

WYANDOTTE NATION

TITLE 3
CIVIL PROCEDURE
INDEX

WYANDOTTE NATION..... i
TITLE 3 CIVIL PROCEDURE INDEX..... i
WYANDOTTE NATION..... 1
TITLE 3 CIVIL PROCEDURE..... 1
CHAPTER ONE GENERAL PROVISIONS..... 1
 Section 101. Title...... 1
 Section 102. Scope of This Title...... 1
 Section 103. Definitions...... 1
 Section 104. Jurisdiction in Civil Actions...... 2
 Section 105. 25 C.F.R. Part 11 Not Applicable...... 2
 Section 106. Declaratory Judgment...... 2
 Section 107. Court Costs Not Charged to Nation...... 2
 Section 201. Commencement of Action...... 3
 Section 202. One Form of Action...... 3
 Section 203. "Claim" Defined...... 3
 Section 204. Notice of Pendency of Action...... 3
 Section 205. Notice of Pendency Contingent Upon Service...... 3
 Section 206. Special Notice for Actions Pending in Other Courts...... 3
 Section 207. Pleadings Allowed: Form of Motions...... 3
 (a) Pleadings.....3
 (b) Motions and Other Papers.....4
 Section 208. General Rules of Pleading...... 4
 (a) Claims for Relief.....4
 (b) Defenses: Form of Denials.....4
 (c) Affirmative Defenses.....4
 (d) Correction of Designation of Pleading.....5
 (e) Effect of Failure to Deny.....5
 (f) Pleading to Be Concise and Direct; Consistency.....6
 (g) Construction of Pleadings.....6
 Section 209. Pleading Special Matters...... 6
 (a) Capacity.....6
 (b) Fraud, Mistake, Condition of the Mind.....6
 (c) Conditions Precedent.....6
 (d) Official Document or Act.....7
 (e) Judgment.....7
 (f) Time and Place.....7
 (g) Special Damage.....7
 Section 210. Form of Pleadings, Motions, and Briefs...... 7
 (a) Caption: Names of Parties.....7
 (b) Paragraphs: Separate Statements.....7
 (c) Adoption by Reference; Exhibits.....8

Section 211. Signing of Pleadings.	8
Section 212. Defenses and Objections; When and How Presented-By Pleading	8
(a) When Presented.	8
(b) How Presented.	9
(c) Motion for Judgment on the Pleadings.	10
(d) Preliminary Hearings.	10
(e) Motion for More Definite Statement.	10
(f) Motion to Strike.	10
(g) Consolidation of Defenses in Motion.	11
(h) Waiver or Preservation of Certain Defenses.	11
Section 213. Final Dismissal on Failure to Amend.	11
Section 214. Counterclaim and Cross-Claim.	12
(a) Compulsory-Counterclaims.	12
(b) Permissive Counterclaims.	12
(c) Counterclaim Exceeding Opposing Claim.	12
(d) Counterclaim Against the Nation.	12
(e) Counterclaim Maturing or Acquired After Pleading.	12
(f) Omitted Counterclaim.	12
(g) Cross-claim Against Co-party.	13
(h) Joinder of Additional Parties.	13
(i) Separate Trials: Separate Judgments.	13
Section 215. Counterclaim: Effect of the Statutes of Limitation.	13
(a) Counterclaim and Claim Arising Out of Same Transaction.	13
(b) Counterclaim and Claim Not Arising Out of Same Transaction.	13
(c) Counterclaim Barred Before Claim Arose.	13
Section 216. Counterclaims Against Assigned Claims.	14
Section 217. Third-Party Practice.	14
(a) When Defendant May Bring in Third Party.	14
(b) When Plaintiff May Bring in Third Party.	14
(c) Party Defendants in Real Property Actions.	14
Section 218. Amended and Supplemental Pleadings.	15
(a) Amendments.	15
(b) Amendments to Conform to the Evidence.	15
(c) Relation Back of Amendments.	15
(d) Supplemental Pleadings.	16
Section 219. Pre-Trial Procedure: Formulating Issues.	16
Section 220. Lost Pleadings.	17
Section 221. Tenders of Money or Property.	17
Section 222. Dismissal of Actions.	17
(a) Voluntary Dismissal: Effect Thereof.	17
(b) Involuntary Dismissal: Effect Thereof.	18
(c) Dismissal of Counterclaim, Cross-Claim, or Third Party Claim.	18
Section 301. Issuance of Summons.	18
Section 302. Form of Summons.	18
Section 303. Personal Service of Process.	19
(a) Who May Serve Process.	19

(b)	Return of Service.	19
(c)	Service by Attorneys or Parties.....	19
(d)	Special Appointments.	19
Section 304. Service of Process by Mail.	.....	19
(a)	Who May Serve by Mail.	19
(b)	Method of Mailing.	19
(c)	Return of Service.	19
(d)	Service on Entity.....	20
(e)	Service Upon Governmental Organization.	20
Section 305. Service by Publication.	.....	20
(a)	Publication Service on Named Defendants.....	20
(b)	Publication Service Upon Parties and the Unknown Successors of Named Parties.	20
Section 306. Publication Notice Requirements.	.....	21
(a)	Publication Requirements.	21
(b)	Publication Notice; Contents.	21
(c)	Legal Descriptions Required.....	21
(d)	Service of Publication Notice.	22
Section 307. Publication Notice for Recovery of Money.	.....	22
Section 308. Publication Notice in Quiet Title Actions.	.....	22
Section 309. Completion of Publication Service.	.....	22
Section 310. Entry of Default on Party Served by Publication.	.....	22
Section 311. Vacating Default Judgments Where Service is by Publication.	.....	23
(a)	Three Year Limitation.....	23
(b)	Preliminary Requirements.	23
(c)	Effect on Property Rights.....	23
(d)	Defense.	23
Section 312. Certain Technical Errors Not Grounds for Vacating Judgment.	.....	23
(a)	Failure to Attach Affidavit to Complaint as Grounds.....	23
(b)	Verification by Attorney as Grounds.	24
Section 313. Meaning of "Successors" for Publication Purposes.	.....	24
Section 314. Minimum Contacts Required for Effective Long Arm Service.	.....	24
Section 315. Consent is Effective Substitute for Service.	.....	24
Section 316. Service Pursuant to Court Order.	.....	24
Section 317. Manner of Making Service.	.....	24
(a)	Individual.	25
(b)	Infant.	25
(c)	Corporation.	25
(d)	United States.	25
(e)	Office or Agency of United States.....	25
(f)	State, Municipality or Indian Nation.	26
(g)	Wyandotte Nation.	26
(h)	Officer or Agency of Wyandotte Nation.	26
Section 318. Effect of Service of Some of Several Defendants.	.....	26
(a)	Jointly Indebted Defendants.	26
(b)	Severally Liable Defendants.	26

(c) Effect of Judgment On Defendants Not Served.....	27
Section 319. Service Upon Party Not Inhabitant of or Found Within the Nation's Territorial Jurisdiction.....	27
(a) Service in Lawful Manner.	27
(b) Foreign Corporation; Service on Officer of the Nation.	27
Section 320. Territorial Limits of Effective Service.....	28
(a) Service Within Territorial Jurisdiction.	28
(b) Manner of Service Outside Territorial Jurisdiction.	28
(c) Service Outside Territorial Jurisdiction.	28
(d) Enforcement of Process.	28
Section 321. Return of Service of Process.....	29
(a) Proof of Service.	29
(b) Statement of Date of Service.	29
Section 322. Alternative Provisions for Service in a Foreign Country.	29
(a) Manner.	29
(b) Return.....	29
Section 323. Summons; Time Limit for Service.....	30
Section 324. Reserved.	30
Section 325. Service and Filing of Pleadings and Other Papers.....	30
(a) When Service Required.	30
(b) How Service Made.....	30
(c) Service on Numerous Defendants.....	31
(d) Filing.....	31
Section 326. Computation and Enlargement of Time.....	31
(a) Computation.....	31
(b) Enlargement.	31
(c) Motions and Affidavits.	32
(d) Additional Time After Service by Mail.....	32
Section 327. General Cases in Which Extraterritorial Service Authorized.	32
Section 328. Legal Newspaper.	32
Section 401. Parties Plaintiff and Defendant: Capacity.	33
(a) Real Party in Interest.....	33
(b) Capacity to Sue or Be Sued.	33
(c) Infants or Incompetent Persons.....	33
(d) Assignment of Tort Claims Prohibited.	33
Section 402. Joinder of Claims, Remedies, and Actions.....	34
(a) Joinder of Claims.	34
(b) Joinder of Remedies; Fraudulent Conveyances.....	34
(c) Joinder of Actions By the Court.	34
Section 403. Joinder of Persons Needed for Just Adjudication.....	34
(a) Persons to Be Joined if Feasible.	34
(b) Joinder Where Feasible.....	34
(c) Determination by Court Whenever Joinder Not Feasible.....	35
(d) Pleading Reasons for Non-Joinder.....	35
Section 404. Permissive Joinder of Parties.	35
(a) Permissive Joinder.	35

(b)	Joinder of Persons Interested in Property.	36
(c)	Separate Trials.	36
Section 405. Misjoinder and Non-Joinder of Parties.	.....	36
Section 406. Interpleader.	.....	36
(a)	Exposure of Plaintiff to Multiple Liability.	36
(b)	Actions for Recovery of Property Taken By Execution.	36
(c)	Protection of Property; Bond.	37
(d)	Costs.....	37
Section 407. Derivative Actions by Shareholders and Members.	.....	37
(a)	Complaint; Requirements.	37
(b)	Limitations on Maintenance.	37
Section 408. Intervention.	.....	38
(a)	Intervention of Right.....	38
(b)	Permissive Intervention.	38
(c)	Procedure.	38
Section 409. Substitution of Parties.	.....	38
(a)	Death.....	38
(b)	Incompetency.....	39
(c)	Transfer of Interest.....	39
(d)	Public Officers: Death or Separation From Office.	39
Section 501. Discovery Methods.	.....	39
Section 502. Scope of Discovery.	.....	40
(a)	In General.....	40
(b)	Insurance Agreements.....	40
(c)	Trial Preparation; Materials.	40
(d)	Trial Preparation; Experts.	41
Section 503. Protective Orders.	.....	41
Section 504. Sequence and Timing of Discovery.	.....	42
Section 505. Supplementation of Response.	.....	42
(a)	Identity and Location of Certain Persons.....	42
(b)	Correction of Information.	42
(c)	By Order or Agreement.	42
Section 506. Depositions Before Action.	.....	42
(a)	Petition.	42
(b)	Notice and Service.	43
(c)	Order and Examination.	43
(d)	Use of Deposition to Perpetuate Testimony.	43
Section 507. Deposition Pending Appeal.	.....	43
Section 508. Deposition Costs.	.....	44
Section 509. Depositions Taken in Other Jurisdictions Admissible.	.....	44
Section 510. Persons Before Whom Depositions May Be Taken.	.....	44
(a)	Within the Nation's Territorial Jurisdiction.	44
(b)	Outside the Nation's Territorial Jurisdiction.....	44
(c)	Disqualification for Interest.	45
Section 511. Subpoena for Taking Depositions: Place of Examination.	.....	45
(a)	Issuance; Proof of Service; Contents.	45

(b) Objections.....	45
Section 512. Stipulations Regarding Discovery Procedure.....	45
Section 513. Depositions Upon Oral Examination.....	46
(a) When Depositions May Be Taken.....	46
(b) Notice of Deposition; General Requirements; Special Notice; Production of Documents and Things; Deposition of Organization.....	46
(c) Method of Recording.....	47
(e) Examination and Cross-Examination; Record of Examination; Oath; Objections.....	48
(f) Objections.....	48
(g) Motion to Terminate or Limit Examination.....	48
(h) Submission to Witness; Changes: Signing.....	48
(i) Certification and Filing by Officer; Exhibits: Copies: Notice of Filing.....	49
(j) Failure to Attend or to Serve Subpoena: Expenses.....	49
Section 514. Depositions Upon Written Questions.....	50
(a) Attendance of Witnesses.....	50
(b) Service of Notice.....	50
(c) Cross-questions.....	50
(d) Officer to Take Responses and Prepare Record.....	50
(e) Notice of Filing.....	50
Section 515. Use Of Depositions In Court Proceedings.....	50
(a) Use of Depositions.....	50
(b) Objections to Admissibility.....	51
(c) Effect of Errors and Irregularities in Depositions.....	51
Section 516. Interrogatories to Parties.....	52
(a) Availability: Procedures for Use.....	52
(b) Answers.....	52
(c) Scope: Use at Trial.....	53
(d) Option to Produce Business Records.....	53
Section 517. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.....	53
(a) Scope.....	53
(b) Request.....	54
(c) Response.....	54
(d) Persons Not Parties.....	54
Section 518. Physical and Mental Examination of Persons.....	54
(a) Order for Examination.....	54
(b) Report of Examining Physician.....	54
Section 519. Requests for Admission.....	55
(a) Request for Admission.....	55
(b) Response.....	55
(c) Motion to Determine Sufficiency of Response.....	56
(d) Effect of Admission.....	56
Section 520. Motion for Order Compelling Discovery.....	56
(a) Appropriate Court.....	56
(b) Motion.....	56

(c)	Evasive or Incomplete Answer.....	57
(d)	Award of Expenses of Motion.....	57
Section 521. Failure to Comply with Order Compelling Discovery.....		57
(a)	Sanctions by Court in Jurisdiction Where Deposition is Taken.....	57
(b)	Sanction by Court in Which Action is Pending.....	57
Section 522. Expenses on Failure to Admit.....		58
Section 523. Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.....		58
Section 601. Subpoena.....		59
(a)	Subpoena for Attendance of Hearing or Trial.....	59
(b)	For Production of Documentary Evidence.....	59
(c)	Form; Issuance.....	59
(d)	Attendance Requirements; Limitations.....	60
(e)	Service.....	60
(f)	Proof of Service.....	60
Section 602. Witness May Demand Fees; Exceptions.....		60
Section 603. Witness May Demand Fees Each Day; Exception.....		60
Section 604. Witness Privileged.....		61
Section 605. Special Provisions for Agencies of the Nation.....		61
(a)	Attendance.....	61
(b)	Witness Fees.....	61
Section 606. Disobedience of Subpoena.....		61
Section 607. Attachment of Witness.....		61
Section 608. Requisites of Attachment; Order of Commitment.....		62
Section 609. Punishment for Contempt.....		62
(a)	Punishment.....	62
(b)	Nature of Punishment.....	62
(c)	Suspension of Punishment.....	62
Section 610. Discharge from Imprisonment.....		63
Section 611. Examination of Prisoner.....		63
Section 700. Eligibility.....		63
(a)	Persons Qualified to Serve as Jurors.....	63
(b)	Persons Not Qualified to Serve as Jurors.....	63
(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 from jury service by the Court in its discretion, upon request.....	64
(d)	Any member of the Nation, taxpayer of the Nation, or person employed within the Nation's jurisdiction may serve as a juror notwithstanding that they are not a resident of the Nation's jurisdiction if they volunteer to do so by signing the Jury Selection Roll maintained by the Court Clerk.....	64
Section 701. Preparation of Lists of Jurors.....		64
(a)	Meeting.....	64
(b)	Lists Provided.....	64
(c)	Information on Lists.....	64

(d)	Deadlines for Lists; Cards.....	65
(e)	Computerization; Cards.....	65
Section 702.	Court Clerk's Jury Selection Roll.....	65
Section 703.	Preparation of Jury Wheel.....	65
Section 704.	Drawing General Jury Panel.....	66
(a)	Drawing General Panel; Order.....	66
(b)	Drawing Names.....	66
(c)	Drawing Until Completion of Panel.....	66
(d)	Limitations on Service of Juror.....	66
Section 705.	Use of Jury Panel.....	66
Section 706.	Certifying and Sealing Lists.....	67
Section 707.	Oath and Delivery of Envelopes.....	67
Section 708.	Sealing and Retaining Juror Name Cards.....	67
Section 709.	Refilling Wheel.....	68
Section 710.	Summoning Jurors.....	68
Section 711.	On-Call System Jurors.....	68
Section 712.	Drawing Trial Jurors Prom Panel.....	68
Section 713.	Substantial Compliance.....	68
Section 714.	Oath to Jury.....	69
Section 715.	Discharge of Employee for Jury Service; Penalty.....	69
Section 716.	Civil Liability; Damages.....	69
Section 801.	Trial by Jury or by the Court.....	69
(a)	By Jury.....	69
(b)	By the Court.....	70
(c)	Advisory Jury and Trial by Consent.....	70
Section 802.	Provisions Applicable to Trials by Court.....	70
Section 803.	Time of Trial.....	70
(a)	Trial Docket.....	70
(b)	Minimum Number of Nonjury and Jury Trial Dockets Required.....	70
Section 804.	Consolidation; Separate Trials.....	70
(a)	Consolidation.....	70
(b)	Separate Trials.....	71
Section 805.	Order of Trial.....	71
Section 806.	Taking of Testimony.....	72
(a)	Form.....	72
(b)	Affirmation in Lieu of Oath.....	72
(c)	Evidence on Motions.....	72
(d)	Interpreters.....	72
Section 807.	Determination of Foreign Law.....	72
Section 901.	Jury Trial of Right.....	73
(a)	Right Preserved.....	73
(b)	Demand.....	73
(c)	Same; Specification of Issues.....	73
(d)	Waiver.....	74
Section 902.	Bifurcated Jury Trials.....	74
Section 903.	Examination of Jurors.....	74

Section 904. Causes for Challenging Jurors.	74
Section 905. Order of Challenges.	75
Section 906. Challenges to Jurors; Filling Vacancies.	75
Section 907. Alternate Jurors.	75
Section 908. Alternate Method of Selecting Jury.	75
(a) Court Discretion.	75
(b) Multiple Defendants.	75
Section 909. Oath of Jury.	76
Section 910. Juries of Less Than Six; Majority Verdict.	76
Section 911. Instruction to Jury; Objection.	76
(a) Request for Instructions.	76
(b) Instructions Given.	76
Section 912. Uniform Jury Instructions.	76
Section 913. Objections to Instructions; Copies to Parties.	76
Section 914. View by Jury.	77
Section 915. Deliberations of the Jury.	77
Section 916. Admonition of Jury on Separation.	77
Section 917. Information After Retirement.	77
Section 918. When the Jury may be Discharged.	77
Section 919. Re-trial.	78
Section 1001. Findings by the Court.	78
(a) Effect.	78
(b) Amendment.	78
Section 1002. Delivery of Verdict.	78
Section 1003. Requisites of Verdicts.	78
Section 1004. General and Special Verdict.	79
Section 1005. Special Verdict and Interrogatories.	79
(a) Special Verdicts.	79
(b) General Verdict Accompanied by Answer to Interrogatories.	79
Section 1006. Jury Must Assess Amount of Recovery.	79
(a) Motion for Directed Verdict: When Made; Effect.	80
(b) Motion for Judgment Notwithstanding the Verdict.	80
(c) Same: Conditional Rulings on Grant of Motion.	80
(d) Same: Denial of Motion.	81
Section 1101. Seizure of Person or Property.	81
Section 1102. Receivers Appointed by District Court.	81
Section 1103. Deposit in Court.	81
Section 1104. Process in Behalf of and Against Persons not Parties.	81
Section 1105. Security; Proceeding Against Sureties.	82
Section 1106. Execution.	82
(a) In General.	82
(b) Against Certain Public Officers.	82
SUBCHAPTER A INJUNCTIONS.	82
Section 1107. Injunction Defined.	82
Section 1108. Cause for Injunction; Temporary Restraining Order.	83
Section 1109. Temporary Restraining Order; Notice; Hearing; Duration.	83

Section 1110. Temporary Restraining Order; Service.	84
Section 1111. Preliminary Injunction.	84
(a) Notice.....	84
(b) Consolidation of Hearing With Trial on Merits.....	84
Section 1112. Preliminary Injunction; Criteria.	84
Section 1113. Form and Scope of Injunction or Restraining Order.	85
Section 1114. Employer and Employee; Interpleader: Constitutional Cases.	85
Section 1115. Security.	85
Section 1116. Use of Affidavits.	85
Section 1117. Injunction by Defendant.	85
Section 1118. Injunction is Equitable.	86
Section 1119. Modification of Preliminary Injunction.	86
Section 1120. Modification of Permanent Injunction.	86
Section 1121. Injunctions Tried to the Court.	86
Section 1122. Enforcement of Restraining Orders and Injunctions.	86
Section 1123. Order of Delivery; Procedure.	87
(a) Claim for Delivery at Commencement of Suit.	87
(b) Prejudgment Delivery Without Actual Notice.....	88
(c) Order for Protection of Property.	88
Section 1124. Penalty for Damage of Property Subject to Order of Delivery.	88
Section 1125. Undertaking in Replevin.	89
Section 1126. Replevin Bond; Value.	89
Section 1127. Order of Delivery.	89
Section 1128. Order Returnable.	89
Section 1129. Execution of Order.	89
Section 1130. Re-delivery on Bond.	89
Section 1131. Exception to Sureties.	90
Section 1132. Proceedings on Failure to Prosecute Action.	90
Section 1133. Judgment; Damages; Attorney Fees.	90
Section 1134. Officer May Break Into Buildings.	90
Section 1135. Compelling Delivery by Attachment.	90
Section 1136. Improper Issue of Order of Delivery.	91
Section 1137. Joinder of Cause of Action for Debt; Stay of Judgment.	91
Section 1138. Grounds for Attachment.	91
Section 1139. Attachment Affidavit.	92
(a) Complaint.....	92
(b) Verification.	92
(c) Notice.....	93
(d) Hearing.....	93
(e) Lack of Actual Notice; Hearing.....	93
Section 1140. Attachment Bonds.	93
Section 1141. Order of Attachment.	93
Section 1142. When Returnable.	94
Section 1143. Order of Execution.	94
Section 1144. Execution of Attachment Order.	94
Section 1145. Service of Order.	94

Section 1146. Re-delivery on Bond.	94
SUBCHAPTER E RECEIVERS	99
Section 1160. Appointment of Receiver.	99
Section 1161. Persons Ineligible.	99
Section 1162. Oath and Bond.	100
Section 1163. Powers of Receiver.	100
Section 1164. Investment of Funds.	100
Section 1165.	100
Section 1166. Disposition of Property Litigated.	100
Section 1167. Punishment for Disobedience of Court.	101
Section 1168. Vacation of Appointment by Supreme Court.	101
Section 1169.1. Who May Exercise Authority.	101
Section 1169.2. What Property May be Condemned by Eminent Domain.	101
Section 1169.3. Condemnation of Property.	102
(a) Applicability of Other Rules.	102
(b) Joinder of Properties.	102
(c) Amount to be Paid.	102
Section 1169.4. Complaint.	102
(a) Caption.....	102
(b) Contents.	102
(c) Filing.	103
Section 1169.5. Process in Eminent Domain.	103
(a) Notice; Delivery.....	103
(b) Same; Form.	103
(c) Service of Notice.....	103
(d) Return Amendment.	104
Section 1169.6. Appearance or Answer.	104
Section 1169.7. Amendment of Pleadings.	104
Section 1169.8. Substitution of Parties.	104
Section 1169.9. Dismissal of Action.	105
(a) As of Right.	105
(b) By Stipulation.	105
(c) By Order of the Court.	105
(d) Effect.	105
Section 1169.10. Deposit and Its Distribution.	105
Section 1169.11. Costs.	106
Section 1201. Judgments – Costs.	106
(a) Definition; Form.	106
(b) Judgment Upon Multiple Claims or Involving Multiple Parties.	106
(c) Demand for Judgment; Default.....	106
(d) Costs.....	106
Section 1202. Default.	107
(a) Entry.....	107
(b) Judgment.	107
(c) Setting Aside Default.....	107
(d) Plaintiff, Counterclaimants. Cross-Claimants.....	107

(e)	Judgment Against the Nation.....	107
	Section 1203. Offer of Judgment.	108
	Section 1204. Judgment for Specific Acts - Vesting Title.	108
	Section 1205. Summary Judgment	108
(a)	For Claimant.	108
(b)	For Defending Party.....	109
(c)	Motion and Proceedings Thereon.	109
(d)	Case Not Fully Adjudicated on Motion.	109
(e)	Form of Affidavits; Further Testimony; Defense Required.	109
(f)	When Affidavits are Unavailable.....	109
(g)	Affidavits Made in Bad Faith.	110
	Section 1206. Declaratory Judgments.	110
	Section 1207. Entry of Judgment.	110
	Section 1208. New Trials; Amendments of Judgments.	110
(a)	Grounds.....	110
(b)	Motion for New Trial.....	111
(c)	Time for Motion.....	111
(d)	Time for Serving Affidavits.....	111
(e)	On Initiative of Court.....	111
(f)	Motion to Alter or Amend a Judgment.	112
	Section 1209. Relief From Judgment or Order.	112
(a)	Clerical Mistakes.	112
(b)	Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.	112
	Section 1210. Harmless Error.	112
	Section 1211. Stay of Proceedings to Enforce a Judgment.	113
(a)	Automatic Stay: Exceptions - Injunctions, Receiverships and Patent Accountings.	113
(b)	Stay on Motion for New Trial or for Judgment.	113
(c)	Injunction Pending Appeal.	113
(d)	Stay Upon Appeal.	113
(e)	Stay in Favor of the Nation or Agency Thereof.	113
(f)	Power of the Supreme Court Not Limited.	114
(g)	Stay of Judgment as to Multiple Claims or Multiple Parties.	114
	Section 1212. Disability of a Judge.	114
	Section 1213. Reserved.	114
	Section 1214. Judgment Against Infant.	114
	Section 1215. Judgments as Liens.	114
	Section 1216. Discharge of Money Judgment Liens.	114
	Section 1217. Additional Case Deposits.	115
	Section 1218. Reversal By Supreme Court.	115
	Section 1219. Interest on Money Judgments.	115
	Section 1220. Exempt Property.	115
	Section 1221. Payment of Judgments From Individual Indian Moneys.	116
	SUBCHAPTER A FOREIGN JUDGMENTS.....	117
	Section 1222. Definition.	117

