

# CIVIL PROCEDURE

## CHAPTER TEN

### LIMITATION OF ACTIONS

#### **Section 1001. Limitations Applicable**

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

#### **Section 1002. Limitation of Real Actions**

Actions for the recovery of real property or for the determination of any adverse right or interest therein, can only be brought within the periods hereinafter prescribed, after the claim shall have accrued, and at no other time thereafter.

(a) An action for the recovery of non-trust interest in real property sold on execution, or for the recovery of real estate partitioned by judgment in kind, or sold, or conveyed pursuant to partition proceedings, or other judicial sale, or an action for the recovery of real estate distributed under decree of The Court, in administration or probate proceedings, when brought by or on behalf of the execution debtor or former owner, or his or their heirs, or any person claiming under him or them by title acquired after the date of the judgment or by any person claiming to be an heir or devisee of the decedent in whose estate such decree was rendered, or claiming under, as successor in interest, any such heir or devisee, within five (5) years after the date of the recording of the deed made in pursuance of the sale or proceeding, or within five (5) years after the date of the entry of the final judgment of partition in kind where no sale is had in the partition proceedings; or within five (5) years after the recording of the decree of distribution rendered by the Court in an administration or probate proceeding; provided, however, that where any such action pertains to real estate distributed under decree of the Court in administration or probate proceedings and would at the passage of this Title be barred by the terms hereof, such action may be brought within five (5) years after the passage of this Title.

(b) An action for the recovery of real property sold by executors, administrators, or guardians, upon an order or judgment of a Court directing such sale, brought by the heirs or devisees of the deceased person, or the ward of his guardian, or any person claiming under any or either of them, by the title acquired after the date of judgment or order, within five (5) years after the date of recording of the deed made in pursuance of the sale.



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(c) An action for the recovery of real property sold for taxes, within five (5) years after the date of the recording of the tax deed.

(d) An action for the recovery of real property not hereinbefore provided for, within twenty (20) years.

(e) An action for the forcible entry and detention or forcible detention only of real property, within three (3) years.

(f) Paragraphs a, b, and c shall be fully operative regardless of whether the deed or judgment or the precedent action or proceeding upon which such deed or judgment is based is void or voidable in whole or in part, for any reason, jurisdictional or otherwise; provided that this paragraph shall not be applied so as to bar causes of action which have heretofore accrued, until the expiration of five (5) years from and after its effective date.

(g) Nothing in this Section should be construed to impose any statute of limitation upon the enforcement of a right to possession of real property held by the United States in trust for any Indian or Indian Tribe under any law of the United States or restricted against alienation by any law of the United States in conformity to the laws of the United States relating to such real property.

### **Section 1003. Persons Under Disability - In Real Property Actions**

Any person entitled to bring an action for the recovery of real property, who may be under any legal disability when the cause of action accrues, may bring his action within two years after the disability is removed.

### **Section 1004. Limitation of Other Actions**

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

(a) Within seven (7) years: An action upon any contract, agreement or promise in writing.

(b) Within five (5) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute including a forfeiture or penalty except where the statute imposes a different limitation and an action on a foreign judgment.

(c) Within three (3) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract except as otherwise provided in building construction tort claims, and not hereinafter enumerated; an action



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for relief on the ground of fraud — the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud.

(d) Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment.

(e) An action upon the official bond or undertaking of an executor, administrator, guardian, Tribal Police officer, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued.

(f) An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

### **Section 1005. Persons Under Disability in Actions Other Than Real Property Action**

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

### **Section 1006. Absence or Flight of Defendant**

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

### **Section 1007. Limitation of New Action After Failure**

If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fail in such action otherwise than upon the merits, the plaintiff, or, if he should die, and the cause of action survive, his representatives may commence a new action within two years after



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the reversal or failure although the time limit for commencing the action shall have expired before the new action is filed. An appeal of any judgment or order against the plaintiff other than on the merits as above stated shall toll the two year period during the pendency of the appeal.

### **Section 1008. Extension of Limitation**

In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same shall have been made, an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby.

### **Section 1009. Statutory Bar Absolute**

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

### **Section 1010. Law Governing Foreign Claims**

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

### **Section 1011. Limitation of Building Construction Tort Claims**

No action in tort to recover damages:

(a) For any deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property,

(b) For injury to property, real or personal, arising out of any such deficiency, or

(c) For injury to the person or for wrongful death arising out of any such deficiency,

shall be brought against any person owning, leasing, or in possession of such an improvement or performing or furnishing the design, planning, supervision

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or observation of construction or construction of such an improvement more than ten (10) years after substantial completion of such an improvement.



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### CHAPTER ELEVEN

#### FAMILY RELATIONS

##### **Section 1101. Recording of Marriages and Divorces**

All marriages and divorces <sup>including common law marriages,</sup> to which an Indian person is a party, whether consummated in accordance with the State law or in accordance with Tribal law or custom, shall be recorded in writing executed by both parties thereto within three (3) months at the office of the Clerk of the Tribal District Court in the marriage record and a copy thereof delivered to the Bureau of Indian Affairs agency of the jurisdiction in which either or both of the parties reside for the agency records.

