



MODOC NATION

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RESOLUTION NO. 22-23

Tribal Court Procedures

WHEREAS the Modoc Nation is a federally recognized Indian tribe organized under the Oklahoma Indian Welfare Act of 1936 with a Constitution approved by the United States Secretary of the Interior on July 27, 1990, and

WHEREAS the Elected Council of the Modoc Nation is empowered to act on behalf of the Modoc Nation under Article 1, Section 3 of the Constitution, and

WHEREAS The Modoc Nation needs to enact Codes for the Tribal Court to operate, and

NOW THEREFORE BE IT RESOLVED that the Elected Council approves the attached codes and documents submitted by the Judicial Department for consideration and approval with an effective date of June 10, 2022.

CERTIFICATION

I hereby certify that the foregoing resolution 22-23 was authorized by the Elected Council of the Modoc Nation on June 10, 2022.

A handwritten signature in blue ink, appearing to read "Troy L. Little Axe".

Attest: Troy L. Little Axe

A handwritten signature in blue ink, appearing to read "Bill G. Follis".

Bill G. Follis, Chief

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CHAPTER 1 GENERAL PROVISIONS

101. Title.

This Title shall be known as the Modoc Nation Code of Civil Procedure.

102. Scope

This title shall apply to all civil actions, whether cognizable as cases at law or in equity, in the Courts of the Modoc Nation unless otherwise specifically provided in other sections of these Law and Order Codes. The term "civil action" shall include those court actions which do not have imposition of a criminal penalty as their object. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

103. Jurisdiction in Civil Actions

The Court may exercise jurisdiction over any person or subject matter on any basis consistent with the Constitution of the Modoc Nation, the Indian Civil Rights Act of 1968, as amended, properly enacted laws of the Nation, and any specific restrictions or prohibitions contained in Federal law.

104. No Effect Upon Sovereign Immunity

Nothing in this Title shall be construed to be a waiver of the sovereign immunity of the Modoc Nation, its officers, employees, agents, or political subdivisions or to be a consent to any suit beyond the limits specifically stated by applicable law.

105. Court Costs Not Charged to the Modoc Nation.

The Modoc Nation, its officers, employees, agents, or political subdivisions acting in their official capacity shall not be charged or ordered to pay Court costs or attorney fees under this Title; however, if these entities prevail in the action, the costs which such entities would have been required to pay may be charged to the non-prevailing party.

106. Definitions.

1. "Child" means and includes every natural person less than eighteen (18) years of age not declared emancipated from his parent or guardian by order of a Court of competent jurisdiction.

2. "Claim" means any right of action which may be asserted in a civil action or proceeding and includes, but is not limited to, a right of action created by statute.

3. "Clerk" shall mean the Clerk of the Modoc Nation Court.

4. "Code" shall mean the statutory laws of the Modoc Nation.

5. "Constitution" shall mean the Constitution of the Modoc Nation.

6. "Court" means the Court of the Modoc Nation.

7. "Defendant/Respondent" means a party against whom recovery is sought.

8. "Executive Department" means the representative governing body of the Modoc Nation authorized by the Constitution to represent the Modoc Nation in all official matters pertaining to tribal business and those matters not reserved for the Modoc Tribal Council.

9. "He", "him", and "his" shall mean the masculine, feminine and neuter forms as appropriate unless a particular masculine, feminine or neuter form is necessary for the phrase to have meaning.

10. "Incompetent person" means and includes every natural person who has been legally declared incompetent by a Court of competent jurisdiction by reason of birth defect, mental illness, mental handicap, dementia, diminished capacity, habitual or addictive abuse of alcohol or other drugs or other cause as provided by law.

11. "Indian" shall mean a citizen or member of a Federally recognized Indian Tribe or person who is eligible for citizenship or membership in a Federally recognized Indian Tribe.

12. "Indian Country" shall mean the land within the Modoc Nation boundaries and as defined by 18 U.S.C.

13. "Indian Tribe" or "Indian Nation" shall mean a Federally recognized Indian Tribe as defined by 25 U.S.C. § 450(b), *et seq.*

14. "Judge" or "Special Judge" shall mean the judge presiding over the Modoc Nation Court.

15. "Judgment" means a final determination of the rights of the parties in an action, including those determined by a decree and any order from which an appeal lies.

16. "Law Enforcement Officer" or "Officer" shall mean an officer of a Law Enforcement Agency.

17. "Modoc Tribal Council" means the body which consists of all enrolled members of the Modoc Nation who are at least eighteen (18) years of age or older.

18. "Modoc Elected Tribal Council" means the representative governing body of the Modoc Nation consisting of a Chief, Second Chief, Secretary/Treasurer, and two (2) Council Members elected by secret ballot the Modoc Tribal Council.

19. "Nation" means the Modoc Nation and all Indian Country as defined in 18 U.S.C. § 1151, subject to the Nation's jurisdiction.

20. "Other Indian Tribe" shall mean any Federally recognized Indian Tribe other than the Modoc Nation.

21. "Personal Property" means property that is not real property.

22. "Plaintiff/Petitioner" means a party who presents a petition to a court, officer, Elected Tribal Council or the Modoc Tribal Council.

23. "Process Server" shall mean a person authorized by law or by the Court to serve papers upon an individual.

24. "Personal Property" shall mean anything of value belonging personally to an individual.

25. "Real Property" shall mean any interest in real property within the Nation other than the Indian trust title held by the United States for the use of any Indian or Indian Tribe, or the fee title to any land held by an Indian or Indian Tribe which is subject to a restriction upon alienation imposed by the United States. Nothing in this Title shall be construed as affecting or attempting to affect the trust or restricted title to trust or restricted Indian land.

26. "Reservation" means the last recognized reservation boundaries of the Modoc Nation irrespective of whether they have been disestablished.

27. "Tribal Statute" shall mean the Modoc Nation Code of Laws.

28. "Tribal Common Law" or "Common Law" means the tribal customs of the Modoc Nation.

107. Territorial Jurisdiction.

The territorial jurisdiction of the Court shall extend to all territory described as Indian Country within the meaning of Section 1151 of Title 18 of the United States Code over which the Modoc Nation has authority.

108. Subject Matter Jurisdiction.

The Court shall jurisdiction over all civil and criminal actions arising under the Constitution, laws, or treaties of the Modoc Nation, including the Tribal Common Law or by virtue of Modoc Nation Tribal Council resolution and enactments, or declaration or regulation of State or Federal Law, or a declaration or order of any Court of competent jurisdiction.

109. Personal Jurisdiction.

Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the Court, or served anywhere in cases arising within the territorial jurisdiction of the Modoc Nation, and over all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Court shall be considered consent to the jurisdiction of the Court.

110. Applicability of Laws to Civil Actions.

(a) In all civil actions, the Court shall apply:

- (1) The Constitution, Statutes, and any traditional or common law of the Nation that is not otherwise prohibited by applicable Federal law, and if none, then
- (2) Applicable Federal law, including Federal common law, and if none, then
- (3) The laws of any federally recognized Tribe, State, or other jurisdiction which the Court finds to be compatible with the public policy of the Nation.

(b) No federal or state law shall be applied to a civil action pursuant to paragraphs (2) and (3) of Subsection (a) of this Section if such law is inconsistent with the laws of the Modoc Nation or the public policy of the Nation.

(c) Where any doubt arises as to the customs and usages of the Modoc Nation, the Court, either on its own motion or the motion of any party, may subpoena and request the advice of elders and councilors familiar with the customs and usages.

111. Parties.

The party initiating the civil action will be known as the plaintiff or petitioner. The party against whom the action is brought will be known as the defendant or respondent. Additional persons, claims or remedies may be joined in the action in the interest of justice.

112. Declaratory Judgment.

The Court, in any actual controversy before it, shall have the authority to declare the rights of the parties in that suit in order to resolve disputes even though a money judgment or equitable relief is not requested nor due.

113. Statute of Limitation.

No complaint shall be filed in a civil action unless the event occurred within three (3) years of filing.

114. Survival of Action.

Civil actions commenced in the Court shall survive to the personal representatives of the petitioner if he or she dies or becomes unable to pursue the action before it's completion.

115. Judges of the Modoc Nation Court.

- (a) A Chief Judge shall be qualified to serve provided they are a member of the Modoc Nation, a qualified voter of the Modoc Tribal Council, and reside within a fifty (50) mile radius of Miami, Oklahoma during the tenure of office. Provided however, nothing in this Title shall prevent the appointment of a special judge or magistrate to hear cases. Special judges need only be licensed to practice law by any state bar association and be 25 years of age or older.
- (b) The Judge of the Modoc Nation Court shall be elected for a term of four (4) years by the enrolled members of the Modoc Nation and shall serve until the successor is duly elected and installed.
- (c) The Chief Judge, nor appointed special judges or magistrates, shall not be members of the Modoc Elected Tribal Council.
- (d) No judge, Chief or specially appointed, may serve if they have been convicted of a felony by any court of competent jurisdiction.

116. Duties and Powers of Judges.

All Judges of the Modoc Nation Court, and special judges and magistrates shall have the duty and power to conduct all court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Court. In doing so, the Court shall:

- (a) Be responsible for creating and maintaining rules of the Court, not in conflict with Modoc Nation Codes, for the orderly and efficient administration of justice.
- (b) Hold court regularly at a designated time and place.
- (c) Have the power to administer oaths, conduct hearings, and otherwise undertake all duties and exercise all authority of a judicial officer under the law.
- (d) Hear and decide all cases properly brought before the Court.
- (e) Enter all appropriate orders and judgements.
- (f) Issue all warrants and subpoenas.
- (g) Keep all Court and other records as may be required.
- (h) Perform the duties of the Clerk in his absence.

117. Disqualification of Judges, Conflicts of Interest.

- (a) No Modoc Nation Judge shall hear any case where he has a direct financial, personal or other interest in the outcome of such case. Judges should attempt to prevent even the appearance of partiality or impropriety.

