

TUNICA-BILOXI
CODE OF CIVIL PROCEDURE

Article 1. Applicable Law

In all civil cases, the Tunica-Biloxi Tribal Court shall apply the Constitution of the United States, federal statutes and regulations, the Charter of 1974, resolutions and ordinances of the Tunica-Biloxi Tribal Court, and to the extent where it does not conflict with the above, the laws and jurisprudence of the State of Louisiana.

Article 2. Form of Action

There shall be one form of action, the civil action.

Article 3. Commencement of Action, Fees

A civil action shall be commenced by filing a petition with the Clerk of the Tribal Court, who shall immediately issue a summons. The petition and summons shall be served on the parties as hereafter prescribed. The filing fee shall be ten dollars, and there shall be a ten-dollar fee for the filing of an answer or responsive pleading. The petition and all subsequent pleadings shall be captioned at the top:

IN THE TUNICA-BILOXI TRIBAL COURT
TUNICA NATION

The original and one copy of each pleading shall be filed with the Clerk of the Tribal Court. The Clerk of the Tribal Court shall number each lawsuit consecutively as filed, as, Civil Action No. 90-1, Civil Action No. 89-2, and so on, beginning

each year with the appropriate prefix and the cardinal number of filing. This docket number shall be on each subsequent document filed with the Tribal Court, on the right side of the parties' caption,

Article 4. Commencement of Actions

Section 1. General limitations. An action can only be commenced within the time stated in this Code unless a different time is specified by law. The time within which the action may be commenced starts at the time the act complained of was discovered, unless by law otherwise provided.

Section 2. Statute of limitations. All civil actions shall be commenced with six (6) years from the time the cause of action accrued in the case of contracts and within three (3) years in the case of torts, unless a different time is prescribed by law. An action shall be deemed to have been commenced for the purposes of this article when the defendant or defendants have been served with summons or when a written petition has been filed. The statute of limitations does not run against a minor, incompetent, or person serving in the Armed Forces of the United States, nor does the period run as to persons absent from the jurisdiction for the purpose of avoiding process.

Section 3. Waiver of limitation. A defense of the running of the statute of limitations can be waived by the party

time after the filing of the complaint, but in no instance shall trial commence without the appointment of a guardian.

Article 6. Summons.

Section 1. A summons is issued by the Clerk of Court to the defendant. The summons shall:

- (1) be dated as of the day of its issue;
- (2) be signed by the party or his agent and the Clerk of Court;
- (3) name the place where the petition is filed.

The summons shall further state the name of the plaintiff and that of the defendant, if known. If the defendant's name is unknown, it must give a reasonable description of him. It shall state generally the nature of the plaintiff's claim against the defendant, with the amount claimed, if any. When the summons is issued after the petition, it shall further state the date of appearance and that, in case of his failure to answer or appear as commanded, he will lose by default.

Section 2. ⁽¹⁾A copy of the summons, together with a copy of the petition as required under section 2 may be served by regular or certified mail, return receipt requested, or may be served personally upon an individual defendant. Service may be made by leaving a copy of the summons and petitioner at the defendant's usual abode with a resident of the household above the age of fourteen years, if the defendant cannot be conveniently found.

(4) contracting to insure any person, property, or risk located within this reservation at the time of contracting; or

(5) entering into a contract for services to be rendered or for materials to be furnished in the Tunica-Biloxi Reservation or on other lands owned or leased by the Tribe: shall be, in a civil action arising out of any of the above enumerated acts, subject to service or process outside the reservation in the same manner provided for service within the reservation with the same force and effect as though service had been made within the Tunica-Biloxi Reservation.

Section 4. Return of Summons. The "return" of the summons is the police officer's or third party's signed statement on the summons that he served a true copy thereof by personal service as directed or that he was unable to serve it. The date of service, if any, and date of return and method of service must be stated on the return by the officer or third party; and when returned, the summons shall be dated and filed with the complaint by the clerk. Should the summons be served by certified mail, return receipt requested, the receipt shall constitute proof of service, and shall be filed with the complaint by the clerk.

If service is made by regular mail, the server of process shall file a declaration under 28 U.S.C. §1746 or a notarized affidavit stating the circumstances of the service.

upon which the Court may grant plaintiff the judgment to which he is entitled.

Article 9. Appearance, Defaults, Postponements

Section 1. General Appearance. A general appearance is the method or proceeding by which the defendant in an action submits himself to the jurisdiction of the Court.

Section 2. Special appearance. A special appearance is the method of proceeding by which the defendant seeks to test the sufficiency of the service or the jurisdiction of the Court. A special appearance does not confer jurisdiction upon the Court except for the purpose of determining sufficiency of the service or jurisdiction, nor does it waive defects of service.

Section 3. Method of appearance. An appearance, general or special, may be made in person or by an agent, and includes either the physical presence in Court of the defendant or his attorney of the filing of a written answer, motion or other pleading in response to the petition.

