

CHAPTER 6
CIVIL ACTIONS

6-1 JURISDICTION

6-1.01 The Tribal Court shall have jurisdiction of all civil suits wherein the defendant is a member of the Kootenai Tribe, a person who voluntarily comes on or lives within the jurisdiction of the Court or a person, business, corporation, association or any other entity that does business with the Kootenai Tribe of Idaho or its members and the cause of action arose within the jurisdiction of the Tribal Court, or the parties consent to Tribal Court jurisdiction.

Provided, however, that the Kootenai Tribal Court shall not have jurisdiction to hear cases involving breaches of short-term loan agreements, which shall include but is not limited to bail bond agreements, payday loans or similar arrangements, including any transactions in which cash or credit is advanced to a borrower and is expected to be repaid in a limited timeframe and/or involves a service charge or other consideration. Application of this provision cannot be avoided by attempting to re-characterize, misrepresent or differentiate a transaction using different terms or features. The determination of what constitutes a short-term loan agreement is a decision of the Kootenai Tribal Court and shall be final.

6-1.02 The Tribal Court shall have jurisdiction to hear disputes between participants in the Tribe's gaming activities and gaming management or the Tribe's Gaming Commission that are referred to it by the Commission. It also shall have jurisdiction to hear appeals from decisions of the Gaming Commission but such jurisdiction shall be limited to determining whether the Commission provided due process in its proceedings and the relief to be granted is limited to remanding such cases to the Gaming Commission for a new hearing.

6-1.03 In addition to jurisdiction to hear any other action under this Chapter, the Court shall have jurisdiction to hear any action brought by the Council of the Kootenai Tribe of Idaho to collect any outstanding accounts, monies, or debts owed to it or the Tribe from any Kootenai tribal member or any other person, corporation, partnership, or business entity under a lawful promise to pay made to the Tribe or Council on Kootenai tribal lands.

6-2 COMMENCEMENT OF CIVIL ACTIONS

6-2.01 Commencement. Civil Actions may be commenced by the filing of a complaint with the Clerk, stating the names of the plaintiff and the defendant, accompanied by a simple statement of the facts giving rise to the cause for which relief is requested and the nature of such relief.

6-2.02 Signature of Complaint. Complaints shall bear the signature of the plaintiff.

6-2.03 Limitation of Filing. An action must be commenced within a period of three (3) years from the date of the events giving rise to the cause of action.

6-2.04 Tolling the Limitation. The three (3) year limitation on the commencement of civil actions shall not apply during the time a person entitled to bring a civil action under this Code is incapacitated or under disability to bring suit by reason of being a minor under 18 years of age or by reason of being mentally incompetent. Provided, however, that if the action is brought after the three (3) year limitation has expired, a written statement of reasonable cause must be given why the person's parent, guardian or other available representative did not bring the action in behalf of the disabled or incapacitated person within the three (3) year limitation. The statement shall be filed with the complaint and if attacked by the defendant or other party to the suit the Tribal Court shall consider the reasonable cause given and in its discretion decide whether it is sufficient to justify the tolling of the statute of limitations. The decision of the Tribal Judge in this respect shall be appealable.

6-2.05 Filing Fee. The plaintiff shall pay a filing fee of \$15.00 or as prescribed in the rules. All or part of the fee may be waived by the Court upon a showing of inability to pay.

6-3 SUMMONS

6-3.01 Summons. Upon the filing of a complaint, the Clerk shall issue a summons requiring the defendant to file and serve a written answer to the complaint with the Court and the plaintiff not more than twenty (20) days after service of summons and complaint upon the defendant.

6-4 SERVICE OF SUMMONS AND COMPLAINT

6-4.01 Service. The Plaintiff shall serve, or arrange to be served, a summons, with a copy of the complaint attached, upon the defendant by personal service or by any other manner authorized by the Tribal Judge as set forth below. All answers and subsequent pleadings may be served by mail or other similar service.

6-4.02 Personal Service. Service may be obtained by personally delivering the summons and complaint to the defendant or by leaving the summons and complaint at the place of his usual abode with some adult person who is a resident therein.

6-4.03 Service by Mail. Service may be authorized by the Tribal Judge by means of certified mail, return receipt requested.

6-4.04 Service by Publication. The Judge may allow service upon the defendant by the posting of copies of the summons and complaint in two (2) public places near the last known address of the defendant for three (3) weeks and by publication of notice of the filing of the summons and complaint once a week for three (3) consecutive weeks in a newspaper of general circulation on or near the lands of the Kootenai Tribe of Idaho. Such service shall be allowed only upon sufficient showing that diligent efforts were made to effect service and that service could not be made.