Section 1223. Filing and Status of Foreign Judgments.	117
Section 1224. Grounds for Non-Recognition.	117
(a) Foreign Judgment Not Conclusive.	117
(b) Recognition of Foreign Judgment Unnecessary.	117
Section 1225. Notice of Filing	118
(a) Affidavit.	118
(b) Notice.	118
(c) Time of Issuance.	118
Section 1226. Stay of Execution of Foreign Judgment.	118
Section 1227. Fees.	119
Section 1228. Optional Procedure.	119
SUBCHAPTER B EXECUTION	119
Section 1229. Executions; Definition.	119
Section 1230. Kinds of Executions.	119
Section 1231. Property Subject to Levy.	119
Section 1232. Property Bound After Seizure.	119
Section 1233. Execution Must Be Issued Within Five Years.	119
Section 1234. Priority Among Property.	120
Section 1235. Priority Among Executions.	120
Section 1236. Levy By Priority.	120
Section 1237. Who Makes Levy.	120
Section 1238. When Levy Void.	120
Section 1239. Penalty for Unlawful Levy.	120
Section 1240. Levy on Property Claimed By Third Person.	121
Section 1241. Re-Delivery to Defendant.	121
Section 1242. Notice of Sale of Chattels.	121
Section 1243. Further Levy When Property Taken Insufficient.	121
Section 1244. Filing and Indexing of Execution.	122
(a) Filing.	122
(b) Appraisal.	122
(c) Extension of Judgment Lien.	122
Section 1245. Waiver of Appraisement.	122
Section 1246. Return of Appraisement.	122
Section 1247. When Lien Restricted.	122
Section 1248. Notice of Sale of Realty.	123
Section 1249. Confirmation of Sale.	123
Section 1250. Police Chief's Deed.	123
Section 1251. Advance of Printer's Fees.	123
Section 1252. Demand for Printing Fees.	124
Section 1253. Place of Sale.	124
Section 1254. Other Executions of Realty Not Sold.	124
Section 1255. Levy on Realty Under Several Executions.	124
Section 1256. Deed by Successor of Officer Making Sale.	124
Section 1257. Payment to Defendant of Overplus After Sale.	125
Section 1258. Reversal of Judgment After Sale of Interest in Land.	125
Section 1259. Execution on Judgment in Favor of Nation.	125

Section 1260. Reappraisal Where Realty Twice Advertised for Sale.	126
Section 1261. Return of Execution.	126
Section 1262. Principal and Surety.	126
Section 1263. Hearing on Assets.	126
Section 1264. Joint Debtors or Sureties.	126
Section 1265. Joint Tortfeasors; Contribution; Indemnity –Exemptions; Release, Covenant Not to Sue, Etc.	127
(a) Right of Contribution.....	127
(b) Limitation.....	127
(c) Intentional Tortfeasor.....	127
(d) Effect of Settlement.	127
(e) Subrogation.	127
(f) Indemnity.	128
(g) Fiduciary Obligations.....	128
(h) Releases.....	128
Section 1266. Affidavit in Forma Pauperis.	128
Section 1267. False Swearing in Such Case.	128
Section 1268. Costs Where Defendant Disclaims.	129
Section 1269. Certain Costs Taxes at Discretion of Court.	129
Section 1270. Costs to Successful Party as Matter of Course.	129
Section 1271. Costs in Other Cases.	129
Section 1272. Several Actions on Joint Instrument.	129
Section 1273. Clerk to Tax Costs.	129
Section 1274. Cost of Notice or Other Legal Publication.	129
Section 1275. Attorney Fees Taxable as Costs.	129
(a) Action for Recovery on Accounts, Etc.	129
(b) Action for Recovery on Bills of Exchanger, Etc.	130
(c) Action Relating to Utility Payments.	130
(d) Action for Damages for Breach of Express Warranty.	130
(e) Action for Damages for Injury to Property.....	130
Section 1276-A. Costs Defined.	130
Section 1277-B. Authority of Court to Fix Cost Rates.	131
Section 1301. Limitations Applicable.	131
Section 1302. Limitation of Real Actions.	131
Section 1303. Persons Under Disability; In Real Property Actions.	131
Section 1304. Limitation of Other Actions.	131
Section 1305. Persons Under Disability in Actions Other Than Real Property Action.	132
Section 1306. Absence or Flight of Defendant.	132
Section 1307. Limitation of New Action After Failure.	132
Section 1308. Extension of Limitation.	132
Section 1309. Statutory Bar Absolute.	133
Section 1310. Law Governing Foreign Claims.	133
Section 1311. Limitation of Building Construction Tort Claims.	133
Section 1401. Persons Who May Prosecute Writ.	133
Section 1402. Application for Writ.	133

Section 1403. Writ Granted.	134
Section 1404. Direction and Command of Writ.	134
Section 1405. Delivery to Nation’s Police Chief.	134
Section 1406. Service on Party Other Than Nation’s Police Chief.	134
Section 1407. Service When Person Not Found.	134
Section 1408. Return and Enforcement of Writ.	134
Section 1409. Manner of Return.	134
(a) Return.....	134
(b) Production of Party.	135
Section 1410. Proceedings in Case of Sickness or Infirmary.	135
Section 1411. Hearings and Discharge.	135
Section 1412. Limits on Inquiry.	135
Section 1413. Writ Upon Temporary Commitment.	135
Section 1414. Writ May Issue to Admit to Bail.	136
Section 1415. Notice to Interested Persons.	136
Section 1416. Powers of Court.	136
Section 1417. Officers Not Liable for Obeying Orders.	136
Section 1418. Issuance of Warrant of Attachment.	136
Section 1419. Arrest of Party Causing Restraint.	136
Section 1420. Execution of Warrant of Attachment.	136
Section 1421. Temporary Orders.	136
Section 1422. Issuance and Service on Sunday.	137
Section 1423. Issue of Process.	137
Section 1424. Protection of Infants and Insane Persons.	137
Section 1425. Security for Costs Not Required.	137
Section 1501. Functions of Mandamus.	137
Section 1502. Writ Not Issued Where Remedy at Law.	137
Section 1503. Forms and Contents of Writs.	137
Section 1504. When Peremptory Writ to Issue.	138
Section 1505. Petition Upon Affidavit.	138
Section 1506. Allowance and Service of Writ.	138
Section 1507. Answer.	138
Section 1508. Failure to Answer.	138
Section 1509. Similarity to Civil Action.	138
Section 1510. Recovery by Plaintiff.	138
Section 1511. Damages Bar Further Actions.	139
Section 1512. Penalty for Refusal or Neglect to Perform.	139
Section 1601. Small Claims.	139
(a) Type of Small Claims Actions Allowed.	139
(b) Actions Not Allowed.	140
(c) Limitation on Attorneys Fees in Uncontested Cases.	140
Section 1602. Small Claims Affidavit.	140
Section 1604. Service of Affidavit.	142
Section 1605. Date for Appearance.	142
Section 1606. Transfer of Actions.	142
Section 1607. Counterclaim or Setoff.	143

Section 1608. Actions for Amounts in Excess of Three Thousand Dollars.	143
Section 1609. Attachment or Garnishment Other Matters.	144
Section 1610. Trial by Court.	144
Section 1611. Payment of Judgment.	144
Section 1612. Appeals.	144
Section 1613. Fees.	144
Section 1614. Costs.	145
Section 1615. Judgments Rendered Under Small Claims Procedure.	145
Section 1616. Fee for Docketing Judgments.	145
Section 1701. Forcible Entry and Detention.	145
Section 1702. Powers of Court.	146
Section 1703. Extent of Jurisdiction.	146
(a) Types of Cases Subject to Forcible Entry and Detainer.	146
(b) Actions by Housing Authority to Enforce Mutual Help and Occupancy Agreements Not Subject to Forcible Entry and Detainer.	146
Section 1704. Affidavit Form.	146
Section 1705. Summons; Form.	147
Section 1706. Issuance and Return of Summons.	148
Section 1708. Constructive Service of Summons.	148
Section 1709. Answer or Affidavit by Defendant.	149
(a) Answer Asserting Title Dispute.	149
(b) Answer Claiming Interest in Property Where Case Involves Breach or Termination of Lease.	149
(c) Answer Not Required.	149
Section 1710. Trial by Court.	149
Section 1711. Procedure Where No Jury Available.	149
Section 1712. Attorney's Fee.	149
Section 1713. Writ of Execution; Form; Motion for New Trial.	150
(a) Form of Writ.	150
(b) Motion for New Trial.	150
Section 1714. Stay of Execution.	150
(a) Supersedeas Bond.	150
(b) Execution of Writ If No Supersedeas Bond Posted.	151
Section 1715. Forcible Entry and Detainer Action on Small Claims Docket.	151

WYANDOTTE NATION

**TITLE 3
CIVIL PROCEDURE**

**CHAPTER ONE
GENERAL PROVISIONS**

Section 101. Title.

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

Section 102. Scope of This Title.

This Title governs the procedure in the Wyandotte Nation District Courts in all suits of a civil nature whether cognizable as cases at law or in equity except where a law of the Nation specifies a different procedure. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

Section 103. Definitions.

The following terms contained in this title shall be defined as set forth in Title 3, Section 103 (Courts Act) of the Code of Laws of the Wyandotte Nation: "Clerk", "Code", "Constitution", "District Court", "He", "Him", and "His", "Judges of the District Court", "Jurisdiction", "Indian", "Indian Country", "Officers of the Court", "Wyandotte Nation Court", and "Supreme Court." The term "Territorial Jurisdiction" shall be defined as set forth in Title __, Section ___ of the Code of Laws of the Wyandotte Nation. In addition to these terms, the following terms shall be defined as follows:

- (a.) "Incompetent Person" shall mean every natural person who has been legally declared incompetent by a court of competent jurisdiction by reason of mental incapacity, habitual or addictive abuse of alcohol or other drugs, or other cause as provided by law.
- (b.) "Infant" shall mean every natural person less than eighteen years of age not declared emancipated from his parent or guardian by order of a court of competent jurisdiction.
- (c.) "Chief" shall mean the Chief of the Wyandotte Nation.
- (d.) "Board of Directors" means the Board of Directors of the Wyandotte Nation.
- (e.) "Nation" shall mean the Wyandotte Nation.
- (f.) "Nation's Jail or Detention Facilities" means the jail facilities used by the Nation, either operated by the Nation or made available to the Nation under an agreement with a local law enforcement agency, or the BIA for the incarceration of persons subject to the District Court's jurisdiction.

- (g.) "Police" or "Nation's Police" shall mean a law enforcement agency operated by the Wyandotte Nation or by the Bureau of Indian Affairs, other law enforcement agency duly commissioned to enforce the provisions of this Title, regardless of the official name of said law enforcement agency.

Section 104. Jurisdiction in Civil Actions.

The District Court shall exercise civil jurisdiction as defined in Title __, Section ___ (Tribal Courts Act) of the Code of Laws of the Wyandotte Nation over any person or subject matter in a manner not inconsistent with federal law.

Section 105. 25 C.F.R. Part 11 Not Applicable.

Any and all provisions of Part 11 of Title 25 of the Code of Federal Regulations as presently or hereafter constituted are declared to be not applicable to the Nation.

Section 106. Declaratory Judgment.

The Court, in any actual controversy before it, shall have the authority to declare the rights of the parties in that suit in order to resolve disputes even though a money judgment or equitable relief is not requested or not due.

Section 107. Court Costs Not Charged to Nation.

The Nation, its officers, employees, agents, or political subdivisions acting in their official capacity shall not be charged or ordered to pay any Court costs or attorney fees under this Act, but if these entities prevail in the action, the cost which such entities would have been required to pay may be charged as costs to the losing party as in other cases.

CHAPTER TWO
COMMENCEMENT OF ACTION: PROCEEDINGS, MOTIONS AND ORDERS

Section 201. Commencement of Action.

A civil action is commenced by filing a complaint with the Court.

Section 202. One Form of Action.

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

Section 203. "Claim" Defined.

As used in this Act, the term "claim" means any right of action which may be asserted in a civil action or proceeding and includes, but is not limited to, a right of action created by statute.

Section 204. Notice of Pendency of Action.

Upon the filing of a complaint in the District Court, the action is pending so as to charge third persons with notice of its pendency. While an action is pending, no third person shall acquire an interest in the subject matter of the suit as against the plaintiff's title, except as provided in § 205 and 206 of this Title.

Section 205. 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 after the filing of the petition.

Section 206. Special Notice for Actions Pending in Other Courts.

No action pending in either state or federal court, or the court of any other Indian Nation, shall constitute notice with respect to any real property or personal property located within the territorial jurisdiction of the Nation until a notice of pendency of the action, identifying the case and the court in which it is pending and giving the legal description of the land affected, or the description of the personal property and its location (if known) affected by the action, is filed of record in the office of the Clerk of the District Court.

Section 207. Pleadings Allowed: Form of Motions.

(a) Pleadings.

There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Section 217; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall:

(i) be made in writing, which may include a motion stated in a written notice of the hearing of the motion;

(ii) state with particularity the grounds therefore; and

(iii) set forth the relief or order sought.

(2) These requirements applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by the provisions of Title __ (this Title) herein.

(3) All motions shall be signed in accordance with Section 211 of this Title.

Section 208. General Rules of Pleading.

(a) Claims for Relief.

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses: Form of Denials.

A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. Denials shall fairly meet the substance of the averments denied. He may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. When he intends to controvert all averments in a pleading, including averments of the grounds upon which the Court's jurisdiction depends, if any, he may do so by general denial subject to the obligation set forth in Section 211. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial.

(c) Affirmative Defenses.

In pleading to a preceding pleading, a party shall set forth affirmatively each of the following defenses 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 constituting an avoidance or affirmative defense.

(d) Correction of Designation of Pleading.

When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(e) Effect of Failure to Deny.

Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.

Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(f) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth and at trial rely upon two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal, equitable, or other grounds. All statements shall be made subject to the obligations set forth in Section 211 of this Title.

(g) Construction of Pleadings.

All pleadings shall be liberally construed so as to do substantial justice.

Section 209. Pleading Special Matters.

(a) Capacity.

It is not necessary to aver or assert the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the Court, if necessary. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge, and that party shall have the burden of proof on that issue.

(b) Fraud, Mistake, Condition of the Mind.

In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent.

In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence of conditions precedent shall be made specifically and with particularity.

(d) Official Document or Act.

In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment.

In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place.

For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage.

When items of special damage are claimed, they shall be specifically stated, but specific amounts need not be alleged in order to obtain judgment in the amount to which the party is entitled.

Section 210. Form of Pleadings, Motions, and Briefs.

(a) Caption: Names of Parties.

Every pleading shall contain a caption setting forth the name of the Court, the title of the action, the file number, and a designation of the type of pleading in the terms expressed in Section 207(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. In the initial third party complaint, counterclaim, cross-claim, motion and petition in intervention or a pleading by a party suing or being sued in a representative capacity, appropriate designations of all affected parties shall be made and their names stated. Thereafter, papers relating to such matters may contain only the name of the first party in each category with an appropriate indication of other parties.

(b) Paragraphs: Separate Statements.

All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings, or motions, or briefs. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits.

Statements in a pleading, or motion, or brief may be adopted by reference in a different part of the same pleading or in another pleading or in any motion or brief. A copy of any written instrument which is an exhibit to a pleading, or a motion, or a brief is a part thereof for all purposes.

Section 211. Signing of Pleadings.

Every pleading of a party represented by a licensed attorney or advocate shall be signed by at least one attorney or advocate of record in his individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney or advocate shall sign his pleading and state his address and telephone number. Except when otherwise specifically provided by Rule or statute, pleadings need not be verified or accompanied by affidavit. The English and American Common Law Rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is not applicable in the District Courts. The signature of an attorney or advocate constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this Section it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this Section an attorney or advocate may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

Section 212. Defenses and Objections; When and How Presented-By Pleading

(a) When Presented.

(1) Answer. A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, except when service is made under any one of Sections 316, 318 or 322 of this Act and a different time is prescribed in the order of Court, or under the statute of the Nation.

(2) Answer to Cross-Claim. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him.

(3) Reply to Counterclaim. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the Court, within 20 days after service of the order unless the order otherwise directs.

(4) Answer by Nation. The Nation or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within sixty days after the service upon the Chief of the pleading in which the claim is asserted, provided that no default judgment shall be entered against the Nation, and upon affidavit of the Chief that the Nation has no attorney but that an attorney contract is pending approval with the Bureau of Indian Affairs, the Court shall allow the Nation to answer

within twenty (20) days after approval of the Attorney contract or within sixty (60) days after service, whichever is later.

(5) Motion; Alteration of Time to File Responsive Pleading. The service of a motion permitted under this Section alters these periods of time as follows, unless a different time is fixed by order of the Court: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading 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 responsive pleading shall be served within 10 days after the service of the more definite statement.

(6) Entry of Appearance; Extension of Time to File Responsive Pleadings. Within the time in which an answer may be served, a defendant may file any entry of appearance and reserve twenty (20) additional days to answer or otherwise 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) of this Section, provided, that a waiver of sovereign immunity shall not be implied under defense numbered 9 of paragraph (b) of this Section since a defense based upon sovereign immunity is a defense to the subject matter jurisdiction of the Court and not a defense to the parties capacity to be sued.

(b) How Presented.

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) Lack of jurisdiction over the subject matter;
- (2) Lack of jurisdiction over the person;
- (3) Improper venue or forum non conveniens;
- (4) Insufficiency of process;
- (5) Insufficiency of service of process;
- (6) Failure to 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 for the same claim;
- (9) Lack of capacity of a party to be sued; and
- (10) Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided by applicable law, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by applicable law. Every motion to dismiss shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

(c) Motion for Judgment on the Pleadings.

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided by applicable law, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by applicable law. Every motion for judgment on the pleadings shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

(d) Preliminary Hearings.

The defenses specifically enumerated (1)-(10) in subdivision (b) of this Section, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this Section shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement.

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 10 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just. Such motions are not favored.

(f) Motion to Strike.

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this Act, upon motion made by a party within 20 days after the service of the pleading upon him or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for partial

summary judgment and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by the rules relating to summary judgment.

(g) Consolidation of Defenses in Motion.

A party who may join in a motion may make any other motions herein provided for and then available to him. If a party makes a motion under this Section but omits therefrom any defense or objection then available to him which this Section permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h) (2) hereof on any of the grounds there stated. The Court may, in its discretion, permit a party to amend his motion by stating additional defenses or objections at any time prior to a decision on the motion.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue or forum non conveniens, insufficiency of process, insufficiency of service of process or lack of capacity of a party to sue is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this Section nor included in a responsive pleading or an amendment thereof permitted by Section 218(a) to be made as a matter of course or (C) if a permissive counterclaim is filed pursuant to Section 214(b).

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Section 403, and an objection of failure to state a legal defense to a claim, and a defense of another action pending may be made in any pleading permitted or ordered under Section 207(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it is determined, upon suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

Section 213. Final Dismissal on Failure to Amend.

On granting a motion to dismiss a claim for relief, the Court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed which should normally be ten (10) days absent good cause for a shorter or longer time. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases amendment shall be made by the party in default within a time specified by the Court for filing an amended pleading. Within the time allowed by the Court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

Section 214. Counterclaim and Cross-Claim.

(a) Compulsory-Counterclaims.

A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. But 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 upon his claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any other counterclaim under this Section. A party pleading a compulsory counterclaim does not thereby waive any defenses the pleader may otherwise have which are otherwise properly raised.

(b) Permissive Counterclaims.

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim.

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the Nation.

This Act shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the Nation or an officer or agency thereof. A compulsory counterclaim does not waive the defense of sovereign immunity when made by the Nation 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 Nation, its officer, or agency, but does not waive such defense for any other purpose.

(e) Counterclaim Maturing or Acquired After Pleading.

A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim.

When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of Court set up the counterclaim by amendment, except that when such amendment is served within the time otherwise allowed for

amendment without leave of the Court by Section 218(a) of this Title, he may set up such counterclaim by amendment without leave of the Court.

(g) Cross-claim Against Co-party.

A pleading may state as a cross-claim any claim by one party 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 therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that 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 other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Sections 403 and 404.

(i) Separate Trials: Separate Judgments.

If the Court orders separate trials as provided in Section 804(b), judgment on a counterclaim, cross-claim, or third party claim may be rendered in accordance with the terms of Section 1201(b) when the Court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Section 215. Counterclaim: Effect of the Statutes of Limitation.

(a) Counterclaim and Claim Arising Out of Same Transaction.

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 notwithstanding that it was barred at the time the petition was filed, and the counterclaimant shall not be precluded from recovering an affirmative judgment.

(b) Counterclaim and Claim Not Arising Out of Same Transaction.

Where a counterclaim and the claim of the opposing party do not arise out of the same transaction or occurrence, the claims are for money judgments, and both claims had accrued before either was barred by a statute of limitation, but the counterclaim is barred by a statute of limitation at the time that it is asserted, whether in an answer or an amended answer, the counterclaim may be asserted only to reduce the opposing party's claim.

(c) Counterclaim Barred Before Claim Arose.

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 216. Counterclaims Against Assigned Claims.

A party, other than a holder in due course, who acquired a claim by assignment or otherwise, takes the claim subject to any defenses or counterclaims that could have been asserted against the person from whom he acquired the claim, but the recovery on a counterclaim may be asserted against the assignee only to reduce the recovery of the opposing party.

Section 217. Third-Party Practice.

(a) When Defendant May Bring in Third Party.

At any time after commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him, or who is or may be liable to him on a claim arising out of the transaction or occurrence that is the subject matter of any one or more of the claim(s) being asserted against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than ten (10) days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Section 212 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Section 214. The third-party defendant may assert against the plaintiff 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 thereupon shall assert his defenses as provided in Section 212 and his counterclaims and cross-claims as provided in Section 214. A third-party defendant may proceed under this Section against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant. Any party may move to strike the third-party claim, or for its severance or separate trial.

(b) When Plaintiff May Bring in Third Party.

When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this Section would entitle a defendant to do so.

(c) Party Defendants in Real Property Actions.

In an action involving real property, any person appearing in any manner in the title thereto, or claiming or appearing to claim some interest in the real property involved, may be included as a party defendant by naming such person as a party defendant in the caption of the complaint; and when such person is made a defendant in the body of the complaint under the appellation of substantially the following words, "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 sufficient 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 in the complaint or other pleading for such person being made a party defendant.

Section 218. Amended and Supplemental Pleadings.

(a) Amendments.

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty (20) days after it is served, including amendments to add omitted counterclaims or cross-claims or to add or drop parties. Otherwise a party may amend his pleading only by leave of the Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.

(b) Amendments to Conform to the Evidence.

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence. Where the pretrial conference order has superseded the pleadings, the pre-trial order is controlling and it 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 set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him. The delivery or mailing of process to the Criminal Prosecutor, or his designee, or the Criminal Prosecutor of the Nation, or an agency or officer thereof who would

have been a proper defendant if named, satisfies the requirement of clauses (1) and (2) thereof with respect to the Nation or any agency or officer thereof to be brought into the action as a defendant.

(d) Supplemental Pleadings.

Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor. A supplemental pleading will relate back to the original pleading if it arises out of the conduct, transaction, or occurrence set forth in the original pleading.

Section 219. Pre-Trial Procedure: Formulating Issues.

- (a.) In any action, the Court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:
- (1) The simplification of the issues;
 - (2) The necessity or desirability of amendments to the pleadings;
 - (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
 - (4) The limitation of the number of expert witnesses;
 - (5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
 - (6) Such other matters as may aid in the disposition of the action.
- (b.) The Court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The Court in its discretion may establish by Rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

Section 220. Lost Pleadings.

If a pleading be lost or withheld by any person, the Court may allow a copy thereof to be substituted.

Section 221. Tenders of Money or Property.

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

Section 222. Dismissal of Actions.

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff: By Stipulation. Subject to any other applicable provisions of Title __ (this Title) herein, of the Nation, an action may be dismissed by the plaintiff without order of Court by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion of summary judgment, whichever first occurs, or by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that 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 the consent of the defendants, in any Court of any Indian Nation, the United States, or any state an action based on or including the same claim, unless such previous dismissal was entered due to inability to obtain personal jurisdiction over an indispensable party or lack of subject matter jurisdiction in the Court in which the case was previously filed. If the plaintiff claims either or both of these exceptions, it shall so state in its notice of dismissal and shall apply to the District Court, upon notice to all adverse parties for an order determining that the previous dismissal was within one or both of the two stated exceptions and that the plaintiff is entitled to dismiss the current action without prejudice. The Court may grant such application in its discretion and allow the plaintiff to dismiss without prejudice on such terms as are just, due regard being had for costs, attorney fees, and inconvenience of the defendants, and any apparent motive to harass, embarrass, or delay the defendants.

(2) By Order of the Court. Except as provided in paragraph (1) of this subdivision of this Section, an action shall not be dismissed at the plaintiff's instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof.

For failure of the plaintiff to prosecute or to comply with this Title, any Court rule, or any order of the Court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the Court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the Court renders judgment on the merits against the plaintiff, the Court shall make findings as provided in Section 1001. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Section, other than a dismissal for lack of jurisdiction, or for failure to join a party under Section 403, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross-Claim, or Third Party Claim.

The provisions of this Section apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this Section shall be made before a responsive pleading is served or, if there in none, before the introduction of evidence at the trial or hearing.

**CHAPTER THREE
PROCESS, SUMMONS,
FILING OF PLEADINGS AND OTHER PAPERS**

Section 301. Issuance of Summons.

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

Section 302. Form of Summons.

The summons shall be signed by the Court Clerk, be under the seal of the Court, contain the name of the Court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which this Title requires the defendant to appear and defend, and shall notify him that in case of his failure to do so, judgment by default will be rendered against him for the relief demanded in the complaint. When, under Section 319, service is made pursuant to a particular law, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by such law.

Section 303. Personal Service of Process.

(a) Who May Serve Process.

Process including a subpoena, if served in person, shall be served by the Nation's Chief of Police or his deputy, or the Bureau of Indian Affairs Police, any law officer who has been cross-deputized by the Bureau of Indian Affairs or by the Nation, a person licensed to make service of process in civil cases pursuant to Court rule, or a person specially appointed by the Court for that purpose. A subpoena may also be served by any person over eighteen years of age who is not a party to the action.

(b) Return of Service.

When process has been served and return thereof is filed in the office of the Court Clerk, a copy of the return shall be sent by the Court Clerk to the serving party's attorney within three (3) days after the return is filed.

(c) Service by Attorneys or Parties.

Process, other than a subpoena, shall not be served by a party's attorney except as provided in Section 304 of this Chapter. A party shall not make service of process unless appearing without an attorney, in which case, the party may make service of process in the same manner and to the same extent that an attorney for the party could have served that process under this Chapter.

(d) Special Appointments.

The Court shall freely make special appointments to serve all process under this paragraph.

Section 304. Service of Process by Mail.

(a) Who May Serve by Mail.

A summons and petition, and a subpoena, may be served by mail by the plaintiff's attorney, or any person authorized to serve process pursuant to Section 303 of this Chapter.

(b) Method of Mailing.

Service by mail may be accomplished by mailing the subpoena, or a copy of the summons and petition, by certified mail, return receipt requested and delivery restricted to the addressee.

(c) Return of Service.

Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. If delivery of

the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default or judgment by default, the person serving the process shall mail to the defendant by first-class mail postage prepaid a copy of the summons and petition and a notice that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. A copy of said notice and proof of mailing thereof shall be filed of record in the case prior to the entry of a judgment by default. Any such default or judgment by default shall be set aside upon motion of the defendant if the defendant demonstrates to the court that 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 the default or judgment by default but in no event more than two (2) years after the judgment.

