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SERVICE OF PROCESS AND EXECUTION OF JUDGMENT ON INDIAN RESERVATIONS

Robert Laurence*

I. The Problem Stated

Indian debtor; non-Indian creditor; reservation transaction. Default. Creditor sues debtor in state court. *Williams v. Lee* stands for the proposition that dismissal of the suit is appropriate, as the state court is without subject matter jurisdiction. No matter that the court has personal jurisdiction; no matter that proper service of process was accomplished off the reservation. *No subject matter jurisdiction*, a defect that may not be waived and which may be raised by the trial or appellate court *sua sponte.*

That much is clear; Williams v. Lee is squarely in point. The ungrammatical, almost head-note style (much to the consternation of the Editor of this Review, I might add) is used to indicate the noncontroversial, settled nature of this point. Thus, in many cases, the issue this article addresses is moot. Service of process does nothing for a plaintiff when there is no subject matter jurisdiction. Likewise, no enforceable judgment will be obtained if no subject matter jurisdiction existed.

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2. Subject matter jurisdiction is a defect that may not be waived by a party (see note 3, infra, and Fed. R. Civ. P. 12(h)(3)), but it may, of course, be lost. That is to say, a defendant may object to subject matter jurisdiction at trial, lose and fail to appeal or lose and lose again on appeal. In either of these cases the objection to subject matter jurisdiction is lost. *See, e.g., Durfee v. Duke,* 375 U.S. 106 (1963).


4. It is not precisely accurate to say that lack of subject matter jurisdiction will necessarily mean no enforceable judgment will be obtained. Suppose Lee, in state court, sues Williams, an Indian, over an on-reservation debt. Williams does not object to subject matter jurisdiction and does not appeal from the judgment for Lee. Is the judgment enforceable? The analysis depends upon where the plaintiff seeks enforcement:

   (A) *In the court where the original suit was brought.* The judgment is enforceable, but in many states the defendant may halt enforcement by having the judgment set aside. *See* Fed. R. Civ. P. 60(b): “the court may relieve a party . . . from a final judgment . . . for the following reasons: . . . (4) the judgment is void. . . . The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment . . . was entered or taken.” Lack of subject matter jurisdiction may be grounds for enforceability.

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Let us assume away that problem: suppose proper subject matter jurisdiction exists in state court. Suppose the debt transaction arose off the reservation. Suppose a tort was committed off the reservation. Suppose a sale is made off the reservation. Suppose further that by the time the plaintiff brings suit, the defendant is physically within the boundaries of a reservation. Can the court get personal jurisdiction? How? Suppose personal jurisdiction is obtained and judgment is given for the plaintiff. Can this judgment be enforced against property on the reservation? How? These are the questions this article addresses.

Focusing our attention on service of process and execution of judgment may seem odd, at first glance. The two events are, after all, at opposite ends of the litigation spectrum, but they are related enough to justify an analysis in one article. First, both events are essentially procedural and raise issues distinguishable from the subject matter concerns of Williams v. Lee and its progeny. Second, in both events the underlying issue is the application of state law on the reservation—by the sheriff or private server serving process and by the sheriff executing on a judgment. Third, there is something of a slippery slope between the two. There is an understandable reluctance on the part of a state court judge to find service proper when the result is a valid judgment.

(B) In the court of a sister state. Durfee v. Duke, 375 U.S. 106 (1963), held that "once the matter has been fully litigated and judicially determined, it cannot be retried in another State in litigation between the same parties." Id. at 115. Thus, the result appears to be the same: if the jurisdictional question was fully and fairly litigated at the trial level, it may not be collaterally attacked on enforcement in another jurisdiction. If not, then full faith and credit does not compel foreign enforcement.

(C) In an Indian tribal court. The analysis is similar as in (B), with the additional complication of the application of full faith and credit to Indian tribes. See infra text accompanying notes 69-88.

In summary, the original "Lee v. Williams" hypothetical situation left the subject matter jurisdiction question unraised and unlitigated at trial and on appeal. On enforcement in the forum state, rule 60(b)(4) should be available. On enforcement in a foreign state, full faith and credit concerns should not block collateral attack. On enforcement in tribal court, full faith and credit is even more problematical and the defendant should be able to halt enforcement.

that is unenforceable somewhere within the state. The events are
distinguishable and the situation described is exactly the one that
prevails, but the reluctance that one sees in the cases to treat ser-
vice of process and execution of judgment differently justifies the
discussion of both in one article. The issues are, then, how may
process be served and how may judgments be enforced on the
reservation?