(b) Either party of interest in such case or the Judge may raise the question of conflict of interest. Upon decision by the Judge concerned or the Chief Judge that disqualification is appropriate, another Judge shall be appointed and assigned to hear the matter before the Court.

(c) Any Judge otherwise disqualified because he is related within the third (3rd) degree to one or more of the parties, may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have a different Judge hear the case, and consent to further action by the Judge in the case in open Court upon the record, or in a writing filed in the record, in spite of the conflict of interest.

118. Decisions of the Court.

Each final decision of the Modoc Nation Court shall be recorded in writing. The written final decision shall include the date of the decision, the case number, the names of all parties, the substance of the complaint, the relevant facts found by the Court to be true, the Court's decision, and the conclusions of law supporting the Court's decision. The final written decision shall be placed in the file as an official document of the case.

119. Effect of Previous Court Decisions.

All previous decisions of the Court of the Modoc Nation, insofar as they are not inconsistent with this Title shall continue to have value as precedence in the Modoc Nation Court.

120. Procedural Rules.

In all court proceedings pursuant to this Act, the Court shall follow the rules of civil procedure contained herein. In any case in which no specific procedure is provided for by Modoc Nation law or Court rule, the Court may proceed in any lawful fashion not inconsistent with Modoc Nation law, the rules of the Court, or the Indian Civil Rights Act of 1968, as amended.

121. Publication Notices.

All notices required or authorized to be published under this Title shall be published in a newspaper authorized by law to publish legal notices within or adjacent to the Modoc Nation.

122. Agencies, Boards and Commissions.

All references in this Title to agencies, boards, commissions and/or committees shall mean agencies, boards, commissions and/or committees operating under the auspices of the Modoc Nation unless otherwise indicated.

123. Repeal of Previously Granted Authorities.

(a) The provisions in this Act do not repeal any authorities previously granted to the Court by the Modoc Nation, unless a repeal provision is expressed in this Act; however, the provisions contained in this Act shall supersede any similar provisions contained in Title 25 of the Code of Federal Regulations ("CFR"). Any authorities granted to the Court under Title 25 CFR that are not specifically addressed by this Act, or other Modoc Nation tribal resolution, bill law or enactment, shall continue to be in full force and effect.

(b) The Executive Department may create a law enforcement agency or may designate other law enforcement agencies, including the Bureau of Indian Affairs Law Enforcement Division, to enforce the provisions of this Act including any orders or judgments issued by the Court.

124. Savings Clause.

Any provision or part of this Act that is determined by a court of competent jurisdiction to be contrary to law or to be unconstitutional shall not affect the remaining provisions or parts thereof that have not been determined to be contrary to law or to be unconstitutional.

**CHAPTER 2
COMMENCEMENT OF ACTION
PLEADINGS, MOTIONS AND ORDERS**

201. Complaints - Generally

Civil actions shall be initiated by filing a complaint in the Court unless otherwise specified in the Code.

202. Commencement of Action.

Other than actions governed by specific rules and procedures found in Modoc Nation law, a civil action is commenced by filing a complaint with the Court.

203. One Form of Action.

There shall be one form of action to be known as a "civil action."

204. Notice of Pendency of Action.

Upon the filing of a complaint in the Court, the action is pending so as to charge third persons with notice of its pendency. While an action is pending, no third person shall acquire an interest in the subject matter of the suit as against the petitioner's title, except as provided herein.

205. Notice of Pendency Contingent Upon Service.

Notice of the pendency of an action shall have no effect unless service of process is made upon the defendant within ninety (90) days after the filing of the petition.

206. Special Notice for Actions Pending in Other Courts.

No action pending in either state or federal court, or the court of any other Indian Tribe, shall constitute notice with respect to any real property or personal property located within the Modoc Nation until a notice of pendency of the action, identifying the case and the court in which it is pending and giving the legal description of the land affected, or the description of the personal property affected by the action its location (if known), is filed of record in the Modoc Nation Court.

207. Pleadings Allowed, Form of Motions.

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim; an answer to a cross-claim, if the answer contains a cross-claim; a third party complaint, if a person who was not an original party is summoned under the provisions herein; and a third party answer, if a third-

party complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third-party answer.

(b) **Motions and Other Papers.**

(1) An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall:

- (A) be made in writing;
- (B) state with particularity the grounds therefore; and
- (C) set forth the relief or order sought.

208. General Rules of Pleading.

(a) All pleadings filed in the Court shall contain the following:

- (1) The names of the parties;
- (2) A brief statement of the facts which justify granting the relief asked for;
- (3) A statement of the relief asked for;
- (4) A brief statement of the facts that show that the Court has jurisdiction over the parties and the subject matter of the action;
- (5) A demand for judgment for the relief to be granted on behalf of the movant;
- (6) The signature of the petitioner or counsel; and
- (7) A statement, signed by the petitioner before a notary public or court clerk, swearing or affirming that the petitioner has read the pleading and believes the contents to be true and correct.

(b) **Defenses; Form of Denials.** A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. Denials shall fairly meet the substance of the averments denied. A party may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. When he intends to controvert all averments in a pleading, including averments of the grounds upon which the Court's jurisdiction depends, if any, he may do so by general denial subject to the obligation set forth in this Title. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial.

(c) **Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively each of the following defenses relied upon:

- (1) Accord and satisfaction;
- (2) Arbitration and award;
- (3) Assumption of risk;
- (4) Contributory negligence;
- (5) Discharge in bankruptcy;
- (6) Duress;
- (7) Estoppel;
- (8) Failure of consideration;
- (9) Fraud;

- (10) Illegality;
- (11) Injury by fellow servant;
- (12) Laches;
- (13) License;
- (14) Payment;
- (15) Release;
- (16) Res judicata;
- (17) Statute of frauds;
- (18) Statute of limitations;
- (19) Waiver;
- (20) Any other matter constituting an avoidance or affirmative defense.

When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) **Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) **Pleading to Be Concise and Direct; Consistency.**

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth and at trial rely upon two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal, equitable, or other grounds. All statements shall be made subject to the obligations as set forth in this Title.

(f) **Construction of Pleadings.** All pleadings shall be liberally construed so as to do substantial justice.

209. Pleading Special Matters.

(a) **Capacity.** It is not necessary to aver or assert the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court, if necessary. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge, and that party shall have the burden of proof on that issue.

(b) Fraud, Mistake, Conditions of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all condition precedent have been performed or have occurred. A denial of performance or occurrence of conditions precedent shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated, but specific amounts need not be alleged in order to obtain judgment in the amount to which the party is entitled.

210. Defenses and Objections - When and How Presented - By Pleading or Motion - Motion for Judgment on the Pleadings

(a) When Presented.

(1) A defendant shall serve his answer within twenty (20) days after the service of the summons and complaint upon him, unless otherwise specified in this Title or under another statute of the Nation, or a different time is prescribed in the order of the court.

(A) A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty (20) days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within twenty (20) days after service of the answer, or, if a reply is ordered by the Court, within twenty (20) days after service of the order unless the order otherwise directs.

(B) The Modoc Nation or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within sixty (60) days after the service upon the Tribe. No default judgment shall be entered against the Tribe.

(C) The service of a motion permitted under this Section alters these periods of time as follows, unless a different time is fixed by order of the court:

(i) If the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the Court's action.

(ii) If the Court grants a motion for a more definite statement the responsive pleading shall be served within ten (10) days after the service of the more definite statement.

(2) Within the time in which an answer may be served, a defendant may file an entry of appearance and reserve twenty (20) additional days to answer or otherwise defend. An entry of

appearance shall extend the time to respond twenty (20) days from the last date for answering and is a waiver of all defenses numbered 2, 3, 4, 5, and 9 of paragraph (b) of this Section, provided, that a waiver of sovereign immunity shall not be implied under defense numbered 9 of paragraph (b) of this Section since a defense based upon sovereign immunity is a defense to the subject matter jurisdiction of the Court and not a defense to the parties capacity to be sued. The defense of sovereign immunity may be raised at any time during the proceedings.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) Lack of jurisdiction over the subject matter;
- (2) Lack of jurisdiction over the person;
- (3) Improper venue or forum non conveniens;
- (4) Insufficiency of process;
- (5) Insufficiency of service of process
- (6) Failure to state a claim upon which relief can be granted;
- (7) Failure to join a party;
- (8) Another action pending between the same parties for the same claim;
- (9) Lack of capacity of a party to be sued; and
- (10) Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided herein, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion. Every motion to dismiss shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided herein, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion. Every motion for judgment on the pleadings shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(10) in subdivision (b) of this Section, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this Section shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before filing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten (10) days after notice of the order or within such other time as the court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just. Such motions are not favored.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this Title, upon motion made by a party, within twenty (20) days after the service of the pleading upon him or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for partial summary judgment and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by the rules relating to summary judgment.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this Section may join with it any other motions herein provided for and then available to him. If a party makes a motion under this Section but omits therefrom any defense or objection then available to him which this Section permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) of this Section on any of the grounds there stated. The Court may, in its discretion, permit a party to amend his motion by stating additional defenses or objections at any time prior to a decision on the motion.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue or forum non conveniens, insufficiency of process, insufficiency of service of process or lack of capacity of a party to sue is waived

(A) if omitted from a motion in the circumstances described in subdivision (g) of this Section, or

(B) if it is neither made by motion under this Section nor included in a responsive pleading or an amendment thereof permitted by Section 118(a) to be made as a matter of course, or

(C) if a permissive counterclaim is filed pursuant to this Section.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable, an objection of failure to state a legal defense to a claim, and a defense of another action pending may be made in any pleading permitted or ordered under this Title, or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it is determined, upon suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

211. Final Dismissal on Failure to Amend.

On granting a motion to dismiss a claim for relief, the Court shall grant leave to amend if the defect can be remedied and shall specify the party has ten (10) days absent good cause for an extension or shorter period, within which an amended pleading shall be filed. If the amended pleading is not

filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases, amendment shall be made by the party in default within a time prescribed by the Court for filing an amended pleading. Within the time allowed by the Court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

212. Counterclaim and Cross-Claim.

(a) **Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if

(i) at the time the action was commenced the claim was the subject of another pending action, or

(ii) the opposing party brought suit upon his claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any other counterclaim under this Section. A party pleading a compulsory counterclaim does not thereby waive any defenses the pleader may otherwise have which are otherwise properly raised.