##### **Section 1102. Tribal Custom Marriage and Divorce**

(a) Indians who desire to become married or divorced by the custom and common law of the Tribe shall conform to the custom and common law of the Tribe. Indians who assume or claim a divorce by Tribal common law and custom shall not be entitled to remarry until they have complied with the Tribal common law and remain separated for six months as in the case of statutory divorces, nor until they have recorded such divorce at the office of the Clerk of the Tribal District Court with a copy delivered to the Bureau of Indian Affairs Agency for agency records/

(b) The validity of Indian custom marriage and divorce shall continue to be recognized as heretofore, recognized by the Absentee Shawnee Tribe.

(c) In any case wherein the marital status of an Indian person is at issue, the Court shall have full authority to determine the marital status of the parties to any purported Tribal common law marriage or divorce and enter its declaratory judgment thereon.

##### **Section 1103. Tribal Custom Adoption**

Tribal Custom Adoptions shall continue to be recognized and shall be fully recognized by the Court, without the necessity of filing any document, when proven for the purpose of establishing extended family status in child custody actions, determining child custody, the obligation to support children, and other family matters. However, Tribal common law adoptions shall not be recognized for the purpose of probate of decedent's estates unless, prior to the death of the decedent, the common law adoption was formalized by action of the Tribal Court, or in the case of adults, by a writing acknowledging such adoption filed in the Tribal Court. A Tribal Common law adoption as a child of another does not terminate parental rights of the parents, nor deprive the natural parents of their ultimate right to the custody of child who is adopted by another pursuant to the Tribal common law.



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### **Section 1104. Determination of Paternity and Support**

The Tribal District Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Department of the Interior or by the Tribal District Court.

### **Section 1105. Determination of Heirs**

(a) When any member of the Tribe dies within the Tribal jurisdiction or while owning a non-trust interest in land within the Tribal jurisdiction, leaving property other than an allotment or other trust property subject to the jurisdiction of the United States, any person claiming to be an heir of the decedent and may bring a suit in the Tribal District Court to determine the heirs of the decedent and to divide among the heirs such property of the decedent. No determination of heirs shall be made unless all the possible heirs known to the Court, to the superintendent of the Indian Agency, and to the claimant have been notified of the suit as in service of summons and given full opportunity to come before the Court and defend their interests. Possible heirs who are not residents of the Tribal jurisdiction may be notified by certified mail, return receipt requested, and if said notice is returned refused or otherwise unclaimed, by further first class mail containing a copy of the original notice and an additional notice stating to the recipient that the action will proceed ten days after mailing of the second notice. A copy of every such notice must be preserved in the record of the case.

(b) In the determination of heirs the Tribal District Court shall apply the written laws of the Tribe or the custom of the Tribe as to inheritance if such custom is proved and no written law exists. Otherwise, the Court shall apply State law in deciding what relatives of the decedent are entitled to be his heirs.

(c) Where the estate of the decedent includes any interest in restricted allotted lands or other property held in trust by the United States, over which the administrative law judge would have jurisdiction, the Tribal District Court may distribute only such property as does not come under the jurisdiction of the administrative law judge.

### **Section 1106. Approval of Wills**

When any member of the Tribe dies while domiciled within the Tribal jurisdiction or while owning a non-trust interest in land within the Tribal jurisdiction, leaving a will disposing of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Tribal District Court shall, at the request of any person named in the will or any other interested party, determine the validity of the will after giving notice and full opportunity to appear in Court to all persons who might be heirs of



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the decedent, as under the preceding section. A will shall be deemed valid if the decedent had a sane mind and understood what he was doing when he made the will and was not subject to any undue influence of any kind from another person, and if the will was made in accordance with Tribal law or custom or made in writing and signed by the decedent in the presence of two witnesses who also sign the will. If the Court determines the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or to their heirs; but no distribution of property shall be made in violation of a Tribal law or proven Tribal custom which restricts the privilege of Tribal members to distribute property by will.

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**SUBCHAPTER A**  
**STATUTORY DIVORCE**

**Section 1111. Grounds for Divorce**

The District Court may grant a divorce for any of the following causes:

- (a) Abandonment for one (1) year.
- (b) Adultery.
- (c) Impotency.
- (d) When the wife at the time of her marriage, was pregnant by another than her husband.
- (e) Extreme cruelty.
- (f) Fraudulent contract.
- (g) Incompatibility.
- (h) Habitual drunkenness.
- (i) Gross neglect of duty.
- (j) Imprisonment of the other party in a State or Federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed.
- (k) Insanity for a period of five years. The fact and duration of insanity being proved by the testimony of two physicians. Such divorce does not relieve the sane spouse from the obligation and support and shall not be granted unless a guardian has been appointed.

**Section 1112. Residence of Plaintiff or Defendant**

Either the plaintiff or the defendant in an action for divorce must have been an actual resident, in good faith, of the Tribal jurisdiction for three (3) months next preceding the filing of the petition, or a member of the Tribe.

**Section 1113. Personal Jurisdiction**

The Court may exercise personal jurisdiction over a person, whether or not a resident of the Tribal jurisdiction who lived within the Tribal jurisdiction



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in a marital or parental relationship, or both, as to all obligations for alimony and child support where the other party to the martial relationship continues to reside in the Tribal jurisdiction. When the person who is subject to the jurisdiction of the Court has departed from the Tribal jurisdiction he may be served outside of the Tribal jurisdiction by any method that is authorized by the statutes of the Tribe. In all other cases, the Court may grant a divorce but may not enter a personal judgment for alimony or child support.