II. Service of Process on the Reservation

In Public Law 280 States

Public Law 280 was an act of Congress that permitted some
states and required others to assume civil and criminal jurisdic-
tion over Indian country. Appendix I lists the states that have
assumed Public Law 280 jurisdiction. Generally speaking, they
are not the states with the largest Indian reservations.

As Bryan v. Itasca County made clear, albeit in dicta, a state
that has assumed Public Law 280 jurisdiction has avoided the
Williams v. Lee subject matter jurisdiction problem and may ap-
ply its rules of decision even in suits involving reservation transac-
tions. It would seem to go without saying that such a state’s ser-
vice of process statute could be validly applied on the reservation.
If not, then notwithstanding Bryan’s approval of the lawsuit in
state court with determination under state law, the defendant
could still find sanctuary on the reservation. True, Public Law

district court had jurisdiction to dissolve the marriage, it had jurisdiction to determine
proper distribution of the parties’ community personal property.” See also Little Horn

   It has been a long standing doctrine that any court having jurisdiction to render a
judgment also has the power to enforce that judgment through any order or writ
necessary to carry its judgment into effect. . . . The property subject to the writ was
located within Big Horn County, the writ was directed to the sheriff of Big Horn
County, and all other essential elements of a valid writ of execution existed.


8. The assumption of Public Law 280 jurisdiction remains a possibility, but since
1968 the consent of the tribes concerned has been required. Such consent is not typically
forthcoming.


10. The precise issue in Bryan was whether a Public Law 280 state might tax reserva-
tion property. The Court held no, but stated that section 4(a) of the Act “authorizes ap-
plication by the state courts of their rules of decision to decide such [civil] disputes.” 426
U.S. at 384, citing Israel & Smithson, Indian Taxation, Tribal Sovereignty and Economic
280 did not terminate the reservation\textsuperscript{11} and not all state laws apply there,\textsuperscript{12} but it is difficult to imagine that Congress would legislate to remove the barrier to subject matter jurisdiction while retaining a similar barrier to personal jurisdiction. This writer concludes, then, that in Public Law 280 states, process may be served on the reservation under state law.

\textit{In Non-Public Law 280 States}

When Public Law 280 jurisdiction has not been assumed, the state court obtains subject matter jurisdiction, not by congressional grant, but by common law permission provided the transaction sued over is off-reservation.\textsuperscript{13} What of personal jurisdiction? Service of process under state statute or rule on the reservation should be seen as an attempted application of state law on the reservation, subject to the familiar two-step analysis: (1) Does that application run afoul of any congressional enactment (hereafter "preemption" or "supremacy")? (2) Does that application "infringe upon the Indians' right to make their own laws and be ruled by them" (hereafter denoted by references to \textit{Williams} or infringement)?

Thus the first issue is whether any federal statute prohibits the application of a state service of process statute or rule on the reservation. None comes to mind and no case has ever so held, but the enigmatic \textit{Kennerly v. District Court}\textsuperscript{14} requires that the possible preempting effect of Public Law 280 be considered even in those states that have not assumed jurisdiction thereunder. Is assumption under Public Law 280 the \textit{only} way a state may exercise jurisdiction on the reservation? Though \textit{Kennerly} rather expressly says so,\textsuperscript{15} it should probably not be read so broadly. In-

\begin{footnotes}
\item[13] The issue of the existence \textit{vel non} of subject matter jurisdiction in state court when the transaction occurred off the reservation is beyond the scope of this article, but it is assumed throughout that such jurisdiction does exist. No United States Supreme Court case has directly so held, but Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973) and Central Mach. Co. v. Arizona Tax Comm'n, 448 U.S. 160 (1980), both taxation cases, strongly suggest that result. See State Securities, Inc. v. Anderson, 84 N.M. 629, 506 P.2d 786 (1973), discussed \textit{infra} with respect to personal jurisdiction.
\item[14] 400 U.S. 423 (1971) (per curiam).
\item[15] "The Court in \textit{Williams}, . . . noted that 'essentially, absent governing Acts of Congress. . . .' With regard to the particular question of the extension of state jurisdiction over civil causes of action . . . there was, . . . a 'governing Act of Congress, \textit{i.e.} [Pub. L. 280].'"
\end{footnotes}
deed, to do so would be to render *Williams v. Lee* superfluous, a proposition that flies in the face of recent Supreme Court citation of that landmark case.16 Public Law 280 should not be read to have so sweeping a preemptive effect.

