

TITLE 2 - RULES OF PROCEDURE

CHAPTER 2-5 CIVIL JUDGMENTS

2-5-0 CIVIL JUDGMENTS AND RECORDS

2-5-1 Definition

Judgment - includes a final trial court ruling on the merits, a decree and any order from which an appeal lies. 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 the party's pleadings.

2-5-2 Whose Rights Determined

Subject to the provisions of Rule 54(b), Federal Rules of Civil Procedure, judgment may be given for or against one (1) or more of several plaintiffs and for or against one (1) or more of several defendants; and the court may, when the justice of the case requires, determine the ultimate rights of the parties on each side as between themselves.

2-5-3 Judgment On Findings by the Court

In all actions tried on the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered. In granting or refusing interlocutory injunctions, the court shall similarly set forth findings of fact and conclusions of law which constitute the grounds of its action. Findings of fact and conclusions of law are unnecessary in decisions on motions.

2-5-4 Validity and Effect of Judgment

(a) The requisites of a valid judgment are -

- (1) adequate notice and an opportunity to be heard by persons whose interests are to be adjudicated,
- (2) the court must have territorial jurisdiction, and
- (3) the court must have subject matter jurisdiction.

(b) An objection of lack of adequate notice or opportunity to be heard may, in the absence of default, be waived by not raising the objection in the trial court.

(c) A trial court determination of territorial jurisdiction is conclusive if raised and adjudicated.

(d) A defense of lack of subject matter jurisdiction may be raised by any party or by the court at any time and cannot be waived.

(e) In considering the effect of a former adjudication in Tribal Court, the rules of res judicata are applicable to domestic and foreign judgments, including but not necessarily limited to, the concepts of barring relitigation and issue preclusion.

2-5-5 Default

(a) When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, the party entitled to a judgment by default shall apply to the court.

(b) A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.

(c) No default of any party shall be entered, and no default judgment shall be entered against any party, except upon application of the opposing party. No judgment by default shall be entered when service has been by publication, through a showing of evidence deemed satisfactory to the court; the moving party demonstrates that other available methods of service were reasonably attempted and failed. No judgment by default shall be entered against a minor or incompetent person unless represented by a guardian, conservator or other such representative who has appeared in the proceeding. If the party against whom the judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application.

(d) If, upon receipt of an application for a default judgment, the court finds that in order for it 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 as it deems necessary and proper.

(e) 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.

(f) No judgment by default shall be entered against the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes) of Oregon or an official or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.

2-5-6 Setting Aside Default

For good cause shown, the court may set aside a judgment of default.

2-5-7 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 the defending party for the money or property or to the effect specified in the 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 Clerk shall enter the judgment. An offer not accepted is deemed withdrawn and evidence thereof is not admissible.

2-5-8 Records of Judgments

(a) The Clerk of Court shall keep with the records of the court a "judgment book" in which judgments must be entered.

(b) The Clerk shall also keep a docket. A docket is a book with each page divided into eight columns and headed as follows: judgment debtors; judgment creditors; time of entry of judgment; where entered in judgment book; date of taking appeal; judgment of appellate court; and time of entry of satisfaction of judgment. If the judgment is for relief other than money damages, the general character of the relief granted must be stated in the docket.

(c) The judgment book and the docket are open for public inspection during office hours of the Clerk of Court at no charge.

2-5-9 Entry of Judgment

Upon a verdict by a jury or a decision by the court granting any relief or denying all relief, the Clerk shall prepare a form of judgment for the prompt approval and signature of the court. Each judgment shall be set forth on a separate document. Upon approval, the Clerk shall enter the judgment by placing it in its chronological order in the judgment book. Parties or their attorneys or representatives shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.

2-5-10 Docketing of Judgment--Period of Lien

(a) Immediately after the entry of the judgment in the judgment book, the Clerk must make the proper entries of the judgment under the appropriate heads in the docket.

(b) From the time the judgment is docketed, it becomes a lien upon the non-exempt property of the judgment debtor owned by him or her at the time of the judgment or which may be afterward acquired. The lien continues until the judgment is satisfied or for a period of six (6) years, whichever first occurs.