(b) **Permissive Counterclaims.** A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) **Counterclaim Exceeding Opposing Claim.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount, or different in kind from that sought in the pleading of the opposing party.

(d) **Counterclaim against the Modoc Nation.** This Title shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the Modoc Nation or an officer or agency thereof. A compulsory counterclaim does not waive the defense of sovereign immunity when made by the Modoc Nation or an officer or an agency thereof. A permissive counterclaim asserted by the Modoc Nation waives the defense of sovereign immunity for the sole purpose of determining the permissive counterclaim stated by the Modoc Nation, its officer, or agency, but does not waive such defense for any other purpose.

(e) **Counterclaim Maturing or Acquired After Pleading.** A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

(f) **Omitted Counterclaim.** When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may be granted leave of the Court to plead the counterclaim by amendment, except that when such amendment is served within the time otherwise allowed for amendment as provided by this Title, he may plead such counterclaim by amendment without leave of the Court.

(g) Cross-claim Against Co-party. A pleading may state as a crossclaim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or crossclaim in accordance with the provisions of this Title.

(i) Separate Trials; Separate Judgments. If the Court orders separate trials as provided in this Title, judgment on a counterclaim, cross-claim, or third party claim may be rendered when the Court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

213. Counterclaim: Effect of the Statute of Limitation.

(a) Where a counterclaim and the claim of the opposing party arise out of the same transaction or occurrence, the counterclaim shall not be barred by a statute of limitation notwithstanding that it was barred at the time the petition was filed, and the counterclaimant shall not be precluded from recovering an affirmative judgment.

(b) Where a counterclaim and the claim of the opposing party:

(i) Do not arise out of the same transaction or occurrence; and

(ii) Both claims are for money judgments; and

(iii) Both claims had occurred before either was barred by a statute of limitation; and

(iv) The counterclaim is barred by a statute of limitation at the time that it is asserted, whether in an answer or an amended answer, the counterclaim may be asserted only to reduce the opposing party's claim.

(c) Where a counterclaim was barred by a statute of limitation before the claim of the opposing party arose, the barred counterclaim cannot be used for any purpose.

214 Counterclaim Against Assigned Claims.

A party, other than a holder in due course, who acquired a Claim by assignment or otherwise takes the Claim subject to any defenses or counterclaims that could have been asserted against the person from whom he acquired the Claim, but the recovery on a counterclaim may be asserted against the assignee only to reduce the recovery of the opposing party.

215. Third Party Practice.

(a) When Defendant may bring in Third-party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him, or who is or may be liable to him on a claim arising out of the transaction or occurrence that is the subject matter of any one (1) or more of the claim(s) being asserted against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party

complaint not later than ten (10) days after he serves his original answer. Otherwise, he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses and his counterclaims and cross-claims. A third-party defendant may proceed under this Section against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant. Any party may move to strike the third-party claim, or for its severance or separate trial.

(b) When Plaintiff may bring in Third-Party. When a counterclaim is asserted against a plaintiff, he may cause a third-party to be brought in under circumstances which under this Section would entitle a defendant to do so.

(c) Party Defendants in Real Property Actions. In an action involving real property, any person appearing in any manner in the title thereto, or claiming or appearing to claim some interest in the real property involved, may be included as a party defendant by naming such person as a party defendant in the caption of the complaint; and when such person is made a defendant in the body of the complaint under the appellation of substantially the following words, "said defendant named herein claims some right, title, lien, estate, encumbrance, claim, assessment, or interest in and to the real property involved herein, adverse to plaintiff which constitutes a cloud upon the title of plaintiff," it not being necessary to set out the reason for such claim or claims in the complaint or other pleading for such person made a party defendant.

216. Amended and Supplemental Pleadings.

(a) Amendments. A party may amend his pleading once as a matter of course at a time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty (20) days after it is served, including amendments to add omitted counterclaims or cross-claims or to add or drop parties. Otherwise a party may amend his pleading only by leave of the Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the grounds that it is not within the issues made by

the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence. Where the pretrial conference order has superseded the pleadings, the pretrial order is controlling and it is sufficient to amend the order and the pleadings need not be amended.

(c) **Relation Back of Amendments.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment: (1) has received such notice of the institution of the action and will not be prejudiced in maintain his defense on the merits; and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

(d) **Supplemental Pleadings.** Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. The Court may allow the supplemental pleading even though the original pleading is defective in its statement of a claim for relief or defense. The Court may require the adverse party plead t the supplemental pleading if the Court feels it is advisable, and shall specify a time therefor. A supplemental pleading will relate bak to the original pleading if it arises out of the conduct, transaction, or occurrence set forth in the original pleading.

217. Pretrial Procedure: Formulating Issues.

(a) In any action, the Court may, in its discretion, direct the attorneys for the parties to appear before it for a conference to consider:

- (i) The simplification of the issues;
- (ii) The necessity or desirability of amendments to the pleadings;
- (iii) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (iv) The limitation of the number of expert witnesses;
- (v) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- (vi) Such matters as may aid in the disposition of the action;

(b) The Court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admission or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The Court, in its discretion, may establish a pretrial calendar on which actions may be placed for consideration as above provided and may determine the types of cases which the Court will place on the calendar.

218. Lost Pleadings.

If a pleading is lost or withheld by any person, the Court may allow a copy thereof to be submitted.

219. Tenders of Money or Property.

When a tender of money or property is alleged in any pleading, it shall not be necessary to deposit the money or property in Court when the pleading is filed, but it shall be sufficient if the money or property is deposited in Court at trial, or when ordered by the Court.

220. Dismissal of Actions.

(a) Voluntary Dismissal: Effect Thereof.

(i) By Plaintiff: By Stipulation. Subject to the provisions of this Title or any statute of the Modoc Nation, an action may be dismissed by the plaintiff without an order of the Court.

(A) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion of summary judgment, whichever occurs first, or

(B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal without the consent of the defendants operates as an adjudication upon the merits when filed by a plaintiff who has once voluntarily dismissed, without the consent of the defendant, in any court of any other Indian Tribe, the United States, or any state an action based on or including the same claim, unless such previous dismissal was entered due to inability to obtain personal jurisdiction over an indispensable party or lack of subject matter jurisdiction in the Court in which the case was previously filed. If the plaintiff claims either or both of these exceptions, it shall so state in its notice of dismissal and shall apply to the Court, upon notice to all adverse parties for an order determining that the previous dismissal was within one or both of the two stated exceptions and that the plaintiff is entitled to dismiss the current action without prejudice. The Court may grant such application in its discretion and allow the plaintiff to dismiss without prejudice on such terms as are just, due regard being had for costs, attorney fees, and inconvenience of the defendants, and any apparent motive to harass, embarrass, or delay the defendants.

(ii) By Order of the court. Except as provided in paragraph (i) of above, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with this Title, any court rule, or any order of the court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the Court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the fact and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any

judgment until the close of all the evidence. If the Court renders judgment on the merits against the plaintiff, the Court shall make specific findings. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this section, other than a dismissal for lack of jurisdiction, or for failure to join a party, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this Section apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (i) of subdivision (a) of this Section shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

CHAPTER 3 PROCESS, SUMMONS, FILING OF PLEADINGS AND OTHER PAPERS

301. Filing Fee.

The plaintiff shall pay to the Court a filing fee in accordance with the Court's fee schedule at the time that the complaint is filed. The filing fee may be waived by the Court, in its discretion, upon good cause shown.

302. Service of Notice.

After the complaint is filed the plaintiff shall cause the defendant to be served with a copy of the complaint and a summons in the form maintained by the Clerk of the Court. The defendant may be served by any person over the age of eighteen (18) years, who is not a party to the action, nor a member of a party's immediate family. Personal service may be effected by personally delivering a copy of the summons and complaint to the party or by leaving a copy of the summons and complaint with a person of suitable age and discretion at the residence of the person to be served, so long as the person receiving the documents is over the age of 15, with directions to deliver it to the person to be served. If the defendant cannot be found service may be accomplished by certified mail return receipt requested.

303. Service by Publication.

When the respondent cannot be found after diligent attempts to serve the respondent by other statutory means, the plaintiff may ask the Court to allow service by publication. If the request is granted, the plaintiff shall 1) publish the summons once a week for three (3) consecutive weeks in a newspaper of general circulation in the county of the defendant's last known residence, and 2) publish the summons in the next issue of the Modoc Nation newsletter which is circulated, after the request to serve by publication is granted.

304. Summons - Content.

The summons shall notify the defendant that if he does not appear or answer the complaint within twenty (20) days from the date of service, the Court may grant the judgment in favor of the plaintiff.

305. Summons, Proof of Service.

The person serving the summons and complaint shall file with the Court certification that he has served the defendant, including the date and place of service. If service was made on the person other than the defendant, the certification shall state the name of the person served, the date and place of service, and the instructions given.

In case of service by certified mail, the return receipt shall constitute the proof of service. In case of service by publication, an affidavit by the publisher and a copy of the summons as published shall constitute the proof of service.

306. Computation and Enlargement of Time.

(a) Computation. In computing any period of time prescribed or allowed by this Title, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or any other day when the office of the Clerk of the Court does not remain open for public business until 4:00 p.m. in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than or equal to eleven (11) days, intermediate Saturdays, Sundays, and legal holidays or any other day when the office of the clerk of the court does not remain open for public business until 4:00 p.m. shall be excluded in the computation. As used in this Section and in the provisions relating to the Court, "legal holiday" includes New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the Modoc Nation.

(b) Enlargement. When by this Title or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the Court for cause shown any at any time in its discretion may

(1) with or without motion or notice order the period enlarged if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order, or

(2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(c) For Motions-Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by this Title or by order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided by this Title, opposing affidavits may be served not later than one (1) day before the hearing, unless the Court permits them to be served at some other time.