Finding that Public Law 280 does not answer all Indian jurisdiction problems does not itself settle the matter, of course. *Williams v. Lee* stands ready to strike offensive state law even where no conflicting federal statute is found.17 Does service of process on the reservation infringe upon Indian self-government?

Let us hypothesize such an infringement: Suppose a tribe, fearful of breaches of the peace, determines that process may be served on the reservation only by a tribal law enforcement officer who must place the summons in the defendant’s hand. Suppose further that the state in which that tribe resides has a very liberal rule allowing the summons to be tacked on the defendant’s door by any disinterested adult. Plaintiff chooses Ace Process Servers, Inc., whose agent visits the defendant’s reservation home and posts the summons. Is the service valid?18 *Williams v. Lee* suggests that it is not. The tribe has made a legitimate policy choice and the application of the more liberal state rule on the reservation frustrates that choice. Indeed, many of the most sensitive services will come in just the context of an off-reservation lawsuit. To allow the state rule to control here would infringe upon Indian self-government at least as much as to allow the Arizona court to adjudicate Lee’s suit against Williams.

No case has been found that brings the hypothetical situation to life, but it is not difficult to find one ripe for such a controversy. New Mexico’s service of process rule is not so liberal as the hypothetical one, but it allows service on a defendant other than by a law enforcement officer.19 The Jicarilla Apache Tribe, on the other hand, requires that civil process be served by a disinterested police officer.20 Suppose then that Smith sues Fast


18. There is, of course, a due process inquiry as to whether such posting gives the defendant adequate notice. The reservation location would appear not to affect this question and it need not be explored here.


20. Jicarilla Law & Order Code, ch. II, § 4(c). This statute gives the rule for service of process in tribal court. The Code does not speak to service on the reservation for an off-reservation suit. It seems that it might, in which case the *Williams* argument would be even stronger.
Horse\textsuperscript{21} in New Mexico court over an off-reservation cause of action. Smith serves process on Fast Horse in a manner that meets the New Mexico requirements but that would not be sufficient if the suit were brought in tribal court. Is the service good?

At this point it is important to distinguish two inquiries. First, did Fast Horse receive adequate notice of the suit in the New Mexico court? If not, then the due process clause of the United States Constitution requires dismissal. Here, the answer is probably that notice was sufficient. The New Mexico service statute, we may assume, is constitutional; it comports with due process; it provides the notice the Constitution requires, and the reservation location of the defendant is immaterial to that question of notice.

But the teaching of \textit{Williams v. Lee} is that, when a reservation is involved, there is an inquiry beyond due process; there is an interest to be protected other than the defendant’s right to notice of the suit. That interest is the tribe’s right to “make its own laws and be ruled by them.”\textsuperscript{22} This is an interest that has little to do with the defendant’s right to receive fair notice of the suit against him. The interest is the tribe’s, not the individual’s,\textsuperscript{23} and here the tribe’s legitimate choice to require service by a tribal police officer has been frustrated by application of New Mexico law on the reservation.

It is not suggested that the result is foretold, and there are arguments the other way. It could be said, indeed, that New Mexico law is \textit{not} being applied on the reservation, that the effect of a service of process rule is to say what must be done in order for the suit to continue off the reservation and, if those acts are

\textsuperscript{21} It is intended that names of the parties indicate their races, and indeed many of the most difficult problems come in interracial conflicts such as that hypothesized. See, \textit{e.g.}, Annis v. Dewey County Bank, 335 F. Supp. 133 (D.S.D. 1971); Francisco v. State, 113 Ariz. 427, 556 P.2d 1 (1976); State Securities, Inc. v. Anderson, 84 N.M. 629, 506 P.2d 786 (1973). \textit{But see, e.g.}, Bad Horse v. Bad Horse, 163 Mont. 445, 517 P.2d 893, cert. denied, 419 U.S. 847 (1974).

Suppose both litigants are non-Indians. Theoretically the analysis is the same, and the tribe’s policy against potential breaches of the peace is just as much frustrated when a non-Indian defendant is served by a private party. United States Supreme Court authority suggests otherwise. See, \textit{e.g.}, \textit{New York ex rel. Ray v. Martin}, 326 U.S. 496 (1946); \textit{Draper v. United States}, 164 U.S. 240 (1896).