### **Section 1114. Custody of Children, Disposition of Property**

That the parties appear to be in equal wrong shall not be a basis for refusing to grant a divorce. If a divorce is granted it shall be granted to both parties. In any such case or where the Court grants alimony without a divorce or in any case where a divorce is refused, the Court may for good cause shown make such order as may be proper for the custody, maintenance and education of the children, and for the control and equitable division and disposition of the property of the parties, or of either of them, as may be proper, equitable and just, having due regard to the time and manner of acquiring such property, whether the title thereto be in either or both of said parties. In making a property settlement, the Court shall have due regard for the needs of the family and justice to the parties.

### **Section 1115. Orders Concerning Property, Children, Support and Expenses**

After a petition has been filed in an action for divorce and alimony, or for alimony alone, the Court may make and enforce by attachment or otherwise, such order to restrain the disposition of the property of the parties or of either of them, and for the use, management, and control thereof, or for the control of the children and support of the wife or husband during the pendency of the action, as may be right and proper; and may also make such order relative to the expenses of the suit as will insure an efficient preparation of the case; and, on granting a divorce the Court may require the husband or wife to pay such reasonable expenses of the other in the prosecution or defense of the action as may be just and proper considering the respective parties and the means and property of each; provided further, that the Court may in its discretion make additional orders relative to the expenses of any such subsequent actions, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys. Provided, no ex parte orders shall be issued until the opposing party is granted an opportunity to be heard, unless such ex parte order provides that instead of performing thereunder the opposing party may appear on a date certain, not more than twenty (20) days thereafter, and show good cause as to why he should not comply with said order.



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### **Section 1116. Care and Custody of Children**

A petition or cross petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the marriage. If there are such children, the Court shall make provision for guardianship, custody, support and education of the minor children, and may modify or change any order in this respect, whenever circumstances render such change proper either before or after final judgment in the action.

Any child, not emancipated and declared an adult by Court order, shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If the Court determines that the parents are unable to provide for the support of the children, it may order any person obligated to support the children by the Tribal common law to be brought into the action by service of summons, and may enter an order requiring said person to contribute to the support of the children within their means.

### **Section 1117. Preference of Child**

In any divorce action in which the Court must determine custody, the child may express a preference as to which of its parents the child wishes to have custody. The Court may determine whether the best interest of the child will be served by the expression of preference and if the Court so finds then the Court may consider the expression of preference by the child in determining custody. Provided, however, the Court shall not be bound by that choice and may take other facts into consideration in awarding custody.

### **Section 1118. Paternity Determination**

In an action for a divorce, legal separation or annulment where there are children born to the parties, the Court may determine if the parties to the action are the parents of the children, although the Court finds that the parties are not married; and if the parties to the action are the parents of the children, the Court may determine which party should have custody of said children, and it may award child support to the parent to whom it awards custody, and make an appropriate order for payment of costs and attorney's fees.

### **Section 1119. Interest on Delinquent Payments**

When ordered by the Court, court ordered child support payments and court ordered payments of suit monies shall draw interest at the rate of ten percent (10%) per year from the date they become delinquent, and the interest shall be collected in the same manner as the payments upon which the interest accrues.



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### **Section 1120. Restoration of Wife's Maiden Name**

When a divorce is granted, the wife shall be restored to her maiden or former name if she so desires.

### **Section 1121. Disposition of Property**

The Court shall enter its decree confirming in each spouse the property owned by him or her before marriage and the undisposed of property acquired after marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the Court shall think reasonable, having due regard to the value of such property at the time of the divorce. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the Court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the Court shall make such division between the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to pay such sum as may be just and proper to effect a fair and just division thereof having due regard to the needs of the family. The Court may set apart a portion of the separate estate of a spouse to the other spouse for the support of the children of the marriage where custody resides with that spouse.

### **Section 1122. Effect of Divorce**

A divorce granted at the instance of one party shall operate as a dissolution of the marriage contract as to both, and shall be a bar to any claim of either party in or to the property of the other, except in cases where actual fraud shall have been committed by or on behalf of the successful party.

### **Section 1123. Remarriage and Cohabitation**

It shall be unlawful for either party to an action for divorce whose former husband or wife is living to marry a person other than the divorced spouse within six (6) months from date of the decree of divorce or to cohabit with such other person during said period and if an appeal be commenced from said decree, it shall be unlawful for either party to such cause to marry any other person and cohabit with such person until the expiration of thirty (30) days from the date on which final judgment shall be rendered pursuant to such appeal. Any person violating the provisions of this section by such marriage shall be deemed guilty of bigamy. Any person violating the provisions of this section by such cohabitation shall be deemed guilty of adultery.

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An appeal from a judgment granting or denying a divorce shall be made in the same manner as in any other civil case.

### **Section 1124. Punishment for Certain Remarriage and Cohabitation**

Every person convicted of bigamy as such offense is defined in the foregoing section shall be punished by imprisonment in the Tribal jail for a term of not more than six months.