(d) Additional Time after Service by Mail. Whenever a party has the right or is required to do something or take some action within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

CHAPTER 4 DEFAULT JUDGMENTS

401. Default.

Default - When Granted. When a party against whom a judgment is sought fails to appear, plead, or otherwise defend within the time allowed, and that fact is demonstrated to the Court by appropriate motion and affidavit or testimony, a default judgment may be entered by the Court, and notice of the default judgment shall be sent to the defaulting party.

The moving party may obtain a default judgment upon satisfactory proof to the Court of the following:

- 1) Proper service of the Summons and Complaint;
- 2) A complaint alleging facts to support a cause of action;
- 3) Evidence supporting the granting of the requested relief;
- 4) Jurisdiction of the Court over the persons and subject matter of the action.

402. Default Set Aside.

Set Aside - Proceeding with case. For good cause shown the Court may set aside a default judgment and proceed with the case per the provisions of this Title in a manner as though the default had not been entered.

CHAPTER 5 DISCOVERY

501. Discovery - Generally.

Parties may request information and evidence, which can reasonably be expected to lead to admissible evidence, from any person having such information in his or her possession, knowledge or control.

502. Privileges.

A person may refuse to make available the information requested if its release would cause undue hardship, or would violate a confidence which it is Nation policy to protect. If the parties disagree about whether the responding party is required to release the information, the Court shall decide the dispute. The Court may place conditions on a release of information in order to protect confidential material, prevent unreasonable burden or expense to a party and shall otherwise insure fairness to all parties.

503. Methods of Discovery.

Methods of discovering and exchanging information may include but need not be limited to written questions or oral examination, requests for names of witnesses, requests for admissions, physical inspection for property, requests to perform scientific or physical tests, requests for permission to enter upon land of other property, and requests for documents. The party who makes a request under this rule shall be as clear and specific as possible in describing the requested item and the manner in which it is to be presented.

504. Responding to a Request for Discovery.

A person who receives a request for information under this chapter shall either

- (1) provide the information;
- (2) respond that he or she does not have the information in his or her possession, knowledge or control; or
- (3) object in writing to the request, stating the specific grounds for the objection.

One of the three (3) responses must be made to the requesting party within twenty (20) days of receiving the request. If the person from whom discovery is sought fails to respond, the discovering party may move for a court order requiring a response. An evasive or incomplete response shall be considered a failure to respond.

CHAPTER 6 TRIAL PROCEDURE

601. Trial Process.

All trials in civil actions shall proceed in the following order:

- (a) Jury selection in those cases to be tried before a jury;
- (b) An opening statement by the plaintiff summarizing what he or she intends to prove and stating the burden of proof;
- (c) An opening statement by the defendant summarizing what he or she intends to prove;
- (d) The plaintiff shall call witnesses and present other evidence to the court. The witnesses shall be subject to cross-examination by the other parties in the case. Following cross-examination the plaintiff shall have a second opportunity to question the witnesses. When the plaintiff has presented all his witnesses and evidence he shall inform the court that his case is complete;
- (e) Following the completion of the plaintiff's case the defendant may move to dismiss the case. If in the opinion of the Judge, after resolving all the disputed pieces of evidence and testimony in favor of the plaintiff and drawing all reasonable inferences in favor of the plaintiff there is insufficient evidence to support the case, the case shall be dismissed;
- (f) If the case is not dismissed, the defendant may call witnesses and present evidence. The witnesses shall be subject to cross-examination by all of the parties. The defendant shall then have a second opportunity to question the witnesses followed by a second opportunity for cross-examination by all other parties. Following the testimony of all witnesses and the introduction of all evidence by the defendant, the defendant shall inform the Court that his case is complete;
- (g) The plaintiff shall then have an opportunity to introduce additional evidence to rebut the evidence produced by the defendant;
- (h) The defendant shall then have an opportunity to present additional evidence to rebut that presented by the plaintiff;
- (i) In the case of a jury trial the Court shall then instruct the jury about the law governing the case;
- (j) The plaintiff shall then make a closing argument to the jury or the judge, as the case may be. The defendant shall then have an opportunity to make his closing argument. The plaintiff shall have an opportunity to rebut the arguments made by the defendant;
- (k) The jury or the judge shall then deliberate upon the case and announce it's verdict;
- (l) Judgment shall be entered on the verdict in accordance with this Code.

602. Juries.

A party may request that the case be tried before a jury. The request must be filed at least thirty (30) days before the trial date and must be accompanied by a fee or other security in an amount reasonably calculated to cover the costs incurred by having a jury. Any excess shall be reimbursed at the conclusion of trial. The fee may be waived by the Court upon a showing of good cause.

603. Standard of Proof.

The party asking for judgment shall have the burden of proving all elements of his or her case by clear and convincing evidence.

604. Evidence.

All relevant evidence shall be admissible in civil proceedings, except when the Court finds that is prejudicial value outweighs its probative value or when inadmissible under the laws of the Modoc Nation.

605. Federal Rules of Evidence.

Except for specific provisions set forth herein, the Federal Rules of Evidence shall serve as the evidentiary procedures to be used in civil proceedings of the Modoc Nation court.

**CHAPTER 7
INJUNCTIONS**

701. Definitions.

The meaning of the terms used in this Chapter is:

(a) "Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to that person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the complaining party, or, when the course of conduct would cause a reasonable person to fear for the well-being of her or his family.

(b) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, but is not limited to, the use of electronic communication as a means of conducting harassment.

(c) "Electronic communication" means any form of expression or exchange of information using electronic means. Electronic communication includes, but is not limited to, communication by telephone, internet, or text message.

(d) "Emergency restraining order" means a court order restricting a person from contacting, approaching, harassing, or threatening another specified person for a period of time not longer than thirty-five (35) days.

702. Emergency Restraining Order.

(a) Contents of the Application. When the complaining party demonstrates to the Court by affidavit or verified complaint that immediate and irreparable damage, injury or loss will occur unless restrained by the court, the Court may issue an emergency restraining order without notice to the adverse party; provided that the applicant provides the Court with written reasons supporting the

applicant's claim that notice should not be required and certifying the applicant's efforts, if any, to notify the adverse party.

(b) Contents of the Order. Any emergency restraining orders shall contain a statement of the injury, why it is irreparable, and why the order was granted without notice. No restraining order shall be issued unless a complaint in writing shall have been filed with the Court. An emergency restraining order shall expire by its own terms not more than thirty-five (35) days from the date of its issuance and this fact shall be shown on the face of the order. Such an order may be renewed for a like period of time not more than once for the purpose of securing service and holding a hearing in the matter. Such renewal must be requested before the expiration of the initial order and shall be granted only upon notice to the opposing party. An emergency restraining order may be modified, vacated, or set aside by motion of either party upon notice and opportunity for a hearing.

703. Preliminary Injunction.

Following opportunity for hearing either on affidavits or on testimony, the Court may enter a preliminary injunction restraining a party from taking certain action or requiring a party to take certain action during the pendency of the lawsuit. A preliminary injunction may be entered only after an appropriate motion by a party and after notice and opportunity to be heard by the opposing party or parties.

704. Bond.

The Court may, in its discretion, require a bond of the party seeking an emergency restraining order or preliminary injunction to protect the party to be restrained in the event that such relief ultimately is determined to be unjustified; provided, however, that no such bond shall be required of the Modoc Nation.

CHAPTER 8 JUDGMENT

801. Judgment.

Following the announcement of the verdict, the judge shall announce the judgment in the case. Where there is no jury, the verdict and the judgment may be combined in the same announcement. The judgment shall be reduced to writing. A copy shall be delivered to each of the parties or their counsel.

802. Judgment - Contents.

The judgment shall contain a statement of all relief granted to the prevailing party including, where appropriate, the declaration of rights and responsibilities of the parties, an assessment of damages including a provision for interest until the judgment is paid, an order directing that certain actions be taken or not taken, and an assessment of the costs of the action.

803. Preparation of the Judgment.

Where desired by one or more of the parties or where directed by the Court, the parties shall prepare a proposed written judgment incorporating the verdict of the Court. In addition, the parties may prepare and present to the judge proposed findings of fact and conclusions of law. No such proposed findings, conclusions or judgment shall be signed by the judge until the other parties

have been given seven (7) days notice of their presentation to the judge, or such notice has been waived in writing.

804. Reconsideration of Judgment.

No later than thirty (30) days after a judgment is final, a party may ask for the judge for a rehearing, reconsideration, correction, vacation, or modification of the judgment. The judge may grant a new hearing or reconsider and change the judgment if he finds one of the following to be true:

- (a) The original judgment was based on or reached as a result of fraud or mistake;
- (b) There is new information available which could have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing on the case, or
- (c) The Court did not have the jurisdiction over a party or over the subject matter.

805. Costs.

The Court may assess the costs of the case against the party or parties against whom judgment was given. The costs shall consist of witness fees and expenses, jury fees and any other expenses connected with the procedures under this Code as the Court may direct.

**CHAPTER 9
ENFORCEMENT OF JUDGMENTS**

901. Definitions.

The meaning of the terms used in this Chapter is:

- (1) "Council" or "Tribal Council" means the elected Tribal council of the Modoc Nation.
- (2) "Enforcement Officer" means a law enforcement officer or other individual designated to act in this capacity by the Tribal Court.
- (3) "Foreign Judgment" means any judgment, decree or order of any other tribal, state or federal court.
- (4) "Garnishee" or "Garnishee Defendant" means the person served a writ of garnishment, usually a third person indebted to, or in possession of wages or property of, a judgment debtor.
- (5) "Immediate Family" means all persons living in the same household, including, but not limited to, husband, wife, children, parents and grandparents.
- (6) "Judgment Creditor" means the person in whose favor a judgment has been entered by a court.
- (7) "Judgment Debt" means an indebtedness that is the subject of a judgment entered by a court.
- (8) "Judgment Debtor" means the person against whom a judgment has been entered by a court.

