

**CIVIL PROCEDURE**

**CHAPTER SIXTEEN**

**SMALL CLAIMS PROCEDURE**

Section 1601. Small Claims

The following suits may be brought under the small claims procedure:

(a) Actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, where the amount sought to be recovered, exclusive of attorney's fees and other court costs, does not exceed Two Thousand Dollars (\$2,000.00). Libel or slander actions may not be brought in the small claims court.

(b) Actions to replevy personal property where the value of personal property sought to be replevied does not exceed Two Thousand Dollars (\$2,000.00); where the claims for possession of personal property and to recover money are pleaded in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought to be recovered, exclusive of attorney's fees and other costs, does not exceed Two Thousand Dollars (\$2,000.00);

No action may be brought under small claims procedure by any collection agency, collection agent or any assignee of a claim. In those cases which are uncontested the amount of attorney's fees allowed shall not exceed ten percent (10%) of the judgment.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1602. Small Claims Affidavit

Actions under the small claims procedure shall be initiated by plaintiff or his attorney filing an affidavit in substantially the following form with the Clerk of the Court:

IN THE DISTRICT COURT  
[NAME OF TRIBE]  
SMALL CLAIMS DIVISION

_____	)	
Plaintiff	)	
	)	
vs.	)	Small Claims No. _____
	)	
_____	)	
Defendant	)	

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**SMALL CLAIMS AFFIDAVIT**

[NAME OF TRIBE] )  
 ) ss.  
[NAME OF RESERVATION] )

\_\_\_\_\_, being duly sworn, deposes and says:

That the defendant resides at \_\_\_\_\_, (within) (without) the Tribal jurisdiction, and that the mailing address of the defendant is \_\_\_\_\_.

That the defendant is indebted to the plaintiff in the sum of \$\_\_\_\_\_ for \_\_\_\_\_, which arose (within) (without) the Tribal jurisdiction that plaintiff has demanded payment of said sum, but the defendant refused to pay the same and no part of the amount sued has been paid.

and/or

That the defendant is wrongfully in possession of certain personal property described as \_\_\_\_\_ that the value of said personal property is \$\_\_\_\_\_. That plaintiff is entitled to possession thereof and has demanded that defendant relinquish possession of said personal property, but that defendant wholly refused to do so.

\_\_\_\_\_  
Plaintiff

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_\_.

\_\_\_\_\_  
Notary Public (or Clerk or Judge)

My Commission Expires: \_\_\_\_\_

On the affidavit shall be printed:

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## ORDER

The People of [Name of Tribe], to the within named defendant:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers and witnesses needed by you to establish your defense to said claim.

This matter shall be heard at [name and address of courthouse building], in [complete address of courthouse], at the hour of \_\_\_\_\_ o'clock of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, or at the same time and place seven (7) days after service hereof, whichever is the latter. And you are further notified that in case you do not so appear, judgment will be given against you as follows:

For the amount of said claim as it is stated in said affidavit, for possession of the personal property described in said affidavit, and, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of this order.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Clerk of the Court (or Judge)

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1603. Preparation of Affidavit

The claimant shall prepare such an affidavit as is set forth in Section 1602 of this Chapter or, at his request, the Clerk of said Court shall draft the same for him. Such affidavit may be presented by the claimant in person or sent to the clerk by mail. Upon receipt of said affidavit, properly sworn to, the Clerk shall file the same and make a true and correct copy thereof, and the clerk shall fill in the blanks in the order printed on said copy and sign the order.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1604. Service of Affidavit

Unless service by the Tribal Police Chief or other authorized person is requested by the plaintiff, the defendant shall be served by mail. The Clerk shall enclose a copy of the affidavit and the order in an envelope addressed to the defendant at the address stated in said affidavit, prepay the postage, and mail said envelope to said defendant by certified mail and request a return receipt from addressee only. The clerk shall attach to the original affidavit the receipt for the certified

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letter and the return card thereon or other evidence of service of said affidavit and order. If the envelope is returned undelivered and sufficient time remains for making service, the clerk shall deliver a copy of the affidavit and order to the Tribal Police Chief who shall serve the defendant in the time stated in Section 1605.