### **Section 1125. Remarriage Within Six Months**

A marriage wherein one of the parties had not been divorced for six months shall hereafter be ground for annulment of marriage by either party.

### **Section 1126. Time When Judgment Final**

Every decree of divorce shall recite the day and date when the judgment was rendered. If an appeal be taken from a judgment granting or denying a divorce, that part of the judgment does not become final and take effect until the appeal is determined. If an appeal be taken from any part of the judgment in a divorce action except the granting of the divorce, the divorce shall be final and take effect from the date the decree of divorce is rendered, provided neither party thereto may marry another person until six (6) months after the date the decree of divorce is rendered; that part of the judgment appealed shall not become final and take effect until the appeal be determined.

### **Section 1127. Avoidance of Marriage of Incompetents**

When either of the <sup>or</sup> parties to a marriage shall be incapable, from want of age or understanding, ~~of~~ contracting such marriage, the same may be declared void by the District Court, in an action brought by the incapable party or by the parent or guardian of such party; but the children of such marriage begotten before the same is annulled, shall be legitimate. Cohabitation after such incapacity ceases, shall be a sufficient defense to any such action.

### **Section 1128. Alimony Without Divorce**

The wife or husband may obtain alimony from the other without a divorce, in an action brought for that purpose in the District Court, for any of the



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causes for which a divorce may be granted. Either may make the same defense to such action as he might to an action for divorce, and may, for sufficient cause, obtain a divorce from the other in such action.

### **Section 1129. Evidence**

No divorce shall be granted without proof taken upon the record as in other cases.

### **Section 1130. Setting Aside of Divorce Decrees**

When a decree of divorce has been issued by the District Court, said Court is hereby authorized to dissolve said decree at any future time, provided that both parties to the divorce action file a petition, signed by both parties, asking that said decree be set aside and held for naught. And further provided that both parties seeking to have the decree set aside shall make proof to the Court that neither one has married a third party during the time since the issuance of the decree of divorce.

### **Section 1131. Termination of Money Payments**

(a) In any divorce decree which provides for periodic alimony payments, the Court shall plainly state, at the time of entering the original decree, what dollar amount of all or a portion of each such payment is designated as support, and what dollar amount of all or a portion of such payment is a payment pertaining to a division of property. Upon the death of the recipient, the payments for support, if not already accrued, shall terminate, but the payments pertaining to a division of property shall continue until completed; and the decree shall so specify. The payments pertaining to a division of property shall be irrevocable. Upon the presentation of proper proof of death of such recipient, the Court shall order the judgment for the payment of support to be terminated, and the lien thereof released unless a proper claim shall be made for any amount of past due support payments by any executor, administrator or her within ninety (90) days from the date of death of the recipient. The Court shall also provide in the divorce decree that any such payment of support shall terminate after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not rendered payment of the same inequitable. Provided however, that unless the recipient shall commence an action for such determination within ninety (90) days of the date of such remarriage, the Court shall, upon proper application, order the payment of support terminated and the lien thereof discharged.

(b) An order for continuing the payments of support shall not be a lien against the real property of the person ordered to make such payments unless



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the Court order specifically provides for a lien on real property or an arrearage in such payments of support has been reduced to a judgment.

(c) The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the Court shall have jurisdiction to reduce or terminate support payments upon proof of substantial change of circumstances relating to need for support or ability to support. As used herein, cohabitation shall mean the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a marriage according to law, or not necessarily meeting all the standards of a common law marriage. The petitioner shall make application for modification and shall follow notification procedures as used in other divorce decree modification actions.

### **Section 1132. Mailing of Alimony and Support Payments**

If a judicial order, judgment or decree directs that the payment of child support, alimony, temporary support or any similar type of payment be made through the office of the Court Clerk, then it shall be the duty of the Court to transmit such payments to the payee by first class United States mail, if requested to do so by the payee. Such payments shall be mailed to the payee at the address specified in writing by the payee. In the event of a change in address of the payee it shall be the duty of the payee to furnish to the Court Clerk in writing the new address of the payee.

### **Section 1133. Modification of Decree**

Notwithstanding that a decree of divorce has become final, the Court may modify its judgment relative to child support or alimony at any time in the interest of justice and equity, having due regard for the needs of the family or families of the parties, upon motion for modification filed in the original action and served with summons requiring an answer to said motion within twenty (20) days. Such motions shall be heard as if they were an independent proceeding and discovery may be had. The order of the Court determining the motion for modification shall be a final appealable order.

### **Section 1134. Effect on Common Law Divorce**

This subchapter shall not be interpreted in derogation of the Tribal common law of Divorce, but is intended for use by those who prefer the statutory method of divorce or who cannot agree as to child custody and support, spousal support, property division, or other similar matters upon which agreement is necessary to effectuate a Tribal common law divorce.



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## Subchapter B

### DOMESTIC RELATIONS

#### **Section 1135. Marriage: Validity generally.**

A marriage between a man and a woman licensed, solemnized and registered as provided in this Act or valid in the jurisdiction where it was performed is valid within the Absentee Shawnee jurisdiction as defined by Article II of the Constitution of the Tribe.

#### **Section 1136. Recognition of previous and existing marriages.**

Marriages consummated prior to the adoption of this Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Absentee Shawnee Tribe.

