

TITLE 2 – RULES OF PROCEDURE

CHAPTER 2-6 CIVIL REMEDIES

2-6-0 SOVEREIGN IMMUNITY

The Court shall have no jurisdiction over any suit brought against the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes) without the consent of the Tribes. Nothing contained within this Code shall be deemed to constitute a waiver or renunciation of the sovereign immunity of the Tribes to suit. Such consent or waiver must be expressly made by the Tribes' Tribal Council by majority vote through passage of an ordinance, by resolution, adopted by the Tribes' Tribal Council.

2-6-1 TRADITIONAL REMEDIES

2-6-2 When Available

Where the relief requested by a party includes a traditional remedy and

- (a) all parties are Tribal members; or
- (b) all parties consent to the award of traditional remedies to the prevailing party; then
- (c) the Court may grant the relief requested or any traditional remedy, statutory remedy or combination of traditional and statutory remedies that it finds to be in the interests of justice.

2-6-3 Objection to Traditional Relief

If a complaint or counterclaim prays for the award of a traditional remedy, an opposing party may move in the first responsive pleading to strike or amend the prayer on grounds that the relief requested is not, in fact, traditional, or, if traditional, inappropriate to relieve the injury complained of. Such motion shall be treated in the same manner as other pretrial motions and may be the subject of an evidentiary hearing if requested by a party or deemed advisable by the Court.

2-6-4 to 2-6-9 Reserved for Expansion

2-6-10 DAMAGES

2-6-11 Detriment Defined

Detriment is a loss or harm suffered to person or property.

2-6-12 Right to Compensatory Damages

A person who suffers detriment from the unlawful act or omission of another may recover from the person at fault a compensation in money, which is called damages. Damages must, in all cases, be reasonable.

2-6-13 Right to Damages for Future Detriment

Damages may be awarded in a judicial proceeding for detriment resulting after the commencement of the action and certain to result in the future.

2-6-14 Limitation on Recovery from Tribes and Tribally Owned Corporations

(a) Damages available to a prevailing claimant in any action in tort against the Tribes, any Tribal entity, its official, agents or employees, shall be limited as set forth in the CTCLUSITC 2-7-5.

(b) Any measure of damages contained in a duly made and approved Tribal contract, resolution or ordinance involving the Tribes or a Tribal entity as a party defendant shall prevail over the provisions of this code.

2-6-15 Nominal Damages When No Appreciable Detriment

When a breach of duty has caused no appreciable detriment to the party affected, the party may yet recover nominal damages. Nominal damages shall be in an amount such as one dollar (\$1.00), which is intended to demonstrate that the party prevailed in its claim, but did not suffer a quantifiable loss.

2-6-16 Measures of Particular Damages

(a) No person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides.

(b) The value of an instrument in writing is presumed to be equal to that of the property to which it entitles the owner.

(c) Where the cost of repairing a motor vehicle exceeds its value, the measure of damages is the actual replacement value of the vehicle. Actual replacement value is the actual cash value of the vehicle immediately prior to the damage.

(d) For breach of contract, the measure of damages, except when otherwise provided by law or contract, is the amount which will compensate the party aggrieved for all the detriment which was proximately caused thereby or in the ordinary course of things would be likely to result therefrom. Damages which are not clearly ascertainable in their nature and origin cannot be recovered for a breach of contract. Recovery is prohibited for emotional or mental distress alleged to be caused by a breach of contract.

(e) The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation with interest thereon.

(f) For the breach of an obligation not arising from contract, the measure of damages, except as otherwise expressly provided by statute, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

(g) The detriment caused by the wrongful occupation of real property is deemed to be the value of the use of the property for the time of the occupation, not exceeding the five (5) years next preceding the commencement of the action, and the costs of recovering possession.

(h) The detriment caused by the wrongful conversion of personal property is presumed to be the value of the property at the time of its conversion with the interest from that time and a fair compensation for the time and money properly expended in pursuit of the property.

2-6-17 Collateral Source Reductions in Actions Arising from Bodily Injury or Death

(a) As used in this Section, the following definitions apply:

(1) Collateral Source – means a payment for something that is later included in a tort award and which is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(A) for medical expenses, hospitalization, home care or disability payments under the federal Social Security Act, the Indian Health Care Act or other federal, state or Tribal law or program to implement such law;

(B) under any health or disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(C) under any contract or agreement of any person, group, organization, partnership or corporation to provide, pay for or reimburse the costs of hospital, medical, dental or other health care services, except gifts or gratuitous contributions of assistance;

(D) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(E) any other source, except the assets of the plaintiff or his or her immediate family.

(2) Person – includes individuals, corporations, government entities, associations, firms, partnerships and any other entity or aggregate of individuals.