2-5-11 Entry of Satisfaction of Judgment in Docket

Satisfaction of a judgment shall be entered in the Clerk's docket upon an execution returned satisfied or upon an acknowledgment of satisfaction filed with the Clerk. An acknowledgment of satisfaction is made by endorsement of the judgment creditor or his or her attorney on the face or the margin of the record of the judgment. Whenever a judgment is satisfied in fact otherwise than by execution, the creditor or his or her attorney must give such endorsement. Upon motion, the court may compel the endorsement or may order the entry of satisfaction to be made without it.

2-5-20 ENFORCEMENT OF FOREIGN JUDGMENTS

2-5-21 Definition

Foreign Judgment - means a judgment, decree or order of a court of the United States, of a State or of a federally recognized Indian tribe.

2-5-22 Filing and Status of Federal Court Judgment

A copy of a federal court judgment, authenticated by the court of its origin, may be filed with the Clerk of Court. The Clerk shall treat the federal foreign judgment in the same manner as a judgment of the Tribal Court. A judgment so filed is subject to the same procedures of reopening, vacating or staying as a judgment of the Tribal Court and may be enforced in like manner.

2-5-23 Notice of Filing of Federal Judgment

(a) At the time of the filing of the federal court judgment, the judgment creditor or the creditor's attorney shall file with the Clerk of Court an affidavit setting forth the name and last-known post office address of the judgment debtor and judgment creditor. The affidavit must include a statement that the federal judgment is valid, enforceable and not appealable, and the extent to which it has been satisfied.

(b) Promptly upon filing the federal judgment and affidavit, the judgment creditor or someone on his or her behalf shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to the debtor's attorney of record, if any, each at his last-known address, by certified mail, return receipt requested. The notice must include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any, within

the Reservation. The judgment creditor shall file with the Clerk an affidavit setting forth the date upon which the notice was mailed.

(c) The federal judgment may not be executed upon by the judgment creditor earlier than thirty (30) days after the date of mailing the notice of filing.

(d) If, during the thirty- (30) day period, the judgment debtor shows the Tribal Court any ground upon which a similar Tribal Court judgment would be stayed, the court will stay enforcement of the federal court judgment for an appropriate period.

2-5-24 Filing and Status of State Court Judgments and the Judgments of Other Tribal Courts

In the interests of comity, a party in whose favor a state court judgment or the judgment of another tribal court was entered may bring an action for enforcement of the judgment in Tribal Court. Such action shall be commenced by the filing of a verified complaint, to which the authenticated foreign judgment and a copy of the entire record of the state court or tribal proceeding shall be attached. The complaint shall include:

(a) jurisdictional facts sufficient for the court to determine that the state or tribal court had subject matter jurisdiction over the cause and personal jurisdiction over the defendant during the proceedings, and

(b) the information required in section 2-5-23(a) to be supplied by affidavit.

2-5-25 Grounds for Declination of Enforcement of State Court Judgment

(a) A defendant in an action to enforce a state court judgment or the judgment of another tribal court may collaterally attack the judgment in a first responsive pleading on grounds of jurisdictional defects or infringement of the rights of the defendant under the federal Indian Civil Rights Act.

(b) If a defendant fails to file a responsive pleading, the court will subject the foreign judgment and record to strict scrutiny for jurisdictional or constitutional deficiencies. Such scrutiny may include an evidentiary hearing on any jurisdictional or constitutional issues raised on the face of the foreign judgment or record of proceedings.

(c) If the court finds jurisdictional or constitutional defects in the judgment or the record of the state or tribal court proceedings, it will decline to enforce the judgment.

2-5-26 Decision and Enforcement

A ruling accepting or declining a state or tribal court judgment for enforcement shall be based upon findings of fact and conclusions of law. The court's ruling shall be filed with the Clerk of Court for entry in the judgment book and docket. If enforcement of the judgment is declined by the court, the Clerk shall transmit the findings and conclusions to the court issuing the judgment.

