

CHAPTER NINE

JUDGMENT

Section 901. 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, the report of a master, or the record of prior proceedings.

(b) **Judgment Upon Multiple Claims or Involving Multiple Parties.** When more than one claim 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 anytime 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 therefore is made either in a statute of the Tribe or in this Title, costs shall be allowed as a matter of course to the prevailing party unless the Court otherwise directs; but costs, including attorney fees and statutory authorization for collection of damages or requirement for bonds or undertakings, against the Tribe, its officers, and agencies shall be imposed only to the extent

specifically permitted by tribal 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 Tribe, 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.

(e) **Applied to Probate Proceedings.** A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Tribal District Court in the distribution of decedent's estate.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 901]

Section 902. 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 as follows:

(1) By the Clerk. When the plaintiff's claims against a defendant is for a sum certain or for a sum which can, by computation, be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) By the Court. In all other cases the party is entitled to a judgment by default shall apply to the Court therefore; 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 Tribe.

(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 909(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 901(c).

(e) **Judgment Against the Tribe.** No judgment by default may be entered against the Tribe, its officers, or agencies unless sixty (60) days written notice has been served upon the Chief Executive Officer and the Tribal Legislative Authority. If during such sixty (60) day period the Tribe is without counsel, and the Tribe 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 Tribe, its agencies, or officers shall be allowed to cure any default. No judgment by default shall be entered against the Tribe, 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 902]

Section 903. 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 the 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 Clerk 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 the liability.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 903]

Section 904. 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 tribal 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 904]

Section 905. 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 as to 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, 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) **Forms 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 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 or 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 905]

Section 906. Declaratory Judgments

The procedure for obtaining a declaratory judgment in actions arising in equity, or through contract, or pursuant to any specific Tribal law 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 703 and 704. The existence of another adequate remedy does not preclude a 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 906]

Section 907. Entry of Judgment

(a) Subject to the provisions of Section 901(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 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;

(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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 907]

Section 908. 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.

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.

(b) **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 (1) year from the date of the judgment.

(c) **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.

(d) **On Initiative of Court.** Not later than ten (10) days after entry of judgment the Court of its own initiative may order a new trial 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 therefore.

(e) **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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 908]

Section 909. 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 under Section 908(b); (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 the Title or by an independent action.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 909]

Section 910. 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 or 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 910]

Section 911. 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 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 or any proceedings to enforce a judgment pending the deposition of a motion for a new trial or to alter or amend a judgment made pursuant to Section 908, or of a motion or relief from a judgment or order made pursuant to Section 909, or of a motion or judgment in accordance with a motion for a directed verdict made pursuant to Section 757, or of a motion for amendment to the findings or for additional findings made pursuant to Section 751(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 Tribe or Agency Thereof.** When an appeal is taken by the Tribe or an officer or agency thereof or

by direction of any department of the Government of the Tribe, 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 901(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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 911]

Section 912. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 912]

Section 913. Reserved

Section 914. 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 (18) years, may show cause against such order of judgment.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 914]

Section 915. Judgments as Liens

Judgments of the Tribal District Court and the Courts of the United States shall be liens on real estate of the judgment debtor within the Tribal 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 Tribal 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 Tribal District Court.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 915]

Section 916. Discharge of Money Judgment Liens

In the event of an appeal to the Tribal 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 debtor's depositing, with the Court Clerk of the Tribal 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 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 cash 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 cash 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 916]

Section 917. Additional Cash 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 cash 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 shall be set by the Court, the judgment shall be revived and attachment may be issued thereon.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 917]

Section 918. 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.

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

PUBLIC LAW # T 6 § 918]

Section 919. Interest on Money Judgments

All money judgments of the Tribal District Court shall bear interest at the rate of ten percent (10%) simple interest per annum, except authorized judgments against the Tribe, its political subdivisions, and agents 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 Tribal law, or the law of the jurisdiction in which the contract was made, upon the amount of interest which may be charged.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 919]

Section 920. 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 Tribal 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 (5) 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 920]

Section 920.1 Payment of Judgments From Individual Indian Moneys

Whenever the Tribal 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 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 Tribal 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 judgment 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.

TITLE 6

CIVIL PROCEDURE

§

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 920.1]

SUBCHAPTER A

FOREIGN JUDGMENTS

Section 921. Definition

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

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 921]

Section 922. 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 Tribe 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 Tribal 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 Tribal 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 922]

Section 923. Grounds for Non-Recognition

(a) A foreign judgment is not conclusive if:

(1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign Court did not have personal

jurisdiction over the defendant; or

(3) The foreign Court did not have jurisdiction over the subject matter.