(3) Plaintiff – a person who alleges that he or she sustained bodily injury, or on whose behalf recovery for bodily injury or death is sought, or who would have a beneficial, legal or equitable interest in a recovery. The term includes a legal representative, a person with a wrongful death or surviving cause of action, a person seeking recovery on a claim for loss of consortium, society, assistance, companionship, or services, and any other person whose right of recovery or whose claim or status is derivative of one who has sustained bodily injury or death.

(b) In an action arising from bodily injury or death, when the total award against all defendants is in excess of ten thousand dollars (\$10,000) and the plaintiff will be fully compensated for his damages, exclusive of Court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source.

(c) The jury shall determine its award without consideration of any collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence is admissible at the hearing to show that condensable damages awarded to the plaintiff have been paid from a collateral source or that the plaintiff has been or may be reimbursed from a collateral source.

2-6-18 Right to Interest

There is no right of interest in any cause of action subject to the provisions of this Chapter.

2-6-19 Punitive Damages

A trier of fact may award, in addition to compensatory damages, reasonable punitive damages for the sake of example and for the purpose of punishing a defendant, subject to the following exclusions and conditions:

(a) Punitive damages may be expressly prohibited or limited by statute;

(b) Punitive damages may not be recovered in any action arising from a contract, except that they are not prohibited in a products liability action;

(c) Punitive damages may not be recovered in any action against a governmental entity;

(d) Punitive damages may not be recovered in any action unless the trier of fact has found that the defendant committed actual fraud or acted with actual malice.

(1) A defendant acts with actual malice if he or she has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and deliberately proceeds to act in conscious or intentional disregard of, or indifference to, the high probability of injury to the plaintiff.

(2) A defendant commits actual fraud for purposes of this section when the plaintiff has a right to rely on the representation of the defendant and suffers injury as a result of that reliance and if the defendant:

(A) makes a representation with knowledge of its falsity; or

(B) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(e) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of the evidence, but less than beyond a reasonable doubt.

(f) After liability for punitive damages is determined by the trier of fact,

(1) if by a jury, the amount of damages must be determined by the jury in an immediate, separate proceeding, at which evidence of a defendant's financial affairs, financial condition and net worth is admissible and must be considered,

(2) if by a judge, the judge shall clearly state his reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(A) the nature and reprehensibility of the defendant's wrongdoing;

(B) the extent of the defendant's wrongdoing;

(C) the intent of the defendant in committing the wrong;

(D) the profitability of the defendant's wrongdoing, if applicable;

(E) the amount of actual damages awarded by the jury;

(F) the defendant's net worth;

(G) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and

(H) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

(3) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (f)(2) of this Section. If, after review, the judge determines that the jury's award of punitive damages should be increased or decreased, he may do so. The judge shall clearly state his reasons for increasing, decreasing or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (f)(2) of this Section.

2-6-20 to 2-6-29 Reserved for Expansion

2-6-30 SPECIFIC PERFORMANCE OF OBLIGATIONS

2-6-31 When Specific Performance May be Required

Specific relief may be given -

- (a) when such relief could also be granted as a traditional remedy as provided in Sections 2-6-2 and 2-6-3, and
- (b) as provided in this Part.

2-6-32 When Specific Performance of an Obligation May be Compelled

The specific performance of an obligation may be compelled when:

- (a) the act to be done is in the performance, wholly or partly, of an express trust;
- (b) the act to be done is such that pecuniary compensation for its nonperformance would not afford adequate relief;
- (c) it would be extremely difficult to ascertain the actual damage caused by the nonperformance of the act to be done; or
- (d) it has been expressly agreed in writing by the parties to the contract that specific performance may be required by either party or that damages shall not be considered adequate relief.

2-6-33 Obligations which Cannot be Specifically Enforced

The following obligations cannot be specifically enforced:

- (a) an obligation to render personal service or to employ another in the rendering of personal service;

- (b) an agreement to marry or live with another;
- (c) an agreement to perform an act which the party has no power to perform lawfully when required to do so;
- (d) an agreement to procure the act or consent of any third person; or
- (e) an agreement the terms of which are too ambiguous to ascertain the precise act which is to be done.

2-6-34 Right to Specific Performance Mutual

When either of the parties to an obligation is entitled to a specific performance thereof, the other party is also entitled to it, together with full compensation for any want of entire performance by the other party.

2-6-35 Parties Who Cannot be Compelled to Perform

Specific performance cannot be enforced against a party to a contract in any of the following cases:

- (a) he or she has not received adequate consideration for the contract;
- (b) if it is not, as to him or her, just and reasonable; or
- (c) if the party's assent was
 - (1) obtained by the misrepresentations, concealment, circumvention or unfair practices of any party to whom performance would become due under the contract or by any promise of such party which has not been substantially fulfilled, or
 - (2) given under the influence of mistake, misapprehension or surprise.