2-5-27 Authentication of Foreign Judgment and Court Records

An official record kept within the United States, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of that record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody.

2-5-28 Fees

Any person filing a foreign judgment or a complaint seeking to enforce a foreign judgment shall pay to the Clerk of Court a fee of \$75.

2-5-40 EXECUTION ON JUDGMENT

2-5-41 Time Limit for Issuing Execution

The party in whose favor judgment is given may, at any time within six (6) years after the entry thereof, have a writ of execution issued for its enforcement.

2-5-42 Renewal After Six (6) Years

A judgment may be renewed after the lapse of six (6) years from its date of entry by motion or by a new judgment founded on supplementary pleadings. It may not be renewed a second (2nd) time.

2-5-43 Execution After Death of a Party

Notwithstanding the death of a party after the judgment, execution may be issued or it may be enforced as follows:

- (a) In case of the death of the judgment creditor, the judgment may be enforced upon application of the creditor's personal representative or successor in interest.
- (b) In case of the death of the judgment debtor, if the judgment is for the recovery of non-exempt property or for the enforcement of a lien, execution may be issued with the same effect as if the judgment debtor were living.

2-5-44 Compelling Contribution or Repayment

(a) When property liable to an execution against several persons is sold and more than a due proportion is satisfied out of the proceeds of the sale of property of one or them, or one of them pays, without a sale, more than his share, he or she may compel contribution from the others. When a judgment is against several persons and is upon an obligation of one of them as surety for another and the surety pays the amount or any part of the judgment, the surety may compel repayment from the principal.

(b) The person so paying or contributing is entitled to enforce contribution or repayment if, within ten (10) days after the payment, he or she files with the Clerk of Court notice of the payment and claim to contribution or repayment. The Clerk shall make an entry of the notice in the margin of the docket.

2-5-45 Methods of Enforcement

(a) When the judgment is for money or the possession of non-exempt real or personal property, it may be enforced by a writ of execution.

(b) When the judgment requires the sale of property, it may be enforced by a writ reciting the judgment or its material parts and directing the Tribal Police Chief to execute the judgment and apply the proceeds as the judgment directs.

(c) When the judgment requires the performance of any other act than those designated in subsections (a) and (b) of this Section, a certified copy of the judgment may be served upon the party against whom the same is rendered or upon the person or officer required to obey the judgment, and obedience may be enforced by the court.

2-5-46 Application for Writ of Execution

A person in whose favor a judgment is rendered may apply to the court for a writ of execution. An application for a writ shall be directed to a judge of the Tribal Court. The application for the writ shall contain

(a) the name, address and telephone number(s) of the applicant,

(b) the name and address of the person against whom the judgment is to be enforced,

(c) the date of the judgment, a description of the property to be executed upon and its location, the principal amount owed if the judgment is for the payment of money, and any accumulated post judgment interest,

- (d) if personal property subject to a security interest is to be taken on execution, evidence that a deposit in the amount of the secured debt and interest, payable to the secured party, has been made with the filing officer with whom, pursuant to law, the financing statement has been filed,
- (e) a copy of the judgment,
- (f) a form of the writ, and
- (g) evidence of payment of a fee of \$75 to the Clerk of Tribal Court upon the filing of the application.

2-5-47 Duty of Secured Party

- (a) A secured party under any security agreement of record shall, upon fifteen (15) days' notice in writing served upon him in person by any judgment creditor of a judgment debtor seeking to satisfy a judgment, is required to file in the office where the financing statement covering the security agreement is filed an affidavit showing the amount of the indebtedness then actually due and owing to the secured party. Such affidavit shall state the amount of the original obligation for which the security agreement was given as security, all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, all payments of whatever kind, whether on principal or interest, made by the debtor to the date of the execution of the affidavit, and the balance then remaining due and unpaid to the secured party. If the secured party fails, refuses or neglects within fifteen (15) days from the service of any demand in writing to file the required affidavit, the security agreement shall be of no force or effect against such creditor upon the seizure on execution of any property subject to the security agreement.
- (b) If the amount shown to be due is paid to the filing officer or to the secured party in satisfaction of the security agreement by any execution creditor against the debtor, the secured party is required to surrender to the filing officer the security agreement and any note or other evidence of indebtedness secured thereby, which security agreement or other evidence of indebtedness shall be delivered by the secured party or filing officer to the execution creditor.

