

WARM SPRINGS TRIBAL CODE

CHAPTER 201

CIVIL PROCEDURES

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I. GENERAL

201.010 Definitions.

(1) "Answer" means a written statement filed with the Court which sets out a reply to the complaint or petition.

(2) "Civil Action" means a controversy brought before the Court to recover a right or to obtain satisfaction for a wrong which was not an offense. Such actions usually seek money damages or a Court order requiring the other party to do or to stop doing something.

(3) "Civil Complaint" means a sworn statement filed with the Court alleging that a civil wrong has occurred. It is usually the first step in the filing of a civil law action and requires the posting of a filing fee.

(4) "Counter Claim" means an answer by a defendant in a civil action claiming that there is a cause of action against the plaintiff which would reduce or defeat plaintiff's claim.

(5) "Default Judgment" means a judgment by the Court entered against a defendant who has been summoned but who failed to answer to a complaint.

(6) "Deposition" means a method of pre trial discovery consisting of the out of court taking of a statement of a witness under oath, in question and answer form. Opportunity is given to the opposing party to be present and cross-examine. All of this is reported and transcribed for use later in Court.

(7) "Discovery" means a procedure by which one party finds out what evidence the other party has in his knowledge or possession and which is necessary for the party seeking the discovery to prove his claim.

(8) "Garnishment" is a process used by the Court to enforce payment of a judgment. Usually there is a taking of property or money of the debtor which is in the hands of a third person.

(9) "Informal Hearing" is a simple meeting between a creditor and debtor before a tribal judge for the purpose of working out an arrangement for the satisfaction of a debt.

(10) "Judgment" means a decision rendered by a judge upon a matter which has been submitted to the Court.

(11) "Negligence" means that a person has created an unreasonable risk of harm after having a duty to prevent such harm by the exercise of the degree of care which a reasonable person would use under the same circumstances.

(12) "Notice" means that information has been communicated to a person of the need to appear in Tribal Court at a specified time and place to answer to a complaint or petition.

(13) "Petition" is an application in writing addressed to the Court or Judge stating facts and circumstances which are the basis for a judicial action, and making a formal request for action by the Court.

(14) "Privilege" is an advantageous exemption from having to do something which is normally required.

(15) "Repossession" means the taking back of property for failure to satisfy a debt.

(16) "Restitution" is the act of replacing or paying for any loss, damage, or injury which one person has inflicted upon the person or property of another.

201.015 Law Applicable in Civil Actions.

(1) In all civil cases, the Tribal Court shall apply applicable laws of the United States, regulations of the Interior Department, and written laws or ordinances of the Confederated Tribes.

(2) Where necessary, the Court shall apply the laws of traditional custom and usage as is generally accepted by the Tribes. Where there is doubt as to custom or traditional laws, the Court shall obtain the advice of at least two impartial tribal elders who are familiar with the custom and usages.

(3) The laws of any state are not binding upon the Tribal Court, but may be used as guidelines for establishment of a tribal common law.

201.020 Service of Off-Reservation Process. Service of off reservation process may be made on the Reservation by obtaining approval for service from the Tribal Court. Service may then be made by the process server if accompanied by a tribal police officer. Service by any other means on the Reservation without compliance with this section is not authorized and is invalid and without any legal force or effect.

II. PLEADINGS

201.025 Commencement of Action. All civil proceedings shall begin by the filing of a signed complaint with a Clerk of the Tribal Court, accompanied by a filing fee as set forth in the Rules of Court.

(1) The complaint to be valid must contain the following information:

- (a) Title of the action naming the parties.
- (b) A brief statement of facts to support the claim.
- (c) A statement of the relief being sought.

(2) After filing, a case number will be assigned and a copy of the complaint served upon each party along with a summons specifying a time, date and place for trial or hearing. Such notice will be provided in accordance with the procedures contained in WSTC 200.190 and 200.200.

201.030 Answer to the Complaint. The named defendant in a civil action may elect to file a written answer to a complaint admitting or denying any or all alleged facts.

(1) Failure to file an answer shall not be deemed to be an admission, nor shall it prejudice any right to later appear in answer to the complaint.

(2) The filing of any pleading, answer, complaint or response by a party or representative counsel will constitute an appearance before the Court.

201.035 Liberal Construction. All pleadings shall be liberally construed with a view of substantial justice between the parties.

201.040 Pleading Errors. The Court shall disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of any party.

201.045 Counter Claims. The defendant in a civil proceeding may include a counterclaim in an answer to a complaint. The cause of action must arise out of a common event. The Court will rule upon the claim and counterclaim at a single scheduled hearing or trial.

201.050 Joinder of Claims. Where several claims arise out of a common event and circumstances, all such claims may be joined in a single action.

201.055 Joinder of Parties. All persons may join as plaintiffs in a single action for any claims arising out of the same transaction, occurrence or transactions where there is a common question of law or fact.

III. EVIDENCE

201.060 Rules of Evidence. The rules to be followed on admissibility of evidence in a civil proceeding shall be the same as those specified in WSTC Chapter 204.