Suppose the defendant is an Indian but not a member of the tribe on whose reservation service is being made. Such problems are dealt with briefly in the \textit{Colville} case, 447 U.S. 134, 160-61 (1980).


\textsuperscript{23} Rolette County v. Eltobgi, 221 N.W.2d 645 (N.D. 1974).
done, wherever they are done, then the New Mexico court may continue with the suit. Furthermore, the Jicarilla rule does *not* say that service of process for a New Mexico suit must be undertaken by a police officer, but rather that a service of process for a Jicarilla suit must be so done. Nevertheless, on balance it appears that, at least in the New Mexico-Jicarilla hypothetical example, *Williams* requires that service by a private person on the reservation should be invalid.

The cases addressing the issue are split and, generally speaking, unenlightening. Two cases have directly held that service on the reservation was improper, not because of any federal barrier but because the state sheriff had no authority on the reservation. In both cases state law required service to be undertaken by a sheriff in his official capacity and both courts found a sheriff to be without official capacity on the reservation. Several other courts have opined in unexplained dicta that reservation service is improper.

Three cases have held service on the reservation to be proper:


25. This may understate the importance of the two cases a bit. Read narrowly, the two cases say that service of process was invalid because a statute required service by a sheriff acting in his official capacity and neither sheriff could do so on the reservation. Stripped of their offices, the sheriffs were private process servers, and service by such a person is insufficient under *state* law. Nevertheless, it is submitted that the question of the sheriff's status, official or not, on the reservation is similar to the basic service of process question under discussion. The courts' opinions show that. See *Francisco v. State*, 113 Ariz. 427, 429-30, 556 P.2d 1, 3-4 (1976); *Martin v. Denver Juvenile Court*, 177 Colo. 261, 263-64, 493 P.2d 1093, 1094 (1972). It is interesting to note that the Arizona Supreme Court, in its decision in the famous *Williams v. Lee*, 83 Ariz. 241, 319 P.2d 998 (1958), *rev'd* 358 U.S. 217 (1959), decided this issue of state/federal law differently. Service of process was made on the reservation in that case, apparently by the sheriff, and the Arizona Supreme Court had no difficulty finding it proper. 83 Ariz. at 224, 319 P.2d at 1000. Prejudgment attachment was also made on the reservation. This the state court found impermissible under federal law. 83 Ariz. at 247-48, 319 P.2d at 1002-03, *citing* 25 C.F.R. § 277.13.


but in none of these is the issue framed as clearly as in the hypothetical. In *State Securities, Inc. v. Anderson*, the New Mexico Supreme Court’s discussion of service of process is inextricably intertwined with the discussion of whether the state court has subject matter jurisdiction over the suit on notes made off-reservation. The court concludes: “We believe that state jurisdiction is proper in cases between Indians and non-Indians involving contractual obligations incurred off the reservation and we hold that process may be served on Indians while they are within the boundaries of the reservation.” However, the discussion of pre-emption and infringement does not support the second half of the conclusion. The court introduces this discussion with reference to service of process, but the diversion of the court’s attention to the subject matter of the suit is shown by its preliminary conclusion: “In this case there is not a proprietary interest in land, one Indian is not suing another Indian and the transaction did not arise in Indian country.” These factors, of course, concern the state court’s ability to hear the suit at all and have little to do with the manner in which the plaintiff served process on the defendant. The court does not discuss factors relevant to service, nor does it mention the tribe’s service statute. The New Mexico Supreme Court apparently assumed that personal jurisdiction tags along with subject matter jurisdiction and that a discongruity between the state and tribal service rules poses no issue at all.

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29. *Id.* at 632, 506 P.2d at 789.
30. “In an attempt to determine whether Indian immunity from process is necessary in this case to protect the right of reservation Indians to make their own laws and be ruled by them, we have surveyed a number of cases and other authorities.” *Id.* at 631, 506 P.2d at 788 (emphasis added).
31. *Id.* at 632, 506 P.2d at 789.
32. Although the court does not mention the tribe’s service statute, that detail is independently discoverable. The reservation involved is the Navajo Reservation, see 506 P.2d at 786, and the applicable service rule reads as follows:

The summons and complaint shall be served by any officer of the Navajo Police Department or any other person authorized by the Court by delivery of a copy to the defendant or someone over the age of sixteen (16) living at the usual residence of the defendant or working at the usual place of business of the defendant. If personal service cannot be effected within five days, notice may be given by registered mail. If service by registered mail cannot be effected, then notice may be given by publication in the Navajo *Times* for three (3) weeks.”