(9) "Net Wages" or "Wages" or "Salary" means income by way of earnings, interest, or rent after deducting the payment of mandatory taxes and deductions, family insurance premiums, and voluntary retirement deductions up to five percent (5%) of gross wages.

(10) "Person" means any natural person, corporation, trust, unincorporated association, partnership, and federal, state or local governments, agencies or subdivisions thereof.

(11) "Tribe" or "Nation" means the Modoc Nation, a federally recognized Indian Tribe.

(12) "Tribal Court" or "Court" means the Modoc Nation Court.

(13) "Trust Land" or "Trust Property" means real property held in trust by the United States for the Nation or tribal members.

902. Purpose and Scope.

The purpose this Chapter to provide a means for enforcement of the judgments of the Modoc Nation Court. This Chapter also provides the exclusive means by which foreign judgments may be enforced in the Modoc Nation Court.

903. Jurisdiction.

The Modoc Nation Court is vested with the fullest personal, subject matter and territorial jurisdiction permissible under the Constitution of the Modoc Nation and to the extent consistent with federal law.

904. Enforcement of Judgments.

If, after thirty (30) days, a judgment debtor fails to pay or otherwise comply with the terms or conditions of the judgment, the judgment creditor may seek to enforce the judgment, or the Modoc Nation Court may order enforcement on its own motion, in the manner provided for in this Chapter.

905. Timing.

Unless the judgment has been renewed by the Court before its expiration and except as may be specifically provided elsewhere by the law of the Nation, no judgment of the Modoc Nation Court shall be enforceable after ten (10) years from the date it is entered, unless specifically stated otherwise in the order granting the judgment.

906. Renewal of Judgments.

At the request of a judgment creditor the Court shall order the judgment renewed and extended for an additional ten (10) years if the request is made to the Court prior to the expiration of ten (10) years after the date of entry of the judgment.

907. Effect upon Estate.

A judgment of the Modoc Nation Court shall be considered a lawful debt for purposes of probate proceedings or other actions regarding a deceased person's estate.

908. Service of Notice.

Any notice required by this Chapter shall be in writing and shall be served in compliance with the provisions of this Title.

909. Sovereign Immunity.

Nothing in this Chapter shall affect the right of the Modoc Nation to assert immunity from suit by virtue of its status as a sovereign entity, except that the Nation may not assert sovereign immunity when named and served as a garnishee in a garnishment order issued by the Modoc Nation Court pursuant to this Chapter. Nothing in this Chapter shall be construed as a waiver of immunity for any administrative order or order from any other court.

910. Supplemental Proceedings.

After an order of execution has been issued, or upon the motion of a judgment creditor, the Court may require the judgment debtor to submit a list of the location and nature of his or her assets which may be used to pay the judgment, and those assets that he or she wishes to claim as exempt. The list may be provided by written or oral response and shall be made under oath.

A request by the Court to receive this list shall be answered and returned to the court within ten (10) days and the request shall carry instructions to that effect. If the judgment debtor fails to respond in either oral or written form, the judgment creditor may apply to the Court for and serve the judgment debtor with an Order to Show Cause why he or she should not be held in contempt of court.

911. Exemptions – Generally.

(a) The Modoc Nation Court shall order seizure and sale of only such property of the judgment debtor as will not impose an immediate and substantial hardship on his or her immediate family.

(b) Only property owned by the judgment debtor may be subject to execution, and not property owned by the judgment debtor's immediate family.

(c) All trust property, income from trust property, or property subject to a restriction on alienation is exempt from execution under this Chapter, except for foreclosure against such property as may be allowed elsewhere by the laws of the Nation.

912. Exemption on Wages.

(a) If a garnishee is an employer owing the judgment debtor wages, then for each pay period of such wages, fifty percent (50%) of the net wages or salary of the judgment debtor shall be exempt.

(b) If the wages of a judgment debtor are derived from self-employment income, fifty percent (50%) of such wages shall be exempt.

(c) The exemptions stated in this section shall apply whether such wages are paid, or are to be paid, weekly, monthly, or at other intervals, and whether wages are due the judgment debtor for one week, a portion of a week, or for a longer period.

(d) Unless directed otherwise by the Court, the garnishee shall determine and deduct exempt amounts under this section as directed in the writ of garnishment and shall pay these amounts to the judgment debtor.

913. Review of Consumer Transactions.

(a) In considering any action to enforce a judgment or repossess personal property located within the Modoc Nation jurisdiction in connection with a consumer transaction, the Tribal Court may review the underlying facts and circumstances of the consumer transaction in order to determine the existence of any unconscionable act or practice by the seller of the consumer goods or the creditor for the transaction.

(b) In determining whether an act or practice by the seller or creditor is unconscionable, the Modoc Nation Court shall consider the following circumstances when it is shown that the supplier or creditor knew or had reason to know that:

(1) The seller or creditor took advantage of the inability of the consumer reasonably to protect his or her interests because of physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement, or similar factors;

(2) When the consumer transaction was entered into, the price or credit terms grossly exceeded the price at which similar property, services or credit were readily obtainable in similar transactions by like consumers in the geographic area;

(3) When the consumer transaction was entered into there was no reasonable probability of payment of the obligation in full by the consumer; or

(4) The seller or creditor made a misleading statement of opinion on which the consumer was likely to rely to his or her detriment.

(c) If the Modoc Nation Court determines that an act or practice in a consumer transaction was unconscionable, the Court may deny the relief requested or may enforce only such part of a judgment as was not affected by the unconscionable act or practice.

914. Petition for Writ of Execution.

A judgment creditor may petition the Modoc Nation Court for a Writ of Execution upon any non-exempt personal property belonging to the judgment debtor when such property is in the possession of the judgment debtor and is found within the jurisdiction of the Court. The petition shall state the following facts:

(1) That the judgment creditor has a judgment wholly or partially unsatisfied in the Court;

(2) The amount alleged to be due under that judgment;

(3) That the judgment creditor has reason to believe and does believe that the judgment debtor has non-exempt property on which the judgment could be executed; and

(4) A list of the specific non-exempt property on which the judgment creditor is seeking execution and the estimated value of each item of property.

915. Hearing on Petition for Writ of Execution.

(a) Upon receipt of a petition for a Writ of Execution, the Court shall schedule a hearing date within twenty (20) days. At the hearing the judgment debtor may show that the judgment has been satisfied or that any or all of the property mentioned in the petition is exempt from execution.

(b) The Court shall not reconsider the merits of the original action, except as provided for in this chapter.

916. Notice of Hearing.

(a) The judgment debtor shall be provided with a notice of the hearing and a copy of the petition no less than ten (10) days prior to the date of the hearing.

(b) The notice shall inform the judgment debtor that the hearing is the judgment debtor's opportunity to show that the judgment has been paid or that any or all of the property mentioned in the petition for Writ of Execution is exempt from execution.

917. Service of Petition and Notice of Hearing.

The Petition for Writ of Execution and the Notice of Hearing shall be delivered to the judgment debtor in the manner provided for service in this Title.

918. Answer to Petition for Writ of Execution.

(a) The judgment debtor may file with the Clerk of the Court a written answer or response to the creditor's petition for a Writ of Execution.

(b) The answer is due at least two (2) days before the hearing on the petition.

(c) A copy of the answer or response must also be delivered to the judgment creditor in the manner provided in this Title at least two (2) days before the hearing on the petition.

919. Power of the Court – Issuance of a Writ of Execution.

(a) The Court may issue a Writ of Execution when it finds that:

- (1) the judgment creditor has a valid judgment that has not been paid;
- (2) the time for appeal of the judgment has run; and
- (3) there exists non-exempt personal property upon which to execute the judgment.

(b) The Court may issue a Writ of Execution solely on the affidavit of the judgment creditor if sufficient evidence is present to show that the property in fact belongs to the judgment debtor.

(c) The Court shall assign a minimum reasonable value to the property for the purposes of beginning bidding at a sale. If the property is not able to be sold for the minimum reasonable value assigned, the Court may re-evaluate the minimum reasonable value.

(d) The Court may amend the Writ of Execution on the basis of the evidence presented at the hearing on the Writ. The new Writ shall be issued in accordance with the procedures for the issuance of the original Writ.

(e) The Court may initiate proceedings for a Writ of Execution on its own motion, consistent with the provisions of this Chapter in order to ensure the enforcement of judgments entered by the court or the payment of any civil fines or penalties imposed by the Court. Any party who fails to comply with a Writ of Execution issued pursuant to this Chapter, shall be subject to the civil contempt powers of the Tribal Court, following notice to show cause and a hearing before the Court.

920. Writ of Execution – Contents.

(a) The Writ of Execution shall:

- (1) State the amount owing to the judgment creditor;
- (2) Describe the property that is to be seized by the authorized enforcement officers;
- (3) Direct the enforcement officers to sell as much of the seized property as is necessary to satisfy the judgment;
- (4) State the date, time, and place of the sale and listing of the items to be sold; and
- (5) State that the judgment debtor has the right to pay the judgment and obtain the return of the property.

(b) A copy of the Writ of Execution must be mailed to the judgment debtor at his or her last known address and posted at the Court in a place where it can be viewed publicly for ten (10) days prior to the sale.

921. Service of Writ of Execution.

The Writ shall be served on the judgment debtor as provided herein in this Title.

922. Substitution or Surrender of Property.

(a) A judgment debtor who owns property that is not exempt from execution may substitute other property of equal or greater value that is exempt from execution. This substitution will allow execution against exempt property. The result is that the non-exempt property shall become exempt from execution and the previously exempt property shall be removed from exemption.

(b) A judgment debtor may voluntarily surrender, by written consent, secured personal property to a judgment creditor.

(c) The written consent of the judgment debtor must be obtained at the time of the surrender, must clearly state the agreed upon value of the surrendered property and must be signed by both the judgment debtor and the judgment creditor.

(d) Contract provisions for the voluntary surrender of property, executed in advance of the judgment debtor's voluntary surrender, are not valid or enforceable.

