

TITLE 2 - RULES OF PROCEDURE

CHAPTER 2-12 SMALL CLAIMS COURT

2-12-1 Authority and Purpose

The purpose of this Code is to grant authority to the Tribal Court to adjudicate over matters involving small claims.

2-12-2 Definitions

For purposes of this Code, the following definitions shall apply:

- (a) "Court Clerk" or "Clerk" shall mean the Clerk of the Tribal Court.
- (b) "Judge" or "Tribal Judge" shall mean any Judge of the Tribal Court.
- (c) "Reservation" shall mean all lands held in trust for the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes) or its members by the United States.
- (d) "Small Claims" shall mean claims of \$5,000 or less.
- (e) "Tribal Court" or "Court" shall mean the Tribal Court of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon.
- (f) "Tribal Council" or "Council" shall mean the Tribal Council of the Tribes.
- (g) "Plaintiff" shall mean the person or persons filing the claim.
- (h) "Defendant" shall mean the person or persons that the Plaintiff has filed suit against.

2-12-3 Requirements for a Claim

A claim may be filed with the Tribal Court only when the following conditions are met.

- (a) The claim is for the recovery of money and/or specific personal property; or performance of a contract;
- (b) The total amount of the claim, including goods or services, is Five Thousand Dollars (\$5,000) or less;
- (c) One (1) party must be a Tribal Member or a resident of the reservation. Any plaintiff that is not a Tribal Member or a resident of this reservation must waive the right to contest jurisdiction.

(d) The loan or injury must have been within the service area, or for a contract claim, the contract must have been executed or to be performed within the service area.

(e) A good faith effort was made to collect the claim.

2-12-4 Time Limit on Actions

No claim may be filed more than one (1) year after the date that the plaintiff knew or should have known of the damage or injury that the claim is based on.

2-12-5 Statement of What Can be Recovered

(a) The plaintiff may only recover one of the following, after a final judgment has been entered:

- (1) Money for the value of the claim;
- (2) The objects in controversy and the value of any loss/damage to the objects;
- (3) Work to be performed under a contract in dispute;
- (4) In kind payment, either in goods or services.

(b) Interest can also be recovered on the value of the claim.

2-12-6 Filing a Claim With the Court Clerk; Content and Form

A case shall begin upon filing with the Court Clerk a verified claim in the form that the Court has prescribed. The plaintiff shall sign the claim and verify under oath that as of the date of its filing each requirement in 2-12-3 has been met. The claim shall contain the name and mailing address of the plaintiff and of the defendant, followed by a simple statement of the claim. This statement shall include the amount of the claim and the date the actions allegedly occurred. With the claim the plaintiff shall include their affidavit stating that they meet all of the requirements in 2-12-3 of this Code, including the date that the damage or injury the claim is based on occurred.

2-12-7 Notice; Content; Service

Upon the filing of a claim, the Court Clerk shall issue a notice in the form prescribed by the court, directed at the defendant, and shall contain a copy of the claim. The Court shall serve the notice and claim upon the defendant by certified mail at the defendant's last known address. The envelope shall be marked "Deliver to Addressee Only" and "Return Receipt Requested", and the date on the return slip will serve as the date upon which the notice and claim were served on the defendant.

2-12-8 Defendant's Rights and Liabilities

Within twenty-one (21) days after the defendant was served with the notice and the claim the defendant must either admit or deny the claim.

(a) If the defendant admits the claim, the defendant may settle by paying the plaintiff the amount of the filing fees and service expenses paid by the plaintiff, plus:

- (1) Paying the amount of the claim, and mailing or providing proof of such payment to the court;
- (2) Delivering the property in dispute to the plaintiff, and if applicable an amount of money equaling the value of the loss or damage to the property, and mailing or providing proof of delivery to the Court; or
- (3) Completing performance of the promised service(s) and mailing or providing proof of performance to the Court.

(b) If the defendant denies the claim, the matter may be settled by:

- (1) filing a written request, in the form prescribed by the court, demanding a hearing in the Tribal Court, or
- (2) filing a counterclaim along with a demand for a hearing.

2-12-9 Counterclaims

A defendant may make a counterclaim, on any claim that the defendant may have against the plaintiff and that arises out of the same transaction or occurrence that is the subject matter of the claim filed by the plaintiff. The counterclaim must be filed with the Tribal Court Clerk within twenty-one (21) days after receiving the claim filed by the plaintiff. The Court Clerk will then serve the plaintiff with the counterclaim by certified mail at the plaintiff's last known address. The defendant is limited to recovery of the same amount, goods and services, as in 2-12-5.