#### **Section 1137. Validation of previous marriages.**

Marriages of members of the Absentee Shawnee, not performed by church, state or tribal custom ceremony, wherein such members were or are recognized as man and wife in their community, are validated and recognized as valid tribal custom marriages from the date of their inception. Parties to such marriages may obtain a marriage certificate upon proof to the clerk by affidavit or otherwise of the validity of their marriage, and payment of the \$5.00 fee.

#### **Section 1138. Procedure for judgment of validity.**

1. Any Absentee Shawnee claiming that his/her marriage was validated by Section 1137 of this Subchapter, may file a petition for a judgment declaring that such marriage was so validated. The petition will include:

- a. The Signature of petitioner's spouse or the naming of the alleged spouse as defendant in the suit and provide that proper notice to named defendant be issued.
- b. If the petitioner's spouse in such alleged marriage is not known to the petition to be living, the petitioner must prove to the satisfaction of the Court that such spouse is dead or has been absent for 5 successive years, without being known to the petitioner within that time to be living or the petition shall be dismissed.

2. If the petitioner, having complied with subsection (a) and (b) of this section, proves to the satisfaction of the Court that he or she and his or her alleged spouse were recognized as man and wife in their community on the effective date of this Code or at any time previously the court

shall issue a judgment that such petitioner and spouse were validly married on such date. If feasible, the court shall also ascertain the date of inception of such marriage and shall recite such date in the judgment.

3. In cases where a child whose parents are deceased contends that such parents' marriage was validated by Section 1138. Of this Subchapter, such child may file a petition in any Court of the Absentee Shawnee for a judgment that such marriage was so validated. If such petitioner proves to the satisfaction of the court that his parents are deceased and that they were recognized as man and wife in their community prior to the effective date of this Code, the Court shall issue a judgment that such parents were validly married on such date. If feasible, the court shall also ascertain the date of inception of such marriage and shall recite such date in the judgment.

**Section 1139. Defect in ceremony.**

All marriages of Absentee Shawnee Indians which have been recorded in the Agency office in Anadarko, Oklahoma, are recognized as valid from their inception despite any defect in the ceremony by which they were contracted. The purpose of this section is to cure defects in ceremony and not to validate marriages which may be valid for any reason other than defect in ceremony.

**Section 1140. Marriage license.**

1. No marriage shall be performed under authority of this Code unless the parties have first obtained a marriage license from the Clerk of the Absentee Shawnee Court.

2. Upon payment of the \$5.00 fee and completing a required application, the Clerk shall issue a marriage license to persons who appear entitled to be married as provided in this Subchapter.

3. The Clerk shall maintain a record of all marriage licenses and certificates issued.

4. The marriage license, properly endorsed by the person performing the marriage, shall be returned to the Clerk who shall issue a marriage certificate to the parties.

**Section 1141. Persons who may marry.**

The Absentee Shawnee Tribe will issue a marriage license to applicants who meet the following qualifications which shall be certified in an application for the marriage license.

1. Both applicants are unmarried, and if either or both parties was previously married, his/her full name and the date, place and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse.

2. Both applicants are at least 14 years old and, if over 14 years of age, but less than 18 years of age, has the written consent of his parents or guardian, properly notarized, to marry.

3. One of the applicants is an enrolled member of the Absentee Shawnee Tribe.



4. Both applicants are unrelated to each other. "Unrelated" means not a father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, aunt, uncle, nephew, niece, brother, sister or first cousin.

**Section 1142. Who may perform marriages.**

A marriage may be solemnized by a recognized clergyman, or a person recognized by his religion as having authority to marry, or judge of the Absentee Shawnee Tribe, only after issuance of a license.

**Section 1143. Marriage ceremony.**

No particular form of marriage ceremony is required provided, however, that the persons to be married must declare in the presence of the person performing the ceremony and at least 2 witnesses, that they take each other as husband and wife, and he must thereafter declare them to be husband and wife.

**Section 1144. Void and voidable marriages.**

1. Marriages between an ancestor and his descendant, between brothers and sisters, of the half as well as the whole blood, between an uncle and his niece or aunt and her nephew, or between first cousins are void from the beginning, whether or not the degree of relationship is legitimate or illegitimate, or by adoption.

2. Marriage between a person who is at the time of the marriage married to another person, still living, are void, provided, however, that such marriages will be considered valid until ruled otherwise by a court of competent jurisdiction if the party previously married:

- a. actually believed in good faith that the prior marriage had been dissolved as a result of divorce or annulment; or
- b. actually believed, in good faith, that his/her spouse was dead.

3. When a marriage is contracted in good faith and in the belief that it is a valid marriage, the issue of such marriage born or conceived prior to the voiding or receiving notice of the invalidity of the marriage for any reason shall be the legitimate issue of both parents.

4. If either party to a marriage is incapable as a result of some physical cause at the time of the marriage to enter into the marital state and such cause appears to be permanent, or if the consent of either party to marry was obtained by force or fraud, the marriage is voidable.