Section 4. Appearance; time allowed parties; default decisions

(1) In all cases, if the defendant fails to appear at the time specified for appearance or at such time as the Court may have set for the argument of a motion, the plaintiff shall proceed and the Court may give such relief as the evidence warrants, as in Article 8, supra.

b) Enlargement. The court for good cause shown may enlarge the prescribed period of time within which any required act may be done.

c) Notice of Motions. Written motions and notice of hearing thereon, other than ones which may be heard ex parte, shall be served not later than 5 days prior to the time specified for hearing.

d) Service by Mail. Whenever service is accomplished by mail, three days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period if they would otherwise have been counted.

Article 11. Pleadings, Motions and Orders.

a) Pleadings. There shall be a petition and an answer; plus a responsive pleading shall be allowed whenever, by cross claim, counterclaim or otherwise, a party is first claimed against unless the court shall otherwise order. The court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.

b) Motions and Orders.

1) Motions. An application to the court for an order shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefor stated with particularity. A motion and notice of motion may be set forth together.

2) Orders. An order includes every direction of the court whether included in a judgment or not, and

shall fairly meet the substance of the claims or statements denied and may be made as to specified parts but not all of a claim, statement or averment. A general denial shall not be made unless the party could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied; if no responsive pleading is allowed the claims of the adverse party shall be deemed denied.

c) General Content of Claims and Defenses. Claims and defenses shall be simply, concisely, and directly stated, but may be in alternative or hypothetical form, on one or several counts or defenses, need not be consistent with one another, and may be based on legal or equitable grounds or both.

d) Affirmative Defenses. Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the court may treat the pleading as if it had been, properly designated if justice so requires.

e) Construction of Pleadings. All pleadings shall be construed so as to do substantial justice.

Article 13. Form of Pleadings

a) Caption. Every pleading shall contain a caption heading, the name of the court, the title of the action, the docket number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties except the name

disposition of the motion by the Court.

Article 15. Counterclaim or Crossclaim.

a) Counterclaim. A party against whom a claim is made may assert in his answer any claims he has against the party claiming against him and both claims, shall be resolved at trial.

b) Crossclaim. A party against whom a claim is made may assert any claim he has against a co-party and have such claim resolved at trial.

c) Third Party Claim . A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party and have such complaint resolved at trial.

Article 16. Amendment of Pleadings

a) Amendment before trial. A party may amend his pleadings once before the opposing party has replied or if no reply is required, not less than 20 days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date be delayed if necessary. Other amendments shall be allowed only upon motion and order of the Court.

b) At trial. When issues or evidence not raised in the pleadings are heard at trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

Article 17. Parties

a) Real Party in Interest. Every action shall be prosecuted

Article 20. Discovery

a) Interrogatories. A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within 25 days of receipt of such.

b) Depositions. A party may take the oral depositions of an adverse party or non-party witness under oath upon not less than 10 days notice, specifying the time and place on the reservation where such will occur.

c) Production, Entry, or Inspection. A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within 25 days reply as to whether or not such will be allowed and if not, why not.

d) Scope of Discovery. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of the work product of a party's counselor or attorney.

e) Protective Order. A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the court may order that the discovery cease or proceed only upon specified conditions.

Section (a)(b) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court.

- (b) Civil cases shall be tried before a Judge and not a jury.
- (c) The case of the plaintiff shall be presented first, followed by the case of the defendant. If rebuttal is required, the plaintiff shall proceed first, followed by the defendants.
- (d) At the conclusion of the evidence, the plaintiff and defendant each in turn may summarize the proof and make final argument.

Section 3. Consolidated and separate trials.

(a) Consolidation. The Court may, upon motion of any party, or on its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating to the actions or if such will tend to avoid unnecessary cost or delay.

(b) Separate trials. The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

Article 22. Evidence

a) Form and Admissibility. At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All evidence admissible

copy thereof is accompanied by a ~~certificate~~ identifying such thing and stating that it is a ~~true~~ correct representation of what it purports to be.

e) Record of Excluded Evidence In an action tried to a jury, excluded evidence may upon ~~not~~ be included in the record for purposes of appeal and ~~excluded~~ oral testimony shall be put into evidence by means of ~~a~~ offer of proof made out of the hearing of the jury. In an action ~~tried~~ only to the court, the judge may receive such excluded ~~testimony~~ into the record.

Article 23. Findings by the Court

In all cases, except in cases ~~where~~ a party defaults, fails to appear or otherwise waives such ~~findings~~ findings of fact and conclusions of law shall be made by ~~the~~ court in support of all final judgments. Upon its own ~~motion~~ motion of any party within ten days of the entry of judgment, ~~findings~~ findings may be amended or added to and the judgment may be amended ~~accordingly~~ accordingly.