923. Execution Sale.

(a) An Execution Sale shall be conducted by the enforcement officer who shall issue a bill of sale or invoice for the property to the highest bidder in return for a cash amount.

(b) No item of property shall be sold for less than the minimum value assigned by the Court. If the minimum assigned value is not offered, the property shall be held and notice of another sale shall be given. The Court may re-evaluate the minimum reasonable value upon request or on its own motion.

(c) Proceeds of the Execution Sale shall first go to satisfy the cost of the sale, second to any unpaid court costs, and third to pay any portion of the judgment still owing.

(d) Any remaining funds shall be held for the benefit of the judgment debtor, who shall be noticed in writing of the remaining funds. Said funds will be held for a period of one (1) year from the date of the Execution Sale.

(e) If no claim is made by the judgment debtor for recovery of the remaining funds during the one year period following the Execution Sale, the funds shall be deposited in the General Fund of the Nation and shall become the property of the Modoc Nation to be expended for the benefit of the Nation.

CHAPTER 10 GARNISHMENTS

1001. Limitations of this Chapter.

(a) All debts collected under this Title shall be collected where the Modoc Nation or Modoc entities are the Employer regardless of Native/Non-Native status.

(b) All debts rendered to judgment where debtor is not employed by the Modoc Nation or Modoc entities will require domestication in a court of competent jurisdiction where the debtor is employed; and

(c) A debt under this act must be for debts owed to the Modoc Nation or Modoc entities; or debts originating out of a federal court order; debts originating out of overpayment of unemployment benefits by the Oklahoma Unemployment Security Commission (OESC); or child support order from any jurisdiction when domesticated; or the IRS; or federal student loans; and

(d) This Act does not apply to any private debt unless the creditor is the Modoc Nation or a Modoc Entity, or there is a valid child support order; or federal court order.

1002. Recognition and Enforcement.

(a) This section applies to a foreign judgments for child support, federal taxes, federal student loans, or orders of any U.S. Federal Court; where these limited and specifically enumerated judgments are rendered by any other state, Tribe or the United States or federal court which is politically and judicially distinct from the Modoc Nation Court against an employee of the Modoc Nation or employee of a tribal entity that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.

(b) A foreign judgment for child support, federal taxes, federal student loans or orders of any U.S. Federal Court, where these limited and specifically enumerated judgments are rendered by any other state, Tribe or the United States or federal court which is politically and judicially distinct from the Modoc Nation Court, against an employee of the Modoc Nation or an employee of a tribal entity meeting the requirements of this Title is conclusive between the parties to the extent that it grants or denies recovery of a sum of money.

(c) Subject to the provisions of this Title, the Modoc Nation Court shall recognize, implement and enforce the orders, judgments and decrees of foreign courts for (1) child support, (2) federal taxes, (3) federal student loans; or (4) orders of any U.S. Federal Court; where these limited and specifically enumerated judgments are rendered by any other state, Tribe or the United States or federal court which is politically and judicially distinct from the Modoc Nation Court against an

employee of the Modoc Nation or an employee of a tribal entity unless the Modoc Nation Court finds the foreign court that rendered the order, judgment or decree:

- (1) Lacked jurisdiction over a party or the subject matter;
- (2) Denied due process as provided by the Indian Civil Rights Act of 1968; or
- (3) Does not reciprocate for recognition and implementation of orders, judgments, and decrees of the Modoc Nation Court.

(d) A foreign judgment for child support, federal taxes, federal student loans, or orders of any U.S. Federal Court shall not be recognized where:

- (1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) The foreign court did not have jurisdiction over the subject matter; or
- (3) The foreign court did not have personal jurisdiction over the defendant.

(e) A foreign judgment for child support, federal taxes, federal student loans, or orders of a U.S. Federal Court need not be recognized if

- (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
- (2) The judgment was obtained by extrinsic fraud;
- (3) The cause of action or defense on which the judgment is based is repugnant to the public policy of the Modoc Nation;
- (4) The proceeding of the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;
- (5) The judgment conflicts with another final and conclusive judgment; or
- (6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

1003. Original Actions in the Modoc Nation Court.

(a) A creditor may seek appropriate relief in the Modoc Nation Court for child support, federal taxes, federal student loans or orders of any U.S. Federal Court; where these limited and specifically enumerated judgments are rendered by any other state, Tribe or the United States or federal court which is politically and judicially distinct from the Modoc Nation Court against a debtor pursuant to the rules of the Modoc Nation Court or as otherwise provided in the Modoc Nation Code of Laws.

(b) The Modoc Nation, its entities and agencies may be a creditor and seek garnishment against any enrolled Modoc or enrolled Native American who is employed by the Modoc Nation or one of its entities or agencies.

1004. Personal Jurisdiction.

The foreign judgment child support, federal taxes, federal student loans, or orders of any U.S. Federal Court; where these limited and specifically enumerated judgments are rendered by any other state, Tribe or the United States or federal court which is politically and judicially distinct from the Modoc Nation Court against an employee of the Modoc Nation or an employee of the

Modoc Nation or an employee of a tribal entity shall not be refused recognition for lack of personal jurisdiction if:

- (1) The defendant was served personally in the foreign state or Tribe;
- (2) The defendant personally appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him; or
- (3) The defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

1005. Notice.

The judgment creditor shall afford notice of the action in the Modoc Nation Court to the judgment debtor and shall also request a hearing pursuant to the rules of the Modoc Nation Court at which the debtor will be given the opportunity to be heard regarding recognition of the foreign court order, judgment or decree.

1006. Garnishment of Wages.

(a) In a civil action for garnishment filed by a judgment creditor, the Court may order garnishment of unpaid past or future wages of the judgment debtor for satisfaction of the judgment. No garnishment action shall be filed in the Modoc Nation Court unless the judgment remains unsatisfied sixty (60) days after such judgment was entered. In an action for garnishment, the judgment debtor shall be named as a defendant. In no case shall the Modoc Nation, tribal entity, Tribal Council, or officials of the Modoc Nation be named as Defendants, unless such individual is subject to a private debt as the debtor or judgment debtor.

(b) The maximum amount of wages subject to garnishment in any one pay period shall be twenty percent (20%) of the judgment debtor's disposable wages for one pay period except for child support and OESC levies. The Judge of the District Court shall have discretion in setting the percentage of garnishment up to and including twenty percent (20%).

(c) In the event a judgment debtor is subject to multiple garnishments during the same pay period, one of which is for child support, the maximum amount of wages subject to garnishment in any one pay period shall be the maximum amount allowable for the non-child support garnishment plus the amount allowable for child support garnishments.

(d) A garnishment order recognized by and/or rendered by the Modoc Nation Court against an employee of the Modoc Nation or an employee of a tribal entity shall lapse when the judgment is satisfied or when the judgment debtor resigns or is dismissed from his employment with the Modoc Nation or tribal entity provided that if the judgment debtor is rehired by the Modoc Nation or tribal entity within ninety (90) days after such resignation or dismissal, the garnishment order shall continue in effect.

(e) No employer shall discharge an employee for the reason that a judgment creditor of the employee has garnished or attempted to garnish unpaid earnings of the employee.

(f) No order for garnishment shall be effective until it is served on the Human Resources Department for the entity which employs the debtor. A garnishment order served on the Human

Resources Department shall have priority over any subsequent garnishment order served on the Human Resources Department during the period it is in effect, except that garnishments for child support shall have priority over any prior or subsequent garnishments of the same wages.

(g) Within seven (7) days after the end of each pay period, the Human Resources Department shall file an answer with the Modoc Nation Court Clerk (or in the case of an OESC levy, with the OESC) and pay the amount withheld to the judgment creditor's attorney (or in the case of an OESC levy, to the OESC) or to the judgment creditor if there is no attorney. The answer shall state:

(1) Whether the entity on which the order or levy was served was the employer of the defendant named in the notice, was indebted to the defendant, or was under any liability to the defendant in any manner for earnings, specifying the beginning and ending dates of the pay period existing at the time of the service of the order or levy, the total amounts earned in the entire pay period, and all the facts and circumstances necessary to a complete understanding of any indebtedness or liability.

(2) If the Human Resources Department claims any setoff, defense or other claim to the wages, the Human Resources Department shall include this information in the answer;

(3) At the Human Resources Department's option, it may include information regarding any claim of exemption from execution on the part of the defendant or other objection known to the Human Resources Department against the right of the judgment creditor or OESC;

(4) If a garnishment order or OESC levy is served on an Human Resources Department while a previous non-child support garnishment order is still in effect, the Human Resources Department shall answer the subsequent garnishment order or OESC levy by stating that the Human Resources Department is presently holding defendant's property under a previous garnishment order or OESC levy and by giving the date on which all previous garnishment orders/OESC levies are expected to end.

1007. Administrative Processing Fee.

The Modoc Nation or tribal entity employer shall have the right to assess a \$5.00 processing fee upon the judgment debtor for each pay period of garnishment of wages of an employee of the Modoc Nation or tribal entity.

1008. Specific Orders With Exemptions From Certain Requirements.

(a) All child support orders rendered against an employee of the Modoc Nation or employee of a tribal entity issued by foreign court under laws of the United States or any State or any federally-recognized Tribe in which the foreign court is situated are enforceable under this Code. The Judge of the Court shall have discretion in setting the percentage of garnishment up to the federally approved amount, except where indicated otherwise in this Title.

(b) Any proper Notice of Levy accompanied by a warrant of levy and lien issued by the OESC against an employee of the Modoc Nation or employee of a tribal entity is enforceable under this Code without the need for an order of Modoc Nation Court Should the HR Department determine that it believes a Notice of Levy is not proper, the Human Resources Department must notify the Tribal Attorney within 3 days. The Tribal Attorney will evaluate the Human Resources Department's rationale and will work with the Human Resources Department to develop an appropriate answer to be filed on or before the 7-day deadline, or will work with the OESC to get an extension of time to respond.

1009. Savings Clause.

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

1010. Stay on Appeal.

If the judgment debtor satisfies the court either that an appeal is pending or that he or she is entitled to and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the judgment debtor to prosecute the appeal.