(d) Service on Entity.

In the case of an entity described in subsection (c) of Section 317 of this Chapter, acceptance or refusal by any officer or by any 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 by the party addressed.

(e) Service Upon Governmental Organization.

In the case of governmental organization subject to suit, acceptance or refusal by an employee of the office of the officials specified in the appropriate subsection of Section 317 of this Chapter who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed.

Section 305. Service by Publication.

(a) Publication Service on Named Defendants.

Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court that with due diligence service cannot be made upon the defendant by any other method.

(b) Publication Service Upon Parties and the Unknown Successors of Named Parties.

Service of summons upon named parties, the unknown successors of a named party, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in the complaint, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court, that the person who verified the complaint or the affiant does not know, and with due diligence cannot ascertain, the following:

- (1) Whether a person named as a party is living or dead, and, if dead, the names or whereabouts of his successors, if any.

(2) The names or whereabouts of a party and the unknown successors, if any, of the named decedent or other parties.

(3) Whether a partnership, corporation, or other association named as a party continues to have legal existence or not; or the name or whereabouts of its officers or successors.

(4) Whether any person designated in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee, or

(5) The names or whereabouts of the owners or holder of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills of similar instruments.

Section 306. Publication Notice Requirements.

(a) Publication Requirements.

Service pursuant to this Section shall be made by publication of a notice, signed by the Court Clerk, in a newspaper authorized by law to publish legal notices which is published within the territorial boundaries of the Nation or within Ottawa County.

(b) Publication Notice; Contents.

All named parties, their unknown successors, and other persons who may be served by publication may be included in one notice. The notice shall state:

(1) The name of the Court in which the petition is filed;

(2) The names of the parties;

(3) Designate the parties whose unknown successors are being served, if any;
and

(4) That the named parties and their unknown successors have been sued and must answer the complaint or other pleading on or before a time to be stated (which shall not be less than thirty-one (31) days from the date of the publication, or judgment, the nature of which shall be stated, will be rendered accordingly. It is not necessary for the publication notice to state that the judgment will include recovery of costs in order for a judgment following the publication notice to include costs of suit.

(c) Legal Descriptions Required.

If jurisdiction of the Court is based on property, any real property subject to the jurisdiction of the Court and any property or debts to be attached or garnished must be described in the notice.

(d) Service of Publication Notice.

Service is complete upon publication.

Section 307. Publication Notice for Recovery of Money.

When the recovery of money is sought, it is not necessary for the publication notice to state the separate items involved, but the total amount that is claimed must be stated. When interest is claimed, 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 308. Publication Notice in Quiet Title Actions.

In an action to quiet title to real property, it is not necessary for the publication notice to state the nature of the claim or interest of either party, and in describing the nature of the judgment that will be rendered should the defendant fail to answer, it is sufficient to state that a decree quieting plaintiff's title to the described property will be entered. It is not necessary to state that a decree forever 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 be not 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 309. Completion of Publication Service.

Service by publication is complete when made in the manner and for the time prescribed in this Chapter. Service by publication shall be proved by the affidavit of any person having knowledge of the publication with a copy of the published notice attached. No default judgment may be entered on such service until proof of service by publication is filed with and approved by the Court.

Section 310. Entry of Default on Party Served by Publication.

Before entry of a default judgment or order against a party who has been served solely by publication under this Chapter, the Court shall conduct an inquiry to determine whether the plaintiff, or someone acting in his behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this subsection. 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 described in subsection (a) of Section 306 of this Chapter have been satisfied.

Section 311. Vacating Default Judgments Where Service is by Publication.

(a) Three Year Limitation.

A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within three (3) years after the date of the judgment or order, have the judgment or order opened and be let in to defend.

(b) Preliminary Requirements.

Before the judgment or order is opened, the applicant shall notify the adverse party of his intention to make such challenge, and shall:

- (1) File a full answer to the petition;
- (2) Pay all costs if the Court requires them to be paid; and
- (3) Satisfy the Court by affidavit or other evidence that during the pendency of the action he had no actual notice thereof in time to appear in Court and make his defense.

(c) Effect on Property Rights.

The title to any property which is the subject of and 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 any proceedings under the Section. Nor shall proceedings under this Section affect the title of any property sold before judgment under an attachment.

(d) Defense.

The adverse party, on the hearing of any application to open a judgment or order as provided by this Section, shall be allowed to present evidence to show that during the pendency of the action the applicant had notice thereof in time to appear in Court and make his defense.

Section 312. Certain Technical Errors Not Grounds for Vacating Judgment.

(a) Failure to Attach Affidavit to Complaint as Grounds.

No judgment heretofore or hereafter rendered in any action against unknown heirs or devisees of a deceased person shall ever be construed, or held to be, either void or voidable upon the ground that an affidavit of the plaintiff to the effect that the name of such heirs or devisees, or any of them, and their residences, are unknown to the plaintiff, was not annexed to his complaint so long as said affidavit is on file in the action, and all such judgments, if not otherwise void, are hereby declared to be valid and binding from the date of rendition.

(b) Verification by Attorney as Grounds.

No judgment heretofore or hereafter rendered in any action against any person or party served by publication shall be construed or held to be void or voidable because the affidavit for such service by publication on file in the action was made by the attorney for the plaintiff or because the complaint or other pleading was verified, if verification is necessary, by the attorney for the plaintiff or party seeking such service by publication. In all such cases it shall be conclusively presumed, if otherwise sufficient, that the allegations and statements made by such attorney were and are in legal effect and for all purposes made by plaintiff and shall have the same force and effect as if actually made by the plaintiff, and the judgment, if not otherwise defective or void, is hereby declared to be valid and legally effective and conclusive as of the date thereof.

Section 313. Meaning of "Successors" for Publication Purposes.

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

Section 314. Minimum Contacts Required for Effective Long Arm Service.

Service outside of the Nation's territorial jurisdiction does not give the Court in persona jurisdiction over a defendant who is not subject to the jurisdiction of the Courts of this Nation, or who has not, either in person or through an agent, submitted himself to the jurisdiction of the Courts of this Nation either by appearance, written consent, or having voluntarily entered into sufficient contacts with the Nation, its members, or its territory to justify tribal jurisdiction over him in accordance with the principals of due process of law and federal Indian law.

Section 315. Consent is Effective Substitute for Service.

An acknowledgment on the back of the summons or the voluntary appearance of a defendant is equivalent to service.

Section 316. Service Pursuant to Court Order.

If service cannot be made by personal delivery or by mail, a defendant of any class referred to in subsection (a) or (c) of Section 217 of this Title may be served as provided by Court order in any manner which is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard. The Court may enter an order requiring such service whenever service has been by publication only prior to entering a default judgment.

Section 317. Manner of Making Service.

The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such certified copies as are necessary. If the complaint is not served with the summons, the case shall not be dismissed but the time to answer should be extended by the Court upon motion. The person serving the summons shall state on the copy that is left with the party served the date that service is made. Where service is to be made by mail, the person mailing the summons shall state on the copy that is mailed to the party to be served the date of mailing.

These provisions are not jurisdictional, but if the failure to comply with them prejudices the party served, the Court may extend the time to answer. Service of the summons and complaint and service of subpoenas shall be made as follows:

(a) Individual.

Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and a copy of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person fifteen (15) years of age or older then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(b) Infant.

Upon an infant, by delivering a copy of the summons and complaint to either parent and the legal guardian of the infant, if any, or the person with whom he resides if the infant is under the age of fourteen years. If the infant is over the age of fourteen years, by serving either parent and the legal guardian of the infant, if any, or the person with whom he resides and by serving the infant personally if the legal guardian cannot be located.

(c) Corporation.

Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant. Service may also be had upon such entities by delivering the summons and complaint to a place of business of such entity and leaving a copy with the person in charge of that place of business at the time service is made.

(d) United States.

Upon the United States, by delivering a copy of the summons and of the complaint to the United States Attorney for the Northern District of Oklahoma or to an assistant United States Attorney or clerical employee designated by the United States Attorney in a writing filed with the Clerk of the United States District Court for the Northern District of Oklahoma and by sending a copy of the summons and of the complaint by registered or certified mail to the United States Attorney General, United States Department of Justice 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 of the summons and of the complaint by registered or certified mail to such officer or agency.

(e) Office or Agency of United States.

Upon any office or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation the copy shall be delivered as provided in subsection (c) of this Section.

(f) State, Municipality or Indian Nation.

Upon a state, a state municipal corporation, any other Indian Nation not a party to this Title, or other governmental organization thereof subject to suit, by delivering copy of the summons and of the complaint to the Chief Executive Officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state or Nation for the service of summons or other like process upon any such defendant.

(g) Wyandotte Nation.

Upon the Wyandotte Nation by delivering a copy of the summons and complaint to the Chief of the Nation, or to such officer or employee of the Nation as may be designated by the Chief of the Nation in a writing filed with the Clerk of the Nation's District Court, and by sending a copy of the summons and complaint by registered or certified mail, return receipt requested, to the Attorney General of the Wyandotte Nation, and in any action attacking the validity of an order of an officer or agency of the Nation not made a party, by also sending a copy of the summons and complaint by registered or certified mail, return receipt request, to such officer or agency.

(h) Officer or Agency of Wyandotte Nation.

Upon any officer or agency of this Nation by serving the Nation, and by delivering a copy of the summons and complaint to such officer or agency. If the agency is a corporation, the copy shall be delivered as provided in subsection (c) of this section.

Section 318. Effect of Service of Some of Several Defendants.

Where the action is against two or more defendants, and one or more shall be been served, but not all of them, the plaintiff may proceed as follows:

(a) Jointly Indebted Defendants.

If the action be against defendants jointly indebted upon contract, tort, or any other cause of action, he may proceed against the defendants served, unless the Court otherwise orders; and if he recover judgment, it may be entered against: (a) all the defendants thus jointly indebted only insofar as the judgment may be enforced against the joint property of all, and (b) against the defendants served insofar as the judgment may be enforced against the separate property of the defendants served, and if they are subject to arrest, against the persons of the defendants served.

(b) Severally Liable Defendants.

If the action be against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

(c) Effect of Judgment On Defendants Not Served.

A judgment against one or more defendants served, whether jointly or severally liable, shall not be construed to make such judgment a bar to another action against those not served.

Section 319. Service Upon Party Not Inhabitant of or Found Within the Nation's Territorial Jurisdiction.

(a) Service in Lawful Manner.

Whenever a law of the Nation or an order of the Court of the Nation provides for service of summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the territorial boundaries of the Nation, service may be made under the circumstances and in the manner prescribed by the law or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this Title.

(b) Foreign Corporation; Service on Officer of the Nation.

In any action against a foreign corporation or association where service is authorized by law of the Nation upon an officer of the Nation, and the party seeking service elects to serve the officer of the Nation, service shall be made as follows:

(1) The Nation's District Court Clerk shall issue a summons and shall forthwith mail or personally serve triplicate copies of said summons, together with a copy of the complaint and the service fee to the officer of the Nation. The Court Clerk shall make due return, indicating that the summons and complaint copies have been delivered to the officer and the date of such delivery. Receipt of the summons and complaint by the officer shall constitute service upon him. Within three (3) working days after service upon him, the officer shall send copies of the summons and complaint to such foreign corporation or association, by registered or certified mail, return receipt requested, at its office as shown by the articles of incorporation, or charter, or by the latest information officially filed in the office of the officer. The summons shall set forth the last-known address of the office of the corporation or association as ascertained by the parties by use of due diligence, and the officer shall mail copies of the summons and complaint to the corporation or association at this address. The officer shall maintain one copy of the summons and complaint with the records of the corporation or association.

(2) The original summons that is served on the officer of the Nation shall be in form and substance the same as provided in suits against residents within the territorial jurisdiction of the Wyandotte Nation. The summons shall state an answer date which shall be not less than forty-five (45) days nor more than sixty (60) days from the date that such summons was issued.

Section 320. Territorial Limits of Effective Service.

(a) **Service Within Territorial Jurisdiction.**

All process may be served anywhere within the territorial jurisdiction of the Wyandotte Nation and, when authorized by a law of the Nation or by this Title, beyond these territorial limits.

(b) **Manner of Service Outside Territorial Jurisdiction.**

When the exercise of jurisdiction is authorized by law of the Nation or Federal law, service of the summons and complaint may be made outside the territorial jurisdiction of the Nation:

- (1) By personal delivery in the manner prescribed for service within the territorial jurisdiction of the Nation;
- (2) In the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its Courts of general jurisdiction;
- (3) By publication in appropriate circumstances;
- (4) As directed by the foreign authority in response to a letter rogatory; or
- (5) As directed by the Court.

(c) **Service Outside Territorial Jurisdiction.**

In addition, persons who are brought in as parties pursuant to Section 217 of this Title, or as additional parties to a pending action or a counterclaim or cross-claim therein pursuant to Section 403, may be served in the manner stated in subsections (a)-(f) of Section 317 of this Act at all places outside the territorial jurisdiction of the Nation but within the United States, and persons required to respond to an order of commitment for civil contempt may be served, but not arrested, at the same places.

(d) **Enforcement of Process.**

A process involving the detention of person or seizure of property may be served and compulsorily enforced only on property within the territorial jurisdiction of the Nation. A process involving the detention of person or seizure of property may be served anywhere within the United States, but no compulsory enforcement thereof may be maintained in this Court unless such person or property is located within the Indian Country of the Nation when service is made.

Section 321. Return of Service of Process.

(a) Proof of Service.

The person serving the process shall make proof of service thereof to the Court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than the Nation's Chief of Police or his deputy, an officer of the Bureau of Indian Affairs Police, or an attorney by mail, he shall make affidavit thereof. Return of receipt for certified or registered mail shall be attached to the proof of service if service was made by mail. A copy of each publication of notice shall be attached to the return of service by publication. Failure to make proof of service does not affect the validity of the service.

(b) Statement of Date of Service.

The person serving the summons shall state on the copy that is left with the party served, as well as on the return, the date that service is made. Where service is to be made by mail, the person mailing the summons shall state on the copy that is mailed to the party to be served the date of mailing. These provisions are not jurisdictional, but if the failure to comply with them prejudices the party served, the Court may extend the time to answer.

Section 322. Alternative Provisions for Service in a Foreign Country.

(a) Manner.

When the law of the Nation referred to in Section 318 of this Chapter authorizes service upon a party not an inhabitant of or found within the territorial limits of effective service of the Nation's District Court, and when service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (1) in the manner prescribed by the law of the Nation, state, or foreign country for service in that Nation, state, or country in an action in any of its Courts of general jurisdiction; or (2) as directed by the foreign authority in response to a letter rogatory when service in either case is reasonably calculated to give actual notice; or (3) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (4) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the Clerk of the Court to the party to be served; or (5) as directed by the order of the Court. Service under (3) or (5) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the District Court or by 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 the service.

(b) Return.

Proof of service may be made as prescribed by Section 324 of this Chapter, or by the law of the Nation, state, or foreign country, or by order of the Court. When service is made by mail pursuant to subsection (a) of this Section, proof of service shall include a receipt signed by the addressee or other evidence of the delivery to the address satisfactory to the Court.

Section 323. Summons; Time Limit for Service.

- (a.) If service of process is not made upon a defendant within one hundred twenty (120) days after the filing of the complaint and the plaintiff cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the Court's own initiative with notice to the plaintiff or upon motion.
- (b.) If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the complaint, the action shall be deemed to have been dismissed without prejudice as to that defendant. This Section shall not apply to service in a foreign country.

Section 324. Reserved.

Section 325. Service and Filing of Pleadings and Other Papers.

- (a) When Service Required.

Except as otherwise provided in this Act, every order required by its terms to be served, every pleading subsequent to the original complaint unless the Court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except the pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons. 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 of the property at the time of its seizure, and upon any person then known to claim an ownership interest in the property.

- (b) How Service Made.

Whenever service is required or permitted to be made upon a party represented by an attorney (including any person licensed to practice law before the District Court) the service shall be made upon the attorney unless service upon the party himself is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the Clerk of the Court who shall mail a copy thereof to the party's last address of record. Delivery of a copy within this Section means: handing it to the attorney or to the party; or leaving it at his office with his Clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person fifteen years of age or older then residing therein. Service by mail is complete upon mailing.

(c) Service on Numerous Defendants.

In any action in which there are unusually large numbers of defendants, the Court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the Court directs.

(d) Filing.

All papers after the complaint required to be served upon a party shall be filed with the Court Clerk either before service or within a reasonable time thereafter. Discovery materials need not be filed except by order of the Court, for use in the proceeding, or to enforce or resist such discovery. The Court may permit the papers to be filed with it, in which event it shall note thereon the filing date and forthwith transmit them to the office of the Clerk.

Section 326. Computation and Enlargement of Time.

(a) Computation.

In computing any period of time prescribed or allowed by this Title, by order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or any other day when the office of the Clerk of the Court does not remain open for public business until 4:00 p.m. in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday or any other day when the office of the Clerk of the Court does remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than or equal to seven days, intermediate Saturdays, Sundays, and legal holidays or any other day when the office of the Clerk of the Court does not remain open for public business until 4:00 p.m. shall be excluded in the computation. As used in this Section and in the provisions relating to the Court, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the Nation.

(b) Enlargement.

When by this Title or by a notice given thereunder or by order of the Court an act is required or allowed to be done at or within a specified time, the Court for cause shown at any time in its discretion may (1) with or without motion or notice order the period enlarged if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Sections 1007(b), 752(c), (d) and (e), and Section 1209(b), except to the extent and under the conditions stated in them.

(c) Motions and Affidavits.

A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by this Act or by order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Section 1208(c), opposing affidavits may be served not later than one (1) day before the hearing, unless the Court permits them to be served at some other time.

(d) Additional Time After Service by Mail.

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

Section 327. 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 103 in the following cases in addition to any circumstances specifically or otherwise provided for:

- (a.) In all actions arising under the Nation's juvenile statutes or the Indian Child Welfare Act;
- (b.) In all divorce actions when one of the parties is a resident of the Nation's jurisdiction or a member of the Nation;
- (c.) In all actions arising in contract where the contract was entered into, or some material portion thereof was to be performed, within the Nation's territorial jurisdiction; or
- (d.) In all actions arising out of the negligent operation of an automobile within the Nation's territorial jurisdiction by a non-resident when an injury to person or property resulted within the Nation's territorial jurisdiction from the negligent operation of the motor vehicle.

Section 328. Legal Newspaper.

All newspapers regularly published at least once each week for a period of two years prior to the date of publication of a notice within the Nation's territorial jurisdiction or in any county adjacent thereto, and the Nation's newspaper shall be legal newspapers for the publication of any notice required to be published by law of the Nation.

CHAPTER FOUR PARTIES

Section 401. 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 of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the Nation so provides, an action for the use or benefit of another shall be brought in the name of the Nation. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity to Sue or Be Sued.

Except as otherwise provided by law, every person, corporation, partnership, or incorporated association shall have the capacity to sue or be sued in its own name in the courts of the Nation, and service may be had upon unincorporated associations and partnership as provided in Section 317(c) of this Act, upon a managing or general partner, or upon an officer of an unincorporated association.

(c) Infants or Incompetent Persons.

Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, 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 he may sue by his next friend or by a guardian ad litem. The Court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

(d) Assignment of Tort Claims Prohibited.

Claims arising in tort may not be assigned and must be brought by the injured party, provided, that this subsection shall not preclude subrogation of the proceeds of such tort claims for the benefit of any person, including insurance companies, who have compensated the injured party for their injuries, including property damage, to the extent of the payment made by the third party.

Section 402. 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 he may have against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances.

Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the Court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

(c) Joinder of Actions By the Court.

Whenever it appears to the Court that separate actions are pending between the same parties, or involving the same facts or law, the Court may, if the parties will not be prejudiced thereby, order said actions joined for all, or a portion of, the further proceedings.

Section 403. 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 of the action shall be joined as a party in the action if:

(1) In his absence complete relief cannot be accorded among those already parties; or

(2) He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may as a practical matter impair or impede his ability to protect that interest or leave any of the persons already parties subject to a substantial risk of incurring double multiple or otherwise inconsistent obligations by reason of his claimed interest.

(b) Joinder Where Feasible.

If a person whose joinder is feasible pursuant to § 403(a) has not been so joined the Court shall order that he be made a party. If he should be joined as a plaintiff, but refuses to do so, he may be made a defendant, or in a proper case, an involuntary plaintiff.

(c) Determination by Court Whenever Joinder Not Feasible.

If a person as described in subdivision (a) (1) and (2) hereof cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court in making such determination include:

(1) To what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties;

(2) The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

(3) Whether a judgment rendered 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.

(d) Pleading Reasons for Non-Joinder.

A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) (1) and (2) hereof who are not joined, and the reasons why they are not joined.

Section 404. Permissive Joinder of Parties.

(a) Permissive Joinder.

(1) All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, or if any question or fact common to all these persons will arise in the action, or if the claims are connected with the subject matter of the action.

(2) All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of a claim arising out of the same transaction, occurrence, or series of transactions or occurrences, or if any question of law or fact common to all defendants will arise in the action, or if the claims are connected with the subject matter of the action.

(3) A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Joinder of Persons Interested in Property.

In actions to quiet title or actions to enforce mortgages or other liens upon property, persons who assert an interest in the property that is the subject of the action may be joined although their interest does not arise from the same transaction or occurrence.

(c) Separate Trials.

The Court may make such orders as will 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 make other orders to prevent delay or prejudice.

Section 405. Misjoinder and Non-Joinder of Parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Leave of the Court shall not be required when the pleader amends his pleadings within the time period for amendment of pleadings without leave of the Court specified in Chapter Two herein. Any claim against a party may be severed and proceeded with separately upon order of the Court.

Section 406. Interpleader.

(a) Exposure of Plaintiff to Multiple Liability.

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or 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 a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff alleges that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this Section supplement and do not in any way limit the joinder of parties permitted in Section 404.

(b) Actions for Recovery of Property Taken By Execution.

The provisions of this section shall be applicable to actions brought against an officer of the Nation's police, an officer of the BIA police or other officer for the recovery of personal property taken by him under execution or for the proceeds of such property so taken and sold by him; and the defendant in any such action shall be entitled to the benefit of this section against the party in whose favor the execution issued.

(c) Protection of Property; Bond.

The Court may make an order for the safekeeping of the subject of the action or for its payment or delivery into the Court or to such person as the Court may direct, and the Court may order the person who is seeking relief by way of interpleader to give a bond, payable to the Clerk of the Court, in such amount and with such surety as the Court or judge may deem proper, conditioned upon the compliance with the future order or judgment of the Court with respect to the subject matter of the controversy. Where the party seeking relief by way of interpleader claims no interest in the subject of the action and the subject of the action has been deposited with the Court or with a person designated by the Court. The Court should discharge him from the action and from liability as to the claims of the other parties to the action with costs and, in the discretion of the Court, a reasonable attorney fee.

(d) Costs.

In cases of interpleader, costs may be adjudged for or against any party, except as provided in subsection (c) of this Section.

Section 407. Derivative Actions by Shareholders and Members.

(a) Complaint; Requirements.

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege:

(1) That the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and

(2) That the action is not a collusive one to confer jurisdiction on a Court of the Nation which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort.

(b) Limitations on Maintenance.

The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the Court directs. The Court shall not take jurisdiction over such actions concerning the internal affairs of corporations or other entities formally organized under the law of some other jurisdiction absent the consent of all parties to the controversy or some compelling reason to assume such jurisdiction.

Section 408. Intervention.

(a) Intervention of Right.

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the Nation confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention.

Upon timely application anyone may 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 to an action relies for ground of claim or defense upon any statute or executive order administered by a tribal, federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure.

A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Section 231. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the motion to intervene is granted, all other parties may serve a responsive pleading upon leave of the Court.

Section 409. Substitution of Parties.

(a) Death.

(1) If a party dies, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Section 325 and upon persons not parties in the manner provided for the service of a summons, and may be served within or without the jurisdiction of the Nation. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action 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 suggested 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, the Court upon motion served as provided in subdivision (a) of this Section 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 in subdivision (a) of this Section.

(d) Public Officers: Death or Separation From Office.

(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution 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 at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name but the Court may require his name to be added.

CHAPTER FIVE DEPOSITIONS AND DISCOVERY

Section 501. Discovery Methods.

Parties may obtain discovery by one or more of the following 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. Unless the Court orders otherwise under subdivision (c) of this Section, the frequency of use of these methods is not limited. Discovery may be obtained as provided herein in aid of execution upon a judgment.

Section 502. Scope of Discovery.

Unless otherwise limited by order of the Court in accordance with this Chapter, the scope of discovery is as follows:

(a) **In General.**

Parties may obtain discovery regarding any matter, not privileged, which is relevant to subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, 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 at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) **Insurance Agreements.**

A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(c) **Trial Preparation; Materials.**

Subject to the provisions of subdivision (d) of this Section, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (a) of this Section and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a 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. The provisions of Section 520(d) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or is a stenographic, mechanical, electrical, 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.

(d) Trial Preparation; Experts.

Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (a) of this Section and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Upon motion, the Court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (d) (3) of this section, concerning fees and expenses as the Court may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Section 518(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (d) (1) and (d) (2) of this Section; and with respect to discovery obtained under subdivision (d) (1) of this Section the Court may require, and with respect to discovery obtained under subdivision (d) (2) of this Section the Court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party obtaining facts and opinions from the expert.

Section 503. Protective Orders.

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court or alternatively, on matters relating to a deposition, the court in the jurisdiction where the deposition is to be taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the Court; (7) that a trade secret or other confidential research development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court. If the motion for a protective order is denied in whole or in part,

the Court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Section 520(d) apply to the award of expenses incurred in relation to the motion.

Section 504. Sequence and Timing of Discovery.

Unless the Court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

Section 505. Supplementation of Response.

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(a) **Identity and Location of Certain Persons.**

The identity and location of persons having knowledge of discoverable matters; and the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(b) **Correction of Information.**

A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which he knows that the response was incorrect when made, or he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) **By Order or Agreement.**

A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Section 506. Depositions Before Action.

(a) **Petition.**

A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in court may file a verified petition in the District Court if the Nation's jurisdiction is the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner, shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition for the purpose of perpetuating their testimony, and shall show: (1) that the petitioner expects to be a party to an action cognizable in the District Court but is presently unable to bring it or cause it to be brought; (2) the subject matter of the expected action and his interest therein; (3) the facts which he

desires to establish by the proposed testimony and his reasons for desiring to perpetuate it; (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 of the testimony which deposition taken under procedures of another jurisdiction, which are similar to those in this section, is admissible in all proceedings in the Nation's District Court to the same extent as a deposition taken under this section he expects to elicit from each.