There are a number of discongruities between this rule and the one which obtains in
As the earlier hypothetical case indicates, Williams suggests otherwise.

*Bad Horse v. Bad Horse*[^33^] is a Montana Supreme Court case that cites *State Securities, Inc. v. Anderson*[^34^] and holds service proper. Once again, most of the opinion deals with the ability of the state court to take subject matter jurisdiction over the suit. In the puzzling end to the opinion, the court first suggests that personal jurisdiction is unnecessary in this case,[^35^] then suggests that once process has been served and notice had, any legal impediment to the service becomes moot.[^36^] The court concludes without analysis that "Indian country is not a federal enclave off limits to state process service."[^37^] Perhaps *Bad Horse* is explained by the frustration the Montana Supreme Court feels with the doctrine of tribal sovereignty.[^38^] As recent United States Supreme Court opinions have held, the doctrine, and perhaps the frustration, are here to stay.[^39^] Given that tribal sovereignty and the Williams infringement test are clearly parts of the law, *Bad Horse* is best relegated to historical obscurity.[^40^]

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[^34^]: Id., 517 P.2d at 897.
[^35^]: "A court may have jurisdiction to grant a divorce even though the defendant has not been served personally . . . ." Id., 517 P.2d at 896.
[^36^]: "Once the district court has assumed jurisdiction over the subject matter and process has been properly served, the defendant cannot throw up a shield around herself by claiming that the state process server cannot pierce the exterior boundaries of an Indian reservation and serve civil process therein." Id., 517 P.2d at 897.
[^37^]: Id. It is here that the court cites *State Securities*.
[^38^]: The myth of Indian sovereignty has pervaded judicial attempts by state courts to deal with contemporary Indian problems. Such rationale must yield to the realities of modern life . . . . Only by throwing off the strictures of Indian sovereignty can state courts enter the arena and meet the problems of the modern Indian. If Congress and the federal appellate courts have a better solution, let them come forward.
[^39^]: Id.
The latest case holding on-reservation service proper, and the most thoughtful of the three, is *LeClair v. Powers* from the Supreme Court of Oklahoma. In that case Georgia LeClair sued her husband, Alexander, for divorce. Alexander was served process in Indian country by an Oklahoma sheriff. Alexander did not appear at several hearings or at the divorce trial. At a contempt hearing he challenged the court’s jurisdiction over his person and lost. He then sought a writ of prohibition against Powers, the trial judge.

The supreme court denied the petition for the writ, citing *Bad Horse* and *State Securities*. Once again the court does not clearly separate subject matter and personal jurisdiction, especially in that part of the opinion where the earlier cases are cited. This time, however, the petitioner, defendant in the original trial, was able to bring home to the court the separate nature of his argument: “service by the State according to its own procedures is asserted as an interference with the self-governing activities of the Indian tribe.” However, the court finds no conflicting tribal service of process rule. Since the Ponca Tribe has a so-called “Court of Indian Offenses” whose rules are set by federal regulation, the court is correct in finding that no tribal self-government interest is implicated.

In summary, then, with respect to service of process, two thoughts are in order. First, the next court to deal with the issue might well take the issue as one of first impression as the precedents, both ways, are so weak. The cases finding service improper are limitable by narrow bits of Arizona and Colorado law or merely state a conclusion in dictum. The cases finding service proper are not careful in their analysis (*State Securities*), are distorted by a fear of tribal self-government (*Bad Horse*), or are limited to the unusual case of Code of Federal Regulation courts (*LeClair*). Thus, a case that will apply the *Williams* test thoughtfully to the application of state service laws on the reservation is awaited.

Second, in many cases the legal difficulty is avoidable. Most tribes have service of process rules, many of which are similar to

42. *Id.* at 375. The court reports that LeClair’s cited authority is *State ex rel. Merriv v. Turtle*, 413 P.2d 683 (9th Cir. 1979) and *Benally v. Marcum*, 89 N.M. 463, 553 P.2d 1270 (1976), two extradition cases. Apparently none of the state cases holding or suggesting that service is impermissible was used.
43. 632 P.2d at 376.
44. *See id.* and 25 C.F.R. pt. 11.
the corresponding state rules. It is possible that acting in conformity with the tribal rule will also satisfy the requirements of the state rule. If this is the case, then the rather knotty problems herein discussed disappear as the laws of both jurisdictions have been followed. If subject matter jurisdiction exists in the state court and if process has been served in accordance with the tribal rule and if such service satisfies the state rule, then the suit may proceed with no fear of infringement.