1011. No Waiver of Sovereign Immunity.

Nothing in this Chapter is intended nor shall be construed as a waiver of the sovereign immunity of the Modoc Nation or its entities or agencies or officials from un-consented suit in State, Federal, or Tribal Court against the Modoc Nation, any Tribal entity, or any official acting in his or her official capacity.

CHAPTER 11 REPOSSESSIONS

1101. Self-Help Repossession Prohibited.

Self-help repossession is prohibited. Creditors shall not use "self-help repossession" but must repossess property only in conformity with this Chapter.

1102. Consent to Repossession.

(a) A creditor may contact a debtor orally or in writing concerning a dispute with such debtor that may lead to repossession of personal property located within the jurisdiction of the Nation, unless the debtor has notified the creditor in writing to cease such contact.

(b) A debtor may give written consent to the creditor permitting a repossession of personal property without formal court proceedings. The written consent of the debtor must be obtained at the time of the repossession of the property. Contract provisions for the voluntary surrender of personal property that are executed in advance of the repossession are not valid or enforceable.

(c) Upon receipt of written consent for repossession, the creditor must abide by any restrictions concerning time or manner of repossession stated in the written consent.

1103. Court Order Absent Written Consent.

If a debtor does not sign a written consent allowing repossession, the property may be removed from the debtor only pursuant to a Writ of Repossession issued by a Court of competent jurisdiction.

1104. Petition for Writ of Repossession.

(a) A creditor may petition the Modoc Court for a Writ of Repossession when the creditor desires to repossess the personal property of a debtor and such property is located within the jurisdiction of the Court.

(b) The petition shall be accompanied by a verified copy of the contract or other document entitling the creditor to repossess the personal property of the debtor.

(c) The petition shall be served in the manner provided for in this Title.

1105. Hearing on Petition for Writ of Repossession.

(a) Upon receipt of a petition for a Writ or Repossession, the Court shall schedule a hearing date within twenty (20) days. The timing of the hearing may be accelerated by the Court if:

(1) The petition contains verified, specific facts showing reasonable cause to believe that the personal property involved may be lost, damaged or removed from the Nation's jurisdiction prior to a regularly scheduled hearing; and

(2) An accelerated hearing can be held without substantially prejudicing the ability of the debtor to present any good faith defenses to the petition for the Writ of Repossession.

1106. Notice of Hearing on Petition for Writ of Repossession.

(a) The debtor shall be provided with a notice of the hearing and a copy of the petition no later than ten (10) days prior to the date of the hearing.

(b) The notice shall inform the debtor that the hearing is the debtor's opportunity to contest the creditor's claim to a right of repossession.

(c) The notice shall also inform the debtor that if he or she fails to appear, a Writ of Repossession may be issued and he or she will have lost his or her opportunity to contest the repossession of the property mentioned in the petition.

1107. Power of the Court – Issuance of the Writ of Repossession.

(a) If after a hearing, the Court determines that repossession is justified, the Court shall issue a Writ of Repossession authorizing the creditor to repossess the personal property involved in the proceeding.

(b) If it appears to the Court that the return of the property to the creditor would be unjust because of the amount of equity the debtor has in the property, the Court may award money damages to the creditor in the amount owed by the debtor on the property.

(c) The Court may enter a Writ of Repossession in the absence of the debtor if the debtor fails to appear at the hearing despite proper notice.

1108. Writ of Repossession – Contents.

The Writ of Repossession shall provide that:

(1) The property which has been specified is to be seized by the authorized enforcement officers and turned over to the judgment creditor; and

(2) The enforcement officers are authorized to use reasonable force to enforce the Writ of Repossession.

1109. Remedies for Violation of this Chapter.

(a) Any creditor and any agents or employees of any creditor who are found by the Modoc Court to be in deliberate or willful violation of the provisions of this Chapter governing repossession may be sanctioned appropriately. The Court shall afford any creditor fair notice and an opportunity for hearing prior to the order of sanctions.

(b) Any person who violates this Chapter and any creditor whose agents or employees violate this Chapter shall be deemed to have breached the peace of the Modoc Nation and they shall be liable to any debtor for any actual damages caused by the deliberate or negligent failure to comply with the provisions of this Chapter.

**CHAPTER 12
RECOGNITION AND ENFORCEMENT OF
FOREIGN JUDGMENTS**

1201. Foreign Judgments – When Recognized.

(a) The Modoc Nation Court shall not recognize or enforce any foreign judgment unless the proponent of the foreign judgment:

- (1) Complies with the procedure set forth in this Section;
- (2) Submits proof that the person against whom the foreign judgment has been rendered is subject to the jurisdiction of the Modoc Nation Court;
- (3) Submits proof that the foreign judgment is based on valid subject matter and personal jurisdiction;
- (4) Submits proof that an attempt was made to enforce the judgment in the jurisdiction in which the foreign judgment was rendered and that such attempt was unsuccessful; or good cause is shown why an attempt at enforcement of the foreign judgment in that jurisdiction would be futile; and
- (5) Submits proof that the foreign judgment is final and that no appeal therefrom is allowed.

(b) The Court shall not recognize or enforce a foreign judgment when to do so would require the Nation to waive its immunity from suit except when the Nation is to be served as a garnishee for the wages or property of a judgment debtor, in which case the requirements for garnishment that are set out in this Chapter shall be followed.

(c) The Court need not recognize a foreign judgment if:

- (1) The defendant in the proceedings in the foreign court did not receive notice of said proceedings in sufficient time to allow him or her to defend;
- (2) The foreign judgment decree or order violated the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301 -1341, or any state or federal constitution;
- (3) The foreign judgment was obtained by fraud;
- (4) The foreign judgment would serve to violate any federal law, tribal law, custom or tradition of the Modoc Nation;

(5) The cause of action on which the judgment is based is contrary to the general welfare of the Modoc Nation or its members; or

(6) The government from which the foreign judgment is issued does not provide reciprocal full faith and credit or comity to the orders, decrees and judgments of the Modoc Nation Court.

1202. Procedure for Recognition and Enforcement of Foreign Judgments.

(a) The proponent of a foreign judgment shall file in the Court:

- (1) a certified copy of the foreign judgment, identifying the date of its entry;
- (2) the record of any subsequent entries affecting the judgment, such as levies of execution and payments in partial satisfaction;
- (3) a motion requesting that the Court recognize and enforce the foreign judgment; and
- (4) submission of proof required by this Chapter.

(b) A properly filed foreign judgment shall be docketed and recorded in the Court in the same manner as other cases.

(c) Upon proper filing of a foreign judgment with the Modoc Nation Court, the Court shall issue a summons directing the defendant to appear on a date not more than sixty (60) days or less than fifteen (15) days from the date of service and respond to the motion requesting the Tribal Court to recognize and enforce the foreign judgment. Such summons shall be served on the defendant in a manner consistent with this Title.

(d) Failure of the defendant to appear as directed by the summons or failure to respond to the motion requesting the Court to recognize and enforce the foreign judgment once personal jurisdiction over the defendant has been obtained shall not prevent the Court from ruling on the motion.

(e) After reviewing all the relevant evidence concerning the foreign judgment the Court shall issue an order granting or denying the motion to recognize and enforce the foreign judgment if doing so would be consistent with the provisions of this Chapter. Such an order shall be a final judgment of the Court in favor of either the plaintiff or defendant to the foreign judgment and shall be enforceable as such.

1203. Severability.

If any provision of this Chapter or its application to any person or circumstances is held invalid, the remainder of this Chapter, or the application to other persons or other circumstances shall remain in effect.

CHAPTER 13 CIVIL FORFEITURE PROCEDURES

1301. Property Which May be Forfeited.

(a) The Court may order forfeiture of the following kinds of property located within its jurisdiction:

- (1) Property which is made contraband by Modoc Nation law;
- (2) Property being used to violate or in violation of Modoc Nation law;

(3) Property otherwise subject to forfeiture by specific Modoc Nation law.

(b) If a specific Modoc law sets forth its own forfeiture proceedings they shall be controlling and the Court may rely on such additional provisions in this chapter as justice may require.

1302. Nature of Forfeiture.

Forfeiture proceedings shall be in the nature of a civil suit against the property to be forfeited.

1303. Initiating A Forfeiture Proceeding.

In order to initiate a forfeiture proceeding, the Modoc Nation shall file a Petition for Forfeiture in the Court and deliver a copy of the petition to all persons believed to have an ownership interest in the property at issue.

1304. Order for Seizure of Property.

Any time after a Petition for Forfeiture is filed, if the Modoc Nation demonstrates that there is probable cause to believe the property named is subject to forfeiture under Modoc Nation law, the judge may issue an order which directs law enforcement officers to seize and hold the property pending resolution of the forfeiture suit.

1305. Seizure of Property Before Petition is Filed.

(a) In the following circumstances the Modoc Nation, through law enforcement officers, may seize any property which is subject to forfeiture before a Petition for Forfeiture is filed or before an order of seizure has been obtained:

- (1) When a Modoc Nation law or regulation allows immediate seizure;
- (2) When the property presents an urgent danger to persons, property, or wildlife within the Nation's jurisdiction;
- (3) When the Modoc Nation has probable cause to believe that the property is subject to forfeiture and is likely to be removed from the Nation's jurisdiction if it is not seized immediately.

(b) Whenever the Modoc Nation seizes property before it has filed and served a Petition for Forfeiture, it must file and serve the petition no later than five (5) days after the seizure has taken place. At the time of filing or as soon after that as the judge can schedule a hearing, the Tribe shall request an order of seizure as provided in this Chapter.

1306. Inventory of Property and Notice of Seizure.

(a) The law enforcement officer who seizes property pursuant to these provisions shall prepare a complete list to a notice which states the time and place of seizure, the name and address of the owner, if known, and the authority for seizure.

(b) The officer shall promptly deliver a copy of the notice and list to the Court, to the owner of the property, and to the person in whose possession the property was found. If the owner of the property cannot be identified or located, the officer shall post the notice and list at the place where the property was found and at the Court in a location visible to the public.

