)

JUDGMENTS OF OTHER COURTS

2-2-200 Application

Any person may apply to the Court by written application for an order accepting a civil judgment from another tribal court or a state or federal court as a judgment of the Court.

2-2-201 Review by Court

The judge shall review the application within five (5) days of its filing. The judge shall then decide whether to enter the judgment of the other court as a Tribal Court judgment. Unless otherwise provided by the Business Council or this Section, the judge shall have full and total discretion regarding this matter and shall be guided by the best interests of the Tribes and the parties. The Tribes shall automatically recognize, for a period not to exceed three (3) days following issuance, any no contact or restraining order issued by another court of competent jurisdiction in which domestic assault or violence is involved, provided that such order is filed with the Tribal Court in accordance with this Subchapter within the three (3) day time period.

(Amended 3/21/96, Resolution 1996-128)

2-2-202 Payment of Judgment

Upon the entry of the order declaring the other court's judgment to be a judgment of the Tribal Court, all provisions of this Code regarding judgments and execution shall be applicable.

(Chapter enacted-original code 5/7/79)