(b) A foreign judgment need not be recognized if:

(1) The defendant in the proceedings in the foreign Court did not receive notice of the proceedings in sufficient time to enable him to defend;

(2) The judgment was obtained by fraud;

(3) The cause of action on which the judgment is based is repugnant to the public policy of the Tribe;

(4) The judgment conflicts with another final and conclusive judgment;

(5) The proceeding in the foreign Court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that Court; or

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

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 923]

Section 924. Notice of Filing

(a) At the time of the filing of the foreign judgment, the judgment creditor or his attorney shall make and file with the Clerk of the Court an affidavit setting forth the name and last known post office address of the judgment debtor, and of the judgment creditor.

(b) Promptly upon 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 include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any. In

addition, the judgment creditor may mail a notice of filing of the judgment to the judgment debtor and mail file proof of mailing with the Clerk. Lack of notice of filing by the Clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(c) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until twenty (20) days after the date the judgment is filed.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 924]

Section 925. Stay of Execution of Foreign Judgment

(a) If the judgment debtor shows the Tribal 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 Tribal District Court any ground upon which enforcement of a judgment of the Tribal 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 Tribal jurisdiction.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 925]

Section 926. 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 Tribal District Court.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 926]

Section 927. Optional Procedure

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

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 927]

SUBCHAPTER B

EXECUTION

Section 931. Executions - Defined

Executions shall be deemed process of the Court, and shall be issued by the Court Clerk, and directed to the Chief of the Tribal Police.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 931]

Section 932. Kinds of Executions

Executions are of three (3) kinds:

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

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 932]

Section 933. Property Subject to Levy

All real estate not bound by the lien of the judgment, as well as goods and chattels of the debtor, shall be liable to be taken on execution and sold, as hereinafter provided.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 933]

Section 934. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 934]

Section 935. 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 Tribal District 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 not 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 Tribe, its subdivisions or agents.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 935]

Section 936. Priority Among Property

The writ of execution against the property of the judgment debtor issuing from the Tribal 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 936]

Section 937. Priority Among Executions

When two (2) or more writs of execution against the same debtor shall be sued out and when two (2) or more writs of execution against the same debtor shall be delivered to the officer prior to the date of sale of this property, no preference shall be given to either of such writs; but if a

sufficient sum of money 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 937]

Section 938. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 938]

Section 939. Who Makes Levy

It shall be unlawful for anyone to levy an attachment or execution within the Tribal jurisdiction who is not a bonded Tribal or Federal Police Officer.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 939]

Section 940. When Levy Void

Any attachment or execution issued to, or levied by anyone other than a bonded Tribal or Federal Police officer 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 940]

Section 941. Penalty for Unlawful Levy

Anyone violating the provisions of Section 939 of this Title shall be punished by a fine not to exceed one hundred dollars (\$100.00) or confinement in the Tribal jail not to exceed thirty (30) days or both.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 941]

Section 942. Levy on Property Claimed by Third Person

If the officer, by virtue of an execution issued from the Tribal 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 942]

Section 943. Re-Delivery to Defendant

In all cases where the Tribal Police Chief 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 and 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 943]

Section 944. Notice of Sale of Chattels

The officer who levies upon goods and chattels, by virtue of an execution issued by the Tribal 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 the sale. The notice shall be given by advertisement, published in some newspaper printed, or, in case no legal newspaper be published, by setting up advertisements in five (5) public places in the reservation. Two (2) 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 944]

Section 945. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 945]

Section 946. Filing and Indexing of Execution

(a) When a general execution is issued and placed in the custody of the Tribal Police Chief 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) If a general or special execution is levied upon an interest in lands and tenements, the Tribal Police Chief shall endorse on the face of the writ the legal description and shall have three (3) 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) 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 Clerk.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 946]

Section 947. Waiver of Appraisement

It is against the public policy of the Tribe 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 947]

Section 948. Return of Appraisement

The officer receiving such return of appraisement pursuant to Section 946(b) of this Title shall forthwith deposit a copy thereof with the Clerk of the Court and advertise and sell property, agreeably to the provisions of this Title.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 948]

Section 949. When Lien Restricted

If, upon such return, as aforesaid, it appears, by the inquisition, that two-thirds (2/3) 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 (2/3) 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 Tribe but all lands, the corporation or associations indebted to the Tribe 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 law in such cases made and provided.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 949]

Section 950. 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 Courthouse door or other public

bulletin board within a common area of the Courthouse and in five (5) other public places in the reservation, 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 950]

Section 951. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 951]