(b) Notice and Service.

The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the Court, at a time and place named therein, for the order described in the petition. At least twenty (20) days before the date of hearing the notice shall be served either within or without the Nation's territorial jurisdiction in the manner provided in Section 317(d) for service of summons. If personal service cannot with due diligence be made upon any expected adverse party named in the petition, the Court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Section 317(d), an attorney or advocate who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Section 401(c) apply. Any attorney appointed pursuant to this Section shall be compensated as provided by the Court from the Court Fund, such compensation to be taxed as costs against the person perpetuating the testimony.

(c) Order and Examination.

If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with this Chapter; and the Court may make orders of the character provided for by Sections 409 and 410.

(d) Use of Deposition to Perpetuate Testimony.

If a deposition to perpetuate testimony is taken under this Chapter or if, although not so taken, it would be admissible in evidence in the Courts of the jurisdiction in which it is taken, it may be used in any action involving the same subject matter subsequently brought in the District Court, in accordance with the provisions of Section 515(a).

Section 507. Deposition Pending Appeal.

If an appeal has been taken from a judgment of the District Court or before the taking of an appeal if the time therefor has not expired, the court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the District Court. In such case the party who desires to perpetuate the testimony may make a motion in the District Court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the Court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; and (2)

the reasons for perpetuating their testimony. If the Court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Sections 517 and 518, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these sections for depositions taken in actions pending in the District Court. Nothing contained herein shall be construed as limiting the power of a Court to entertain an action to perpetuate testimony.

Section 508. Deposition Costs.

The party taking any deposition under this section shall pay the costs thereof unless otherwise ordered by the court.

Section 509. Depositions Taken in Other Jurisdictions Admissible.

A deposition taken under procedures of another jurisdiction, which are similar to those in this section, is admissible in all proceedings in the Nation's District Court to the same extent as a deposition taken under this section.

Section 510. Persons Before Whom Depositions May Be Taken.

(a) Within the Nation's Territorial Jurisdiction.

Within the territorial jurisdiction of the Nation, depositions shall be taken before an officer authorized to administer oaths by the laws of the Nation, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. All parties shall be subject to these provisions anywhere within the Nation's territorial jurisdiction as defined in this Act.

(b) Outside the Nation's Territorial Jurisdiction.

Outside the Nation's territorial jurisdiction, depositions may be taken in one of the following ways:

(1) On notice before an officer authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States; or

(2) Before an officer commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony; or

(3) Pursuant to a letter rogatory pursuant to the following procedure: A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter

rogatory may be addressed "To the Appropriate Authority in (Here Name of Nation, State, or Country)." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the Nation's territorial jurisdiction under these sections.

(c) Disqualification for Interest.

No deposition shall be taken before a person who is a relative or employee or 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 511. Subpoena for Taking Depositions: Place of Examination.

(a) Issuance; Proof of Service; Contents.

Proof of service of a notice to take a deposition as provided in Sections 513(b) and 514(a) or presentation of prepared notices to be attached to the subpoena constitutes a sufficient authorization for the issuance by the Clerk of the District Court of subpoenas for the persons named or described therein. Proof of service of the notice may be made by filing, with the Clerk of the District Court, a copy of the notice together with a statement of the date and manner of service and the names of the person who made service. A subpoena must be served in the manner provided in by Section 601 herein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Section 502, but in that event the subpoena will be subject to the provisions of Section 503 and subdivision (b) of this Section.

(b) Objections.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the Court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

Section 512. Stipulations Regarding Discovery Procedure.

Unless the Court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by this Chapter for other methods of discovery, except that stipulations extending the time provided in Sections 516, 517 and 519 for responses to discovery may be made only with the approval of the Court.

Section 513. Depositions Upon Oral Examination.

(a) When Depositions May Be Taken.

After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made by publication, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b) (2) of this Section. The attendance of witnesses may be compelled by subpoena as provided in Section 601. The deposition of a person confined in prison may be taken only by leave of Court on such terms as the Court prescribes.

(b) Notice of Deposition; General Requirements; Special Notice; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition, the method for recording the deposition testimony, and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of Court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the Nation's territorial jurisdiction, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the thirty (30) day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Section 211 are applicable to the certification. If a party shows that when he was served with notice under this subdivision he was unable through the exercise of due diligence to obtain counsel to represent him at the taking of 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 notice to a party deponent may be accompanied by a request made in compliance with Section 517 for the production of documents and tangible things at the taking of the deposition. The procedure of Section 517 shall apply to the request.

(5) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In

that event, the organization so named shall designate one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(5) does not preclude taking a deposition by any other procedure authorized in these sections.

(c) Method of Recording.

(1) Method Stated in Notice. The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court, sua sponte or upon motion, orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(2) Additional Method. With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(3) Method Ordered by Court. The Court may sua sponte or upon motion order the method by which the testimony at a deposition shall be recorded, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have an additional method of recording at his own expense.

(d) Officer's Duties During Deposition.

(1) Before the Deposition. A deposition must be conducted before an officer appointed or designated under Section 510. The officer must begin the deposition with an on-the-record statement that includes:

- (a) the officer's name and business address;
- (b) the date, time, and place of the deposition;
- (c) the deponent's name;
- (d) the officer's administration of the oath or affirmation to the deponent; and
- (e) the identity of all persons present.

(2) Conducting the Deposition; Avoiding Distortion. If the deposition is recorded nonstenographically, the officer must repeat the items in Section 513(d)(1)(a)-(c) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(3) After the Deposition. At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(e) Examination and Cross-Examination; Record of Examination; Oath; Objections.

Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Chapter Six (Witnesses). The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (c) of this Section. If requested by one of the parties, the testimony shall be transcribed.

(f) Objections.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, 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 propound them to the witness and record the answers verbatim.

(g) Motion to Terminate or Limit Examination.

At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in an unreasonable manner to annoy, embarrass, or oppress the deponent or party, the District Court or the Court in the jurisdiction where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 503. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the District Court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Section 520(d) apply to the award of expenses incurred in relation to the motion.

(h) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission

to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress the Court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(i) Certification and Filing by Officer; Exhibits: Copies: Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the District Court or send it by registered or certified mail to the Clerk thereof for filing.

(2) Documents and things produced for inspection during the examination of the witness, shall, upon the 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 that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, 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 producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(3) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. The court may, by section, establish the maximum charges which are reasonable for such services.

(4) The party taking the deposition shall give prompt notice of its filing to all other parties.

(j) Failure to Attend or to Serve Subpoena: Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

Section 514. Depositions Upon Written Questions.

After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions, pursuant to the following procedure:

(a) Attendance of Witnesses.

The attendance of witnesses may be compelled by the use of subpoena as provided in Section 511. The deposition of a person confined in prison may be taken only by leave of Court on such terms as the Court prescribes.

(b) Service of Notice.

A party desiring to take a deposition 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 them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, 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 a partnership or association or governmental agency in accordance with the provisions of Section 513(b)(5).

(c) Cross-questions.

Within thirty (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 for cause shown enlarge or shorten the time.

(d) Officer to Take Responses and Prepare Record.

A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly in the manner provided by Section 513(d), (e), (g), and (h), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(e) Notice of Filing.

When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

Section 515. Use Of Depositions In Court Proceedings

(a) Use of Depositions.

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice, thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Section 513(b)(5) or Section 514(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party 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 finds: (A) that the witness is dead; or (B) that the witness is outside the jurisdiction of the Nation, and cannot be served with a subpoena to testify at trial while within the Nation's territorial jurisdiction unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that 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 such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court to allow the deposition to be used.

(4) If only part of the deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts, subject to the requirements of Title __ of the Code of Laws of the Wyandotte Nation (Evidence).

(5) Substitution of parties pursuant to Section 409 does not affect the right to use depositions previously taken; and, when an action in any court of any Indian Nation, the United States, or of any State has been dismissed and another action involving the same subject matter is afterward brought between the same parties, or their representatives or successors in interest, in the Nation's District Court, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) Objections to Admissibility.

Subject to the provisions of Section 513(f) and subdivision (c)(3) of this Section, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reasons which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Errors and Irregularities in Depositions.

(1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition.

(i) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(ii) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(iii) Objections to the form of written questions submitted under Section 514 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Sections 405 and 406 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been ascertained.

Section 516. Interrogatories to Parties

(a) Availability: Procedures for Use.

Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

(b) Answers.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. In the answers, the full text of the interrogatory shall immediately precede the answer to that interrogatory. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The Court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Section 520 with respect to an objection to or other failure to answer an interrogatory.

(c) Scope: Use at Trial.

Interrogatories may relate to any matters which can be inquired into under Section 401(b), and the answers may be used to the extent permitted by the evidentiary requirements of Title 8 of the Code of Laws of the Wyandotte Nation (Evidence Code). 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 that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(d) Option to Produce Business Records.

Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts or summaries.

Section 517. 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 making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phone-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test or sample any tangible things which constitute or contain matters within the scope of Section 502 and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying,

photographing testing, or sampling the property or any designated object or operation thereon, within the scope of Subsection (b).

(b) Request.

The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, 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 the related acts.

(c) Response.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Section 520(b) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(d) 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 518. Physical and Mental Examination of Persons.

(a) Order for Examination.

When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the Court may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the item, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examining Physician.

(1) If requested by the party against whom an order is made under Section 518(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party

causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter 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 make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other 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 agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other Section of this Title.

Section 519. Requests for Admission.

(a) Request for Admission.

A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Section 502 set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

(b) Response.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the Court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit to deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify this answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reasons for failure to admit or deny unless he states that he has made reasonable

inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter on which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Section 522, deny the matter or set forth reasons why he cannot admit or deny it.

(c) Motion to Determine Sufficiency of Response.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Section, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Section 520(d) apply to the award of expenses incurred in relation to the motion.

(d) Effect of Admission.

Any matter admitted under this Section is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Section 219 governing amendment of a pre-trial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the Court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. An admission made by a party under this Section is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

Section 520. Motion for Order Compelling Discovery.

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(a) Appropriate Court.

An application for an order to a party may be made to the District Court, or, on matters relating to a deposition, to the court in the jurisdiction where the deposition is being 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 being taken.

(b) Motion.

If a deponent fails to answer a question propounded or submitted under Sections 513 or 514, or a corporation or other entity fails to make a designation under Section 513(b)(5) or Section 514(a), or a party fails to answer an interrogatory submitted under Section 516, or if a party, in response to a request for inspection submitted under Section 517 fails to respond that inspection will be permitted as requested, or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order

compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. If the Court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Section 503.

(c) Evasive or Incomplete Answer.

For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(d) Award of Expenses of Motion.

Expenses related to a motion to compel discovery shall be awarded as follows:

(1) If the motion is granted, the Court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the Court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(2) If the motion is denied, the Court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or that other circumstances made an award of expenses unjust.

(3) If the motion is granted in part and denied in part, the Court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in just manner.

Section 521. Failure to Comply with Order Compelling Discovery.

(a) Sanctions by Court in Jurisdiction Where Deposition is Taken.

If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the jurisdiction in which the deposition is being taken, the failure may be considered contempt of that court. Sanctions imposed in such matters by any foreign court shall be given full faith and credit and promptly enforced by the Nation's District Court, subject to the Nation's District Court's authority to modify the sanctions imposed as justice may require.

(b) 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 under Section 513(b)(5) or Section 514(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this

Section or Section 518, the Court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(5) Where a party has failed to comply with an order under Section 518(a) requiring him to produce another for examination, such orders as are listed in paragraphs (1), (2), and (3) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

(6) In lieu of any of the foregoing orders or in addition thereto, the Court shall require the party failing to obey the order, or the attorney advising him or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Section 522. Expenses on Failure to Admit.

If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 519, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that (1) the request was held objectionable pursuant to Section 512, or (2), the admission sought was of no substantial importance, or (3) the party failing to admit has reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

Section 523. Failure of Party to Attend at 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 under Section 513(b)(5) or Section 514 to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Section 516, after proper service of the

interrogatories, or (3) to serve a written response to a request for inspection submitted under Section 517, after proper service of the request, the District Court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (1), (2), and (3) of subdivision (b) (2) of this Section. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The failure to act described herein may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Section 503.

CHAPTER SIX WITNESSES

Section 601. Subpoena.

(a) Subpoena for Attendance of Hearing or Trial.

At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the Clerk of the District Court. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the Nation's territorial jurisdiction, or at any place without the territorial jurisdiction that is within sixty (60) miles of the place of the hearing or trial specified in the subpoena; and, when a statute of the Nation provides therefore, the Court upon proper application and cause shown may authorize the service of a subpoena at any other place.

(b) For Production of Documentary Evidence.

A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Form; Issuance.

Every subpoena shall be issued by the Clerk under the seal of the Court, shall state the name of the Court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The Clerk shall issue a subpoena, or a subpoena for the production of documentary or other physical evidence signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.

(d) Attendance Requirements; Limitations.

A resident of property within the territorial jurisdiction of the Nation shall be required to attend a hearing or trial at any place within the territorial jurisdiction of the Nation. A nonresident of lands within the territorial jurisdiction of the Nation shall be required to attend a hearing or trial only in the county wherein he is served with a subpoena or resides or within sixty (60) miles from the place of service, or at such other convenient place as is fixed by an order of the Court.

(e) Service.

A subpoena may be served by an officer of the Nation's Police, an officer of the Bureau of Indian Affairs Police, or by any other person authorized by the Court or by this Act who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering or mailing a copy thereof to such person and by tendering to him the fees for one (1) day's attendance and the mileage allowed by law. Service of a subpoena by mail may be accomplished by mailing a copy thereof by certified mail with return receipt requested and delivery restricted to the person named in the subpoena.

(f) Proof of Service.

The person serving the subpoena shall make proof of service thereof to the Court promptly and, in any event, before the witness is required to testify at the hearing or trial. If service is made by a person other than an officer of the Nation's Police or of the Bureau of Indian Affairs police, such person shall make affidavit thereof. If service is by mail, the person serving the subpoena shall show in his proof of service the date and place of mailing and attach a copy of the return receipt showing that the mailing was accepted. Failure to make proof of service does not affect the validity of the service, but service of a subpoena by mail shall not be effective if the mailing was not accepted by the person named in the subpoena. Costs of service shall be allowed whether service is made by a police officer or other person.

Section 602. Witness May Demand Fees; Exceptions.

A witness may demand his traveling fees and fee for one days attendance as shall be set by Court rule, where the subpoena is served upon him pursuant to Section 324 herein; and if the same be not paid, the witness shall not be obliged to obey the subpoena. The fact of such demand and non-payment shall be stated in the return, provided, however, that witnesses subpoenaed by any of the Nation's departments, boards, commissions or legislative committees authorized to issue subpoenas shall be paid their attendance and necessary travel, as provided by law for witnesses in other cases, at the time their testimony is concluded out of funds appropriated to such departments, boards, commissions or legislative committees. In the case of subpoena issued by such agencies of the Nation, the witness may not refuse to attend because fees and travel expenses were not paid in advance.

Section 603. Witness May Demand Fees Each Day; Exception.

At the commencement of each day after the first day, a witness may demand his fees for that days attendance in obedience to a subpoena; and if the same be not paid, he shall not be required

to remain, except witnesses subpoenaed by any of the Nation's departments, boards, commissions, or legislative committees or bodies authorized by law to issue subpoenas shall be paid for their attendance and necessary travel from that agency's approved budget as provided by law in other cases at the time their testimony is completed.

Section 604. Witness Privileged.

A witness who does not reside within the territorial jurisdiction of the Nation shall not be liable to be sued in the Nation's District Court by being served with a summons while going, returning, or attending in obedience to a subpoena.

Section 605. Special Provisions for Agencies of the Nation.

(a) Attendance.

No agent or employee of the Nation may be required to attend and testify in his official capacity for any private party absent the consent of his Department head or higher ranking superior.

(b) Witness Fees.

No agent or employee of the Nation may be paid a witness fee in addition to his regular salary or other compensation, if he is on duty at the time he is required to attend and testify, and shall be deemed to have elected to receive his regular salary or other compensation unless he requests leave without pay prior to the time he appears in response to the subpoena, provided, that when such agent or employee appears and testifies while being paid the regular salary or other compensation, the normal witness fee shall be charged as costs in the case for the benefit of the Nation and paid into the Nation's Treasury for the benefit of the Nation, and the agent or employee's supervisor may require prepayment of said fees as a condition precedent of his approval for his appearance. Such witness shall be entitled to receive his travel costs, if any, from the party in advance as in other cases.

Section 606. Disobedience of Subpoena.

Disobedience of a subpoena, or refusal to be sworn or to answer as a witness, when lawfully ordered, may be punished as a contempt of the Court or officer by whom his attendance or testimony is required.

Section 607. Attachment of Witness.

When a witness fails to attend in obedience to a subpoena (except in case of a demand and failure to pay his fees), the Court or officer before whom his attendance is required may issue an attachment to the Nation's Police or the Bureau of Indian Affairs Police or other law enforcement agency having authority to enforce such attachment, commanding him to arrest and bring the person therein named before the Court or officer, at a time and place to be fixed in the attachment, to give his testimony and answer for the contempt. If the attachment be not for immediately bringing the witness before the Court or officer, a sum may be fixed not to exceed One Hundred Dollars (\$100.00) in which the witness may give an undertaking, with surety, for

his appearance; such sum shall be indorsed on the back of the attachment; and if no sum is so fixed and indorsed, it shall be one hundred dollars (\$100.00). If the witness be not personally served, the Court may, by a rule, order him to show cause why an attachment should not issue against him.

Section 608. Requisites of Attachment; Order of Commitment.

Every attachment for the arrest, or order of commitment to jail of a witness by the Court or an officer, pursuant to this Chapter, must be under the seal of the Court or officer, if he have an official seal, and must specify, particularly, the cause of arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of commitment may be directed to the Nation's Police or the Bureau of Indian Affairs Police, and shall be executed by committing him to the Nation's detention facilities, and delivering a copy of the order to the jailor.

Section 609. Punishment for Contempt.

(a) Punishment.

The punishment for the contempt provided in Section 607 of this Title shall be as follows: When the witness fails to attend, in obedience to the subpoena, except in case of a demand and failure to pay his fees, the Court or officer may fine the witness in a sum not exceeding Fifty Dollars (\$50.00). In case the witness attends but refuses to be sworn or to testify, the Court or officer may fine the witness in a sum not exceeding Fifty Dollars (\$50.00), or may imprison him in the Nation's detention facilities, there to remain until he shall submit to be sworn, testify, or give his deposition. The fine imposed by the Court or agency of the Nation shall be paid into the Nation's treasury, and that imposed by the officer at a deposition shall be for the use of the party for whom the witness was subpoenaed. The witness shall, also, be liable to the party injured for any damages occasioned by his failure to attend, or his refusal to be sworn, testify, or give his deposition.

(b) Nature of Punishment.

The punishment provided in this section shall not apply where the witness refuses to subscribe a deposition. The punishment provided in this section is civil in nature, and shall not be interpreted in any way as a criminal punishment, nor shall the punished person be deemed convicted of any criminal offense.

(c) Suspension of Punishment.

When the witness purges his contempt, the Court, officer, or agency may suspend any punishment imposed.

Section 610. Discharge from Imprisonment.

A witness imprisoned pursuant to Sections 607 and 608 may apply to a District Judge of the Nation's District Court who shall have power to discharge him, if it appears that his imprisonment is illegal.

Section 611. Examination of Prisoner.

A person confined in the Nation's detention facilities 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. 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.

**CHAPTER SEVEN
JURORS**

Section 700. Eligibility.

(a) Persons Qualified to Serve as Jurors.

The following persons are qualified to serve as jurors: All members of the Nation and other citizens of the United States who are over eighteen years of age and have resided within the territorial jurisdiction of the Wyandotte Nation 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 as herein provided.

(b) Persons Not Qualified to Serve as Jurors.

The following persons are not qualified to serve as jurors:

- (1) Justices of the Supreme Court of the Nation, or the employees in their office.
- (2) District Judges or Special Judges of the District Court, or the employees in their office.
- (3) The Court Clerk, or the employees in his office.
- (4) The Chief of the Nation's Police, his deputies, and the employees of the Nation's Police Department.
- (5) Jailers having custody of prisoners, or other tribal, state, or federal law enforcement officers.
- (6) Licensed attorneys or advocates engaged in the practice of law.
- (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 any such person has been fully restored to his civil rights by the

jurisdiction wherein such conviction occurred, the person shall be eligible to serve as a juror.

(8) Elected and Appointed officials of the Nation, including the Chief, Second Chief, and elected Board of Directors members.

(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 from jury service by the Court in its discretion, upon request.

(d) Any member of the Nation, taxpayer of the Nation, or person employed within the Nation's jurisdiction may serve as a juror notwithstanding that they are not a resident of the Nation's jurisdiction if they volunteer to do so by signing the Jury Selection Roll maintained by the Court Clerk.

Section 701. Preparation of Lists of Jurors.

(a) Meeting.

On the first Monday in November, or as soon thereafter as may be, and, at any time upon the order of the Chief Justice of the Supreme Court in his discretion to accommodate demands for jury trials, the Jury Selection Board, composed of the Enrollment Committee Chairman or one of his deputies, an officer of the Wyandotte Nation Police, the Court Clerk or one of his deputies, and one of the Judges of the Court, shall meet at the office of the Court Clerk and select from a list to be compiled of all qualified jurors, as prescribed in this Chapter, all qualified jurors for service in the Nation's District Court for the ensuing calendar year in the manner hereinafter provided.

(b) Lists Provided.

For the purpose of ascertaining the names of all persons qualified for jury service, it shall be the duty of the following officers to provide the following lists of qualified prospective jurors to the Court Clerk:

(1) The Enrollment Committee shall supply a list of all enrolled members of the Nation over eighteen years of age who are residents of property within the boundaries of the Wyandotte Nation territorial jurisdiction;

(2) The Court Clerk shall supply a list of all persons over eighteen years of age irrespective of tribal membership who have registered upon the Court Clerk's Jury Selection Roll for jury service.

(c) Information on Lists.

Each such list shall contain, insofar as is known, the date of birth or age, name, and actual place of residence of each person within the category on the list.

(d) Deadlines for Lists; Cards.

Whenever possible, these lists shall be prepared at least thirty days prior to the meeting to allow time for the typing of the names contained therein on cards as hereafter provided, or shall be presented typed upon the cards as hereafter provided.

(e) Computerization; Cards.

Whenever such is, or may become reasonably available and efficient, the lists may be printed from computer memory on cards in the manner hereafter provided.

Section 702. Court Clerk's Jury Selection Roll.

It shall be the duty of the Court Clerk to maintain at all times a jury selection roll upon which any person who is or may be eligible for jury service may enter their name, date of birth, and place of residence. Such roll shall be provided to the jury selection board in order that all qualified persons who may not be identified in paragraphs (1), (2), or (3) of Subsection (b) of Section 702 of this Chapter shall have the opportunity for jury service.

Section 703. Preparation of Jury Wheel.

Said officers shall write or cause to be written or typed the names of all persons who are known to be, or may be qualified jurors under the law on separate cards of uniform size and color, writing also on said cards, whenever possible, the post office address of each juror so selected, along with his age or date of birth and place of residence under the direction of the Court Clerk. Whenever such can be avoided, no person's name shall be placed upon more than one card. The expenses of preparation of said cards shall be paid from the Court Fund. The cards containing said names shall be deposited in a circular hollow wheel, to be provided for such purpose by the Court Clerk after the Jury Selection Board has examined the contents thereof and removed therefrom and destroyed any cards found therein. Said wheel shall be in the form of a drum made of iron, steel, or other substantial material, and shall be so constructed as to freely revolve on its axle and big enough to freely mix all the cards placed therein, the size thereof in each case to be determined by the number of names placed therein, and shall be locked at all times, except when in use as hereinafter provided, by the use of two separate locks, so arranged that the key to one will not open the other lock; and said wheel and the clasps thereto attached into which the locks shall be fitted, shall be so arranged that said wheel cannot be opened unless both of said locks are unlocked at the time the wheel is opened. The keys to such locks shall be kept, one by the Chief of the Nation's Police, and the other by the Court Clerk. The Chief of the Nation's Police and the Court Clerk shall not open such wheel, nor permit the same to be opened by any person, except at the time and in the manner and by the persons herein specified; but said Chief of the Nation's Police and Court Clerk shall keep such wheel, when not in use, in a safe and secure place where the same cannot be tampered with.

Section 704. Drawing General Jury Panel.

(a) Drawing General Panel; Order.

The Chief District Judge, or a majority of District Judges of the District Court shall, more than twenty (20) days prior to each jury docket of Court, determine approximately the number of jurors that are reasonably necessary for jury service in the Court during the jury docket, and shall thereupon order the drawing of such number of jurors from the wheel, said jury to be known as the general panel of jurors for service for the respective jury docket for which they are designated to serve.

(b) Drawing Names.

The Court Clerk or one of his deputies and the Chief of the Nation's Police or one of his deputies in open court and under the directions of the Chief Judge of the District Court, or during his absence or disability, some other Judge of the District Court, shall draw from the wheel containing the names of Jurors, after the same has been well turned so that the cards therein are thoroughly mixed, one by one until the number of jurors for jury service as directed by the Court are procured and shall record such names as they are drawn. The officers attending such drawing shall not divulge the name of any person that may be drawn as a juror to any person.

(c) Drawing Until Completion of Panel.

Additional and other drawings of as many names as the Court may order may be had at any such time as the Court or Judge may order for the completion of a jury panel, or for the impaneling of a new jury if, in the judgment of the Court, the same shall be necessary, or if, for any cause, the Court, in its discretion, shall deem other jurors necessary. The Court may excuse or discharge any person drawn and summoned as a juror, whenever, in its discretion, such action shall be deemed expedient.

(d) Limitations on Service of Juror.

No person may be required, over his objection, to render service as a juror for more than a total of twenty (20) working days in any one calendar year unless, when this time limit is reached, he is sitting upon a panel engaged in the consideration of a case, in which event he may be excused when such case is terminated; provided, that if the Judge is of the opinion that the jury business of a jury docket fixed by the Court may be concluded within six (6) days, he may require a jury, or a juror, to remain until the termination of said jury service. Persons summoned for jury service need not be required to serve during previously fixed days or weeks or a docket fixed by the Court for jury trials, but they may be recalled from time to time as the trial needs of the District Court may require, without regard to the docket term fixed by the Court for jury trials for which they were originally summoned.

Section 705. Use of Jury Panel.