\_\_\_\_\_ [History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1605. Date for Appearance

The date for the appearance of the defendant as provided in the order endorsed on the affidavit shall not be more than thirty (30) days nor less than ten (10) days from the date of said order. The order shall be served upon the defendant at least seven (7) days prior to the date specified in said order for the appearance of the defendant. If it is not served upon the defendant, the plaintiff must apply to the Clerk for a new alias order setting a new day for the appearance of the defendant, which shall not be more than thirty (30) days nor less than ten (10) days from the date of the issuance of the new order. When the clerk has fixed the date for appearance of the defendant, he shall inform the plaintiff, either in person or by certified mail, of said date and order the plaintiff to appear on said date.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1606. Transfer of Actions

On motion of the defendant the action shall be transferred from the small claims docket to the general civil docket of the Court, provided said motion is filed and notice given to opposing party at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer and, provided further, that the defendant deposit the cost of filing a complaint in a civil action, and thereafter, the action shall proceed as other civil actions and shall not proceed under the small claims procedure. The clerk shall enclose a copy of the order transferring the action from the small claims docket to the general docket in an envelope addressed to the plaintiff, with postage prepaid. Within twenty (20) days of the date the transfer order is signed, the plaintiff shall file a civil complaint that conforms to the standards of civil pleadings and shall be answered and proceed to trial as in other civil actions. If the plaintiff ultimately prevails in the action so transferred by the defendant, a reasonable attorney's fee shall be allowed to plaintiff's attorney to be taxes as costs in the case.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1607. Counterclaim or Setoff

No formal pleading, other than the claim and notice, shall be necessary, and there is no requirement to assert any counterclaim or cross claim, but if the defendant wishes to state new matter which constitutes a counterclaim or a setoff, he shall file a verified answer, a copy of which

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shall be delivered to the plaintiff or his attorney in person, and filed with the Clerk of the Court not later than forty-eight (48) hours prior to the hour set for the appearance of said defendant in such action. Such answer shall be made in substantially the following form:

**COUNTERCLAIM OR SETOFF**

IN THE DISTRICT COURT  
[NAME OF TRIBE]  
SMALL CLAIMS DIVISION

\_\_\_\_\_)  
Plaintiff, )  
)  
vs. ) Small Claims No. \_\_\_\_\_  
)  
\_\_\_\_\_)  
Defendant. )

**CLAIM OF DEFENDANT**

[NAME OF TRIBE] )  
) ss.  
[NAME OF RESERVATION] )

\_\_\_\_\_, being first duly sworn, deposes and says: That said plaintiff is indebted to said defendant in the sum of \$\_\_\_\_\_ for \_\_\_\_\_, which amount defendant prays may be allowed as a claim against the plaintiff herein.

\_\_\_\_\_  
Defendant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Notary Public (or Clerk or Judge)

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

**Section 1608. Actions for Amounts Exceeding in Excess of Two Thousand Dollars**

If a claim, a counterclaim, or a setoff is filed for an amount in excess of Two Thousand Dollars (\$2,000.00), the action shall be transferred to the general civil docket of the District Court

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unless both parties agree in writing and file said agreement with the papers in the action that said claim, counterclaim or setoff shall be tried under the small claims procedure. If such an agreement has not been filed, a judgment in excess of Two Thousand Dollars (\$2,000.00) may not be enforced for the part that exceeds Two Thousand Dollars (\$2,000.00) shall deposit with the Clerk of the Court costs that are charged in other cases, less any sums that have been already paid to the clerk, or his claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1609. Attachment or Garnishment, Other Matters

No attachment or prejudgment garnishment shall issue in any suit under the small claims procedure. Proceedings to enforce or collect a judgment rendered by the trial court in a suit under the small claims procedure shall be in all respects as in other cases. No depositions shall be taken or interrogatories or other discovery proceeding shall be used under the small claims procedure except in aid of execution. No new parties shall be brought into the action, and no party shall be allowed to intervene in the action.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1610. Trial by Court