Section 952. Police Chief's Deed

The Chief of the Tribal 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 the Chief of the Tribal 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 952]

Section 953. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 953]

Section 954. Demand for Printing Fees

Before any officer shall be excused from giving the notification mentioned in Section 952, he shall demand of the party for whose benefit the execution was issued, his agent or attorney, the fees in said Section specified.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 954]

Section 955. Place of Sale

All sales of interests in lands or tenements under execution shall be held at the Tribal Courthouse unless some other place within the reservation is designated by the Judge having jurisdiction in the case. No Tribal Police officer 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 955]

Section 956. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 956]

Section 957. Levy on Realty Under Several Executions

In all cases where two (2) or more executions shall be put into the hands of the Tribal 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 the Tribal Police or other officer to levy such 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 (2/3) 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 957]

Section 958. Deed by Successor of Officer Making Sale

If the term of service of the Tribal Police Chief or other officer who has made, or shall hereafter make sale of any non-trust interest in lands and tenements, shall expire, or if the Tribal Police Chief 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 Tribal Police Chief 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 the Tribal Police Chief or other officer who made the sale had executed the same.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 958]

Section 959. Payment to Defendant of Overplus After Sale

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

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 959]

Section 960. Reversal of Judgment After Sale of Interest in Land

If any judgment or judgments, in satisfaction of which any non-trust interests in 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 960]

Section 961. Execution on Judgment in Favor of Tribe

In all civil actions wherein the Tribe as plaintiff, has heretofore or may hereafter recover judgment, and where in any such action an execution has or may be issued, the Tribe 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 Tribal Legislative Body, said amount to be credited upon the judgment.

And further, when such property offered for sale at execution is brought by the Tribe, said property may be sold for the Tribe by the officer or officers upon whose relation the Tribe was party plaintiff, and further provided that at such execution sales, the attorney or attorneys representing the Tribe may bid for the Tribe, not to exceed the amount of the judgment and such additional amount as may be approved by the Tribal Legislative Body, 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 Tribe was plaintiff, may sell said property by executing a good and sufficient Bill of Sale, to be attested by the Secretary of the Tribe. 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 Tribe was party plaintiff, may execute in the name of the Tribe by said officer a good and sufficient deed to be attested by the Secretary of the Tribe. 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 Tribe. 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 the Tribal land purchases fund for the purchase of further real property.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 961]

Section 962. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 962]

Section 963. Return of Execution

The Chief of the Tribal 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 (90) days from the date thereof.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 963]

Section 964. Principal and Surety

In all cases where judgment is rendered in the Tribal 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 the Chief of the Tribal 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 the 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. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 964]

Section 965. 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 tot he judgment creditors property. Such order may be enforced by contempt proceedings.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 965]

SUBCHAPTER C

CONTRIBUTION

Section 971. 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. Upon a filing of such notice the Clerk shall make an entry thereof in the margin of the docket.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 971]

Section 972. Joint Tortfeasors - Contribution - Indemnity - Exemptions - Release, Covenant Not to Sue, Etc.

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

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

(d) 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) 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) 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) This subchapter shall not apply to breaches of trust or of other fiduciary obligation.

(h) 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 972]

SUBCHAPTER D

COSTS

Section 981. 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.:

[Name of Tribe, Name of Reservation] in the District Court of [Name of Tribe]: 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 981]

Section 982. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 982]

Section 983. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 983]

Section 984. Certain Costs 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 984]

Section 985. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 985]

Section 986. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 986]

Section 987. Several Actions on Joint Instrument

Where several actions are brought on one bill of exchange, promissory note or other obligations, 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 Tribal jurisdiction or otherwise subject to suit and service or process in the Tribal District Court and the whereabouts of such persons were known or could have been ascertained with reasonable diligence.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 987]

Section 988. Clerk to Tax Costs

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

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 988]

Section 989. 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 989]

Section 990. Attorney Fees Taxable as Costs

(a) 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 taxes and collected as costs.

(b) 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) 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, 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) 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 taxes and collected as costs.

(e) 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 taxes and collected as other costs of the action, except that a plaintiff who is required to pay costs pursuant to Section 903 of this Title may not recover his attorney's fees as provided by this subsection.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 990]

Section 991. Costs Defined

Costs include, in addition to items of expense specifically recoverable as costs pursuant to any statute of the Tribe, 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, Tribal 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 991]

Section 992. 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 Tribal Police Chief on behalf of the parties when such fees and costs are not provided for by the Tribal statute. Such fees and costs shall be maintained at the minimum level possible considering the needs of the Court Fund.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 992]