

CIVIL PROCEDURE

CHAPTER FIVE

WITNESSES

Section 501. Issue and Service of Subpoena for Witnesses

The clerk of the Court shall, on application of any party having a cause or any matter pending in the Court, issue a subpoena for a witness, under the seal of the Court. The clerk may issue separate subpoenas for each person, issue one subpoena carrying the names of all persons subpoenaed, or may at the request of any party, issue subpoenas in blank. A subpoena may be served by the Tribal or Bureau of Indian Affairs Police, or by the party, or any other person in the manner provided in Section 217. When a subpoena is not served by the Tribal or Bureau of Indian Affairs Police, proof of service shall be shown by affidavit; but no costs of service of the same shall be allowed, except when served by The Tribal Police, a licensed process server, Bureau of Indian Affairs Police, or a person serving by special appointment.

[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 502. Subpoenas - Contents

The subpoena shall be directed to the person therein named, requiring him to attend at a particular time and place to testify as a witness; and it may contain a clause directing the witness to bring with him any book, writing or other thing, under his control, which he is bound by law to produce as evidence.

[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 503. Subpoena for Deposition

When the attendance of the witness before any officer authorized to take depositions is required, the subpoena may be issued by such office.

[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 504. Subpoena for Agency Hearings

When the attendance of the witness is required before any Tribal Agency authorized to issue a subpoena, the subpoena may be issued by any officer of the agency or by such person as may be authorized to issue subpoena by Agency rule.

[History: PUBLIC LAW #85-58, June 21, 1985.]

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Section 505. Witness may Demand Fees - Exception

A witness may demand his traveling fees and fee for one days attendance as shall be set by Court rule, when the subpoena is served upon him; and if the same be not paid, the witness shall not be obliged to obey the subpoena. The fact of such demand and non-payment shall be stated in the return, Provided, however, that witnesses subpoenaed by any Tribal department, board, commission or legislative committee authorized to issue subpoenas shall be paid their attendance and necessary travel, as provided by law for witnesses in other cases, at the time their testimony is concluded out of funds appropriated to such department, board, commission or legislative committee. In the case of subpoena issued by such Tribal agencies, the witness may not refuse to attend because fees and travel expenses were not paid in advance.

[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 506. Disobedience of Subpoena

Disobedience of a subpoena, or refusal to be sworn or to answer as a witness, when lawfully ordered, may be punished as a contempt of the Court or officer by whom his attendance or testimony is required.

[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 507. Attachment of Witness

When a witness fails to attend in obedience to a subpoena (except in case of a demand and failure to pay his fees), the Court or officer before whom his attendance is required may issue an attachment to the Chief of the Tribal Police or the Bureau of Indian Affairs Police or their deputy, commanding him to arrest and bring the person therein named before the Court or officer, at a time and place to be fixed in the attachment, to give his testimony and answer for the contempt. If the attachment be not for immediately bringing the witness before the Court or officer, a sum may be fixed not to exceed One Hundred Dollars (\$100.00) in which the witness may give an undertaking, with surety, for his appearance; such sum shall be indorsed on the back of the attachment; and if no sum is so fixed and indorsed, it shall be one hundred dollars (\$100.00). If the witness be not personally served, the Court, may, by a rule, order him to show cause why an attachment should not issue against him.

[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 508. Punishment for Contempt

(a) The punishment for the contempt provided in Section 507 of this Title shall be as follows: When the witness fails to attend, in obedience to the subpoena, except in case of a demand and failure to pay his fees, the Court or officer may fine the witness in a sum not

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exceeding Fifty Dollars (\$50.00). In case the witness attend but refuses to be sworn or to testify, the court or officer may fine the witness in a sum not exceeding Fifty Dollars (\$50.00), or may imprison him in the Tribal jail, there to remain until he shall submit to be sworn, testify, or give his deposition. The fine imposed by the Court or Tribal Agency shall be paid into the Tribal treasury, and that imposed by the officer at a deposition shall be for the use of the party for whom the witness was subpoenaed. The witness shall, also, be liable to the party injured for any damages occasioned by his failure to attend, or his refusal to be sworn, testify, or give his deposition.

(b) The punishment provided in this section shall not apply where the witness refuses to subscribe a deposition. The punishment provided in this section is civil in nature, and shall not be interpreted in any way as a criminal punishment, nor shall the punished person be deemed convicted of any criminal offense.

(c) When the witness purges his contempt, the Court, officer, or agency may suspend any punishment imposed.

[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 509. Discharge When Imprisonment Illegal

A witness so imprisoned by an officer before whom his deposition is being taken, or by a Tribal Agency Officer, may apply to a judge of the Tribal Court who shall have power to discharge him, if it appears that his imprisonment is illegal.

[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 510. Requisites of Attachment - Order of Commitment

Every attachment for the arrest, or order of commitment to jail of a witness by the Court or an officer, pursuant to this Chapter, must be under the seal of the Court or officer, if he have an official seal, and must specify, particularly the cause of arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of commitment may be directed to the Tribal or Bureau of Indian Affairs Police, and shall be executed by committing him to the Tribal jail, and delivering a copy of the order to the jailor.

[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 511. Examination of Prisoner

A person confined in the Tribal jail may by order of the Tribal Court, be required to be produced for oral examination at a hearing, but in all other cases his examination must be by deposition.

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[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 512. Prisoner's Custody During Examination

While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge who shall afford reasonable facilities for the taking of the deposition.

[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 513. Witness Privileged

A witness shall not be liable to be sued in the Tribal Court if he does not reside within the tribal jurisdiction by being served with a summons while going, returning, or attending in obedience to a subpoena.

[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 514. Witness May Demand Fees Each Day - Exception

At the commencement of each day after the first day, a witness may demand his fees for that days attendance in obedience to a subpoena; and if the same be not paid he shall not be required to remain, except witnesses subpoenaed by any Tribal department, board, commission, or legislative committee or body authorized by law to issue subpoenas shall be paid for their attendance and necessary travel from that agencies approved budget as provided by law in other cases at the time their testimony is completed.

[History: PUBLIC LAW #85-58, June 21, 1985.]

Section 515. Special Provisions for Tribal Agencies

(a) No Tribal agent or employee may be required to attend and testify in their official capacity for any private party absent the consent of their Department head or higher ranking superior.

(b) No Tribal agent or employee may be paid a witness fee in addition to their regular salary or other compensation, if they are on duty at the time they are required to attend and testify, and shall be deemed to have elected to receive their regular salary or other compensation unless they request leave without pay prior to the time they appear in response to the subpoena, provided, that when such agents or employees appear and testify while being paid the regular salary or other compensation. The normal witness fee shall be charged as costs in the case for the benefit of the Tribe, and the agent or employee's supervisor may require prepayment of said fees as a condition precedent of his approval for their appearance. Such witnesses shall be entitled to receive their

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travel costs, if any, from the party in advance as in other cases.

[History: PUBLIC LAW #85-58, June 21, 1985.]