2-12-10 Hearing

If a defendant demands a hearing, the Court Clerk shall mail to the parties notice of the hearing. In the notice of the hearing, the Court Clerk shall instruct the parties that they need to bring witnesses, documents and other evidence pertinent to the controversy. If a counterclaim was filed by the defendant, the notice of hearing shall be accompanied by such counterclaim. No formal pleading other than the claim shall be necessary. The hearing will be informal and only the parties and their witnesses, and spokespersons who appear at no charge and are immediate family members of a party, will be allowed to address the court.

2-12-11 No Attorneys

Notwithstanding any provision of tribal law to the contrary, attorneys are not permitted to represent or advise a party in a small claims court case.

2-12-12 Time Extension

If one of the two parties wishes to extend the time, in order to make formal appearances to the Court, the party must file a written request with the court. The requested extension can be no longer than thirty (30) days. The Court may only grant one extension per party.

2-12-13 Default

If the defendant fails to pay the claim, demand a hearing, or show up for the hearing, upon written request from the plaintiff, the Clerk shall enter a judgment against the defendant for the relief claimed, plus the amount of the small claims filing fees and service expenses paid by the plaintiff. If the plaintiff fails to show up for the hearing, upon written request from the defendant, the Clerk shall dismiss the case, or if a counterclaim has been filed, enter a judgment for the amount of the claim plus fees and service expenses paid by the defendant. A default judgment may not be entered for failure to appear at the hearing through no fault of the party who failed to appear.

2-12-14 Final Judgment as Final Decree

When entered, the final judgment shall document a final decree of the rights and obligations of both parties regarding the claims and counterclaims made by the plaintiff and the defendant. The judgment will remain valid for seven (7) years.

2-12-15 Action/Petition to Set Aside Final Judgment

(a) A final judgment entered shall not influence nor bar the rights of either party to petition the Court to set aside or amend the final judgment for fraud, duress, accident, mistake, or other grounds recognized as reasonable under Tribal Law.

(b) The Court may retain jurisdiction of a case for one (1) year following the entry of final judgment in all matters.

2-12-16 Applicable Law

The Court in resolving claims under this Code will use the substantive law of the State of Oregon unless that law conflicts with the law of the Tribes. In the event of conflict, Tribal law will govern.

2-12-17 Brochure Describing Proceedings; Content, Form and Distribution

The Court shall develop and print a brochure describing the requirements, nature and effect of the proceedings. The brochure shall be distributed by the Court and shall state in clear English the following:

- (a) A short summary of the provisions and procedures established by this Code.
- (b) A statement in boldface type that with the entry of a final judgment, all rights and obligations of both parties including property and monetary gains will be permanently ended without right of appeal, except that either person may petition the Court to set aside the final judgment for fraud, duress, accident, mistake or other grounds recognized under tribal law.
- (c) A list of the items or services that a party can receive if the judge rules in favor of that party.

2-12-18 Fees

The Court shall collect a fee from the plaintiff for filing a claim, a fee from the defendant if a counterclaim is filed, and also from the defendant a fee for requesting a hearing with the Tribal Court. This fee will cover the cost of the court's time and the distribution of the brochure, and other costs the Court may incur in processing the case. The amount of the fees shall be set by the Judge and approved by a resolution of the Tribal Council.

2-12-19 Sovereign Immunity

This Code shall not waive the sovereign immunity of the Tribes except as to counterclaims against the Tribes when the Tribes are a plaintiff in a case brought under this Code.

2-12-20 Fiscal Office Authority

This Code shall not be construed to reduce the authority of the Tribes' Fiscal Office to deduct sums owed to the Tribes from paychecks and other payments.

APPENDIX A

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

SMALL CLAIMS COURT

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the "Small Claims Court" Code, Resolution No. 03-057, Ordinance No. 053, in a business Tribal Council meeting on October 27, 2003. Vote was 7 (for), 0 (against) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians adopted the "Small Claims Court" Code, Resolution No. 03-043, Ordinance No. 053, in a regular Tribal Council meeting on September 14, 2003. Vote was 7 (for), 0 (against) and 0 (abstaining).