The general panel of jurors shall be used to draw juries in all actions tried during the jury docket for which they were summoned. In the event of a deficiency of said general panel at any given

time to meet the requirements of the Court, the presiding Judge having control of said general panel shall order such additional jurors to be drawn from the wheel as may be sufficient to meet such emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are not further needed. Resort to the wheel shall be had in all cases to fill out the general panel, except when only a single jury is needed or when the Court determines that undue delay will be caused thereby to the prejudice of a party, in which case the Court may issue an open venire to the Chief of the Nation's Police or other suitable person for such number of jurors as may be necessary to be selected from the body of the Nation's jurisdiction without resort to the jury wheel, provided, that no person shall be called to service or required to serve under an open venire more often than once each year.

Section 706. Certifying and Sealing Lists.

The list of names so drawn for the general panel shall be certified under the hand of the Court Clerk or the deputy doing the drawing and the Judge in whose presence said names were drawn from the wheel to be the list drawn by the said Clerk for the said jury docket, and shall be sealed up in envelopes endorsed "jurors for the jury docket of the Nation's District Court scheduled to commence on (filling in the blank with the appropriate date) and the Clerk doing the drawing shall write his name across the seals of the envelopes.

Section 707. Oath and Delivery of Envelopes.

The judge attending the drawing shall deliver such envelopes to the Court Clerk, or one of his deputies, and the Judge shall, at the same time, administer to the Court Clerk and to each of his deputies an oath in substance as follows: "You and each of you do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law, nor communicate to anyone the name or names of persons appearing on the jury lists until the time a list is opened as prescribed by law at which time it shall be published, that you will not, directly or indirectly, converse or communicate with any one selected as juror concerning any case pending for trial in the Court at the next jury docket, So help you God."

Section 708. Sealing and Retaining Juror Name Cards.

When the names are drawn for jury service, the cards containing such names shall be sealed in separate envelopes, endorsed "cards containing the name of jurors for the petit jury for the jury docket of the Wyandotte Nation District Court, commencing on _____" (filling in the blank for the date properly); and said envelopes shall be retained securely by the Clerk, unopened, until after the jury has been impaneled for such docket, and, after such jurors so impaneled have served one jury docket, the envelopes containing the cards bearing the names of the Jurors for that docket shall then be opened by the Court Clerk, or his deputy, and those cards bearing the names of persons who have not been impaneled and who have not served on a Jury shall be immediately returned to the wheel by the Court Clerk or his deputy; and the cards bearing the names of the persons serving on a jury shall be put in a box provided for that purpose for the use of the officer who shall next select jurors for the wheel, provided, that no person shall serve as a juror more often than once a year, except upon order of the Court for lack of sufficient jurors or as herein provided.

Section 709. Refilling Wheel.

If the wheel containing the names of jurors be lost or destroyed, with the contents thereof, or if all the cards in said wheel be drawn out, such wheel shall immediately be refurnished, and cards bearing the names of jurors shall be placed therein immediately in accordance with law.

Section 710. Summoning Jurors.

The summons of persons for service on the juries in the District Court shall be served by the Court Clerk by mailing a copy of such summons containing the time, place, and the name of the Court upon which said jurors are required to attend, by registered or certified mail, or as directed by the Judge, to the person selected for service not less than ten (10) days before the day said person is to appear as a juror in the Court. The court Clerk shall make a return of such service by filing an affidavit stating the date of mailing and type of mail used in sending the summons; provided, that this shall not prevent service of special open venire or talesman by the Chief of the Wyandotte Nation Police.

Section 711. On-Call System Jurors.

When an on-call system is implemented by order of the Chief Judge of the District Court, each juror retained for services subject to call shall be required to contact a center for information as to the time and place of his next assignment. For purposes of this Section, "on-call system" means a method whereby the Chief Judge of the District Court estimates the number of jurors required for a jury docket of court, and those jurors not needed during any particular period are released to return to their home or employment subject to call when needed. Pursuant to summons for service on petit juries in the District Court, each qualified, nonexempt juror is retained for service subject to call and is assigned to a judge or a case.

Section 712. Drawing Trial Jurors Prom Panel.

Prospective jurors for the trial of an action shall be drawn by the Court Clerk, in open Court in the presence of a Judge, by lot either by wheel, by numbering the prospective jurors cards and then drawing numbers from a pool containing a numbered marker for each prospective juror available to be called, or by some similar form of random drawing approved by the Court. The initial six jurors shall be drawn as shortly before the trial of the action as is reasonably practical in the discretion of the Court. As prospective jurors are removed or dismissed by challenge, whether preemptory or for cause, the Clerk shall draw another name from the general pool who shall take the place of the challenged prospective juror and be subject to voir dire to the same extent as the prospective jurors originally chosen.

Section 713. Substantial Compliance.

A substantial compliance with the provisions of this Chapter, shall be sufficient to prevent the setting aside of any verdict rendered by a jury chosen hereunder, unless the irregularity in drawing, and summoning, or impaneling the same, resulted in depriving a party litigant of some substantial right; provided, however, that such irregularity must be specifically presented to the Court at or before the time the jury is sworn to try the cause.

Section 714. Oath to Jury.

After selection of the jury, and prior to the opening statements of the parties, 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 in the Court and the law as given by the Court, and to return their true verdict thereon without partiality for any unlawful cause or reason.

Section 715. 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 said employee's absence from his employment by reason of said employee's having been required to serve as a juror on a jury of the Nation's District Court, or any other Court, shall be guilty of an Offense, and, upon conviction thereof, shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00).

Section 716. Civil Liability; Damages.

Every person, firm, or corporation who discharges or causes to be discharged an employee because of said employee's absence from his employment by reason of said employee having been required to serve as a juror on a jury, in the Nation's District Court or any other Court, shall be liable to the person so discharged in a civil action at law 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, if any, and a reasonable attorney fee to be determined by the Court.

**CHAPTER EIGHT
TRIALS; GENERAL PROVISIONS**

Section 801. Trial by Jury or by the Court.

(a) By Jury.

When trial by jury has been demanded as provided in Section 901, the action shall be designated upon the docket 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 and entered in the record, consent to trial by the Court sitting without a jury; or

(2) The Court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the laws of the Nation, or under the Indian Civil Rights Act.

(b) By the Court.

Issues not demanded for trial by jury as provided in Section 901 shall be tried by the Court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the Court in its discretion or upon motion of a party may order a trial by a jury of any or all issues properly triable to a jury.

(c) Advisory Jury and Trial by Consent.

In all actions not triable of right by a jury, the Court upon motion or its own initiative may try any issue with an advisory jury or, except in actions against the Nation when a statute of the Nation provides for trial without a jury, the Court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Section 802. Provisions Applicable to Trials by Court.

The provisions of this Chapter respecting trials by jury apply, so far as they are in their nature applicable to trials by the Court.

Section 803. Time of Trial.

(a) Trial Docket.

Actions shall be triable at the first trial docket of the Court, after or during which the issues therein, by the time fixed for pleading 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 forthwith.

(b) Minimum Number of Nonjury and Jury Trial Dockets Required.

The Court shall arrange its business so that two nonjury trial dockets and two jury trial dockets are completed during each calendar year, unless the majority of the judges of the Court by order determine that additional trial dockets are necessary to promptly dispose of the cases pending before the Court.

Section 804. Consolidation; Separate Trials.

(a) Consolidation.

When different actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.

(b) Separate Trials.

The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or third-party claims, or issues, always preserving inviolate the right to trial by jury as declared by the Indian Civil Rights Act or as given by a statute of the Nation.

Section 805. Order of Trial.

When the jury has been sworn in an action before a jury, and in trials to the Court, when the Court is ready to proceed, the trial shall proceed in the following order, unless the Court for special reasons otherwise directs:

- (a.) The party on whom rests the burden of proving the issues may briefly state his case, and the evidence by which he expects to sustain it.
- (b.) The adverse party may then briefly state his defense and the evidence he expects to offer in support of it, or the adverse party may reserve his opening statement until the beginning of the presentation of his evidence.
- (c.) The party on whom rests the burden of proving the issues must first produce his evidence; after he has closed his evidence the adverse party may interpose a motion for a directed verdict thereto upon the ground that no claim for relief or defense is proved. If the Court shall sustain the motion, no formal verdict of the jury shall be required, but judgment shall be rendered for the party whose motion for a directed verdict is sustained as the state of the pleadings or the proof shall demand.
- (d.) If the motion for a directed verdict be overruled, the adverse party may then briefly state his case if he did not do so prior to the beginning of the presentation of the evidence, and, shall then produce his evidence.
- (e.) The parties will then be confined to rebutting evidence unless the Court, for good reasons in furtherance of justice, shall permit them to offer evidence in the original case.
- (f.) After the close of the evidence, and when the 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 therefrom. The party having the burden of proving the issue shall first present his argument. Thereafter, the other party shall present his argument, and then, the party having the burden of proof shall have the opportunity for rebuttal argument. The Court may place reasonable limitation upon the time allowed for closing argument, provided, that each side to the action should have the same total time for argument if time restrictions are placed thereon.

- (g.) After the closing arguments of the parties have been completed, the Court shall instruct the jury as to the law of the case, and shall give a copy of the written instructions to the jury for their use during their deliberations.
- (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 806. Taking of Testimony.

- (a) Form.

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by a law of the Nation or by this Title, the Nation's Rules of Evidence, or other rules adopted by the Supreme Court of the Nation.

- (b) Affirmation in Lieu of Oath.

Whenever under this Title an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

- (c) Evidence on Motions.

When a motion is based on facts not appearing of record the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or depositions.

- (d) Interpreters.

The Court may appoint an interpreter of its own selection and may fix his reasonable 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, and may be taxed ultimately as costs, in the discretion of the Court.

Section 807. 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, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Title __ (Evidence) of the Code of Laws of the Wyandotte Nation. 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 of the law in question. The term "foreign jurisdiction within the United States" includes every federally recognized Indian Nation, every state, territory, or possession of the United States, the United States, and their political subdivisions and agencies.

**CHAPTER NINE
JURY TRIALS**

Section 901. Jury Trial of Right.

(a) Right Preserved.

The action shall be tried to a jury in the following circumstances:

(1) Where a substantial question of fact is raised;

(2) In all actions for the involuntary removal of children from the custody of their parents or custodian and the involuntary termination of parental rights;

(3) In all actions arising in contract or tort where the amount in controversy, or the value of the property to be recovered, as stated in the prayer for relief or an affidavit of a party, or as found by the Court where the amount in controversy is questioned by the affidavit of the adverse party, exceeds Ten Thousand Dollars (\$10,000.00), except in tax cases, in forcible entry and detainer actions, and as otherwise specifically provided by law, the action may be tried to a jury upon demand of any party; and

(4) In any case where other applicable law of the Nation or the Indian Civil Rights Act of 1968 requires jury trial.

(b) Demand.

Any party entitled to a jury trial may demand a trial by jury of any issue triable of right by a jury pursuant to any law of the Nation by serving upon the other parties a demand therefore in writing at any time after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party. Such demand shall not be effective unless, at the time of filing or at such later time as the Court shall by rule allow, the party making such demand deposit with the Court Clerk a reasonable jury fee in such amount as the Court shall by rule determine. Each juror who serves upon a jury shall be entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. § 206(a)(1), plus twenty-two cents per mile travel costs. Each juror shall receive pay for a full eight hour day for any portion of a day served, plus travel allowance.

(c) Same; Specification of Issues.

In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within ten 10 days after service of the demand or such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver.

The failure of a party to serve a demand as required by this section and to file it as required by Section 325 constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided 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 the trial by himself or attorney, or by written consent, in person or by attorney, filed with the Clerk, or by oral consent, in open court, entered on the journal.

Section 902. Bifurcated Jury Trials.

- (a.) The Supreme Court may provide by rule for the bifurcation of any jury trial in a civil action sounding in tort so that the jury shall first hear evidence on, and render its verdict upon the issue of liability, and thereafter hear evidence on and render its verdict upon the issue of the amount of damages if liability has been found.
- (b.) In such bifurcated trials, evidence of insurance coverage or similar agreements by third parties to pay any part 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 such cases not provided for by Court rule, the case may be determined in bifurcated proceedings as stated in Subsections (a) and (b) of this Section by stipulation of the parties.

Section 903. Examination of Jurors.

The Court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the Court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

Section 904. Causes for Challenging Jurors.

If there shall be impaneled, for the trial of any action, any juror, who shall have been convicted of any crime which by law renders him disqualified to serve on a jury; or who has been arbitrator on either side relating to the same controversy; or who 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, he may be challenged for such causes; in either of which cases the same shall be considered as a principal challenge, and the validity thereof be tried by the Court; and any juror who shall be returned upon the trial of any of the cases hereinbefore specified, against whom no principal cause of challenge can be alleged, may, nevertheless, be challenged on suspicion of prejudice against, or partiality for either party, or any other Cause that may render

him, at the time, an unsuitable juror; but a resident or taxpayer of the Nation's jurisdiction, or a member of the Nation or any municipality therein shall not be thereby disqualified in actions in which the Nation or such municipality is a party. The validity of all principal challenges and challenges for cause shall be determined by the Court.

Section 905. Order of Challenges.

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

Section 906. Challenges to Jurors; Filling Vacancies.

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

Section 907. Alternate Jurors.

The Court may direct that not more than three jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

Section 908. Alternate Method of Selecting Jury.

(a) Court Discretion.

Notwithstanding other methods authorized by law, the trial judge may direct in his discretion that a jury in an action be selected by calling and seating twelve prospective jurors in the jury box and then examining them on voir dire; when twelve such prospective jurors have been passed for cause, each side of the lawsuit shall exercise its peremptory challenges out of the hearing of the jury by alternately striking three names each from the list of those so passed for cause, and the remaining six persons shall be sworn to try the case.

(b) Multiple Defendants.

If there be more than one defendant in the case, and the trial judge determines on motion that there is a serious conflict of interest between them, he may, in his discretion, 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 to be seated in the jury box for voir dire examination.

Section 909. 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 910. Juries of Less Than Six; Majority Verdict.

All juries shall be composed of six persons, and an unanimous verdict shall be required, except that the parties may stipulate that the jury shall consist of any number less than six and greater than two, or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

Section 911. Instruction to Jury; Objection.

(a) Request for Instructions.

At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. All instructions requested, and modifications thereof, shall be reduced to writing, numbered, and signed by the party or his attorney asking the same and filed in the record of the case. When either party asks special instructions to be given to the jury, the Court shall either give such instructions as requested, or positively refuse to do so; or give the instructions with modification in such manner that it shall distinctly appear what instructions were given in whole or part, and in like manner those refused, so that either party may except to the instructions as asked for, or as modified, or to the modification, or to the refusal.

(b) Instructions Given.

The Court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the Court shall instruct the jury after the arguments are completed. All instructions given by the Court must be numbered, signed by the judge; and filed together with those asked for by the parties as a part of the record.

Section 912. Uniform Jury Instructions.

The Supreme Court, in its discretion, is authorized to promulgate by rule uniform instructions to be given in jury trials of civil or criminal actions, which, if applicable in a civil or criminal action, due regard being given to the facts and prevailing law, shall be used unless the Court determines that the instruction does not accurately state the law.

Section 913. Objections to Instructions; Copies to Parties.

A party objecting to the giving of instructions, or the refusal thereof, shall not be required to file a formal bill of exceptions; but it shall be sufficient to make objection thereto by dictating into the record in open Court, 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 that is excepted to, provided, further, that the

Court shall furnish copies of the instructions to the Plaintiff and Defendant prior to the time said instructions are given by the Court.

Section 914. View by Jury.

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

Section 915. Deliberations of the Jury.

When the case is finally 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, subject to the discretion of the Court, to permit them to separate temporarily at night, and at their meals. The officer having them under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them 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 he shall not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

Section 916. Admonition of Jury on Separation.

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

Section 917. Information After Retirement.

After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, 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 arising in the case, 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 on the point in dispute, or cause the same to be read by the stenographer or played back on an electronic recording device by the reporter in the presence of, or after notice to, the parties or their Counsel. Upon motion in appropriate circumstances, 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 918. 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 calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears to the Court that there is no probability of their agreeing.

Section 919. Re-trial.

In all cases where the jury are discharged during the trial, or after the cause is submitted to them but prior to issuance of a verdict, the case may be tried again immediately, or at a future time, as the Court may direct.

**CHAPTER TEN
VERDICT**

Section 1001. Findings by the Court.

(a) Effect.

In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Section 1207; and in granting or refusing interlocutory injunctions the Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Request for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the Court adopts them, shall be considered as the findings of the Court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.

(b) Amendment.

Upon motion of a party made not later than 10 days after entry of judgment, the Court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial. When findings of fact are made in actions tried by the Court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the District Court an objection to such findings or has made a motion to amend them or a motion for judgment.

Section 1002. Delivery of Verdict.

When the jury have agreed upon their verdict they must be conducted into Court, and their verdict rendered by their foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the Clerk or the court asking each juror if it is his verdict. If anyone answers in the negative, the jury must again be sent out, for further deliberation.

Section 1003. Requisites of Verdicts.

The verdict shall be written, signed by the foreman and read by the Clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If, however, the verdict be defective in form

only, the same may, with the assent of the jury, before they are discharged, be corrected by the Court.

Section 1004. General and Special Verdict.

The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds facts only. It must present the facts as established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the Court but to draw from them conclusions of law.

Section 1005. Special Verdict and Interrogatories.

(a) **Special Verdicts.**

The Court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the Court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The Court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the Court omits any issue of fact raised by the pleadings or by the evidence, each party waived his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the Court may make a finding; or, if it fails to do so 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 to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The Court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the Court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are consistent with each other, judgment shall be entered thereon, but, when the answers to one or more interrogatories is inconsistent with the general verdict, judgment may be entered pursuant to Section 1207 in accordance with the answers, notwithstanding the general verdict, or the Court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the Court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

Section 1006. Jury Must Assess Amount of Recovery.

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

Section 1007. 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 at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for directed verdict shall state the specific grounds therefor. The order of the Court granting a motion for a directed verdict is effective without any assent of the jury.

(b) Motion for Judgment Notwithstanding the Verdict.

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 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 thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 14 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. 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 had 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, provided for in subsection (b) of this Section, is granted, the Court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon 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 the Supreme Court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; 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 on motion for judgment notwithstanding the verdict may serve a motion for a new trial not later than ten (10) days after entry of the judgment notwithstanding the verdict.

(d) Same: Denial of Motion.

If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, on appeal, assert grounds entitling him to a new trial in the event the Supreme Court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the Supreme Court reverses the judgment, nothing in this Section precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

**CHAPTER ELEVEN
PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS**

Section 1101. Seizure of Person or Property.

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the Nation, existing at the time the remedy is sought.

Section 1102. Receivers Appointed by District Court.

An action wherein a receiver has been appointed shall not be dismissed except by order of the Court. The practice in the administration of estates by receivers or by other similar officers appointed by the Court shall be in accordance with probate law of the nation, or, if none, then the practice heretofore 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 Title.

Section 1103. 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 the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of Court, may deposit with the Court all or any part of such sum or thing. Money paid into Court under this Section shall be deposited and withdrawn in accordance with applicable tribal or federal law detailing accounting procedures for the Court Clerk's Office, and if there be none, then in accordance with the applicable federal or tribal procedure for the administration and accounting of federal grant monies, upon order of the Court.

Section 1104. Process in Behalf of and Against Persons not Parties.

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order 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 for enforcing obedience to the order as if he were a party.

Section 1105. Security; Proceeding Against Sureties.

Whenever this Title or other law of the Nation requires or permits the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court, who shall forthwith mail copies to the sureties if their addresses are known.

Any surety authorized to give a bond or stipulation or other undertaking in either the Federal courts or the Oklahoma state courts and any individual approved by the District Court who resides within the jurisdiction of Nation (except officers of the Court or elected officials of the Nation) shall be eligible to give such bond or stipulation, or undertaking in the District Court under this Title of other law of the Nation unless otherwise prohibited by the laws of the Nation.

Section 1106. Execution.

(a) In General.

Process to enforce a judgment for the payment of money shall be a 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, in the manner provided in this Title.

(b) Against Certain Public Officers.

When a judgment otherwise authorized has been entered against a collector or other officer of revenue of the Nation or against an officer, or employee, or agency of the Nation in his official capacity; or if judgment is entered against an individual in his personal capacity who purported to act as an officer or employee of the Nation, and the Court has given certificate of probable cause for his act wherein the Court determines that the individual had probable cause to believe that his action was authorized by the Nation in his official capacity, execution shall not issue against the officer or his property but the final judgment shall be satisfied as may be provided by appropriation of such judgment (or such part thereof as the legislative body of the Nation deems permissible considering the extent of available tribal resources) from available tribal funds. This section is not intended, nor shall it be construed, as a waiver of sovereign immunity.

**SUBCHAPTER A
INJUNCTIONS**

Section 1107. Injunction Defined.

The injunction provided for by this Subchapter is a command to refrain from or to do a particular act for the benefit of another. It may be the final judgment in an action, or may be allowed as a provisional remedy, and when so allowed, it shall be by order.

Section 1108. Cause for Injunction; Temporary Restraining Order.

When it appears, by the verified complaint or an affidavit that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or when, during the litigation, it appears that 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 respecting the subject of the action, and tending to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such act. And when, during the pendency of an action, it shall appear, by affidavit or proof, that the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors, or to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such removal or disposition. It may, also, be granted in any case where it is specially authorized by statute.

Section 1109. Temporary Restraining Order; Notice; Hearing; Duration.

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

- (a.) It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and
- (b.) The applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required.
- (c.) Temporary restraining orders should not be granted except in cases of extreme urgency. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the Clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ten (10) days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and take precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary restraining order. On two (2) days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or

modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Section 1110. Temporary Restraining Order; Service.

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

Section 1111. Preliminary Injunction.

(a) Notice.

No preliminary injunction shall be issued without notice to the adverse party. Notice may be in the form of 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 of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even 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 upon the trial. This Subsection shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

Section 1112. Preliminary Injunction; Criteria.

Unless a statute of the Nation provides specifically for preliminary injunctive relief upon a showing of particular circumstances, no preliminary injunction shall be granted unless upon hearing the evidence presented by the parties the Court determines that:

- (a.) There is a substantial likelihood that the moving party will eventually 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 Nation or the United States.

Section 1113. 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; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal Service or otherwise.

Section 1114. Employer and Employee; Interpleader: Constitutional Cases.

This Subchapter does not modify any statute of the Nation 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 1115. Security.

- (a.) No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs, damages, and a reasonable attorney fee as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Nation or of an officer or agency thereof.
- (b.) The provisions of Section 1104 apply to a surety upon a bond or undertaking under this Section.
- (c.) A party enjoined by a preliminary injunction may, at any time before final judgment, upon reasonable notice to the party who has obtained the preliminary injunction, move the Court for additional security, and if it appears that the surety in the undertaking has removed from the Nation's jurisdiction, or is insufficient, the Court may vacate the preliminary injunction unless sufficient surety be given in a reasonable time upon such terms as may be just and equitable.

Section 1116. Use of Affidavits.

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

Section 1117. 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 manner hereinbefore prescribed.

Section 1118. Injunction is Equitable.

Relief by way of a restraining order, preliminary, or permanent injunction is of equitable cognizance and shall be issued or refused in the sound discretion of the Court. Relief by way of injunction shall be denied where the moving party may be adequately compensated for his injuries in money damages. The District Court shall not enjoin the enforcement of the Nation's tax laws or the collection of tribal taxes except to the extent that such relief is specifically provided for in those tax laws. No injunction shall issue to control the discretion or action of a Governmental officer or employee when such officer or employee has been delegated the authority to exercise his discretion in determining how to act upon the subject matter, and is acting or refusing to act in a manner not prohibited by the laws of the Nation or the Indian Civil Rights Act.

Section 1119. Modification of Preliminary Injunction.

If the preliminary injunction be granted, the defendant, at any time before the trial, may apply, upon notice, to the Court to vacate or modify the same. The application may be made upon the complaint and affidavits upon which the injunction is granted, or upon affidavits on the part of 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 of the Court and recorded.

Section 1120. 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 to the extent that the injunction is no longer just and equitable, or that the injunction is no longer needed to protect the rights of the parties.

Section 1121. Injunctions Tried to the Court.

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

Section 1122. Enforcement of Restraining Orders and Injunctions.

A restraining order of injunction granted by a Judge may be enforced as the act of the Court. Disobedience of any injunction may be punished as a contempt by the Court or any Judge who might have granted it. An attachment maybe issued by the Court or Judge, upon being satisfied, by affidavit or testimony, of the breach of the injunction, against the party guilty of the same, who may be required to make immediate restitution to the party injured, and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirements, or be otherwise legally discharged, or be punished by fine not exceeding Two Hundred Dollars (\$200.00) for each day of, or separate act of, contempt, to be paid into the Court Fund, or by confinement in the Nation's jail for not longer than sixty (60) days.

SUBCHAPTER B
REPLEVIN

Section 1123. Order of Delivery; Procedure.

(a) Claim for Delivery at Commencement of Suit.

The plaintiff in an action to recover the possession of specific personal property may claim the delivery of the property at the commencement of suit, as provided herein.

(1) The complaint must allege facts which show:

(i) A description of the property claimed;

(ii) That the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property;

(iii) That the property is wrongfully detained by the defendant;

(iv) The actual value of the property, provided that when several articles are claimed, the value of each shall be stated as nearly as practicable;

(v) That the property was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this Title, or any other mesne or final process issued against said plaintiff; or, if taken in execution or on any order or judgment against the plaintiff, that it is exempt by law from being so taken; and

(vi) The prayer for relief requests that the Court issue an order for the immediate delivery of the property.

(2) The above allegations are verified by the party or, when the facts are within the personal knowledge of his agent or attorney and this is shown in the verification, by said agent or attorney.

(3) A notice shall be issued by the Clerk and served on the defendant with the summons which shall notify the defendant that an order of delivery of the property described in the complaint is sought and that the defendant may object to the issuance of such an order by a written objection which is filed with the Clerk and delivered or mailed to the plaintiff's attorney within five (5) days of the service of the summons. In the event that no written objection is filed within the five-day period, no hearing is necessary and the Court Clerk shall issue the order of delivery. Should a written objection be filed within the five-day period specified, the Court shall, at the request of either party, set the matter for prompt hearing. At such hearing the Court shall proceed to determine whether the order for prejudgment delivery of the property should issue according to the probable

merit of the plaintiff's complaint. Provided, however, that no order of delivery may be issued until an undertaking has been executed pursuant to Section 1133 of this Title.

(4) Nothing in this Title contained shall prohibit a party from waiving his right to a hearing or from voluntarily delivering the goods to the party seeking them before the commencement of the proceedings or at any time after institution thereof.

(b) Prejudgment Delivery Without Actual Notice.