While most legal problems disappear when service is accomplished under both tribal and state law, several practical problems remain. First, tribal law must be discovered, and that is, generally speaking, a more difficult legal research task than usual. Tribal codes are often not published or distributed widely. They are not found in many law firm libraries. To provide some aid to the practitioners in this regard, Appendix II contains the service of process rules of several tribes.

Once the tribal rule is found, the correspondence must be in the right direction. That is to say, the legal problems disappear only if the state method is more liberal than the tribal method. If the opposite is true, then service under the tribal method does not automatically satisfy the state rule. The attorney must be careful to serve under tribal law in a way that will satisfy the state law.

One further practical problem remains. Tribal law may require service by a tribal law enforcement officer. Such an official may be reluctant to serve process with respect to a suit brought in state court. All law enforcement officers are busy; many do not care for civil process serving and service may be expensive, especially on a large reservation. Furthermore, the tribal officer may not be permitted to serve for a state court suit. All in all, it may be difficult to arrange the practical details of service pursuant to the state law in conformity with the tribal law.

45. See, e.g., the service rules of New Mexico and the Navajo Tribe, discussed supra in note 32. In most ways, the state rule is more generous than the tribal and hence service under the tribe's rule will satisfy the state's. That appears not to be the case, however, with respect to service by publication.

Service by publication raises, as always, due process inquiries. In the case of the Navajo rule, the relevant provision is found in the Indian Civil Rights Act, 25 U.S.C. § 1302(8).

46. This is, of course, a matter of tribal law.

47. But see Nenna v. Moreno, 132 Ariz. 565, 647 P.2d 1163 (Ariz. App. 1982), in which the plaintiff used a Papago official to serve process. Service, however, was to no avail, as the court of appeals held there to be no subject matter jurisdiction to hear the suit under the Uniform Reciprocal Enforcement of Support Act. But see Natewa v. Natewa, 84 N.M. 69, 499 P.2d 691 (1972). See also Francisco v. State, 113 Ariz. 427, 556 P.2d 1 (1976) (en banc) and especially n.1.
Knotty legal problems on the one hand; practical difficulties on the other. Service of process on the reservation with proper respect for the defendant's right to due process and the tribe's right of self-government would appear to be an issue especially susceptible to state-tribal cooperation.

III. Execution of Judgment on the Reservation

Consider now the other end of the litigation spectrum. Suppose there is valid subject matter jurisdiction in state court and that service has been properly made—perhaps off-reservation, perhaps on-reservation pursuant to both state and tribal law. The case goes to judgment for the plaintiff and the defendant does not voluntarily pay the debt. Furthermore, the defendant's only nonexempt assets lie on the reservation. How may the plaintiff enforce the judgment? Once more, we must distinguish between Public Law 280 and non-Public Law 280 states.

Enforcement of Judgment in Public Law 280 States

Theoretically the question of the enforcement of judgment in Public Law 280 states is as easy as the question of service of process. "Why," a novice might ask, "would Congress grant to the states the power to serve process, hear a case, and determine the outcome under state law, but stop short of allowing enforcement of the judgment obtained?" The answer is that the last step, unlike the first several, directly affects Indian land, and Congress, even while enacting Public Law 280, was protective of Indian land rights. Witness 25 U.S.C. § 1322(b), a proviso to the jurisdictional grant of section 1322(a): "Nothing in this section shall authorize the . . . encumbrance . . . of any real or personal property . . . belonging to any Indian or any Indian tribe [etc.] that is held in trust by the United States . . . ." Hence, even in


49. 25 U.S.C. § 1322(b) (1976). This section was enacted as part of the Indian Civil Rights Act of 1968, but it followed exactly the wording of 28 U.S.C. § 1360(b), which was
Public Law 280 states, execution on a state court judgment presents difficulties and requires the judgment creditor to seek out nontrust property.

Unfortunately for the creditor, much Indian property is held in trust. Most tribal property is, as are all allotments where the trust period had not expired before Congress extended it indefinitely in 1934. Therefore, even in Public Law 280 states, the plaintiff may well obtain only a personal judgment, unenforceable against all of the defendant’s property of any value.