2-5-48 Contents of Writ

The writ of execution must -

- (a) be issued in the name of the Tribes, sealed with the seal of the Tribal Court and subscribed by a judge;
- (b) be directed to the Tribal Police Chief, or the employer of the judgment debtor, as prescribed in section 2-5-51;

- (c) describe the judgment, stating the name and address of the applicant for the writ and of the person against whom the judgment is to be enforced, the date when the judgment was entered, and, if it is for money, the amount of the judgment and the amount actually due thereon, or if not for money, the amount of the execution stated in dollars and cents;
- (d) describe in detail the property to be executed upon;
- (e) require the Tribal Police Chief or the employer of the judgment debtor, as appropriate, to act substantially as provided in Sections 2-5-50 and 2-5-52, and
- (f) contain directions to the levying officer as provided in Sections 2-5-56 and 2-5-57, or as may be required to complete the execution pursuant to law.

2-5-49 Issuance of Writ

- (a) Not less than five (5) nor more than ten (10) days after the filing of an application for a writ of execution, the court will approve the application and issue the writ unless it finds, in writing, that incomplete or inaccurate information is contained in the application or the form of writ, that exempt property is proposed to be executed upon, or that the execution would be in contravention of the rights of a secured creditor.
- (b) Upon subscription of the writ by the judge, the Clerk of Court shall docket the writ and transmit it or a certified copy of the same, with the application, to the levying officer.

2-5-50 Execution in Particular Circumstances

- (a) A judgment rendered against debtors and sureties shall so state, and an execution shall direct the levying officer to make the amount due out of the nonexempt goods, lands, wages or assets of the debtors, and only if the judgment cannot be so satisfied, to make the balance out of the nonexempt property, personal or real, of the sureties.
- (b) If the writ of execution is against the property of a judgment debtor, it shall require the levying officer to satisfy the judgment, with interest, out of the nonexempt personal property of the debtor and, if sufficient personal property cannot be found, out of his nonexempt real property.
- (c) If the writ of execution be against non-exempt real or personal property in the hands of personal representatives, heirs, devisees, legatees or trustees, it shall require the levying officer to satisfy the judgment, with interest, out of such property.

(d) If the writ of execution be for the delivery of the possession of nonexempt real or personal property, it must require the levying officer to deliver the possession of the property, particularly describing it, to the party entitled to possession.

2-5-51 To Whom Execution Issued

(a) Where the writ is against the non-exempt property of a judgment debtor or where it requires the delivery of non-exempt real or personal property, it must be issued to the Tribal Police Chief.

(b) Where the writ is against earnings or wages of a judgment debtor it may be called a writ of garnishment, and it must be issued to the debtor's employer in compliance with the requirements of Section 2-5-52(b).

2-5-52 How Writ Executed

(a) If the Tribal Police Chief is the levying officer, he or she must execute the writ against the property of the judgment debtor no later than sixty (60) days after receipt of the writ by levying on a sufficient amount of nonexempt property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than necessary to satisfy the judgment and accruing costs, the Tribal Police Chief must levy only on such part of the property as the judgment debtor may select if the property selected is sufficient to satisfy the judgment and costs.

(b) If the levying officer is an employer of the judgment debtor, the sum to be levied for each pay period is to be calculated as follows:

(1) Except as provided in subsections (2) and (3), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(A) the amount by which his or her disposable earnings for the week exceed thirty (30) times the federal minimum hourly wage in effect at the time the earnings are payable; or

(B) 25% of his or her disposable earnings for that week.

(2) The restrictions of subsection (1) of this Section do not apply in the case of an order or judgment for the maintenance or support of any person issued by a court of competent jurisdiction.

