

CIVIL PROCEDURE

SUBCHAPTER A

INJUNCTIONS

Section 811. Injunction Defined

The injunction provided for by this Chapter is a command to refrain from or to do a particular act for the benefit of another. It may be the final judgment in an action, or may be allowed as a provisional remedy, and when so allowed, it shall be by order.

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

Section 812. Cause for Injunction - Temporary Restraining Order

When it appears, by the verified complaint or an affidavit that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such act. And when, during the pendency of an action, it shall appear, by affidavit or proof, that the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors, or to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such removal or disposition. It may, also, be granted in any case where it is specially authorized by statute.

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

Section 813. Temporary Restraining Order; Notice; Hearing; Duration

A temporary restraining order may be granted after commencement of the action without written or oral notice to the adverse party or his attorney only if:

- (a) 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 applicant before the adverse party or his attorney can be heard in opposition, and
- (b) the applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required.

Temporary restraining orders should not be granted except in cases of extreme urgency. Every temporary restraining order granted without notice shall be indorsed with the date and hour

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of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ten (10) days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and take precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary restraining order. On two (2) days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

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

Section 814. Temporary Restraining Order - Service

Temporary restraining orders shall be served in the same manner as provided for service of the summons and complaint.

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

Section 815. Preliminary Injunction

(a) **Notice.** No preliminary injunction shall be issued without notice to the adverse party. Notice may be in the form of an order to appear at a designated time and place and show cause why a proposed preliminary injunction should not be issued, or in such form as the Court shall direct. The burden of showing the criteria for issuance of a preliminary injunction remains with the moving party.

(b) **Consolidation of Hearing With Trial On Merits.** Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This Subsection shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

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

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Section 816. Preliminary Injunction - Criteria

Unless a statute of the Tribe provides specifically for preliminary injunctive relief upon a showing of particular circumstances, no preliminary injunction shall be granted unless upon hearing the evidence presented by the parties the Court determines that:

- (a) There is a substantial likelihood that the moving party will eventually prevail on the merits of their claim for a permanent injunction or other relief, and
- (b) The moving party will suffer irreparable injury unless the preliminary injunction issues. Irreparable injury means an injury which cannot be adequately remedied by a judgment for money damages, and
- (c) The threatened injury to the moving party outweighs whatever damage or injury the proposed preliminary injunction may cause the opposing party, and
- (d) The preliminary injunction, if issues, would not be adverse to the public interest, and would not violate the public policy of the Tribe or the United States.

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

Section 817. Form and Scope of Injunction or Restraining Order

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; 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, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

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

Section 818. Employer and Employee; Interpleader; Constitutional Cases

This Subchapter does not modify any statute of the Tribe relating to temporary restraining orders and preliminary injunctions in action affecting employer and employee; or relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or any other case where temporary restraining orders or preliminary injunctions are expressly authorized or prohibited upon certain express terms or conditions.

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

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Section 819. Security

_____ (a) 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, damages, and a reasonable attorney fee 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 Tribe or of an officer or agency thereof.

(b) The provisions of Section 805 apply to a surety upon a bond or undertaking under this Section.

(c) A party enjoined by a preliminary injunction may, at any time before final judgment, upon reasonable notice to the party who has obtained the preliminary injunction, move the Court for additional security, and if it appears that the surety in the undertaking has removed from the Tribal jurisdiction, or is insufficient, the Court may vacate the preliminary injunction unless sufficient surety be given in a reasonable time upon such terms as may be just and equitable.

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

Section 820. Use of Affidavits

On the hearing for a restraining order or preliminary injunction, each party may submit affidavits which shall be filed as a part of the record.

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

Section 821. Injunction by Defendant

A defendant may obtain a temporary restraining order or preliminary injunction upon filing his answer containing an appropriate counterclaim. He shall proceed in the manner hereinbefore prescribed.

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

Section 822. Injunction is Equitable

Relief by way of a restraining order, preliminary, or permanent injunction is of equitable cognizance and shall be issued or refused in the sound discretion of the Court. Relief by way of injunction shall be denied where the moving party may be adequately compensated for his injuries in money damages. The District Court shall not enjoin the enforcement of the Tribal tax laws or the collection of tribal taxes except to the extent that such relief is specifically provided for in those tax laws. No injunction shall issue to control the discretion or action of a Governmental officer or employee when such officer or employee has been delegated the authority to exercise his

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discretion in determining how to act upon the subject matter, and is acting or refusing to act in a manner not prohibited by tribal law or the Indian Civil Rights Act.

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

Section 823. Modification of Preliminary Injunction

If the preliminary injunction be granted, the defendant, at any time before the trial, may apply, upon notice, to the Court to vacate or modify the same. The application may be made upon the complaint and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined, with or without answer. The order of the judge, allowing, dissolving or modifying an injunction, shall be returned to the office of the Clerk of the Court and recorded.

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

Section 824. Modification of Permanent Injunction

A final judgment containing a permanent injunction may be modified or dissolved by separate action upon a showing that the facts and circumstances have changed to the extent that the injunction is no longer just and equitable, or that the injunction is no longer needed to protect the rights of the parties.

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

Section 825. Injunctions Tried to the Court

All injunctions shall be tried to the Court and not to a jury unless the Court orders an advisory jury pursuant to Section 704(c) of this Title.

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

Section 826. Enforcement of Restraining Orders and Injunctions

A restraining order of injunction granted by a Judge may be enforced as the act of the Court. Disobedience of any injunction may be punished as a contempt, by the Court or any Judge who might have granted it. An attachment may be issued by the Court or Judge, upon being satisfied, by affidavit or testimony, of the breach of the injunction, against the party guilty of the same, who may be required to make immediate restitution to the party injured, and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirements, or be otherwise legally discharged, or be punished by fine not exceeding Two Hundred Dollars (\$200.00) for each day of, or separate act of,

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contempt, to be paid into the Court fund, or by confinement in the Tribal jail for not longer than sixty (60) days.

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