Where the notice that is required by subsection (a) of this Section cannot be served on the defendant but the Judge finds that a reasonable effort to serve him was made and at the hearing the plaintiff has shown the probable truth of the allegations in his complaint, the Court may issue an order for the prejudgment delivery of the property. If an order for the prejudgment delivery of the property is issued without actual notice being given the defendant, the defendant may move to have said order dissolved and if he does not have possession of the property, for a return of the property. Notice of the right to move for return of said property shall be contained in the order for seizure and delivery of such property which shall be served upon the defendant or left in a conspicuous place where the property was seized, and the Chief of the Nation's Police shall hold said property in such cases for three (3) working days prior to delivery to the plaintiff in order to give the defendant a reasonable opportunity to move for the return of such property. Notice of said motion with the date of the hearing shall be served upon the attorney for the plaintiff in the action. The motion shall be heard promptly, and in any case within ten (10) days after the date it is filed. The Court must grant the motion unless, at the hearing on defendant's motion, the plaintiff proves the probable truth of the allegations contained in his complaint. If said motion and notice is filed before the Police turns the property over to the plaintiff, the Nation's Police shall retain control of the property pending the hearing on the motion.

(c) Order for Protection of Property.

The Court may, on request of the plaintiff, order the defendant not to conceal, damage or destroy the property or a part thereof and not to remove the property or a part thereof from the Nation's jurisdiction pending the hearing on plaintiff's request for an order for the prejudgment delivery of the property, and said order may be served with the summons.

Section 1124. Penalty for Damage of Property Subject to Order of Delivery.

Any person who willfully and knowingly damages property in which there exists a valid right to issuance of an order of delivery, or on which such order has been sought under the provisions of this Title, or who conceals it, with the intent to interfere with enforcement of the order, or who removes it from the jurisdiction of the Court with the intention of defeating enforcement of an order of delivery, or who willfully refuses to disclose its location to an officer charged with executing an order for its delivery, or, if such property is in his possession, willfully interferes with the officer charged with executing such writ, may be held in civil contempt of Court, and shall be guilty of an offense, and if convicted of such offense shall be subject to a fine of not more than Five Hundred Dollars (\$500.00) and imprisonment for a term of not more than six (6) months, or both; and, in addition to such civil and criminal penalties, shall be liable to the

plaintiff for double the amount of damage done to the property together with a reasonable attorney's fee to be fixed by the Court, which damages and fee shall be deemed bases on tortious conduct and enforced accordingly.

Section 1125. Undertaking in Replevin.

The order shall not be issued until there has been executed by one or more sufficient sureties of the plaintiff, to be approved by the Court, an undertaking in not less than double the value of the property as stated in the complaint to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages which may be awarded against him, including attorney's fees and, if the property be delivered to him, that he will return the same to the defendant if a return be adjudged; provided, that where the Nation or its agents or subdivisions is party plaintiff, an undertaking in replevin shall not be required of the plaintiff, but a writ shall issue upon complaint duly filed as provided by law. The undertaking shall be filed with the Clerk of the Court, and shall be subject to the provisions of Section 1105 of this Title.

Section 1126. Replevin Bond; Value.

On application of either party which is made at the time of executing the replevin Bond or the redelivery bond, or at a later date, with notice to the adverse party, the Court may hold a hearing to determine the value of the property which the plaintiff seeks to replevy. If the value as determined by the Court is different from that stated in the complaint, the value as determined by the Court shall control for the purpose of Sections 1133 and 1138 of this Title.

Section 1127. Order of Delivery.

The order for the delivery of the property to the plaintiffs shall be addressed and delivered to the Nation's Police. It shall state the names of the parties, the Court in which the action is brought, and command the Police to take the property, describing it, and deliver it to the plaintiff as prescribed in this Title, and to make return of the order on a day to be named therein.

Section 1128. Order Returnable.

The return day of the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be ten (10) days after it is issued.

Section 1129. Execution of Order.

The Police shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detainer of the property, or leave such copy at his usual place of residence, or at the place such property was seized.

Section 1130. Re-delivery on Bond.

If, within three working days after service of the copy of the order, there is executed by one or more sufficient sureties of the defendant, to be approved by the Court or the Nation's Police, an undertaking to the plaintiff, in not less than double the amount of the value of the property as

stated in the affidavit of the plaintiff, to the effect that the defendant will deliver the property to the plaintiff, if such delivery be adjudged, and will pay all costs and damages that may be awarded against him, the Chief of the Police shall return the property to the defendant. If such undertaking be not given within three working days after service of the order, the Chief of the Police shall deliver the property to the plaintiff.

Section 1131. Exception to Sureties.

Any party for whose benefit an undertaking is made may except at any time to the sufficiency of the sureties on such undertaking. Such exception shall be made in writing and filed with the Clerk. Upon hearing, the Court shall make such order as is just to safeguard the rights of the parties.

Section 1132. Proceedings on Failure to Prosecute Action.

If the property has been delivered to the plaintiff, and judgment rendered against him, or his action be dismissed, or if he otherwise fails to prosecute his action to final judgment, the Court shall, on application of the defendant or his attorney, proceed to inquire into the right of property, and right of possession of the defendant to the property taken.

Section 1133. Judgment; Damages; Attorney Fees.

In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value thereof in case a delivery cannot be had, and of damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same. The judgment rendered in favor of the prevailing party in such action may include a reasonable attorney fee to be set by the Court, to be taxed and collected as costs.

Section 1134. Officer May Break Into Buildings.

The Chief of the Nation's Police or other law enforcement officer, in the execution of the order of delivery issued by the District Court, may break open any building or enclosure in which the property claimed, or any part thereof is concealed upon probable cause to believe that the property is concealed therein, but not until he has been refused entrance into said building or enclosure and the delivery of the property, after having demanded the same, or if not person having charge thereof is present.

Section 1135. Compelling Delivery by Attachment.

In an action to recover the possession of specific personal property, the Court may for good cause shown, before or after judgment, compel the delivery of the property to the officer or party entitled thereto by attachment, and may examine either party as to the possession or control of the property. Such authority shall only be exercised in aid of the foregoing provisions of this Subchapter.

Section 1136. Improper Issue of Order of Delivery.

Any order for the delivery of property issued under this Subchapter without the affidavit and undertaking required, shall be set aside and the plaintiff shall be liable in damages to the party injured.

In any action for replevin in the District Court, it shall be permissible for the plaintiff to join with the claim in replevin a claim founded on debt claimed to be owing to the plaintiff if the debt shall be secured by a lien upon the property sought to be recovered in the claim in replevin. In such cases, the execution of the judgment for debt shall be stayed pending the sale of the property and the determination of the amount of debt remaining unpaid after the application of the proceeds of the sale thereto.

Section 1137. Joinder of Cause of Action for Debt; Stay of Judgment.

In any action for replevin in the District Court, it shall be permissible for the plaintiff to join with the claim in replevin a claim founded on debt claimed to be owing to the plaintiff if the debt shall be secured by a lien upon the property sought to be recovered in the claim in replevin. In such cases, the execution of the judgment for debt shall be stayed pending the sale of the property and the determination of the amount of debt remaining unpaid after the application of the proceeds of the sale thereto.

**SUBCHAPTER C
ATTACHMENT**

Section 1138. Grounds for Attachment.

The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon proof of any of the following grounds:

- (a.) When the defendant, or one of several defendants, is a foreign corporation, or a nonresident of the Nation's jurisdiction (but no order of attachment shall be issued on this clause for any claim other than a debt or demand arising upon contract, judgment or decree, unless the claim arose wholly within the Nation's jurisdiction); or
- (b.) When the defendant, or one of several defendants, has absconded with intention to defraud his creditors; or
- (c.) Has left the Nation's jurisdiction to avoid the service of summons; or
- (d.) So conceals himself that a summons cannot be served upon him; or
- (e.) Is about to remove his property, or a part thereof, out of the jurisdiction of the Court with the intent to defraud his creditors; or

- (f.) Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or
- (g.) Has property or rights in action, which he conceals; or
- (h.) Has assigned, removed or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud, hinder or delay his creditors; or
- (i.) Fraudulently contracted the debt, or fraudulently incurred the liability or obligations for which the suit has been brought; or
- (j.) Where the damages for which the action is brought are for injuries arising from the commission of a criminal offense; or
- (k.) When the debtor has failed to pay the price or value of any article or thing delivered, which by contract he was bound to pay upon delivery; or
- (l.) When the action is brought by the Nation, or its officers, agents, or political agencies or subdivisions for the purpose of collection of any tax, levy, charge, fee, assessment, rental, or debt arising in contract or by statute and owed to the Nation.

Section 1139. Attachment Affidavit.

An order of attachment maybe issued by the Court when:

(a) Complaint.

A civil complaint must be filed in the office of the Court Clerk stating a claim for relief and an application that the Court issue an order of attachment which states facts which show:

- (1) The nature of the plaintiff's claim;
- (2) That it is just;
- (3) The amount which the affiant believes the plaintiff ought to recover; and
- (4) The existence of some one of the grounds for an attachment enumerated in Section 1151 of this Subchapter.

(b) Verification.

The application must be verified by the plaintiff, or, where his agent or attorney has personal knowledge of the facts, by said agent or attorney.

(c) Notice.

The defendant must be served with a notice, issued by the Clerk, which shall notify the defendant that an order of attachment of property is requested and that he may object to the issuance of such an order by a written objection which is filed with the Court Clerk and mailed or delivered to the plaintiff's attorney within five (5) days of the receipt of the notice. A copy of plaintiff's application shall be attached to and served with the notice, and the notice and application may be served with the summons in the action.

(d) Hearing.

If no written objection is filed within the five day period, no hearing is necessary and the Clerk may issue the order of attachment. If a written objection is filed within the five day period, the Court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If the plaintiff proves the probable merit of his cause and the truth of the matters asserted in his application for an order of attachment, the Court may issue the order of attachment. Provided, however, before an order of attachment is issued by either the Court or the Clerk, the Plaintiff has executed an undertaking pursuant to Section 1153 of this Title. The Nation and its agents shall not be required to execute an undertaking.

(e) Lack of Actual Notice; Hearing.

If the Court finds that the defendant cannot be given notice as provided herein, although a reasonable effort was made to notify him, but at the hearing the plaintiff proves the probable merit of his claim and the truth of the matters asserted in his application, the Court may issue the order of attachment. The defendant may subsequently move to have the attachment vacated as provided in this Title.

Section 1140. Attachment Bonds.

The attachment bond for the benefit of the party whose property is attached shall be in such form and in such amount, not less than double the amount of the plaintiff's claim, as the Court shall direct, and shall guarantee payment of all damages, costs, and reasonable attorney fees incurred as a result of a wrongful attachment. No bond shall be required of the Nation.

Section 1141. Order of Attachment.

The order of attachment shall be directed and delivered to the Nation's Police. It shall require him to attach the lands, tenements, goods, chattels, stocks, rights, credits, moneys and effects of the defendant within the Nation's jurisdiction not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable cost of the action not exceeding One Hundred Dollars (\$100.00).

Section 1142. When Returnable.

The return day of the order of attachment when issued at the commencement of the action, shall be the same as that of the summons, and otherwise within twenty (20) days of the date of issuance.

Section 1143. Order of Execution.

Where there are several orders of attachment against the defendant, they shall be executed in the order in which they are received by the Nation's Police.

Section 1144. Execution of Attachment Order.

The order of attachment shall be executed by the Nation's Police without delay. He shall go to the place within the Nation's jurisdiction where the defendant's property may be found, and declare that, by virtue of said order, he attaches said property at the suit of the plaintiff; and the officer shall make a true inventory and appraisal of all the property attached, which shall be signed by the officer and returned with the order, leaving a copy of said inventory with the person or in the place from which the property was seized.

Section 1145. Service of Order.

- (a.) When the property attached is real property, the officer shall leave a copy of the order with the occupant, or, if there be no occupant, then a copy of the order shall be posted in a conspicuous place on the real property. When the property attached is real property, third parties shall not be affected until a copy of the attachment order and the legal description of the real property attached shall be filed and placed of record in the land tract book maintained by the Court Clerk.
- (b.) Where it is personal property, and he can get possession, he shall take such into his custody, and hold it subject to the order of the Court.

Section 1146. Re-delivery on Bond.

The Chief of the Nation's Police shall re-deliver the property to the person in whose possession it was found, upon the execution by such person, in the presence of the Nation's Police, an undertaking to the plaintiff, with one or more sufficient sureties, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property, or its appraised value in money, shall be forthcoming to answer the judgment of the Court in the action.

**SUBCHAPTER D
GARNISHMENT**

Section 1147. Garnishment

The purpose of this Subchapter is to establish a systematic and uniform procedure for garnishment of wages of employees of the Wyandotte Nation or a tribal entity pursuant to orders of the Wyandotte Nation District Court recognizing foreign judgments of judgment creditors in a

fair, equal and fiscally responsible manner. This Subchapter shall also establish a systematic and uniform procedure for garnishment of wages of employees of the Wyandotte Nation or a tribal entity pursuant to orders of the Wyandotte Nation District Court arising out of original proceedings in such court. This Subchapter is not intended to prohibit judgment debtors and judgment creditors from reaching alternative agreements/ settlements of their claims. This Subchapter is not intended to alter or diminish the rights of the Wyandotte Nation to collect debts owed to the Wyandotte Nation or its entities pursuant to any other law of the Wyandotte Nation.

Section 1148. Definitions

A. "**Board**" means the Wyandotte Nation Board of Directors as established by the Constitution of the Wyandotte Nation.

B. "**Creditor**" means a person to whom a debt is owed by another person who is the debtor.

C. "**Debt**" means a sum of money due by certain and express agreement, including a specified sum of money owing to one person from another, including not only obligations of a debtor to pay, but a right of a creditor to enforce and receive such payment.

D. "**Debtor**" means a person who owes a debt to another and may be compelled to pay a claim or demand by a creditor.

E. "**Disposable Wages**" means that part of the wages of an individual left after deduction of federal tax withholding, and any other amounts required by applicable law to be withheld by the employer.

F. "**Employee**" means a person employed by or in the service of the Wyandotte Nation or one of its subordinate entities under any contract of hire, express or implied, oral or written, where the Wyandotte Nation has the power or right to control and direct such individual in return for whom such individual receives a salary or wages. For purposes of this Subchapter, "employee" shall not include elected officials, Board members, commission members, and committee members.

G. "**Employer**" means the Wyandotte Nation or one of its subordinate entities.

H. "**Foreign Judgments**" means a judgment rendered by any other state of the United States or federal court which is politically and judicially distinct from the Wyandotte Nation District Court.

I. "**Garnishment**" shall mean the method to obtain satisfaction of a judgment by reaching the unpaid past or future wages of an employee of the Wyandotte Nation or a tribal entity. Garnishment shall not include voluntary wage assignments by employees of the Wyandotte Nation.

J. "**Judgment Creditor**" means a person in whose favor a money judgment has been entered by a Court of law and who has not yet been paid.

K. "**Judgment Debtor**" means a person against whom judgment has been recovered, and which remains unsatisfied.

L. **"Tribal Entity"** means the Wyandotte Nation itself, its departments, programs, agencies, entities, enterprises, and subdivisions operating under a governing document established pursuant to authority contained in the Wyandotte Nation Constitution or Code of Laws.

M. **"Wages"** means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus, or otherwise. For purposes of this Subchapter, "otherwise" does not include stipends.

Section 1149. Recognition and Enforcement

A. This Subchapter applies to any foreign judgment against an employee of the Wyandotte Nation or of a tribal entity that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.

B. A foreign judgment against an employee of the Wyandotte Nation or of a tribal entity meeting the requirements of this Section is conclusive between the parties to the extent that it grants or denies recovery of a sum of money.

C. The Wyandotte Nation District Court shall recognize, implement and enforce the orders, judgments and decrees of foreign courts against an employee of the Wyandotte Nation or of a tribal entity in matters in which either the exclusive or concurrent jurisdiction has been granted or reserved to a foreign court under the laws of the United States or the State in which the foreign court is situated unless the Wyandotte Nation District Court finds the foreign court that rendered the order, judgment or decree:

- (1) lacked jurisdiction over a party or the subject matter;
- (2) denied due process as provided by the Indian Civil Rights Act of 1968; or
- (3) does not reciprocally provide for recognition and implementation of orders, judgments, and decrees of the Wyandotte Nation District Court.

D. 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 subject matter; or
- (3) the foreign court did not have personal jurisdiction over the defendant.

E. 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 extrinsic fraud;

(3) the cause of action or defense on which the judgment is based is repugnant to the public policy of the Wyandotte Nation;

(4) the proceeding of the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;

(5) the judgment conflicts with another final and conclusive judgment; or

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

Section 1150. Original Actions in the Wyandotte Nation District Court

A creditor may seek appropriate relief in the Wyandotte Nation District Court against a debtor pursuant to the rules of the Wyandotte Nation District Court or as otherwise provided in the Wyandotte Nation Code of Laws.

Section 1151. Personal Jurisdiction

The foreign judgment against an employee of the Wyandotte Nation or tribal entity shall not be refused recognition for lack of personal jurisdiction if:

A. the defendant was served personally in the foreign state;

B. the defendant personally 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; or

C. the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

Section 1152. Notice

The judgment creditor shall afford notice of the action in the Wyandotte Nation District Court to the judgment debtor and shall also request a hearing pursuant to the rules of the Wyandotte Nation District Court at which the debtor will be given the opportunity to be heard regarding recognition of the foreign court order, judgment or decree.

Section 1153. Garnishment of Wages

A. In a civil action for garnishment filed by a judgment creditor, the court may order garnishment of unpaid past or future wages of the judgment debtor for satisfaction of the judgment. No garnishment action shall be filed in the Wyandotte Nation District Court unless the judgment remains unsatisfied sixty (60) days after such judgment was entered. In an action for garnishment, the judgment debtor shall be named as a defendant. In no case shall the Wyandotte Nation, a tribal entity, the Board of Directors, or officials of the Wyandotte Nation be named as Defendants, unless such individual is subject to a private debt as the debtor or judgment debtor.

B. The maximum amount of wages subject to garnishment in any one pay period shall be twenty percent (20%) of the judgment debtor's disposable wages for one pay period consistent with applicable federal law.

C. A garnishment order recognized by and/or rendered by the Wyandotte Nation District Court against an employee of the Wyandotte Nation or tribal entity shall lapse when the judgment is satisfied or when the judgment debtor resigns or is dismissed from his employment with the Wyandotte Nation or tribal entity provided that if the judgment debtor is rehired by the Wyandotte Nation or a tribal entity within ninety (90) days after such resignation or dismissal, the garnishment order shall continue in effect.

D. No employer shall discharge an employee for the reason that a judgment creditor of the employee has garnished or attempted to garnish unpaid earnings of the employee.

Section 1154. Administrative Processing Fee

The Wyandotte Nation or tribal entity employer shall have the right to assess a \$2.00 processing fee upon the Judgment Debtor for each pay period of garnishment of wages of an employee of the Wyandotte Nation or tribal entity.

Section 1155. Child Support Orders

All child support orders rendered against an employee of the Wyandotte Nation or tribal entity issued by foreign court under the laws of the United States or the State in which the foreign court is situated are exempt from Section 1167, subsections (a) and (b).

Section 1156. Savings Clause

This Subchapter does not prevent the recognition or non-recognition of a foreign judgment in situations not covered by this Subchapter.

Section 1157. Stay on Appeal

If the judgment debtor satisfies the court either that an appeal is pending or that he is entitled to and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the judgment debtor to prosecute the appeal.

Section 1158. Severability

If any part of this Subchapter is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

Section 1159. No Waiver of Sovereign Immunity

Nothing in this Subchapter is intended nor shall be construed as a waiver of the sovereign immunity of the Wyandotte Nation from unconsented suit in State, Federal or Tribal Court against the Wyandotte Nation, any Tribal entity, or any official acting in his or her official capacity.

SUBCHAPTER E RECEIVERS

Section 1160. Appointment of Receiver.

A receiver may be appointed by the Supreme Court, the District Court, or any Judge of either:

- (a.) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.
- (b.) In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.
- (c.) After judgment, to carry the judgment into effect.
- (d.) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceeding in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.
- (e.) In the cases provided in this Title, and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.
- (f.) In all other cases where receivers should be appointed to protect the property and rights of the parties thereto in dispute by the usages of the Court in equity.

Section 1161. Persons Ineligible.

No party, or attorney, or person so interested in an action, shall be appointed receiver therein except by consent of all parties thereto.

Section 1162. Oath and Bond.

Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the Court, execute an undertaking to such person and in such sum as the Court shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the Court therein.

Section 1163. Powers of Receiver.

The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, to collect debts, to compound for and compromise the same, to make transfers, and generally to do such act respecting the property as the Courts may authorize.

Section 1164. Investment of Funds.

Funds in the hands of a receiver may be invested upon interest, by order of the Court; but no such order shall be made, except upon the consent of all the parties to the action, or except by order of the Court when the principal and interest earned thereon are guaranteed by the federal government and may be withdrawn within a reasonable time.

Section 1165.

Reserved.

Section 1166. Disposition of Property Litigated.

- (a.) When it is admitted, by the pleadings or on oral or written examination of a person, that he has in his possession or under his control any non-exempt money or other thing capable of delivery, which, is held by him as trustee for a party, or which belongs or is due to a party, the Court may order the same to be deposited in Court or delivered to such party, with or without security, subject to the further direction of the Court.
- (b.) Any person abiding by an order of the Court in such cases and paying or delivering the money or other property subject to said order into Court, shall not thereafter be liable to the party for whom he held as trustee, or to whom the money or property belonged or was due, in any civil action for the collection or return of the property or money delivered or paid into Court.
- (c.) Such order may be made by ordering the party to procure the deposit or payment into Court of the property, which order may be enforced by contempt, or the Court, upon proper application, may order the person holding said property to be served with summons and brought into the action as a special defendant for the sole purpose of determining the nature and amount of property in his possession subject to payment into Court under this Section, and ordering said person to pay or deliver such non-exempt property into Court. After such payment has been made, the person shall be dismissed from the action.

- (d.) In cases where judgment has been obtained against the party whose property or money is to be paid into Court, it is not necessary to formally appoint a receiver for the money or property paid into Court under this Section, but the Court Clerk shall act as receiver as an aid to the enforcement of a judgment, and shall pay such money or deliver such property over to the person entitled thereto in conformity with the order of the Court.

Section 1167. Punishment for Disobedience of Court.

Whenever, in the exercise of its authority, the Court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the Court, besides punishing the disobedience as for contempt, may make an order requiring the Nation's Police to take the money, or thing, and deposit or deliver it, in conformity with the direction of the Court.

Section 1168. Vacation of Appointment by Supreme Court.

In all cases in the Supreme Court in which a receiver has been appointed, or refused, by any Justice of the Supreme Court, the party aggrieved may, within ten (10) days thereafter have the right to file a motion to vacate the order refusing or appointing such receiver, and hearing on such motion may be had before the Supreme Court, if the same be in session, or before a quorum of the Justices of said Court in vacation, at such time and place as the said Court or the Justices thereof may determine, and pending the final determination of the cause, if the order was one of the appointment of a receiver, the moving party shall have the right to give bond with good and sufficient sureties, and in such amount as may be fixed by order of the Court or a Justice thereof, conditioned for the due prosecution of such case, and the payment of all costs and damages that may accrue to the Nation, or any officer, or person by reason thereof, and the authority of any such receiver shall be suspended pending a final determination of such cause, and if such receiver shall have taken possession of any property in controversy in said action, the same shall be surrendered to the rightful owner thereof, upon the filing and approval of said bond.

**SUBCHAPTER F
EMINENT DOMAIN**

Section 1169.1. Who May Exercise Authority.

The Board of Directors, and any officer or Agency of the Nation specifically authorized to do so by statute may obtain real property by eminent domain proceedings in conformance with the Indian Civil Rights Act and this Subchapter.

Section 1169.2. What Property May be Condemned by Eminent Domain.

Except property made exempt from eminent domain by the Nation's laws, all real property within the Nation's jurisdiction, not owned by the Nation and its agencies, shall be subject to eminent domain except title to property held in trust by the United States for an Indian or Nation, or property held by an Indian or Nation subject to a restriction against alienation imposed by the United States unless the United States has consented to the eminent domain of said property. Any lease or tribally granted assignment, or other non-trust right to use such trust or restricted

property conveyed by Nation or federal law shall be subject to eminent domain in conformance with the Nation's laws and the Indian Civil Rights Act.

Section 1169.3. Condemnation of Property.

(a) Applicability of Other Rules.

The Code of Civil Procedure of the Wyandotte Nation governs the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this Subchapter.

(b) Joinder of Properties.

The plaintiff may join in the same action one or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(c) Amount to be Paid.

The owner shall be entitled to receive just compensation for all property or rights to property taken from him in eminent domain proceedings.

Section 1169.4. Complaint.

(a) Caption.

The complaint shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(b) Contents.

The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interest to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners." Process shall be served as provided in Section 1198.5 of this Subchapter upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in Section 1198.6 of this Subchapter. The Court meanwhile may order such distribution of a deposit as the facts warrant.

(c) Filing.

In addition to filing the complaint with the Court, the plaintiff shall furnish to the Clerk at least one copy thereof for the use of the defendants and additional copies at the request of the Clerk or of a defendant.

Section 1169.5. Process in Eminent Domain.

(a) Notice; Delivery.

Upon the filing of the complaint the plaintiff shall forthwith deliver to the Clerk joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons.

(b) Same; Form.

Each notice shall state the Court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of his property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the plaintiff's attorney an answer within twenty (20) days after service of the notice, and that the failure so to serve an answer constitutes a consent to the taking and to the authority of the Court to proceed to hear the action and to fix the compensation. The notice shall conclude with the name of the plaintiff's attorney and an address where he may be served. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.

(c) Service of Notice.

(1) Personal Service. Personal service of the notice shall be made in accordance with the rules for personal service of summons upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known. A copy of the complaint may, but need not, be served.

(2) Service by Publication. Upon the filing of a certificate of the plaintiff's attorney stating that he believes a defendant cannot be personally served, because after diligent inquiry his place of residence cannot be ascertained by the plaintiff or, if ascertained, that it is beyond the territorial limits of personal service as provided in this Section, service of the notice shall be made on that defendant by publication in a newspaper published in the county where the property is located, or if there is no such newspaper, then in a newspaper having a general circulation where the property is located, once a week for not less than three successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this Section but whose place of residence is then known. Unknown owners may be served by publication in a like manner by a notice addressed to "Unknown Owners."

(3) When Publication Service Complete. Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of the plaintiff's attorney, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

(d) Return Amendment.

Proof of service of the notice shall be made and amendment of the notice or proof of its service allowed in the manner provided for the return and amendment of the summons.

Section 1169.6. Appearance or Answer.

If a defendant has no objection or defense to the taking of his property, he may serve a notice of appearance designating the property in which he claims to be interested. Thereafter he shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of his property, he shall serve his answer within twenty (20) days after the service of notice upon him. The answer shall identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and state all his objections and defenses to the taking of his property. A defendant waives all defenses and objection not so presented, but at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

Section 1169.7. Amendment of Pleadings.