Section 354 of Title 25 makes it clear that it is the fact that the property is in trust which forbids the enforcement of a judgment on the property. Section 1322(b) in turn makes it clear that Public Law 280 has no effect on this protection. Whether the judgment is obtained in a Public Law 280 or a non-Public Law 280 state, trust property will be protected from execution. This explains why all the cases to be discussed involving enforcement of state judgments will concern nontrust property—wages, personalty, and so forth. With respect to this nontrust property, execution should be permitted in Public Law 280 states as the proviso in section 1322(b) does not apply.

Enforcement of Judgment in Non-Public Law 280 States

In non-Public Law 280 states, the impact of the bar to encumbrance of trust property equals that discussed above. Again,

part of the original Public Law 280. For a precursor of these sections, see 25 U.S.C. § 233, which was a Public Law 280-like statute, applying only to New York and passed in 1950:

provided further, That nothing herein contained shall be construed . . . as subjecting any such lands . . . to execution on any judgment rendered in the State courts, except in the enforcement of a judgment in a suit by one tribal member against another in the matter of the use or possession of land . . . .


50. See F. COHEN, FEDERAL INDIAN LAW 471-507 (1982). The only importance of this restriction is for plaintiffs who obtain judgment against a tribe. Tribal defendants are not discussed in this paper and shall not be, as suits against tribes are generally barred by sovereign immunity. See Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).


52. The possible preemptive effect of Public Law 280 in nonassuming states is ignored here, Kennerly to the contrary notwithstanding. See supra text accompanying notes 14-16.
much reservation land is held in trust, either for the tribe or for individual Indians, and hence will be immune from execution. What of nontrust property: perhaps personalty, perhaps property freed from the restraint, perhaps property held in fee simple, as with the Pueblos? May a valid state court judgment be enforced against such property?

It is easier to see an infringement here than in the case of service of process. Putting aside the discongruity, hypothesized earlier, between state and tribal service statutes and assuming notice conforming to due process, it is difficult to see that mere service of process—notifying the defendant of the pending lawsuit—infringes upon the Indians' right to make their own laws. But with enforcement of judgment, the case seems clearer. Of course, if the tribe prohibits or restricts execution, garnishment, replevin, or the like, the arguments are the same as those discussed at length above. Even if the tribe is silent with respect to execution, or even if it permits it by the same process the state is using, an infringement should be found. The concern now is not merely with the procedure of enforcement, although there are due process inquiries here as well. Enforcement amounts to a seizing of property on the reservation, which constitutes a substantial intrusion into reservation affairs. It is relatively nondisruptive of reservation life to permit a suit, pursuant to an off-reservation transaction, to continue. Discontinuity of service statutes aside, service is proper. Personal judgment may be entered and may, of course, be paid voluntarily. The act of converting the personal judgment into an interest in reservation property, however, should not withstand *Williams* scrutiny.

The most recent case is in accord with this view. In *Joe v. Marcum*, 53 U.S. Life sued Joe in New Mexico court over an off-reservation debt. Default judgment was entered. U.S. Life then attempted to garnish Joe's wages, earned on the reservation and

53. 621 F.2d 358 (10th Cir. 1980). See also Airvator, Inc. v. Turtle Mountain Mfg. Co., 329 N.W.2d 596 (N.D. 1983). The issue in *Airvator* was whether the state court had subject matter jurisdiction over a suit on a contract where the breaching party is a corporation 51% Indian-owned. The North Dakota Supreme Court held that there was subject matter jurisdiction in state court, *id.* at 604. In dicta, the court then contemplated the eventual judgment: "We do recognize that, in the event a judgment is served in favor of Airvator against Turtle Mountain Manufacturing, enforcement and execution of that judgment in state court may be difficult because the corporation's assets may be located on the Turtle Mountain Indian Reservation." *Id.* at 605. The court appears to recommend that enforcement be sought in tribal court, with subsequent full faith and credit concerns. See *id.* and infra, text and notes 69-89.

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owed to Joe by Utah International, a non-Indian, Delaware corporation. Joe sought an injunction in federal court against the garnishment. The Court of Appeals for the Tenth Circuit affirmed the district court's grant of the injunction. It is fair to say that the circuit court expressed some reluctance to reach this result; nonetheless, the court held that "to allow the present garnishment proceeding to stand would impinge on tribal sovereignty." 

The court looked to a number of factors in reaching this conclusion. The preemptive effect of Public Law 280 was considered, although it was not dispositive. So too was the sovereignty of the Navajo Tribe mentioned. The key element, however, was that "to permit a state court of New Mexico to run a garnishment . . . on the reservation . . . would thwart the Navajo policy not to allow garnishment," a policy the court had earlier found legitimate. The court found the Navajo's policy against garnishment to be embodied in silence.