1307. Release of Property Pending Forfeiture Trial.

(a) Pending the forfeiture trial, a person who presents satisfactory proof that he or she owns the property which has been seized may gain possession of the property by posting a bond or cash deposit with the Modoc Nation. The bond or deposit shall be in the amount equal to the market value of the property. The amount and form of the bond shall be subject to approval of the Court.

(b) The Court shall order the Bond or cash forfeited if it is shown by a preponderance of the evidence that the owner used the property in violation of Modoc Nation law after posting the bond. If the Court ultimately rules in the Nation's favor on the Petition for Forfeiture the Court shall order either the bond or the property itself forfeited.

1308. Procedures and Burdens of Proof.

Procedures and burdens of proof in a forfeiture proceeding shall be the same as in any civil suit, except where indicated otherwise in this Chapter, and except that in cases where the property owner does not post bond and regains possession of the property, trial of the principle issue in the case must be held no later than thirty (30) days after the petition for forfeiture is filed. The property owner may voluntarily waive this right to a speedy hearing.

1309. Disposition of the Property.

If the Court rules in favor of the property owner, all property seized or bonds or cash deposited shall promptly be returned to the owner. If the Court rules in favor of the Nation, and orders the property forfeited, the Court's order shall transfer title to the property to the Modoc Nation. The Modoc Nation may then dispose of the property as it sees fit.

CHAPTER 14 CONTEMPT OF COURT

1401. Contempt - Generally.

The Modoc Nation Court shall at all times have authority to utilize contempt powers upon persons who may disobey orders, act in a manner that is disorderly or insolent. The contempt process shall be classified in two categories: (1) Direct Contempt and (2) Indirect Contempt.

1402. Direct Contempt.

(a) Direct contempts shall exist where the Court makes a finding an individual's behavior is

- (1) disorderly or insolent; and
- (2) committed during the session of the court, or in its immediate view and presence;

(b) Individuals found to be in direct contempt of Court may be sanctioned appropriately and in a manner reasonable to the incidents leading up to the contemptuous activity or may be incarcerated for a period of time, not to exceed six (6) months for each act or incident.

1403. Indirect Contempt.

(a) Indirect Contempt of court shall consist of:

- (1) willful disobedience of any process or order lawfully issued or made by the court; or
- (2) resistance willfully offered by any person to the execution of a lawful order or process of a court.

- (b) Individuals found to be in indirect contempt of Court may be sanctioned appropriately and in a manner reasonable to the incident leading up to the contemptuous activity or may be incarcerated for a period of time, not to exceed six (6) months for each act or incident.

CHAPTER 15 COUNSELORS AND PROFESSIONAL ATTORNEYS

1501. Pro Se.

Any person appearing as a party in a judicial proceeding before the Courts of the Modoc Nation may represent themselves. Any person appearing in representation of themselves shall be subject to the same ethical obligations of honesty and candor towards the Court as would a licensed attorney.

1502. Right to be Represented by an Attorney.

Any person appearing as a party in any action shall have the right to be represented by an attorney of their own choice and at their own expense; provided, however, that the Modoc Nation has no obligation to provide or pay for such an attorney; provided further, that any such attorney appearing before the courts of the Courts of the Modoc Nation shall have first obtained admission to practice before such court in accordance with the procedures set forth herein.

1503. Eligibility for Admission.

Any attorney who is an active member in good standing, certified to practice before the highest court of any state or of the Supreme Court of the United States is eligible to be admitted to practice before the Courts of the Modoc Nation. An attorney who has been disbarred or disqualified by any Court shall be ineligible for admission.

1504. Procedure for Admission.

Any attorney desiring to be admitted to practice before the Courts of the Modoc Nation shall apply for admission by certifying under oath, either verbally or in writing to the following:

1. That the applicant is of good moral character.
2. That the applicant is an active member in good standing, is certified to practice before the highest court of any state or of the Supreme Court of the United States.
3. That the applicant has not been disbarred or disqualified by any Court.
4. That if admitted to practice before the Courts of the Modoc Nation, the applicant will take the required oath as prescribed and be bound thereby.

An admission fee of \$500.00 shall be tendered with the application, subject to return if the application is denied. The Chief Judge may waive or lower the admission fee for good cause shown. The fee shall go into a special Bar Admission Fund to be used for training of court staff, Judges, and other officers of the Courts of the Modoc Nation. If a Modoc Bar Association is formed, then that association shall assume responsibility and control for the collection and expenditures of these fees. The Court or, if organized, the bar association, shall retain the right to establish and require the taking of a bar examination for admission to practice before the Courts of the Modoc Nation.

Upon receipt of an application for admission to practice before the Courts of the Modoc Nation, the Chief Judge shall review the application and shall investigate the truth of the matters contained therein; such an investigation may require additional responses from the applicant for clarification. If satisfied that the applicant meets the qualifications set forth herein, the Chief Judge shall notify such person who may then appear in person to take the oath prescribed herein or may subscribe his signature to such oath and forward it to the Chief Judge.

Upon taking of the oath, either orally or in writing, the Chief Judge shall cause a certificate to be issued evidencing the admission of the attorney to practice before the Courts of the Modoc Nation.

Any person denied admission shall have a right to an appeal provided new information is presented and have a hearing before the Court.

1505. Exemption from Payment of Admission Fee.

a. The following Attorneys shall be exempt from paying the required admission fee:

(1) Attorneys employed by the Tribe;

(2) Tribal Members;

(3) Attorneys representing parties pursuant to a qualified "pro-bono" agreement without collecting any fees, provided that said Attorney shall present an executed copy of the "pro-bono" agreement at the time of his application.

b. Any Judge, properly elected by the Tribal Council, or appointed by the Chief Judge, shall be exempt from the requirement to pay the admission fee and shall be automatically entered upon the roll of attorneys.

1506. Disbarment and Discipline.

Whenever it is made to appear to the Chief Judge that any attorney admitted to practice before the Courts of the Modoc Nation has been disbarred or suspended from the practice of law in any state or a tribal court, they shall immediately be given notice at their last known address that they shall be suspended from practice before the tribal court for an indefinite period unless they appear within five (5) days and show good cause why such order should not be made.

Any Judge who finds an attorney admitted to practice before the Courts of the Modoc Nation to be in contempt of Court may, in addition to any other sanctions imposed, order the attorney to appear within ten (10) days and show cause why he should not be suspended from practicing before the Courts of the Modoc Nation.

The Chief Judge may, upon receiving a written, verified complaint which indicates that an attorney admitted to practice before the Courts of the Modoc Nation has acted in an unethical or otherwise improper manner while functioning as an attorney, order such attorney to appear and defend himself at a hearing, to hear all evidence relevant to the matter, and may order the suspension of such an attorney if such appears reasonably necessary or appropriate. If the Chief Judge is the complainant, another trial judge shall hear and decide the matter.

All suspensions from practicing before the Court of the Modoc Nation shall be for an indefinite period unless the Judge specifically orders otherwise. An attorney suspended for an indefinite

period, or one suspended for a specific period, may petition the Courts of the Modoc Nation for permission to re-apply for admission to practice at the end of one year or the specific period of suspension, and such permission shall be granted if it is made to appear, at a hearing or otherwise as the Court shall direct that they have been adequately reprovved and now appears willing to conduct themselves in a proper manner, and that the petitioner has been reinstated to practice if previously disbarred or suspended in another jurisdiction.

Any improper behavior by any Judge resulting in a suspension, shall require the same conditions of notice and hearing provided professional attorneys.

1507. Oath of Attorneys and Counselors.

Upon admission to practice as provided herein, an attorney shall take the following oath, either verbally before the Court, or subscribe his signature to such oath if admitted without personally appearing:

I do solemnly swear (or affirm): That I will support and defend the Constitution, and all resolutions and ordinances of the Modoc Nation; that I will maintain the respect due the Courts and Judicial officers of the Modoc Nation; that I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; that I will employ for such purposes of maintaining the cause confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement or fact or law; that I will maintain the confidences and preserve inviolate the secrets of my client, and will accept no compensation in connection with his/her business except from him or with his knowledge and approval; that I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required in justice by the cause with which I am associated; that I will never reject, from any consideration personal to myself, the cause of the defenseless oppressed or delay any man's cause for lucre or malice.

1508. Lay Counsel.

Aside from an individual representing themselves, Lay Counsel attorneys shall not be permitted to practice before the Courts of the Modoc Nation.



INFORMATION OF PERSON FILING FORM:

Name: _____

Address: _____

Attorney for: _____

MODOC NATION
TRIBAL COURT
22 N. Eight Tribe Trail, Miami OK 74354

**APPLICATION FOR ADMISSION TO THE
TRIBAL COURT BAR
[FOR COURT USE ONLY]**

CASE NO.: _____

I, (print your full legal name) _____, the Applicant, hereby apply for admission to practice law before the Modoc Nation Tribal Court (Tribal Court) pursuant to Chapter 15 of the Modoc Code of Civil Procedure. In support of this application, I declare, under penalty of perjury, the following:

1. I am an attorney, in good standing, admitted to practice law in the state of _____

Date Admitted: _____

Firm Name and Address: _____
2. I pledge to advise the Court if my status changes in any other jurisdiction to which I am admitted.
3. I anticipate I will appear regularly before the Tribal Court.
4. I will abide by all Modoc Laws, Ordinances, and Codes.
5. I consent to the jurisdiction of the Modoc Nation for all matters related to the application for admission and all other conduct, whether before or after admission and whether by appearance, written submission, or otherwise, in the Tribal Court's administrative bounds.

6. The non-refundable filing fee of \$500.00 is enclosed via check or money order or I am exempt from the filing fee because of the reason marked below:

- A. I am an Attorney employed by the Tribe.
- B. I am a Tribal Member.
- C. I am representing a party "pro-bono" or without collecting any fees. A signed statement from the party reflecting the pro-bono arrangement is attached.

Dated

Applicant's Signature

Applicant's Printed Name

Address

City, State, Zip Code

Telephone Number