Without leave of Court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by Section 1198.9 of this Subchapter. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Section 325 of this Title, upon any party affected thereby who has appeared and, in the manner provided in Section 898.9 of this Subchapter, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the Clerk of the Court for the use of the defendants at least one copy of each amendment, and he shall furnish additional copies on the request of the Clerk or of a defendant. Within the time allowed by Section 898.6 of this Subchapter, a defendant may serve his answer to the amended pleading, in the form and manner and with the same effect as there provided.

Section 1169.8. Substitution of Parties.

If a defendant dies or becomes incompetent or transfers his interest after his joinder, the Court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in Section 2003.

Section 1169.9. Dismissal of Action.

(a) As of Right.

If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in the property or taken possession thereof, the plaintiff may dismiss the action as to that property, without an order of the Court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(b) By Stipulation.

Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the Court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and, if the parties so stipulate, the Court may vacate any judgment that has been entered.

(c) By Order of the Court.

At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the Court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, without awarding just compensation of the possession, title or lesser interest so taken, or, if the possession, title, or interest in such property is to be returned to the defendant upon dismissal by motion of the plaintiff, the Court may also award reasonable actual damages incurred, not to exceed One Thousand Dollars (\$1,000.00) in excess of fair rental value of the premises during the period in which the plaintiff held possession or title against the plaintiff notwithstanding the doctrine of sovereign immunity. The Court at any time may drop a defendant unnecessarily or improperly joined.

(d) Effect.

Except as otherwise provided in the notice, or stipulation of dismissal, or order of the Court, any dismissal is without prejudice.

Section 1169.10. Deposit and Its Distribution.

The plaintiff shall deposit with the Court any money required by law as a condition to the exercise of the power of eminent domain; and, although not so required, may make a deposit when permitted by statute. In such cases the Court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to him on distribution of the deposit, the Court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to him, the Court shall enter judgment against him and in favor of the plaintiff for the overpayment.

Section 1169.11. Costs.

Costs shall normally be paid by the Plaintiff in condemnation actions unless the Court, in its discretion, determines that a defendant should pay their own costs, which may include a reasonable portion of plaintiff's costs because of inequitable conduct or other statutory reason.

**CHAPTER TWELVE
JUDGMENT**

Section 1201. Judgments – Costs.

(a) Definition; Form.

"Judgment" as used in this Title 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, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties.

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there are no just reasons for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims, or rights and liabilities of fewer than all of the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment; Default.

A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) Costs.

Except when express provision therefor is made either in a statute of the Nation or in this Title, costs shall be allowed as of course to the prevailing party unless the Court otherwise directs; but costs, including attorney's fees and statutory authorization for collection of damages or requirement for bonds or undertakings, against the Nation, its officers, and agencies shall be imposed only to the extent specifically permitted by Nation law. A general statement in this Title that such are payable by a party or by the plaintiff or defendant is not authority to impose such costs, damages, or requirements upon the Nation, its officers, and agencies. Costs may be taxed by the Clerk on one (1) day's notice. On motion served within ten (10) days thereafter, the action of the Clerk may be reviewed by the Court.

Section 1202. Default.

(a) Entry.

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by this Title and that fact is made to appear by affidavit or otherwise, the Clerk shall enter his default.

(b) Judgment.

Judgment by default may be entered by the Court, following application to the Court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the Nation.

(c) Setting Aside Default.

For good cause shown the Court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Section 1209(b).

(d) Plaintiff, Counterclaimants, Cross-Claimants.

The provisions of this Section 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. In all cases a judgment by default is subject to the limitations of Section 1201(c).

(e) Judgment Against the Nation.

No judgment by default may be entered against the Nation, its officers, or agencies unless sixty (60) days written notice has been served upon the Chief and the Board of Directors. If during such sixty (60) day period the Nation is without counsel, and the Nation has submitted to the Bureau of Indian Affairs an attorney contract for approval, no default may be entered until thirty (30) days after approval of the contract. During such period, the Nation, its agencies, or officers shall be allowed to cure any default. No judgment by default shall be entered against the Nation, its agencies, or officers in any case unless the claimant establishes his claim or right to relief, including his authority to bring the suit, and his damages by evidence satisfactory to the Court.

Section 1203. Offer of Judgment.

At any time more than ten (10) days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within ten (10) days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding 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 of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability, or both, remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ten (10) days prior to the commencement of hearings to determine the amount or extent of liability.

Section 1204. Judgment for Specific Acts - Vesting Title.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the Court may direct the act to be done at the cost of the disobedient party by some other person appointed by the Court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the Clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The Court may also in proper cases adjudge the party in contempt. If real or personal property is within the Nation's jurisdiction, and the interest in said property at issue in the action is not held in trust by the United States as Indian lands, the Court in lieu of directing a conveyance of that 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 party in whose favor it is entered is entitled to a writ of execution or assistance upon application.

Section 1205. Summary Judgment

(a) For Claimant.

A party seeking to recover upon a Claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of twenty (20) days from the commencement of the action or after service of a motion for summary Judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party.

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon.

The motion shall be served at least ten (10) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a 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 as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion.

If on motion under this Section judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this Section, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response by affidavits or as otherwise provided in this Section, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits are Unavailable.

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith.

Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this Section are presented in bad faith or solely for the purpose of delay, the Court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Section 1206. Declaratory Judgments.

The procedure for obtaining a declaratory judgment in actions arising in equity, or through contract, or pursuant to any specific law of the Nation authorizing a declaratory judgment, shall be in accordance with this Title, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Sections 901. The existence of another adequate remedy does not preclude judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Section 1207. Entry of Judgment.

(a.) Subject to the provisions of Section 1201(b), the Court shall promptly approve the form of the judgment, and the Clerk shall thereupon enter it:

(1) Upon a general verdict of a jury, or upon a decision by the Court that a party shall recover only a sum certain or costs or that all relief shall be denied, the Clerk, unless the Court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the Court; or

(2) Upon a decision by the Court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories.

(b.) Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered in the civil docket book. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the Court.

Section 1208. New Trials; Amendments of Judgments.

(a) Grounds.

A new trial is a re-examination in the same Court, of an issue of fact, or of law, or both, and may be granted to all or any of the parties and on all or part of the issues for any of the following reasons:

(1) Irregularity in the proceedings of the Court, jury, referee, or prevailing party, or any order of the Court or referee, or abuse of discretion, by which the party was prevented from having 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, appearing to have been given under the influence of passion or prejudice; or
- (5) Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property; or
- (6) That the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law; or
- (7) Newly-discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial; or
- (8) Error of law occurring at the 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.

(b) Motion for New Trial.

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

(c) Time for Motion.

A motion for a new trial shall be served not later than ten (10) days after the entry of the judgment, except that a motion based upon newly discovered evidence shall be made within one year from the date of the judgment.

(d) Time for Serving Affidavits.

When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has ten (10) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the Court for good cause shown or by the parties by written stipulation. The Court may permit reply affidavits.

(e) 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 for any reasons for which it might have granted a new trial on motion of a

party. After giving the parties notice and an opportunity to be heard on the matter, the Court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the Court shall specify in the order the grounds therefor.

(f) Motion to Alter or Amend a Judgment.

A motion to alter or amend the judgment shall be served not later than ten (10) days after entry of the judgment.

Section 1209. Relief From Judgment or Order.

(a) Clerical Mistakes.

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Supreme Court, and thereafter while the appeal is pending may be so corrected with leave of the Supreme Court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.

On motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial; (3) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other 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 otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the 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 or taken. A motion under this Subsection (b) does not affect the finality of a judgment or suspend its operation. This Section does not limit the power of a 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 of the proceedings, or to set aside a judgment for fraud upon the Court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in this Title or by an independent action.

Section 1210. Harmless Error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial or for setting aside a verdict for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with

substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Section 1211. Stay of Proceedings to Enforce a Judgment.

(a) Automatic Stay: Exceptions - Injunctions, Receiverships and Patent Accountings.

Except as stated in this Title, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten (10) days after its entry. Unless otherwise ordered by the Court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subsection (c) of this Section govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment.

In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of any proceedings to enforce a judgment pending a motion for a new trial or to alter or amend a judgment made pursuant to Section 1208, or of a motion for relief from a judgment or order made pursuant to Section 1209, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Section 1007, or of a motion for amendment to the findings or for additional findings made pursuant to Section 1007(b).

(c) Injunction Pending Appeal.

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay Upon Appeal.

When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subsection (a) of this Section. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the Court.

(e) Stay in Favor of the Nation or Agency Thereof.

When an appeal is taken by the Nation or an officer or agency thereof or by direction of any department of the Government of the Nation, the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Power of the Supreme Court Not Limited.

The provisions in this Section do not limit any power of the Supreme Court or of a judge or justice thereof to stay proceedings during the pendency of an appeal 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 the effectiveness of the judgment subsequently to be entered.

(g) Stay of Judgment as to Multiple Claims or Multiple Parties.

When the Court has ordered a final judgment under the conditions stated in Section 1201(b), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Section 1212. Disability of a Judge.

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the Court under this Title after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the Court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

Section 1213. Reserved.

Section 1214. Judgment Against Infant.

It shall not be necessary to reserve in a judgment or order the right of a minor to show cause against it after his attaining full age; but in any case in which such reservation would be proper, the minor, within two (2) years after arriving at the age of eighteen years, may show cause against such order or judgment.

Section 1215. Judgments as Liens.

Judgments of the District Court and the Courts of the United States shall be liens on real estate of the judgment debtor within the Nation's jurisdiction from and after the time a certified copy of such judgment has been filed in the Court Clerk's land tract records book. A five dollar (\$5.00) fee shall be collected for each requested filing in the land tract records book. No judgment whether rendered by the District Court or a Court of the United States shall be a lien on the real estate of a judgment debtor until it has been filed in this manner. Execution shall be issued only by the District Court.

Section 1216. Discharge of Money Judgment Liens.

In the event of an appeal to the Supreme Court from a money judgment, the lien of such judgment, and any lien by virtue of an attachment issued and levied in the action in which such judgment was rendered, shall cease upon the judgment debtor or debtor's depositing, with the

Court Clerk of the District Court, cash sufficient to cover the whole amount of the judgment, including interest, costs and any attorney fees, together with costs and interest on the appeal, accompanied by a written statement, executed by the judgment debtor or debtors, that such deposit is made to discharge the lien of such judgment and any lien by virtue of an attachment issued and levied in the action, as provided for herein. It shall be the duty of the Court Clerk, upon receipt of such a cash deposit and written statement, immediately to enter the same and the amount of case received upon the civil appearance docket in the action, upon the judgment docket opposite the entry of such judgment, and upon the land tract records book if the judgment has been filed therein. It shall further be the duty of the Court Clerk to deposit the case so received in any action in a separate interest bearing official depository account and to hold the same pending final determination of the action, and, upon final determination of the action, to pay, or apply the same upon any judgment that might be rendered against the depositor or depositors, and to refund any balance in excess of any such judgment to the depositor or depositors, or, in the event the action be finally determined in favor of the depositor or depositors, to refund the whole amount thereof to the depositor or depositors.

Section 1217. Additional Case Deposits.

A judgment creditor may, at any time, upon reasonable notice to the judgment debtor or debtors, move the Court for the deposit of additional cash; and if it appears that the case which has been deposited is insufficient to cover the whole amount of the judgment, including interest, costs and any attorney fees, together with costs and interest on the appeal, the Court shall order the deposit of additional cash. If the additional cash is not deposited within a reasonable time, which time shall be set by the Court, the judgment shall be revived and attachment may be issued thereon.

Section 1218. Reversal By Supreme Court.

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

Section 1219. 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 Nation, its political subdivisions, and agents in their official capacity which judgments shall not bear interest unless such is specifically provided for, provided that when a rate of interest is specified in a contract, the rate therein shall apply to the judgment debt and be specified in the judgment if the rate does not exceed the lesser of any limitation imposed by law of the Nation, or the law of the jurisdiction in which the contract was made, upon the amount of interest which may be charged.

Section 1220. Exempt Property.

The following property shall be exempt, except as to 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 any judgment of the District Court:

- (a.) Three-fourths (3/4) of the net wages earned per week by the person or an amount equivalent to forty (40) times the federal minimum hourly wages per week, whichever is greater, except as may be specifically provided by law for child support payments.
- (b.) One automobile of fair market value not exceeding One Thousand Dollars (\$1,000.00).
- (c.) Tools, equipment, utensils, or books necessary to the conduct of the person's business but not including stock or inventory.
- (d.) Actual trust or restricted title to any lands held in trust by the United States, or subject to restrictions against alienation imposed by the United States but not including leasehold and other possessory interests in such property.
- (e.) Any dwelling used as the actual residence of the judgment debtor, including up to five acres of land upon which such dwelling is located whether such dwelling is owned or leased by the judgment debtor.
- (f.) Household goods, furniture, wearing apparel, personal effects, but not including televisions, radios, phonographs, tape recorders, 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 four cows with their immature offspring, two hogs with their immature offspring, ten chickens, and feed suitable and sufficient to maintain said livestock and fowls for a period of one year.
- (i.) All ceremonial or religious items.

Section 1221. Payment of Judgments From Individual Indian Moneys.

Whenever the District court shall have ordered payment of money damages to an injured party and the debtor refuses or neglects to make such payment within the time set for payment by the Court, or when an execution is returned showing no property found, and when the debtor has sufficient funds to his credit at any Bureau of Indian Affairs Agency Office to pay all or part of such judgment, the Clerk of the District Court, upon request of the judgment creditor, shall certify the record to the Superintendent of the Agency, who shall certify to the Secretary of the Interior the record of the case and the amount of the available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the judgment creditor the amount of the judgment, or such lesser amount as may be specified by the Secretary from the account of the judgment debtor.

SUBCHAPTER A
FOREIGN JUDGMENTS

Section 1222. Definition.

In this Title "foreign judgment" means any judgment, decree, or order of a Court of the United States, any Indian Nation, or of any other Court which is entitled to comity or full faith and credit in the District Court.

Section 1223. Filing and Status of Foreign Judgments.

A copy of any foreign judgment authenticated in accordance with the applicable act of Congress or of the statutes of the Nation may be filed in the office of the Court Clerk. The Clerk shall treat the foreign judgment in the same manner as a judgment of the District Court. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of the District Court and may be enforced or satisfied in like manner, provided, however, that no such filed foreign judgment shall be a lien on real estate of the judgment debtor until a certified copy of the judgment so filed is also filed in the office of the Court Clerk as provided by law in the land tract record book.

Section 1224. Grounds for Non-Recognition.

(a) Foreign Judgment Not Conclusive.

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 personal jurisdiction over the defendant; or
- (3) The foreign court did not have jurisdiction over the subject matter.

(b) Recognition of Foreign Judgment Unnecessary.

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 Nation;
- (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 otherwise than by proceedings in that court; 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 1225. Notice of Filing

(a) Affidavit.

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) Notice.

Promptly upon the 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) Time of Issuance.

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.

Section 1226. Stay of Execution of Foreign Judgment.

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

(b.) If the judgment debtor shows the District Court any ground upon which enforcement of a judgment of the District Court would be stayed, the Court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in the Nation's jurisdiction.

Section 1227. Fees.

Any person filing a foreign judgment shall pay to the Court Clerk those fees now and hereafter prescribed by the statute or by authorized 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 District Court.

Section 1228. Optional Procedure.

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

SUBCHAPTER B
EXECUTION

Section 1229. Executions; Definition.

Executions shall be deemed process of the Court, and shall be issued by the Clerk, and directed to an officer of the Nation's Police.

Section 1230. Kinds of Executions.

Executions are of three kinds:

- (a.) Against the property of the judgment debtor;
- (b.) For the delivery of possession of real or personal property, with damages for withholding the same, and costs; and
- (c.) Executions in special cases.

Section 1231. Property Subject to Levy.

Lands, tenements, goods and chattels, not exempt by law shall be subject to the payment of debts, and shall be liable to be taken on execution and sold, as hereinafter provided.

Section 1232. Property Bound After Seizure.

All real estate not bound by the lien of the judgment, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution.

Section 1233. Execution Must Be Issued Within Five Years.

If execution is not issued and filed as provided by this Subchapter within five (5) years after the date of any judgment that now is or may hereafter be rendered in the Court or if five (5) years have intervened between the date that the last execution on such judgment was filed and the date that writ of execution was filed such judgment shall become unenforceable and of no effect, and shall cease to operate as a lien on the real estate of the judgment debtor. Provided, that this section shall not apply to judgments in favor of the Nation and its subdivisions or agents.

Section 1234. Priority Among Property.

The writ of execution against the property of the judgment debtor, issuing from the District Court shall command the officer to whom it is directed, that of the goods and chattels of the debtor he cause to be made the money specified in the writ; and for want of goods and chattels, he cause the same non-trust interest in lands and tenements of the debtor; and the amount of the debt, damages and costs, for which the judgment is entered, shall be endorsed on the execution.

Section 1235. Priority Among Executions.

When two or more writs of execution against the same debtor shall be sued out and when two or more writs of execution against the same debtor shall be delivered to the officer prior to the date of sale or this property, no preference shall be given to either of such writs; but if a sufficient sum of money be not made to satisfy all such executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands, provided that nothing herein contained shall be so construed as to affect any preferable lien which one or more of the judgments, on which execution issued, may have on the property of the judgment debtor.

Section 1236. Levy By Priority.

The officer to whom a writ of execution is delivered, shall proceed immediately to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall endorse on the writ of execution, "no goods," and forthwith levy the writ of execution upon any interests in the lands and tenements of the debtor, which may be liable to satisfy the judgment; and if any of the interests in such lands and tenements of the debtor which may be liable shall be encumbered by mortgage or any other lien or liens, such lands and tenements may be levied upon and appraised and sold, subject to such lien or liens, which shall be stated in the appraisalment.

Section 1237. Who Makes Levy.

It shall be unlawful for anyone to levy an attachment or execution within the Nation's jurisdiction who is not a bonded Nation or Federal Police officer.

Section 1238. When Levy Void.

Any attachment or execution issued to or levied by anyone other than a bonded Federal Police officer or officer of the Nation's Police shall be void and of no effect and the Court Clerk or other person issuing same, or officer or other person levying same, as the case may be, together with their bondsmen shall be liable for any damage caused thereby.

Section 1239. Penalty for Unlawful Levy.

Anyone violating the provisions of Section 1248 of this Title shall be punished by a fine not to exceed one hundred dollars (\$140.00) or confinement in the Nation's jail not to exceed thirty (30) days or both.

Section 1240. Levy on Property Claimed By Third Person.

If the officer, by virtue of an execution issued from the District Court, shall levy the same on any goods and chattels claimed by any person other than the defendant, or be requested by the plaintiff to levy on any such goods and chattels, the officer may require the plaintiff to give him an undertaking, with good and sufficient securities to pay all costs and damages that he may sustain by reason of the detention or sale of such property; and until such undertaking shall be given, the officer may refuse to proceed as against such property.

Section 1241. Re-Delivery to Defendant.

In all cases where an officer of the Nation's Police or other officer shall, by virtue of an execution, levy upon any goods and chattels which shall remain upon his hands unsold, for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the officer may, for his own security, take of the defendant an undertaking, with security, in such sum as he may deem sufficient, to the effect that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice, given in writing, to said defendant in execution, or by advertisement published in a legal newspaper, naming therein the day and place of sale. If the defendant shall fail to deliver the goods and chattels at the time and place mentioned in the notice to him, given, or to pay to the officer holding the execution the full value of said goods and chattels, or the amount of said debt and costs, the undertaking, given as aforesaid, may be proceeded on as in other cases.

Section 1242. Notice of Sale of Chattels.

The officer who levies upon goods and chattels, by virtue of an execution issued by the District Court, before he proceeds to sell the same shall cause public notice to be given of the time and place of sale, for at least ten (10) days before the day of sale. The notice shall be given by advertisement, published in some newspaper printed, or, in case no legal newspaper be published, by setting up advertisement in five (5) public places in the Nation's territorial jurisdiction. Two advertisements shall be put up in the township where the sale is to be held; and where goods and chattels levied upon cannot be sold for want of bidders, the officer making such return shall annex to the execution a true and perfect inventory of such goods and chattels, and the plaintiff in such execution may thereupon sue out another writ of execution, directing the sale of the property levied upon as aforesaid; but such goods and chattels shall not be sold, unless the time and place of sale be advertised, as hereinbefore provided.

Section 1243. Further Levy When Property Taken Insufficient.

When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing said writ shall, at the request of the person entitled to the benefit thereof, his agent or attorney, add thereto a command to the officer to whom such writ shall be directed, that if the property remaining in his hands not sold shall, in his opinion, be insufficient to satisfy the judgment, he shall levy the same upon lands and tenements, goods and chattels, or either, as the law shall permit, being the property of the judgment debtor, sufficient to satisfy the debt.

Section 1244. Filing and Indexing of Execution.

(a) Filing.

When a general execution is issued and placed in the custody of an officer of the Nation's Police for levy, a certified copy of such execution shall be filed in the office of the Court Clerk and shall be indexed the same as judgments.

(b) Appraisal.

If a general or special execution is levied upon an interest in lands and tenements, the Police officer shall endorse on the face of the writ the legal description and shall have three disinterested persons who have taken an oath to impartially appraise the property so levied on, upon actual view; and such disinterested persons shall return to the officer their signed estimate of the real value of said property.

(c) Extension of Judgment Lien.

To extend a judgment lien beyond the initial or any subsequent statutory period, prior to the expiration of such period, a certified copy of a general execution thereon shall be filed and indexed in the same manner as judgments in the office of the Court.

Section 1245. Waiver of Appraisement.

It is against the public policy of the Nation to allow enforcement of execution upon realty without appraisal, and if the words "appraisement waived" or other words of similar import, shall be inserted in any deed, mortgages, bonds, notes, bill or written contract, they shall be of no effect whatsoever and an appraisal shall be ordered notwithstanding any contract to the contrary.

Section 1246. Return of Appraisement.

The officer receiving such return of appraisement of this Title shall forthwith deposit a copy thereof with the Clerk of the Court and advertise and sell such property, agreeably to the provisions of this Title.

Section 1247. When Lien Restricted.

If, upon such return, as aforesaid, it appears, by the inquisition, that two-thirds of the appraised value of said non-trust interest in lands and tenements, so levied upon is sufficient to satisfy the execution, with costs, the judgment on which such execution issued shall not operate as a lien on the residue of the debtor's estate, to the prejudice of any other judgment creditor; but no such property shall be sold for less than two-thirds of the value returned in the inquest; and nothing in this section contained shall, in any wise, extend to affect the sale of lands by the Nation but all lands, the corporation or association indebted to the Nation for any debt or taxes, or in any other manner, shall be sold without valuation for the discharge of such debt or taxes, agreeably to any laws in such cases made and provided.

Section 1248. Notice of Sale of Realty.

Any non-trust interest in lands and tenements taken on execution shall not be sold until the officer causes public notice of the time and place of sale to be given by publication for two (2) successive weeks in a legal newspaper and by putting up an advertisement upon the Court House door or other public bulletin board within a common area of the Court House and in five (5) other public places in the Nation's territorial jurisdiction, two (2) of which shall be in the township where such lands and tenements lie. Such sale shall not be held less than thirty (30) days after the date of the first publication of the notice herein required. All sales made without such advertisement shall be set aside on motion by the Court to which the execution is returnable.

Section 1249. Confirmation of Sale.

If the Court, upon the return of any writ of execution, for the satisfaction of which any lands or tenements have been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has, in all respects, been made in conformity with the provisions of this Title, the Court shall direct the Clerk to make an entry on the journal that the Court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed for such interest in lands and tenements; and the officer, on making such sale, shall deposit the purchase money with the Clerk of the Court where same shall remain until the Court shall have examined his proceedings as aforesaid, when said Clerk of the Court shall pay the same of the person entitled thereto, agreeably to the order of the Court.

Section 1250. Police Chief's Deed.

An officer of the Nation's Police or other officer who, upon such writ or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchaser a good and sufficient deed of conveyance of the land sold, as the person or persons against whom such writ or writs of execution were issued could have made of the same, at or any time after they became liable to the judgment. The deed shall be sufficient evidence of the legality of such sale, and the proceedings therein, until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned as was vested in the party at, or after, the time when such lands and tenements became liable to the satisfaction of the judgment; and such deed of conveyance, to be made by an officer of the Nation's Police or other officer, shall recite the execution or executions, or the substance thereof, and the names of the parties, the amount and date of rendition of each judgment, by virtue whereof the said lands and tenements were sold as aforesaid, and shall be executed, acknowledged and recorded as is or may be provided by law, to perfect the conveyance of such interests in real estate in other cases.

Section 1251. Advance of Printer's Fees.

The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ of execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper until the party for whose benefit such execution issued, his agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice.

Section 1252. Demand for Printing Fees.

Before any officer shall be excused from giving the notification mentioned in Section 1259, he shall demand fees of the party for whose benefit the execution was issued, his agent or attorney.

Section 1253. Place of Sale.

All sales of interests in lands or tenements under execution shall be held at the District Court House unless some other place within the Nation's jurisdiction is designated by the Judge having jurisdiction in the case. No officer of the Nation's Police or other officer making the sale of property, either personal or real, nor any appraiser of such property, shall either directly or indirectly, purchase the same; and every purchase so made shall be considered fraudulent and void.

Section 1254. Other Executions of Realty Not Sold.

If lands or tenements, levied on as aforesaid, are not sold upon one execution, other executions may be issued to sell the property so levied upon.

Section 1255. Levy on Realty Under Several Executions.

In all cases where two or more executions shall be put into the hands of an officer of the Nation's Police or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors, in whose favor one or more of said executions are issued, shall require an officer of the Nation's Police or other officer to levy said executions, or so many thereof as may be required, on separate parcels of the real property of the judgment debtor or debtors, it shall be the duty of the officer, when required, to levy the same on separate parcels of the real property of the judgment debtor or debtors, when, in the opinion of the appraisers, the property of said debtors will not be sufficient, at two-thirds of its appraised value, to satisfy all the executions chargeable thereon, such part of the same shall be levied on, to satisfy each execution, as will bear the same proportion in value to the whole, as the amount due to the execution bears to the amount of all the executions chargeable thereon, as near as may be according to the appraised value of each separate parcel of said real property.

Section 1256. Deed by Successor of Officer Making Sale.