201.065 Evidence of Damages. Where a Court judgment supports an award of compensation or restitution, no order will issue until the prevailing party has presented into evidence an itemized and verified accounting of damages.

IV. DISCOVERY

201.100 Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; production of documents; permission to enter upon land or other property; and physical and mental examinations.

201.105 Scope of Discovery. For all forms of discovery, parties may make demand for production of any matter or material, not privileged, which is relevant to the claim or defense being asserted.

201.110 Insurance Policies.

(1) The court may order disclosure of existence and contents of any insurance policy which would be available to satisfy all or part of a civil judgment.

(2) The Court, in its discretion, may limit the extent of disclosure including a declaration of inadmissibility as evidence in a civil proceeding.

201.115 Deposition. Where testimonial evidence is to be preserved by taking of a deposition, the rules contained in WSTC 204.190 will apply.

201.120 Order for Examination. When the mental or physical condition of a party is a matter at controversy, the Court may issue an order to the party to submit to a physical or mental examination. Such order may further direct that the report of the examining physician be made available and delivered to the party requesting such examination.

V. FEES

201.200 Filing Fee. The filing fee for a civil action will be as provided for in the adopted Rules of Court. In exceptional circumstances, a filing fee may be waived until judgment on the action.

201.205 Withdrawal of Action. Where a complainant or petitioner elects not to pursue a civil action after filing, the action will be dismissed with prejudice and there will be no return of the filing fee.

201.210 Payment of Fees. All monies paid into the Court as fees, shall be in the form of cash, cashier's check, certified check or money order, and shall be delivered to the Court Clerk for deposit. A receipt shall be issued for all fees paid.

VI. SMALL CLAIMS

201.250 Authority. The Chief Judge of the Tribal Court has authority to establish and conduct a Small Claims Court for the purpose of resolving minor disputes. The sum in controversy may not exceed \$300. Each party must appear by self-representation. The rules of conduct of Small Claims Court will be established and published in the Rules of Court.

VII. TRIAL CONDUCT

201.300 Appearance.

- (1) If a defendant fails to appear in a civil action, the plaintiff may be awarded a default judgment.
- (2) If a plaintiff fails to appear in a civil action the Court may take the following action.
 - (a) Dismiss the case for lack of prosecution.
 - (b) Allow defendant to offer proof.
 - (c) Continue the case and reschedule.
- (3) Where both parties fail to appear at a scheduled civil proceeding, the Court may dismiss the action or set over for trial at another time.

201.305 Procedure. The conduct and procedures in a civil proceeding shall follow the general rules of trial conduct in a criminal trial, except the burden of proof shall be by a preponderance of the evidence.

VIII. INFORMAL DEBTOR/CREDITOR HEARINGS

201.350 General.¹ Off-reservation creditors having a complaint against an Indian debtor for failure to pay, may seek relief through an Informal Hearing process.

201.355 Request for Hearing. If a creditor believes a debtor Indian is in default of his obligation, the creditor may request an informal hearing before the Tribal Court. The request shall be in writing and shall set forth the debtor's name, address, description of the property, and general nature of the problem.

201.360 Notice of Hearing. Upon receipt of a valid request for hearing, the Clerk of the Tribal Court shall schedule a hearing before a tribal judge and shall notify the creditor and Indian debtor of the time and place of hearing.

201.365 Evidence and Appearance. The creditor shall produce at the hearing all documentary evidence regarding the debt or sale of the property to the debtor including records

¹ On April 17, 2003, the Tribal Council took the following action by motion:

- I. Reinstated the "Informal Debtor/Creditor" process as provided in the WSTC Code 201.350-380 with the following clarifications of existing Tribal law:
 - a. While appearing at such a hearing is involuntary, a Tribal member can't be compelled to agree to any resolution of the dispute;
 - b. The Tribal Council eliminated the arrest warrant consequence for a Tribal member's failure to appear at such a hearing and replaced it with an "Order to Appear and Show Cause" as provided for elsewhere in the WSTC Code.

of payment, sales contracts, loan disclosure form, insurance policies, and notice of default. The Indian debtor shall appear personally at the hearing and shall not be entitled to a spokesman. The creditor may not appear with an attorney.

201.370 Settlement Agreements. The parties shall attempt to resolve any disputes as to amounts due and agree to a payment schedule. Agreements shall be set forth in writing, signed by both parties, and approved by the Court.

201.375 Voluntary Repossession. The parties may agree to a voluntary repossession of property. In such event both parties shall sign a Notice of Repossession. The Notice of Repossession shall expressly state that the creditor releases the debtor from all further claims arising out of the contract of sale and that the debtor shall not be liable for any deficiency on the contract of sale.

201.380 Tribal Assistance on Repossession. Upon approval of the Notice of Repossession by the Tribal Court, the Court may issue an order to the Warm Springs Tribal Police to assist the creditor with repossession of the property. The creditor shall not repossess the property without the assistance of the Tribal Police.