6-5 SERVICE OF SUMMONS AND COMPLAINT UPON MINORS, WARDS, AND CORPORATIONS

6-5.01 Service Upon Minors. If the suit is against a minor under the age of 14 years, service may be made on the minor's father, mother, or person having custody the minor, or with a person eighteen years of age or older with whom the minor resides.

6-6 PROOF OF SERVICE

6-6.01 Proof of Service. An affidavit of personal service shall be returned to the Clerk for filing. The return receipt from service made by mail shall be made a part of the record. When service by is made by publication, affidavits shall be obtained for the Court records from the individual posting the summons and complaint and from the newspaper publishing the notice.

6-7 GUARDIAN AD LITEM FOR MINOR OR INCOMPETENT

6-7.01 Guardian Ad Litem for Minor or Incompetent. When a minor or incompetent is a party, he shall appear by guardian. If he has no guardian or his guardian is not proper or unable to act as such, the Court shall appoint one as follows:

(1) If the party is a minor without a proper guardian, the Court shall appoint a guardian upon the minor's request if the minor is 14 years of age or older or upon the application of a relative or friend if the minor is under the age of 14 years.

(2) If the party is incompetent other than by age and has no proper guardian, the Court shall appoint one upon application of a friend or relative or upon the Court's own motion.

6-8 APPLICABLE LAW IN CIVIL ACTIONS

6-8.01 Applicable Law in Civil Actions. The Tribal Court shall apply the laws of the Kootenai Tribe of Idaho, including its traditional laws and customs, unless such law has been specifically preempted by the laws of the United States. In the absence of applicable law, the Court may apply the laws of the United States or the regulations of the Department of the Interior as they may specifically relate to the issues in the case. As to any matters not covered by the above, the Tribal Court may be guided by the common law of the State of Idaho.

6-8.02 Tribal Custom Advisor. In the event of a dispute or uncertainty regarding traditional Tribal law and customs, the Court may utilize advisors familiar with these laws and customs.

6-9 JUDGMENTS IN CIVIL ACTIONS

6-9.01 Judgments. In all civil cases in which plaintiff prevails, judgment shall consist of an order of the Court directing payment to plaintiff of the monies found to be owed, awarding money damages to be paid to the injured party, or an order directing the performance of some other act for the benefit of the injured party.

6-9.02 Judgments in Cases Involving Injury. In cases involving injury to persons or property:

(1) Where the injury inflicted is found to be the fault of the defendant, the judgment shall fairly compensate the injured party for the loss suffered.

(2) If the injury was deliberately inflicted, an additional penalty may be imposed in favor of the injured party.

(3) Where the injury is found to be the fault of both the complainant and the defendant, the judgment shall compensate the injured party for the loss suffered minus an adjustment for the proportion of the plaintiff's fault.

6-10 DEFAULT JUDGMENT AND DISMISSAL

6-10.01 Default Judgment. Upon the failure of a defendant answer in the time stated in the summons, the other party may proceed to offer evidence including proof that the defendant was served with a summons, and the Court may render a judgment granting such relief as the evidence warrants, provided that the defaulting party may apply in writing for a new trial within twenty (20) days of the default judgment, showing good cause for his failure answer the summons. Upon failure of plaintiff to appear at the time set by the summons for hearing, the Court may dismiss the case.

6-11 COSTS

6-11.01 Costs. Unless the Court provides otherwise, Court costs incurred by the winning party shall be included in any judgment, including filing fees, service fees, expense of witnesses, expert witness fees, compensation of jurors and other incidental expenses.

6-12 INDIVIDUAL INDIAN MONEY

6-12.01 Payment of Judgments from Individual Indian Monies. Whenever money damages are not paid to an injured party within the time specified, and the party against whom judgment is rendered has sufficient funds in an Individual Indian Money account with the BIA to satisfy all or part of the judgment, the Clerk of the Court shall certify a copy of the case record to the Superintendent of the Agency where the losing party has such funds available and to the Secretary of the Interior. The Secretary of the Interior may direct the disbursing agent to pay from the delinquent party's account to the injured party the amount of judgment, or an

amount specified by the Secretary not to exceed the amount of judgment.

6-13 ESTATES

6-13.01 Effect on Estate. A judgment by this Court shall be considered a lawful debt for purposes of probate proceedings or other actions regarding decedent's estates.