**Section 1145. Annulment. Grounds of annulment.**

A marriage may be annulled for any of the following causes existing at the time of marriage:

1. That the party in whose behalf it is sought to have the marriage annulled, was under the age of 18 years, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her, unless, after attaining the age of consent, such party freely cohabits with the other as husband or wife;

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

3. That either party was of unsound mind, unless such party, after coming into reason, freely cohabited with the other as husband or wife;

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband and wife; or

6. Impotence which continues and appears to be incurable.

**Section 1146. Action to annul – parties and limitations.**

An action to obtain a decree of annulment of a marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subsection 1., by the party to the marriage who was married under the age of legal consent within two years after arriving at the age of consent, or by a parent, guardian, or other person having charge of such minor male or female, at any time before such married minor has arrived at the age of legal consent;

2. For causes mentioned in subsection 2., by either party during the life of the other, or by such former husband or wife;

3. For causes mentioned in subsection 3., by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;

4. For causes mentioned in subsection 4., by the party injured, within two years after the discovery of the facts constituting a fraud;

5. For causes mentioned in subsection 5., by the injured party within two years after the marriage.

**Section 1147. Conclusiveness of judgment of annulment.**

A judgment of annulment of a marriage is conclusive only as against the parties to the action and those claiming under them.



# CIVIL PROCEDURE

## CHAPTER TWELVE

### FORCIBLE ENTRY AND DETAINER

#### **Section 1201. Forcible Entry and Detention**

The District Court shall have jurisdiction to try all actions for the forcible entry and detention, or detention only, of real property, and claims for the collection of rent or damages to the premises may be included in the same action, but other claims may not be included in the same action. A judgment in an action brought under this Title shall be conclusive as to any issues adjudicated therein, but it shall not be a bar to any other action brought by either party.

#### **Section 1202. Powers of Court**

The Court shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who, having a lawful and peaceable entry into land or tenements, unlawfully and by force hold the same, and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands and tenements are held unlawfully, then the court shall cause the party complaining to have restitution thereof.

#### **Section 1203. Extent of Jurisdiction**

Proceedings under this Chapter may be had in all cases against tenants holding over their terms and, incident thereto, to determine whether or not tenants are holding over their terms; in sales or real estate on executions, orders or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made; in sales by executors, administrators, guardians and on partition, where any of the parties to the partition were in possession at the commencement of the suit, after such sales, so made, on execution or otherwise, shall have been examined by the Court, and the same adjudged valid; and in the cases where the defendant is a settler or occupier of lands and tenements without color of title, and to which the complainant has the right of possession. This section is not to be construed as limiting the provisions of the preceding section.

#### **Section 1204. Issuance and Return of Summons**

The summons shall be issued and returned as in other cases, except that it shall command the Chief of the Tribal Police or other person serving it, to



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summon the defendant to appear for trial at the time and place specified therein, which time shall be not less than five (5) days nor more than ten (10) days from the date that the summons is issued. The summons shall apprise the defendant of the nature of the claim that is being asserted against him; and there shall be endorsed upon the summons the relief sought and the amount for which the plaintiff will take judgment if the defendant fails to appear. In all cases, pleadings may be amended to conform to the evidence.

### **Section 1205. Service of Summons**

The summons may be served as in other cases except that such service shall be at least three (3) days before the day of trial, and the return day shall not be later than the day of trial, and it may also be served by leaving a copy thereof with some person over fifteen (15) years of age, residing on the premises, at least three (3) days before the day of trial; or, if service cannot be made by the exercise of reasonable diligence on the tenant or on any person over the age of fifteen (15) years residing on the premises, the same may be served by registered mail with return receipt postmarked at least three (3) days before the date of trial.

### **Section 1206. Constructive Service of Summons**

If, in the exercise of reasonable diligence, service cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen (15) years of age, then in lieu of service by registered mail, service may be obtained for the sole purpose of adjudicating the right to restitution of the premises by the Tribal Police's posting said summons conspicuously on the building on the premises, and, if there by no building on said premises, then by posting the same at some conspicuous place on the premises sought to be recovered at least ten (10) days prior to the date of trial, and by the claimant's mailing a copy of said summons to the defendant at his last known address by registered or certified mail at least seven (7) days prior to said date of trial. Such service shall confer no jurisdiction upon the Court to render any judgment against the defendant for the payment of money nor for any relief other than the restoration of possession of the premises to the claimant. Such service shall not be rendered ineffectual by the failure of the defendant to actually receive or sign a return receipt for such mailed process.

### **Section 1207. Answer or Affidavit by Defendant**

(a) In all cases in which the defendant wishes to assert title to the land or that the boundaries of the land are in dispute, he shall, before the time for the trial of the cause, file a verified answer or an affidavit which contains a full and specific statement of the facts constituting his defense of title or boundary dispute. If the defendant files such a verified answer or



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affidavit, the action shall proceed as one in ejectment before the District Court. If the defendant files an affidavit he shall file answer within ten (10) days after the date the affidavit is filed.

(b) In all cases in which the cause of action is based on an asserted breach of a lease by the defendant, or the termination or expiration of a lease under which the defendant claims an interest in the property in a verified answer or affidavit, the plaintiff may proceed with the forcible entry and detainer action instead of an ejectment action.

(c) No answer by the defendant shall be required before the time for trial of the cause.

### **Section 1208. Trial by Court**

All cases for forcible entry and detainer or detainer only shall be tried by the Court unless the rent and damages prayed for exceeds ten thousand (10,000) dollars.