(3) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce a

maintenance or support order described in subsection (2) of this Section may not exceed:

(A) 50% of the judgment debtor's disposable earnings for that week if he or she is supporting a spouse or dependent child (other than a spouse or child for whom the order is issued); or

(B) 60% of the judgment debtor's disposable earnings for that week if he is not supporting a spouse or dependent child.

(4) For purposes of this subsection, the definitions of earnings, disposable earnings and garnishment are as set for in 15 U.S.C. Section 1672.

2-5-53 Security for Costs When Property Seized

If the Tribal Police Chief will incur substantial costs in transporting, keeping or storing the property seized, the party requesting service of a writ of execution shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

2-5-54 Return of the Execution

(a) A writ of execution issued to the Tribal Police Chief shall be made returnable to the Clerk of Court not more than sixty (60) days after imposition of the levy as provided in Section 2-5-52(a).

(b) A writ of execution issued to an employer for the garnishment of the wages of a judgment debtor shall be made returnable to the Clerk of Court not more than thirty (30) days after the judgment is satisfied or within two (2) years from the date of its issuance, whichever shall earlier occur.

2-5-55 Clerk to Record Returned Execution

If property is levied upon, the Clerk of Court must record the execution and the return of the writ and certify the same as true copies in a book to be called the "execution book", which must be indexed with the names of the plaintiffs and defendants in execution alphabetically arranged, and kept open at all times during office hours for the inspection of the public, without charge.

2-5-56 Property Subject to Execution -- Limitations and Exemptions

(a) All goods, chattels, moneys and other property, both real and personal, or any interest of the judgment debtor in such property, except exempt property as provided in section 2-5-57, are liable to execution subject to the limitations set out in subsections (b) and (c) of this subsection.

(b) Only those earnings of a judgment debtor subject to garnishment as provided in Section 2-5-52 are liable to execution.

2-5-57 Property Exempt from Execution

A judgment debtor is entitled to exemption from execution on the following:

- (a) any property, real or personal, within the jurisdiction of the Tribes, to which the legal title is held by the United States of America for the benefit of the Tribes or any individual Indian;
- (b) all lands, buildings and grounds with the fixtures, equipment, furniture, books, papers, computers and appurtenances pertaining to the public offices or for the use of Tribes or the public use of its members, and such property as may be necessary to carry out the governmental functions of any governmental entity with property located within the jurisdiction of the Tribes;
- (c) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;
- (d) personal property recognized by the Tribal Court or the Tribal Council as having significant spiritual, religious, or traditional value;
- (e) benefits the judgment debtor has received or is entitled to receive under -
 - (1) federal social security
 - (2) federal, state or Tribal public assistance,
 - (3) veterans' disability programs
 - (4) unemployment compensation or workers' compensation programs,
- (f) a home,
- (g) maintenance and child support
- (h) the judgment debtor's interest, not exceeding a value of \$2,000 in any item or \$6,000 in the aggregate, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops and musical instruments,
- (i) the judgment debtor's interest, not to exceed \$4,000 in one motor vehicle, and

(j) the judgment debtor's interest, not to exceed \$4,000 in aggregate value, in any implements, professional books and tools, of the trade of the judgment debtor or a dependent of the judgment debtor.

2-5-58 Effective Date and Application to Pending Proceedings

Chapters 2-5-0 through 2-5-40 of this Title apply to all civil actions filed on or after April 14, 2002, to judgments in proceedings pending on that date, and to post judgment procedures and limitations, and enforcements on judgments outstanding on that date.

APPENDIX A

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

CIVIL JUDGMENTS

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the amended "Civil Judgments" Ordinance, Resolution No. 07-055, Ordinance 43A, in a regular Tribal Council meeting on May 20, 2007. Vote was 6 (for), 1 (against) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved the amended "Civil Judgments" Ordinance, Resolution No. 07-012, Ordinance No. 43A, in a regular Tribal Council meeting on February 11, 2007. Vote was 7 (for), 0 (against) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the "Civil Judgments" Ordinance, Resolution No. 02-036, Ordinance No. 43, in a regular Tribal Council meeting on April 14, 2002. Vote was 7 (for), 0 (against) and 0 (abstained).