Article 24. Judgment; Costs

a) Definition. A judgment ~~includes~~ includes any final order from which an appeal is available and ~~no~~ special form of judgment is required.

b) Judgment on Multiple Claims When more than one claim for relief is presented in an action ~~however~~ however designated, a final judgment may be entered on less ~~than~~ than all of such claims only upon the Court's specifically finding ~~that~~ such is justified. Absent such a finding, an order or decision ~~will~~ will not terminate the action as to any of the claims are finally ~~decided~~ decided, nor will the appeal period commence to run.

purposes of harassment only, or that ~~there was~~ reasonable expectation of success on the part of ~~the~~ affirmatively claiming party. In any action in which the ~~Tribe~~ and/or any of its officers or employees are sued for a ~~cause~~ of action arising out of, or in the course of, the performance of a tribal function or duty, or in any action, except by the ~~Tribe~~, against the bond of any such officer or employee, if judgment shall be against the Plaintiff the Court shall award a ~~reasonable~~ attorney's fee against such Plaintiff and in favor of ~~the~~ Defendant or Defendants.

Article 25. Summary Judgment

Any time 20 days after the commencement of an action, any party may move the court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions, which shall be served not less than 10 days prior to the hearing on said motion, may be supported by affidavits, discovery, or memoranda, all of which must be made available to opposing parties at least two days prior to the hearing.

Article 26. Entry of Judgment

a) Judgment. All judgments shall be signed by the judge and filed with the clerk.

additional 8 years and may be thereafter further extended by the same procedure.

Article 27 New Trials; Amendments of Judgment

1) error or irregularity which prevented any party from receiving a fair trial; or

2) misconduct of the jury or jury members; or

3) accident or surprise, or newly discovered evidence which ordinary prudence could not have guarded against or produced at trial; or

4) damages so excessive or inadequate that they appear to have been given under influence or passion or prejudice; or

5) insufficiency of the evidence to justify the verdict or other decision, or that it is contrary to the law; or

6) error in law.

b) Harmless Error. A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not affect substantial justice.

c) Support for Motion. Parties may include memoranda or affidavits in support of their motions to which reply memoranda and affidavits shall be allowed if desired.

d) Court Initiative. The court may, on its own initiative, not later than 10 days after entry of judgment, order a new trial on any grounds assertable by a party to the action, and shall specify the reasons for so ordering.

longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Article 29. Harmless Error

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties, is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Article 30. Stay Of Proceedings To Enforce A Judgment

a) Stay Upon Entry of Judgment. Proceedings to enforce a Judgment may issue immediately upon the entry of the judgment,

the proceedings of the Tribal Court, or to modify, suspend, restore or grant an injunction or to stay proceedings during the pendency of a Petition for Review, or to take any action appropriate to protect the rights of the parties during the pendency of a Petition for Review.

f) Stay of Judgment Upon Multiple Claims. . When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Article 24, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

g) Waiver of Undertaking. In all cases, the parties may, by written stipulation, waive the requirements of this Article with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by this Code a deposit in court in the amount of such undertaking, or such lesser amount as the court may order, is equivalent to the filing of the undertaking.

Article 31. Injunctions

a) Preliminary Injunction; Notice. No preliminary injunction shall be issued without notice to the adverse party.

b) Temporary Restraining Order; Notice; Rehearing; Duration. No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the

c) Security. Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Tunica-Biloxi Tribe, or of an officer, or agency, of either; nor shall it be required of a married person in a suit against the other party to the marriage contract.

A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

d) Form and Scope of Injunction or Restraining Order; Service. Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants,

- 1) Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of his office; or
- 2) Where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; or
- 3) Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal, board or person; or
- 4) Where the relief sought is to arrest the proceedings of any tribunal, board or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

b) Habeas Corpus. Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the court that any person is unjustly imprisoned or otherwise restrained of his liberty. Upon the filing of the petition the court shall, unless it appears from such petition or the showing of the plaintiff

Pending a determination of the matter the court may place such person in the custody of such individual or individuals as may be deemed proper.

c) Habeas Corpus; Decision. In each case, the court, upon determining the case, shall enter specific findings of fact and conclusions of law and judgment, in writing, and the same shall be made a part of the record in the case. If the court finds in favor of the complainant, it shall enter an appropriate order with respect to judgment or sentence in the former proceedings and such further orders with respect to rearraignment, retrial, custody, bail or discharge as the court may deem just and proper in the case.

Article 33. Execution.

a) Time. If within 60 days after entry of a judgment awarding money damages and/or costs against a party, or within 60 days after final resolution of a Petition for Review of such a judgment, it is made to appear to the court that the judgment debtor has not paid the judgment amount in full or commenced making installments payments in a manner agreed to by the parties, or is not current in such payments, the Court shall upon motion of the judgment creditor, heard ex parte, order the Tribal Police to execute the personal property of the judgment debtor as provided herein.

d) Redemption From Sale. At any time within 6 months after the sale under this Rule, the judgment debtor may redeem his property from the purchaser thereof by paying the amount such purchaser paid for the property plus 8 percent interest, plus any expenses actually incurred by the purchaser, such as taxes and insurance to maintain the property.