6-14 LIENS

6-14.01 Judgment Lien. An unsatisfied judgment shall be a lien against funds owing the judgment debtor by the Tribe upon the delivery of a copy of the judgment from the Kootenai Tribal Court to the Finance Department.

6-14.02 Satisfaction of Judgment Lien. Upon receipt of an order from the Tribal Court, the Finance Department shall arrange for payment of the amount specified in the judgment as funds become available to the credit of the judgment debtor. Funds available to the credit of the judgment debtor include:

(1) Wages, except that seventy-five (75%) of the disposable earnings of defendant shall be exempt, such percentage to be computed for each interval wages are to be paid judgment debtor.

(2) Future gaming revenue distributions not obligated prior to the judgment through Tribal Court order or agreement of judgment debtor.

(3) Incarcerated Members' Trust Accounts not obligated prior to the judgment through Tribal Court order or agreement of judgment debtor.

(4) Such other funds as may be become available to the credit of the judgment debtor.

6-14.03 Payment Plans Prohibited. Tribal Court orders to the Finance Department may not require payments less than the amount of funds available to the credit of the judgment debtor as identified in Section 6-14.02.

6-14.04 Priority and Order of Satisfaction. Judgment liens for child support orders shall take priority over all other judgment liens. Once child support order judgment liens have been satisfied, all other judgment liens shall be paid on a first-come, first-served basis unless modified through agreement of

all judgment debtors or upon a finding of the Tribal Court that good cause exists to modify the order of satisfaction.

6-14.05 Prohibition against Satisfaction of Certain Judgments by Tribal Government. No judgment lien against funds owing a judgment debtor by the Tribe shall be valid if such judgment arises out of a short-term loan agreement. For purposes of this section, a short-term loan which shall include but is not limited to bail bond agreements, payday loans or similar arrangements, including any transactions in which cash or credit is advanced to a borrower and is expected to be repaid in a limited timeframe and/or involves a service charge or other consideration. Application of this provision cannot be avoided by attempting to re-characterize, misrepresent or differentiate a transaction using different terms or features. The determination of what constitutes a short-term loan agreement is a decision of the Kootenai Tribal Court and shall be final. This prohibition exists whether the judgment is an original Tribal Court judgment or is a foreign judgment recognized by the Tribal Court.

6-15 EXECUTION ON JUDGMENTS

6-15.01 Writ of Execution. A judgment creditor may seek a writ of execution upon personal property of the judgment debtor to be sold in order to satisfy all or part of the judgment. A writ shall specify the amount of the judgment and property to be seized. A notice must be posted at two (2) public places within the Reservation for seven (7) days prior to the sale by the Court. The sale will be conducted by the Court Clerk. The property shall be sold to the highest bidder but not for less than its reasonable value. The proceeds of the sale shall first go to satisfy the cost of the sale, second to any unpaid court costs, next to satisfy any portion of the judgment still owing. Any amount remaining after the above has been paid shall be paid to the defendant.

6-16 LIMITATION

6-16.01 Limitation of Enforcement of Judgment. An uncollected judgment shall be void at the end of five (5) years from the date of entry.

6-17 SATISFACTION

6-17.01 Satisfaction of Judgment. It shall be the duty of the judgment creditor to notify the Court in

writing that a judgment has been fully or partially satisfied.

6-18 EVIDENTIARY STANDARD

6-18.01 Preponderance of the Evidence. Judgment in civil cases shall be rendered upon a finding that the plaintiff has proved or failed to prove his case by a preponderance of the evidence.

6-19 IMMUNITY FOR EMERGENCY RESPONDERS

6-19.01 "Emergency Responder" means a person employed by or who is a bona fide member of a governmental entity including, but not limited to, a federally recognized Indian tribe, a legally organized law enforcement agency, a legally organized fire department or a licensed emergency medical service provider, and whose primary duty is to serve or protect the safety or life of any person or to protect property. Emergency responder includes, but is not limited to, law enforcement officers, peace officers, firefighters, ambulance attendants, emergency medical technicians, search and rescue personnel and park rangers.

6-19.02 Any Emergency Responder practicing as such on the Kootenai Indian Reservation or any other person who renders emergency care at a public gathering or at the scene of an emergency accident, illness or other occurrence in good faith shall not be liable for any civil or other damages as a result of any act or omission by such person rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care for the injured or ill persons, unless such person, while rendering such emergency care, is found guilty of gross, willful negligence.