### **Section 1209. Procedure Where No Jury Available**

If a jury be properly demanded by either party, and no jury is available from the general panel, the judge shall immediately direct that an open venire be issued to the Chief of the Tribal Police or one of his deputies, for such number of jurors as may be deemed necessary, to be selected without resorting to the jury wheel. The persons selected shall have the qualifications of jurors.

### **Section 1210. Attorney Fee**

A reasonable attorney fee shall be allowed by the Court to the prevailing party.

### **Section 1211. Writ of Execution - Form - New Trial**

If judgment be for plaintiff, the Court shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in substantially the following form:

[HEADING]?

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The Absentee Shawnee Tribe to the Chief of the Tribal Police:

Whereas, in a certain action for the forcible entry and detention (or for the forcible detention as the case may be) of the following described premises, to wit: \_\_\_\_\_ tried before me, wherein, \_\_\_\_\_ was plaintiff, and \_\_\_\_\_ was defendant, judgment was rendered on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, that the plaintiff have restitution of said premises; and also that he recover rent, attorney fees and costs in the sum of \_\_\_\_\_; you, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises and the said plaintiff to have restitution of the same; also that you levy on the goods and chattels of the said defendant, and make the cost aforesaid, and all accruing costs, and of this writ, make legal service and due return.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
A. B. Judge

A motion for a new trial may be filed only within three (3) days of judgment but shall not operate to stay execution.

**Section 1212. Stay of Execution**

If no supersedeas bond be posted within the time provided herein, the officer shall forthwith restore the plaintiff to possession of the premises by executing the writ prescribed in the preceding section and shall make levy to collect the amount of the judgment and all accruing costs. The officer's return shall be as upon other executions.

The defendant shall have three (3) days after the date of judgment to post supersedeas bond conditioned as provided by law. This time limit may be enlarged by a trial judge's order to not more than ten (10) days after the date of judgment. The posting of a supersedeas bond shall not be construed to relieve the defendant of his duty to pay current rent as it becomes due while the appeal is pending. The rent shall be paid into the Court Clerk's office together with poundage. If there be controversy as to the amount of rent, the judge shall determine by order how much shall be paid in what time intervals. Withdrawal by the plaintiff of rent deposited in the Court Clerk's office pending appeal shall not operate to estop him from urging on appeal his right to the possession of the premises. Failure to pay current rentals while the appeal is pending shall be considered as abandonment of the appeal.



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**Section 1213. Forcible Entry and Detainer Action on Small Claims Docket**

An action for forcible entry and detainer brought pursuant to procedures prescribed otherwise in this title standing alone and when joined with a claim for recovery of rent, damages to the premises, where the total recovery sought, exclusive of attorney's fees and other court costs, does not exceed the jurisdictional amount for the small claims court, shall be placed on the small claims docket of the District Court. The Court Clerk shall in connection with such actions prepare the affidavit, by which the action is commenced, and the summons and generally assist the unrepresented plaintiffs to the same extent that he is now required so to do under the Small Claims Procedure Act.

**Section 1214. Affidavit Form**

The actions for unlawful entry and detainer standing alone or when joined with a claim for collection of rent or damages to the premises, or both, shall be commenced by filing an affidavit in substantially the following form with the Clerk of the Court:

IN THE DISTRICT COURT  
ABSENTEE SHAWNEE TRIBE OF OKLAHOMA

\_\_\_\_\_)  
Plaintiff )  
vs. ) Case No. SC-  
\_\_\_\_\_)  
Defendant )

FORCIBLE ENTRY AND DETAINER  
AFFIDAVIT

[Name of Reservation ] )  
[Name of Tribe ] ) ss.

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

The defendant resides at \_\_\_\_\_, and defendant's mailing address is \_\_\_\_\_.

The defendant is indebted to the plaintiff in the sum of \$ \_\_\_\_\_  
\_\_\_\_\_ for rent and for the further sum of \$ \_\_\_\_\_  
for damages to the premises rented by the defendant; the plaintiff has  
demanded payment of said sum(s) but the defendant refused to pay the  
same and no part of the amount sued for herein has been paid,  
and/or

The defendant is wrongfully in possession of certain real property  
within the Tribal jurisdiction described as \_\_\_\_\_;  
the plaintiff is entitled to possession thereof and has made demand on  
the defendant to vacate the premises, but the defendant refused to do so.

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\_\_\_\_\_  
Plaintiff

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

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

**Section 1215. Summons - Form**

The summons to be issued in an action for forcible entry and detainer shall be in the following form:

SUMMONS

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

You are hereby directed to relinquish immediately to the plaintiff herein total possession of the real property described as \_\_\_\_\_ or to appear and show cause why you should be permitted to retain control and possession thereof.

This matter shall be heard at \_\_\_\_\_  
[Name or address of Courthouse], in \_\_\_\_\_, [Town],  
[Name of Tribe], at the hour of \_\_\_\_\_  
\_\_\_\_\_ o'clock on the \_\_\_\_\_ day of \_\_\_\_\_ month, 19\_\_\_\_\_,  
or at the same time and place three (3) days after service hereof,  
whichever is the latter. (This date shall be not less than five (5) days  
from the date summons is issued.) You are further notified that if you  
do not appear on the date shown, judgment will be given against you as  
follows:

For the amount of the claim for deficient rent and/or damages to the premises, as it is stated in the affidavit of the plaintiff and for possession of the real property described in said affidavit, whereupon a writ of assistance shall issue directing the Tribal Police to remove you from said premises and take possession thereof.