Actions under the small claims procedure shall be tried to the Court. Provided, however, if either party wishes a reporter, he must notify the Clerk of the Court in writing at least forty-eight (48) hours before the time set for the defendant's appearance and must deposit with said notice with the Clerk the sum of twenty dollars (\$20.00) against the costs or producing the record. The plaintiff and the defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, and the judge may call such witnesses and order the production of such documents as he may deem appropriate. The hearing and disposition of such actions shall be informal with the sole object of dispensing speedy justice between the parties.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1611. Payment of Judgment

If judgment be rendered against either party for the payment of money, said party shall pay the same forthwith, provided, however, the judge may make such order as to time of payment or otherwise as may, by him, be deemed to be right and just.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

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### Section 1612. Appeals

Appeals may be taken from the judgment rendered under small claims procedure to the Supreme Court of the Tribe in the same manner as appeals are taken in other civil actions, provided that any other party which did not request a reporter and provided in Section 1610 shall not be granted a new trial or other relief on appeal due to lack of a record.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1613. Fees

A fee shall be charged and collected for the filing of the affidavit for the commencement of any action, for the filing of any counterclaim or setoff, for the mailing of the copy of the affidavit as determined by rules of the Court, and, if the affidavit and order are served by the Tribal Police, the Clerk shall collect the usual police service fee, which shall be taxes as costs in the case. After judgment, the clerk shall issue such process and shall be entitled to collect such fees and charges as are allowed by law for the like services in other actions. All fees collected hereunder shall be deposited with other fees that are collected by the District Court. Provided that any statute provided for an award of attorney's fees shall be applicable to the small claims division if the attorney makes an appearance in the case, whether before or after judgment or on hearing for disclosure of assets.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1614. Costs

The prevailing party in an action is entitled to costs of the action, including the costs of service of the order for the appearance of the defendant and the costs of enforcing any judgment rendered therein.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1615. Judgments Rendered Under Small Claims Procedure

(a) Except as otherwise provided herein, judgments rendered under the Small Claims Procedure shall not be entered upon the judgment docket. Such judgment shall not become a lien upon real property unless entered upon the judgment docket as hereinafter provided.

(b) Any small claims judgment, when satisfied by payment other than through the office of the Court Clerk or otherwise discharged, may be released by the Court upon written application to the Court by the judgment debtor and upon proof of due notice thereof having been mailed by the Court Clerk to the judgment creditor at his last known address at least ten (10) days prior to the hearing of the application. Payment of all costs necessary to accomplish said release

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shall be paid by the judgment debtor.

(c) Such judgment shall become a lien on any non-trust interest real property of the judgment debtor within the Tribal jurisdiction only from and after the time a certified copy of the judgment has been filed in the office of the Court Clerk for entry in the clerk's land tract records book. No judgment under the Small Claims Procedure Act shall be a lien on the real property of a judgment debtor until it has been filed in this manner. When a judgment is entered upon the judgment docket, the Court Clerk shall instruct the prevailing party of the manner in which to proceed to file such judgment for the purpose of obtaining a lien against the real property of the judgment debtor and the Court Clerk shall provide the proper certified copy of the judgment necessary to file.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1616. Fee for Docketing Judgments

\_\_\_\_\_The Court Clerk shall, upon payment by the prevailing part of a fee established by Court rule, cause the judgment to be entered upon the judgment docket. Fees collected pursuant to this section shall become part of the cost of the action.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 1617. Other Actions in Small Claims Court

By leave of the Court, and with the consent of all parties, other actions not provided by herein, or exceeding the maximum amount allowed to be claimed by Section 1601 and 1608, except actions for liable and slander, may be tried under the small claims procedure. The motion for leave to file in such cases shall contain the consent of the defendant endorsed thereon, or such consent shall be promptly filed upon the submittal for filing of the small claims affidavit.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]