2-6-36 Parties Who Cannot Obtain Specific Performance

Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his or her part to the obligation of the other party except where his or her failure to perform is only partial and either entirely immaterial or capable of being fully compensated, in which case specific performance may be compelled upon full compensation being made for the default.

2-6-40 RELATIONS WITH THE COURT

2-6-41 Contempt of Court

Any person failing to maintain the respect due the Tribal Court or engaging in offensive conduct in the Courtroom shall be deemed guilty of contempt of Court and subject to immediate sentencing by the judge to imprisonment for a period not to exceed three (3) days, or a fine not to exceed one thousand dollars (\$1000.00), or both the jail sentence and fine.

2-6-42 Acts or Failures to Act Which Constitute Contempt of Court

Any person may be held in contempt of Court for any of the following reasons:

- (a) Disorderly or contemptuous or insolent behavior, committed in immediate view and presence of the Court while in session;
- (b) Any breach of the peace, noise or other disturbance which interrupts the proceedings of the Court;
- (c) Willful disobedience or resistance to any process, judgment, summons or order lawfully issued by the Court;
- (d) Deceit or abuse of process of the Court by a party or attorney to a judicial proceeding;
- (e) Acting as an attorney, officer spokesman or official of the Court without authority;
- (f) Refusing to be sworn or answer as a witness; and
- (g) Any other interference with the process, proceedings, or dignity of the Court or a judge of the Court while the Court is in session.

2-6-43 Civil Contempt

A civil contempt consists of the willful refusal to perform an act that is yet in the person's power to perform after being ordered by the Court to perform the act, or the failure to comply with an order of the Court or Court rule. Relief in a civil contempt may include:

- (a) A fine payable to the Court; or
- (b) The imposition of a fine or imprisonment for the purpose of coercing performance. Imprisonment shall remain in effect for so long as the party in contempt has the ability to comply with the Court order or directive, and refuses. Persons incarcerated under this statute shall be brought to Court on a regular basis for the Court to determine if the contemtor continues in his refusal to purge of the contempt. A person shall not be

entitled to reimbursement of a fine for the reason that he subsequently complies with the Court order. Compliance with the Tribal Court's order prior to a contempt hearing held in relation to such order shall be a full defense to prosecution for civil contempt for refusal to comply with such order.

(c) Civil contempt is a Class B violation as provided in the Violations Offenses CTCLUSITC 3-3-6(b).

2-6-44 Criminal Contempt

When so provided by Tribal Code,

(a) Criminal contempt is a past act where a person knowingly or willfully violates a Tribal Court rule or order of the Court.

(b) Criminal contempt is a Class B offense as provided by the Criminal Offenses provisions of this Code.

2-6-45 Contempt Procedure

(a) A direct contempt is one committed in the presence of the Court or so near thereto as to be disruptive of the Court proceedings, and as such may be adjudged and punished summarily as provided in this subchapter.

(b) All other contempts shall be determined at an outside hearing. Notice of the hearing shall be given orally by the judge in open Court in the presence of the defendant, upon the filing of a complaint by the prosecutor, by an order to show cause or the issuance of an arrest warrant. The notice shall state:

(1) The time and place for the contempt hearing, allowing a reasonable time for the preparation of the defense;

(2) The exact contempt charges and the essential facts constituting such charges;

(3) Whether the contempt proceedings are civil or criminal as provided by this Chapter; and

(4) The sanctions which may be imposed against the defendant.

(c) In proceedings involving other than direct contempt cases if the charge involves disrespect to or criticism of a judge, such judge is disqualified from presiding at the trial or hearing except with the defendant's consent. If the defendant does not consent, the case shall be presided over by any other available Tribal judge.

2-6-50 DECLARATORY JUDGMENTS AND INJUNCTIONS

2-6-51 Declaratory Judgment -- Creation of Remedy

In a case of actual controversy within its jurisdiction, the Tribal Court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

2-6-52 Procedure for Obtaining a Declaratory Judgment

The procedure for obtaining a declaratory judgment pursuant to section 2-6-51 shall be in accordance with the Rules of Civil Procedure; however, a trial by jury may not be demanded. 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.

2-6-53 Further Relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

2-6-54 Definition of Injunction

An injunction is a Court order requiring a person to refrain from a particular act.

2-6-55 When Injunction May Not be Granted

An injunction cannot be granted:

- (a) to stay a judicial proceeding pending at the commencement of an action in which the injunction is demanded;
- (b) to prevent the lawful exercise of a Tribal office by the appropriate officer or officers;
- (c) to prevent a legislative act; or
- (d) to stay execution upon a valid and subsisting judgment after expiration of one (1) year from the rendition of the judgment.