In addition, a judgment for costs of the action, including attorney's fees and other costs, may also be given.

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

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



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Plaintiff or Attorney

Address

---

Telephone Number

---

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**CHAPTER THIRTEEN**

**HABEAS CORPUS**

**Section 1301. Persons Who May Prosecute Writ**

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

**Section 1302. Application for Writ**

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

(a) By whom the person, in whose behalf the writ is requested, is restrained of his liberty, and the place where restrained, naming all the parties, if they are known, or describing them, if they are not known.

(b) The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant.

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

**Section 1303. Writ Granted**

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

**Section 1304. Direction and Command of Writ**

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



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### **Section 1305. Delivery to Tribal Police Chief**

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

### **Section 1306. Service on Party Other Than Tribal Police Chief**

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

### **Section 1307. Service When Person Not Found**

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

### **Section 1308. Return and Enforcement of Writ**

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

### **Section 1309. Manner of Return**

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

- (a) The authority or cause of restraint of the party in his custody.
- (b) If the authority be in writing, he shall return a copy and produce the original on the hearing.
- (c) If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer.

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He shall produce the party on the hearing, unless prevented by sickness or infirmity or other good cause, which must be shown in the return.

### **Section 1310. Proceedings in Case of Sickness or Infirmity**

The Court or judge, if satisfied with the truth of the allegation of sickness or infirmity or other good cause for not producing the body of the person, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance; the new matter shall be verified, except in cases of commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

### **Section 1311. Hearings and Discharge**

The Court or Judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuance thereof, shall discharge the party.

### **Section 1312. Limits on Inquiry**

No judge shall inquire into the legality of any judgment or process, whereby the party is in custody, or discharge him when the term of commitment has not expired in either of the cases following:

(a) Upon process issued by any court or judge of the United States, or of any State or where such court or judge has exclusive jurisdiction; or,

(b) Upon any lawful process issued on any final judgment of a court of competent jurisdiction; or,

(c) For any contempt of any court, officer or body having authority to commit; but an order of commitment as for a contempt, upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications;

(d) Upon a warrant or commitment issued from the Tribal District Court, or any other court of competent jurisdiction, upon indictment or information.



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### **Section 1313. Writ Upon Temporary Commitment**

No person shall be discharged from an order of temporary commitment issued by any judicial or peace officer for want of bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged want of probable cause; but in all such cases, the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, let to bail or recommit the prisoner, as may be just and legal, and recognize witnesses when proper.

### **Section 1314. Writ May Issue to Admit to Bail**

The writ may be had for the purpose of letting a prisoner to bail in civil and criminal actions.

### **Section 1315. Notice to Interested Persons**

When any person has an interest in the detention, the prisoner shall not be discharged until the person having such interest is notified.

### **Section 1316. Powers of Court**

The Court or judge shall have power to require and compel the attendance of witnesses and to do all other acts necessary to determine the case.

### **Section 1317. Officers Not Liable for Obeying Orders**

No Tribal policeman or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge or enforcement made thereon.

### **Section 1318. Issuance of Warrant of Attachment**

Whenever it shall appear by affidavit that anyone is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the Court or judge, or will suffer some irreparable injury before compliance with the writ can be enforced, the Court or judge may cause a Warrant of Attachment to be issued, reciting the facts, and directed to the Chief of the Tribal Police, commanding him to take

## CIVIL PROCEDURE

the person thus held in custody or restraint, and forthwith bring him before the Court or judge, to be dealt with according to law.

### **Section 1319. Arrest of Party Causing Restraint**

The Court or judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.

### **Section 1320. Execution of Warrant of Attachment**

The officer shall execute the Warrant of Attachment by <sup>bringing</sup> bring the person therein named before the Court or Judge; and the like return and proceedings shall be required and had as in case of writs of habeas corpus.

### **Section 1321. Temporary Orders**

The Court or Judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings, that justice may require. The custody of any party restrained may be changed from one person to another, by order of the Court or Judge.

### **Section 1322. Issuance and Service on Sunday**

Any writ, warrant, or process authorized by this Chapter may be issued and served, in case of emergency on any day including Saturdays, Sundays, and holidays.

### **Section 1323. Issue of Process**

All writs and other process, authorized by the provisions of this Chapter may be issued by the Clerk of the Court upon direction of a Judge, and except summons, sealed with the seal of such Court and shall be served and returned forthwith, unless the Court or Judge shall specify a particular time for any such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed, and temporary commitments, when necessary.



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### Section 1324. Protection of Infants and Insane Persons

Writ of habeas corpus shall be granted in favor of parents, guardians, masters, husbands and wives; and to enforce the rights and for the protection of infants and insane persons; and the proceedings shall, in all such cases, conform to the provisions of this Chapter.

### Section 1325. Security for Costs Not Required

No deposit or security for costs shall be required of an applicant for a writ of habeas corpus.