If the term of service of an officer of the Nation's Police or other officer who has made, or shall hereafter make sale of any non-trust interest in lands and tenements, shall expire, or if an officer of the Nation's Police or other officer shall be absent, or be rendered unable by death or otherwise, to make a deed of conveyance of the same, any succeeding officer of the Nation's Police or other officer or the law enforcement officer acting on his behalf, on receiving a certificate from the Court from which the execution issued for the sale of said non-trust interest in lands and tenements, signed by the Clerk, by order of said Court, setting forth that sufficient proof has been made to the Court that said sale was fairly and legally made, and on tender of the purchase money, or if the same or any part thereof be paid then on proof of such payment and tender of the balance, if any, may execute to the said purchaser or purchasers, or his or their legal representatives, a deed of conveyance of said lands and tenements so sold. Such deed shall be as

good and valid in law and have the same effect as if an officer of the Nation's Police or other officer who made the sale had executed the same.

Section 1257. Payment to Defendant of Overplus After Sale.

If, on any sale made as aforesaid, there shall be in the hands of an officer of the Nation's Police or other officer more money than is sufficient to satisfy the writ or writs of execution, with interest and costs, an officer of the Nation's Police or other officer shall, on demand, pay the balance to the defendant in execution.

Section 1258. Reversal of Judgment After Sale of Interest in Land.

If any judgment or judgments, in satisfaction of which any non-trust interests lands or tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but in such cases, restitution shall be made, by the judgment creditors, of the money, for which such lands or tenements were sold, with lawful interest from the day of sale.

Section 1259. Execution on Judgment in Favor of Nation.

In all civil actions wherein the Nation as plaintiff, has heretofore or may hereafter recover judgment, and where in any such action an execution has or may be issued, the Nation through the officer or officers on whose relation the action was brought, may bid at such execution sale, and buy said property offered for sale, for any amount not to exceed the amount of the judgment in such action and such additional amount as may be approved by the Board of Directors said amount to be credited upon the judgment.

And further, when such property offered for the sale at execution is brought by the Nation, said property may be sold for the Nation by the officer or officers upon whose relation the Nation was party plaintiff, and further provided that at such execution sales the attorney or attorneys representing the Nation may bid for the Nation, not to exceed the amount of the judgment and such additional amount as may be approved by the Board of Directors, provided however, that said bid is not more than one hundred dollars (\$100.00) higher than the next best bid, and if there be no other bidder, then not to exceed one hundred dollars (\$100.00).

And further provided that in disposing of such property so acquired, if it be personal property, the officer or successor of the officer upon whose relation the Nation was plaintiff may sell said property by executing a good and sufficient Bill of Sale, to be attested by the Secretary of the Nation. And in disposing of any non-trust interest in real property so acquired or any interest or equity therein, the officer or successor in office on whose relation the Nation was party plaintiff may execute in the name of the Nation by said officer a good and sufficient deed, to be attested by the Secretary of the Nation. Provided, however, that in no event shall any sale be valid under this Title for any amount less than the amount for which said property was originally bid in by the Nation. The funds obtained upon the sale of any such property shall be placed in the fund for which the judgment was obtained, or if none, then in a Nation land purchases fund for the purchase of real property for the Nation.

Section 1260. Reappraisal Where Realty Twice Advertised for Sale.

In all cases where a non-trust interest in real estate has been or may hereafter be taken on execution and appraised and twice advertised and offered for sale, and shall remain unsold for the want of bidders, it shall be the duty of the Court, on motion of the plaintiff, to set aside such appraisal and order a new one to be made, or to set aside such levy and appraisal and order a new execution to issue, as the case may require.

Section 1261. Return of Execution.

An officer of the Nation's Police or other officer to whom any writ of execution shall be directed, shall return such writ to the Court to which the same is returnable, within ninety days from the date thereof.

Section 1262. Principal and Surety.

In all cases where judgment is rendered in the District Court upon any instrument of writing in which two or more persons are jointly and severally bound, and it shall be made to appear to the Court, by parol or other testimony, that one or more of said persons so bound, signed the same as surety or bail, for his or their co-defendant, it shall be the duty of the Clerk of said Court, in recording the judgment thereon to certify which of the defendants is principal debtor, and which are sureties or bail. And the Clerk of the Court aforesaid shall issue execution on such judgment, commanding an officer of the Nation's Police or other officer to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor; but for want of sufficient property of the principal or debtor to make the same that he cause the same to be made of the goods and chattels, lands and tenements, of the surety or bail. In all cases, the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution.

Section 1263. Hearing on Assets.

In addition to other discovery procedures, the Court, at any time after judgment upon motion of the judgment creditor, may order the judgment debtor to appear and answer concerning his property subject to execution to satisfy the judgment. The order to appear shall be served on the judgment debtor as a summons is served and may contain an order prohibiting the conveyance of any non-exempt property, and may order the production of any books, records documents, or papers relating to the judgment creditors property. Such order may be enforced by contempt proceedings.

SUBCHAPTER C
CONTRIBUTION

Section 1264. Joint Debtors or Sureties.

When property, liable to an execution against several persons, is sold thereon, and more than a due proportion of the judgment is laid upon the property of one of them, or one of them pays, without a sale, more than his proportion, he may regardless of the nature of the demand upon which the judgment was rendered, compel contribution from the others; and when a judgment is

against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal; in such case, the person so paying or contributing, is entitled to the benefit of the judgment, to enforce contribution or repayment, if within ten days after his payment he files with the Clerk of Court notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the Clerk shall make an entry thereof in the margin of the docket.

Section 1265. Joint Tortfeasors; Contribution; Indemnity –Exemptions; Release, Covenant Not to Sue, Etc.

(a) Right of Contribution.

When two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them except as provided in this section.

(b) Limitation.

The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

(c) Intentional Tortfeasor.

There is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death.

(d) Effect of Settlement.

A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

(e) Subrogation.

A liability insurer which by payment has discharged, in full or in part, the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship

(f) Indemnity.

This Title does not impair any right of indemnity under existing law. When one tortfeasor is entitled to indemnity from another, 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) Fiduciary Obligations.

This Subchapter shall not apply to breaches of trust or of other fiduciary obligations.

(h) Releases.

When a release, covenant not to sue or a similar agreement is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

SUBCHAPTER D
COSTS

Section 1266. Affidavit in Forma Pauperis.

Any person who cannot afford to pay costs of an action in order to vindicate his rights may be allowed by the Court to proceed without paying costs upon the filing of an affidavit in forma pauperis. The affidavit in forma pauperis shall be in the form following, and attached to the petition, viz.:

Wyandotte Nation in the District Court of the Wyandotte Nation: I do solemnly swear that the cause of action set forth in the petition hereto prefixed is just, and I (or we) do further swear that by reason of my (or our) poverty, I (or we) am (are) unable to give security for costs.

Section 1267. False Swearing in Such Case.

Any person willfully swearing falsely in making the affidavit aforesaid, shall, on conviction, be adjudged guilty of perjury, and punished as the law prescribes.

Section 1268. 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 1269. Certain Costs Taxes at Discretion of Court.

Unless otherwise provided by statute, the costs of motions, continuances, amendments and the like, shall be taxed and paid as the Court, in its discretion, may direct.

Section 1270. Costs to Successful Party as Matter of Course.

Where it is not otherwise provided by this and other statutes, costs shall be allowed of course to the party, upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific, real or personal property.

Section 1271. Costs in Other Cases.

In other actions, the Court may award and tax costs and apportion the same between the parties on the same or adverse sides, as in its discretion it may think right and equitable.

Section 1272. Several Actions on Joint Instrument.

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

Section 1273. Clerk to Tax Costs.

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

Section 1274. Cost of Notice or Other Legal Publication.

Whenever any notice, or other legal publication is required by law to be made in any action or proceeding pending in the Court, the cost of such publication shall be taxed as other costs in said action or proceeding.

Section 1275. Attorney Fees Taxable as Costs.

(a) Action for Recovery on Accounts, Etc.

In any civil action to recover on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods,

wares, or merchandise, or for labor or services, unless otherwise provided by law or the contract which is the subject of the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, to be taxed and collected as costs.

(b) Action for Recovery on Bills of Exchanger, Etc.

In any civil action to enforce payment of or to collect upon a check, draft or similar bill of exchange drawn on a bank or otherwise, payment upon which said instrument has been refused because of insufficient funds or no account, the party prevailing on such cause of action shall be awarded a reasonable attorney's fee, such fee to be assessed by the Court as costs against the losing party; provided, that said fee shall not be allowed unless the plaintiff offers proof during the trial of said action that prior to the filing of the petition in the action demand for payment of the check, draft or similar bill of exchange had been made upon the defendant by registered or certified mail not less than ten (10) days prior to the filing of such suit.

(c) Action Relating to Utility Payments.

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 to be set by the Court, to be taxes and collected as costs.

(d) Action for Damages for Breach of Express Warranty.

In any civil action brought to recover damages for breach of an express warranty or to enforce the terms of an express warranty against the seller, retailer, manufacturer, manufacturer's representative or distributor, the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, which shall be taxed and collected as costs.

(e) Action for Damages for Injury to Property.

In any civil action to recover damages for the negligent or willful injury to property and any other incidental costs related to such action, the prevailing party shall be allowed reasonable attorney's fees, Court costs and interest to be set by the Court and to be taxed and collected as other costs of the action, except that a plaintiff who is required to pay costs pursuant to Section 1203 of this Title may not recover his attorney's fees as provided by this Subsection.

Section 1276-A. Costs Defined.

Costs include, in addition to items of expense specifically recoverable as costs pursuant to any statute of the Nation, fees required to be paid by law for the filing of any paper in an action, expense for service of process as provided by law, costs of transcripts, an officer of the Nation's Police Fees for service of papers and mileage, costs of publication of any notice required to be published, printing of briefs or other documents required by the Court to be printed, and any other items made recoverable as costs by Court rule.

Section 1277-B. Authority of Court to Fix Cost Rates.

The Court by rule may set the fees and costs of any service performed by the Court Clerk or an officer of the Nation's Police on behalf of the parties when such fees and costs are not provided for by law of the Nation. Such fees and costs shall be maintained at the minimum level possible considering the needs of the Court Fund.

**CHAPTER THIRTEEN
LIMITATION OF ACTIONS**

Section 1301. Limitations Applicable.

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

Section 1302. Limitation of Real Actions.

Reserved.

Section 1303. Persons Under Disability; In Real Property Actions.

Reserved.

Section 1304. Limitation of Other Actions.

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

- (a.) Within seven (7) years: An action upon any contract, agreement or promise in writing.
- (b.) Within five (5) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute including a forfeiture or penalty except where the statute imposes a different limitation and an action on a foreign judgment.
- (c.) Within three (3) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract except as otherwise provided in building construction tort claims, and not hereinafter enumerated; an action for relief on the ground of fraud, provided that the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud.

- (d.) Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment.
- (e.) An action upon the official bond or undertaking of an executor, administrator, guardian, officer of the Nation's Police, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued.
- (f.) An action for relief, not hereinbefore provided for can only be brought within five (5) years after the cause of action shall have accrued.

Section 1305. Persons Under Disability in Actions Other Than Real Property Action.

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

Section 1306. Absence or Flight of Defendant.

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

Section 1307. Limitation of New Action After Failure.

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

Section 1308. Extension of Limitation.

In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same shall have been made, an action may be brought in such case within the period prescribed for the

same, after such payment, acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby.

Section 1309. Statutory Bar Absolute.

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

Section 1310. Law Governing Foreign Claims.

The period of limitation applicable to a claim accruing outside of the Nation's jurisdiction shall be that prescribed either by the law of the place where the claim accrued or by the law of this Nation, whichever last bars the claim.

Section 1311. Limitation of Building Construction Tort Claims.

No action in tort to recover damages shall be brought against any person owning, leasing, or in possession of such an improvement or performing or furnishing the design, planning, supervision or observation of construction or construction of such an improvement more than ten (10) years after substantial completion of such an improvement, in the following actions:

- (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.

**CHAPTER FOURTEEN
HABEAS CORPUS**

Section 1401. Persons Who May Prosecute Writ.

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

Section 1402. Application for Writ.

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

- (a.) By whom the person, in whose behalf the writ is requested, is restrained of his liberty, and the place where restrained, naming all the parties, if they are known, or describing them, if they are not known;
- (b.) The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant; and

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

Section 1403. Writ Granted.

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

Section 1404. Direction and Command of Writ.

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

Section 1405. Delivery to Nation's Police Chief.

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

Section 1406. Service on Party Other Than Nation's Police Chief.

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

Section 1407. Service When Person Not Found.

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

Section 1408. Return and Enforcement of Writ.

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

Section 1409. Manner of Return.

(a) Return.

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

- (1) The authority or cause of restraint of the party in his custody;
- (2) If the authority be in writing, he shall return a copy and produce the original on the hearing;

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

(b) Production of Party.

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

Section 1410. Proceedings in Case of Sickness or Infirmity.

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

Section 1411. Hearings and Discharge.

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

Section 1412. Limits on Inquiry.

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

- (a.) Upon process issued by any court or judge of the United States, or of any State or where such court or judge has exclusive jurisdiction; or
- (b.) Upon any lawful process issued on any final judgment of a court of competent jurisdiction; or
- (c.) For any contempt of any court, officer or body having authority to commit; but an order of commitment as for a contempt, upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications; or
- (d.) Upon a warrant or commitment issued from the District Court, or any other court of competent jurisdiction, upon indictment or information.

Section 1413. Writ Upon Temporary Commitment.

No person shall be discharged from an order of temporary commitment issued by any judicial or peace officer for want of bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged want of probable cause; but in all such cases, the court or judge shall

summon the prosecuting witnesses, investigate the criminal charge, and discharge, let to bail or recommit the prisoner, as may be just and legal, and recognize witnesses when proper.

Section 1414. Writ May Issue to Admit to Bail.

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

Section 1415. Notice to Interested Persons.

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

Section 1416. Powers of Court.

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

Section 1417. Officers Not Liable for Obeying Orders.

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

Section 1418. Issuance of Warrant of Attachment.

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

Section 1419. Arrest of Party Causing Restraint.

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

Section 1420. Execution of Warrant of Attachment.

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

Section 1421. Temporary Orders.

The Court may make any temporary orders in the cause or disposition of the party during the progress of the proceedings that justice may require. The custody of any party restrained may be changed from one person to another, by order of the Court.

Section 1422. Issuance and Service on Sunday.

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

Section 1423. Issue of Process.

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

Section 1424. Protection of Infants and Insane Persons.

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

Section 1425. Security for Costs Not Required.

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

**CHAPTER FIFTEEN
MANDAMUS**

Section 1501. Functions of Mandamus.

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

Section 1502. Writ Not Issued Where Remedy at Law.

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

Section 1503. Forms and Contents of Writs.

The writ is either alternative or peremptory. The alternative writ must state, concisely, the fact showing the obligation of the defendant to perform the act, and his omission to perform it, and command him that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed or show cause before the Court at a specified time and place,

why he has not done so; and that he then and there return the writ with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

Section 1504. When Peremptory Writ to Issue.

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

Section 1505. Petition Upon Affidavit.

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

Section 1506. Allowance and Service of Writ.

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

Section 1507. Answer.

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

Section 1508. Failure to Answer.

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

Section 1509. Similarity to Civil Action.

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

Section 1510. Recovery by Plaintiff.

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

Section 1511. Damages Bar Further Actions.

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

Section 1512. Penalty for Refusal or Neglect to Perform.

- (a.) Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty specially enjoined by law, if it appears to the Court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the Court may impose a fine, not exceeding Five Hundred Dollars (\$500.00), upon every such officer or members of such body or board. Such fine, when collected, shall be paid into an appropriate fund of the Nation's treasury.

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

**CHAPTER SIXTEEN
SMALL CLAIMS PROCEDURE**

Section 1601. Small Claims.

- (a) Type of Small Claims Actions Allowed.

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

- (1) Actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, where the amount sought to be recovered, exclusive of attorney's fees and other court costs, does not exceed Three Thousand Dollars (\$3,000.00). Libel or slander actions may not be brought in the small claims court.

- (2) Actions to replevy personal property where the value of personal property sought to be replevied does not exceed Three Thousand Dollars (\$3,000.00). Where the claims for possession of personal property and to recover money are pleaded in the alternative, the joinder of claims is permissible if neither the value of the property, nor the total amount of money sought to be recovered, exclusive of attorney's fees and other costs, does not exceed Three Thousand Dollars (\$3,000.00).

(3) By leave of the Court, and with the consent of all parties, other actions not provided for herein, or exceeding the maximum amount allowed to be claimed by other applicable law, except actions for libel and slander, may be tried under the small claims procedure. The motion for leave to file in such cases shall contain the consent of the defendant endorsed thereon, or such consent shall be promptly filed upon the submittal for filing of the small claims affidavit.

(b) Actions Not Allowed.

No action may be brought under small claims procedure by any collection agency, collection agent or any assignee of a claim.

(c) Limitation on Attorneys Fees in Uncontested Cases.

In those cases which are uncontested, the amount of attorney's fees allowed shall not exceed ten percent (10%) of the judgment.

Section 1602. Small Claims Affidavit.

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

IN THE DISTRICT COURT
OF THE WYANDOTTE NATION
SMALL CLAIMS DIVISION

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

SMALL CLAIMS AFFIDAVIT

WYANDOTTE NATION)
) Ss.
)

_____, being duly sworn, deposes and says:

That the defendant resides at _____, (within) (without) the jurisdiction of the Wyandotte Nation, and the mailing address of the defendant is _____;

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

and/or

The defendant is wrongfully in possession of certain personal property described as _____ that the value of said personal property is \$_____; and that plaintiff is entitled to possession thereof and has demanded that defendant relinquish possession of said personal property, but that defendant wholly refused to do so.

Plaintiff

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

Notary Public (or Clerk or Judge)

My Commission Expires: _____

On the affidavit shall be printed:

ORDER

To the within named defendant:

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

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

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

Dated this ____ day of _____, 20__.

Clerk of the Court (or Judge)

Section 1603. Preparation of Affidavit.

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

Section 1604. Service of Affidavit.

Unless service by a police officer of the Nation or other authorized person is requested by the plaintiff, the defendant shall be served by mail. The Clerk shall enclose a copy of the affidavit and the order in an envelope addressed to the defendant at the address stated in said affidavit, prepay the postage, and mail said envelope to said defendant by certified mail and request a return receipt from addressee only. The Clerk shall attach to the original affidavit the receipt for the certified letter and the return card thereon or other evidence of service of said affidavit and order. If the envelope is returned undelivered and sufficient time remains for making service, the Clerk shall deliver a copy of the affidavit and order to the Nation's Police, who shall serve the defendant in the time stated in Section 1605.

Section 1605. Date for Appearance.

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

Section 1606. Transfer of Actions.

On motion of the defendant the action shall be transferred from the small claims docket to the general civil docket of the Court, provided said motion is filed and notice given to opposing party at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer and, provided further, that the defendant deposit the cost of filing a complaint in a civil action, and thereafter, the action shall proceed as other civil actions and shall not proceed under the small claims procedure. The Clerk shall enclose a copy of the order transferring the action from the small claims docket to the general docket in an envelope addressed to the plaintiff, with postage prepaid. Within twenty (20) days of the date the transfer order is signed, the plaintiff shall file a civil complaint that conforms to the standards of civil pleadings and shall be answered and proceed to trial as in other civil actions. If the plaintiff ultimately prevails in the action so transferred by the defendant, a reasonable attorney's fee shall be allowed to plaintiff's attorney to be taxed as costs in the case.

Section 1607. Counterclaim or Setoff.

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

COUNTERCLAIM OR SETOFF

IN THE DISTRICT COURT
OF THE WYANDOTTE NATION
SMALL CLAIMS DIVISION

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

CLAIM OF DEFENDANT

WYANDOTTE NATION)
) ss.
)

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

Defendant

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

Notary Public (or Clerk or Judge)

Section 1608. Actions for Amounts in Excess of Three Thousand Dollars.

If a claim, a counterclaim, or a setoff is filed for an amount in excess of Three Thousand Dollars (\$3,000.00), the action shall be transferred to the general civil docket of the District Court unless both parties agree in writing and file said agreement with the papers in the action that said claim, counterclaim or setoff shall be tried under the small claims procedure. If such an agreement has not been filed, a judgment in excess of Three Thousand Dollars (\$3,000.00) may not be enforced for the part that exceeds Three Thousand Dollars (\$3,000.00). Plaintiff shall deposit with the Clerk of the Court costs that are charged in other cases, less any sums that have been already

paid to the Clerk, or his claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure.

Section 1609. Attachment or Garnishment Other Matters.

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

Section 1610. Trial by Court.

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

Section 1611. Payment of Judgment.

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

Section 1612. Appeals.

Appeals may be taken from the judgment rendered under small claims procedure to the Supreme Court of the Nation in the same manner as appeals are taken in other civil actions, provided that any party which did not request a reporter as provided in Section 1610 shall not be granted a new trial or other relief on appeal due to lack of a record.

Section 1613. Fees.

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

Section 1614. Costs.

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

Section 1615. Judgments Rendered Under Small Claims Procedure.

- (a.) Except as otherwise provided herein, judgments rendered under the Small Claims Procedure shall not be entered upon the judgment docket. Such judgment shall not become a lien upon real property unless entered upon the judgment docket as hereinafter provided.
- (b.) Any small claims judgment, when satisfied by payment other than through the office of the Court Clerk or otherwise discharged, may be released by the Court upon written application to the Court by the judgment debtor and upon proof of due notice thereof having been mailed by the Court Clerk to the judgment creditor at his last known address at least ten (10) days prior to the hearing of the application. Payment of all costs necessary to accomplish said release shall be paid by the judgment debtor.
- (c.) Such judgment shall become a lien on any non-trust interest real property of the judgment debtor within the Nation's jurisdiction only from and after the time a certified copy of the judgment has been filed in the office of the Court Clerk for entry in the Clerk's land tract records book. No judgment under the Small Claims Procedure Act shall be a lien on the real property of a judgment debtor until it has been filed in this manner. When a judgment is entered upon the judgment docket, the Court Clerk shall instruct the prevailing party of the manner in which to proceed to file such judgment for the purpose of obtaining a lien against the real property of the judgment debtor and the Court Clerk shall provide the proper certified copy of the judgment necessary to file.

Section 1616. Fee for Docketing Judgments.

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

**CHAPTER SEVENTEEN
FORCIBLE ENTRY AND DETAINER**

Section 1701. Forcible Entry and Detention.

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

Section 1702. Powers of Court.

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

Section 1703. Extent of Jurisdiction.

(a) Types of Cases Subject to Forcible Entry and Detainer.

Proceedings under this Chapter may be had in all cases against tenants holding over their terms and, incident thereto, to determine whether or not tenants are holding over their terms; in sales or real estate on executions, orders or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made; in sales by executors, administrators, guardians and on partition, where any of the parties to the partition were in possession at the commencement of the suit, after such sales, so made, on execution or otherwise, shall have been examined by the Court, and the same adjudged valid; and in the cases where the defendant is a settler or occupier of lands and tenements without color of title, and to which the complainant has the right of possession. This section is not to be construed as limiting the provisions of the preceding section.

(b) Actions by Housing Authority to Enforce Mutual Help and Occupancy Agreements Not Subject to Forcible Entry and Detainer.

Forcible entry and detainer proceedings may not be used in an action by the Housing Department of the Wyandotte Nation to recover possession of a home which is subject to a Mutual Help and Occupancy Agreement. Such actions must proceed as actions in ejectment.

Section 1704. Affidavit Form.

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

IN THE DISTRICT COURT
OF THE WYANDOTTE NATION

Plaintiff)
)
VS.) Case No. SC-
)
Defendant)

FORCIBLE ENTRY AND DETAINER
AFFIDAVIT

_____, being duly sworn, deposes and says:

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

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

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

Plaintiff

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

Notary Public (Clerk or Judge)

Section 1705. Summons; Form.

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

SUMMONS

To the within named defendant:

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

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

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

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

Dated this _____ day of _____, 20____.

Clerk of the Court (of Judge)

Plaintiff or Attorney
Address
Telephone Number

Section 1706. Issuance and Return of Summons.

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

Section 1707. Service of Summons.

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

Section 1708. Constructive Service of Summons.

If, in the exercise of reasonable diligence, service cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen (15) years of age, then in lieu of service by registered mail, service may be obtained for the sole purpose of adjudicating the right to restitution of the premises by the Nation's Police, who shall post said summons conspicuously on the building on the premises, and, if there be no building on said premises, post the same at some conspicuous place on the premises sought to be recovered at least ten (10) days prior to the date of trial, and by the claimant's mailing a copy of said summons to the defendant at his last known address by registered or certified mail at least seven (7) days prior to said date of trial. Such service shall confer no jurisdiction upon the Court to render any judgment against the

defendant for the payment of money nor for any relief other than the restoration of possession of the premises to the claimant. Such service shall not be rendered ineffectual by the failure of the defendant to actually receive or sign a return receipt for such mailed process.

Section 1709. Answer or Affidavit by Defendant.

(a) Answer Asserting Title Dispute.

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

(b) Answer Claiming Interest in Property Where Case Involves Breach or Termination of Lease.

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

(c) Answer Not Required.

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

Section 1710. Trial by Court.

All cases for forcible entry and detainer or detainer only shall be tried by the Court unless the rent and damages prayed for exceeds ten thousand (\$10,000) dollars.

Section 1711. Procedure Where No Jury Available.

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

Section 1712. Attorney's Fee.

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

Section 1713. Writ of Execution; Form; Motion for New Trial.

(a) Form of Writ.

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

[HEADING]

The District Court of the Wyandotte Nation to the Wyandotte Nation Police Department:

Whereas, in a certain action for the forcible entry and detention (or for the forcible detention as the case may be) of the following described premises, to wit: _____ tried before me, wherein, _____ was plaintiff, and _____ was defendant, judgment was rendered on the ____ day of _____, 20____, that the plaintiff have restitution of said premises; and also that he recover rent, attorney fees and costs in the sum of \$_____; you, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises and the said plaintiff to have restitution of the same; also that you levy on the goods and chattels of the said defendant, and make the cost aforesaid, and all accruing costs, and of this writ, make legal service and due return.

Witness my hand this ____ day of _____ 20____.

District Judge

(b) Motion for New Trial.

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

Section 1714. Stay of Execution.

(a) Supersedeas Bond.

The defendant shall have three (3) days after the date of judgment to post supersedeas bond conditioned as provided by law. This time limit may be enlarged by a trial judge's order to not more than ten (10) days after the date of judgment. The posting of a supersedeas bond shall not be construed to relieve the defendant of his duty to pay current rent as it becomes due while the appeal is pending. The rent shall be paid into the Court Clerk's office together with poundage. If there be controversy as to the amount of rent, the judge shall determine by order how much shall be paid in what time intervals. Withdrawal by the plaintiff of rent deposited in the Court Clerk's office pending appeal shall not operate to estop him from urging on appeal his right to the possession of the premises. Failure to pay current rentals while the appeal is pending shall be considered as abandonment of the appeal.

(b) Execution of Writ If No Supersedeas Bond Posted.

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

Section 1715. Forcible Entry and Detainer Action on Small Claims Docket.

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