2-6-56 Form and Scope of Injunction or Restraining Order

An order granting an injunction or a restraining order shall:

- (a) set forth the reasons for its issuance;
- (b) be specific in its terms;
- (c) describe in reasonable detail, and not by reference to the complaint or any other document, the act or acts sought to be restrained; and
- (d) be binding only upon the parties to the action; their officers, agents, employees and attorneys; and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
- (e) order the posting of a bond by the plaintiff, other than the Tribes, in an amount reasonably calculated to provide recovery of damages occasioned by the preliminary injunction or temporary restraining order, should it later be determined that the defendant was improperly enjoined.

2-6-57 Temporary Restraining Order

When an application for an injunction is made upon adequate notice or an order to show cause, as provided in Section 2-6-60, the Tribal Court may enjoin the adverse party, until the hearing and decision of the application, by an order which is called a temporary restraining order.

2-6-58 Grant of Restraining Order without Notice

- (a) A temporary restraining order may be granted without written or oral notice to the adverse party or opposing attorney only if:
 - (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or the opposing attorney could be heard in opposition; and
 - (2) the applicant or the applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give notice and the reasons supporting his or her claim that notice should not be required.
- (b) Each temporary restraining order granted without notice must:
 - (1) be endorsed with the date and hour of its issuance;
 - (2) be filed immediately in the Clerk's office and entered in the record;
 - (3) define the injury and state why such injury is irreparable and why the order was granted without notice; and

- (4) expire by its terms within such time after entry, not to exceed ten (10) calendar days, as the Court fixes.

2-6-59 Application for Injunction to be Heard without Delay

Whenever a temporary restraining order is granted without notice, the application for an injunction must be set for hearing at the earliest possible time and takes precedence over all matters. At the hearing, the party who obtained the temporary restraining order shall proceed with the application for the injunction; or if he or she does not do so, the Court or judge shall dissolve the temporary restraining order. On two (2) days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion expeditiously.

2-6-60 Notice of Application for Preliminary Injunction

- (a) No preliminary injunction may be issued without reasonable notice to the adverse party of the time and place of the making of the application.
- (b) Before granting an injunction order, the Court shall make an order requiring cause to be shown, at a specified time and place, why the injunction should not be granted, and the adverse party may in the meantime be restrained as provided in sections 2-6-56 through 2-6-58.

2-6-61 Evidence Required for Issuance of Preliminary Injunction

Upon the hearing, each party may present affidavits or oral testimony. An injunction order may not be granted on affidavits unless

- (a) they are duly verified, and
- (b) the material allegations of the affidavits setting forth the grounds for the order are made positively and not upon information and belief.

2-6-62 Application to Dissolve or Modify an Injunction – Hearing

The party enjoined may apply to the Court to dissolve or modify an injunction. The application may be made upon reasonable notice or upon an order to show cause returnable at a specified time or immediately after service thereof. The application must be supported by an affidavit showing that there is not sufficient ground for the injunction to continue or that the scope of the injunction is too broad. If, upon the hearing, it satisfactorily appears that there are not sufficient grounds for the injunction order, the order must be dissolved; or if it satisfactorily appears that the extent of the injunction order is too great, the order must be modified.

2-6-63 Actions for Injunctive Relief Involving Tribes

None of the foregoing language is intended to grant a waiver of sovereign immunity against the Tribes so that a temporary restraining order or preliminary injunction may be entered against the Tribes or any agent or official acting in their official capacity, ex parte or otherwise, unless an action is instituted by the Tribes against its own agent or employee or official.

2-6-64 Actions for Declaratory or Injunctive Relief Brought by Tribes

In any action brought by the Tribes requesting declaratory or injunctive relief, no counterclaims or cross-complaints shall be permitted to be filed by any other party.

2-6-65 Severability

If a Court of competent jurisdiction holds any provision of this Code invalid, the invalid portion will be severed and the remaining provisions shall continue in full force and effect.

APPENDIX A

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

CIVIL REMEDIES

LEGISLATIVE HSITORY AND EDITORIAL CHANGES

The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the "Civil Remedies" Ordinance, Resolution No. 06-028, Ordinance No. 073, in a regular Tribal Council meeting on February 12, 2006. One change was made in 2-6-0... "by entering into a written contract which provides for such wavier, or other means adopted" was removed. Vote was 7 (for), 0 (against) and 0 (abstaining).

The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved the "Civil Remedies" Ordinance, Resolution No. 05-119, Ordinance No. 073, in a regular Tribal Council meeting on December 11, 2005. Vote was 7 (for), 0 (against) and 0 (abstaining).