The court was not persuaded by the argument that the garnishment was ancillary to the underlying suit on the off-reservation debt. A new, on-reservation party, the garnishee, was involved. A new on-reservation res, the wages due, was sought. A new on-reservation service of process was required. All in all, the court found the garnishment to be a new suit, sufficiently separate from the initial suit to invoke the Williams test and the subsequent barrier to the state activity.

Two cases prior to Joe v. Marcum had dealt with the issue of execution on the reservation. Little Horn State Bank v. Stops involved, like Joe v. Marcum, an on-reservation garnishment pursuant to a judgment entered on an off-reservation debt. The Montana Supreme Court did not find the silence of the tribe, here the Crow, on the question of garnishment to be as relevant as did the Tenth Circuit, later, in Joe v. Marcum. "Until the Crow Tribe has provided a means of such enforcement or acted in some manner within this area, we fail to see how tribal self-

54. "[W]e recognize that there is authority to the contrary, and that an argument can be made that Joe should not be allowed to use the Navajo Reservation as a sanctuary to insulate himself from state court garnishment proceedings arising from an off-reservation transaction with a non-Indian lending agency." Id. at 361.
55. Id.
56. Id. at 362 (emphasis in the original).
57. Id. at 361.
58. Id. at 362.
government is interfered with by assuring that reservation Indians pay for their debts incurred off the reservation."

At the heart of the *Stops* case is the court's view that a judgment that is not enforceable is "absurd." Judgments, of course, are ordinarily not enforceable in other jurisdictions, but the court refers to full faith and credit as the judgment creditor's protection when defendant is in other states. The court, however, does not explain what protection the plaintiff gets when the defendant's property is in a foreign country. Thus, the Montana court's frustration is again with the sovereignty of the Crow Tribe—no foreign country, to be sure, but hardly a mere part of Big Horn County as the court suggests.

The other pre-*Joe v. Marcum* enforcement of judgment case is *Annis v. Dewey County Bank* in which the non-Indian creditor bank attempted to execute judgment on defendant's on-reservation personal property. As always, the bank's execution was pursuant to a valid judgment on an off-reservation debt. Instead of challenging the execution in state court, as *Stops* had unsuccessfully tried, *Annis* sought an injunction in federal court, as *Joe* was to do several years later. *Annis*, as did *Joe*, persuaded the federal court to grant the injunction, the court reasoning very similarly to the Tenth Circuit. *Annis*’s victory, however, was pyrrhic, for the bank counterclaimed in federal court on its state court judgment. After granting *Annis*’s injunction, the district court turned to the bank's counterclaim, found that no independent jurisdictional base was needed, and granted judgment for the bank. The federal marshal was then sent to execute on *Annis*’s cattle, free of any *Williams* barrier.

The bank's clever and successful tactic, which was inexplicably not copied by U.S. Life in *Joe v. Marcum*, places the defendant resisting execution in a quandary. He can litigate the matter entirely in state court, even though the right to be free from execution is a federal one. Or, fearing the unhappy state reception that *Stops* received, the defendant may seek protection of the federal court, there to face the creditor's counterclaim, *a la Dewey County Bank*. Even in the Tenth Circuit, where *Joe v. Marcum* appears to have settled the issue, the options are risky, for the

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60. *Id.*, 555 P.2d at 214.

61. See *infra* text accompanying notes 69-82.


63. None existed, of course, as the parties were not diverse and no federal question was raised by the bank's counterclaim on the state court judgment.
counterclaim is available even though the injunction should summarily be granted, and a state court might always refuse to follow the federal court of appeals. 64

The way out of this quandary is not apparent. One possibility is to find that the counterclaim is not permitted because it does not arise out of the same transaction as the debtor's suit for the injunction. But the Annis court's analysis of this issue appears technically flawless. 65 It might also be found that the federal marshal may not execute on what is essentially a state court judgment. Once again the court is correct in saying, sub silentio, that Williams is a bar only to state interference with tribal activity.

64. Hence the debtor faces the unsavory choice between litigating in state court or facing the Annis-counterclaim in federal court. The choice, however, remains the debtor's. It would appear that the creditor with a state court judgment has very limited access to federal court, unless the debtor opens the courthouse door by seeking the federal injunction. The federal court registration statute, 28 U.S.C. § 1963, allows registration only of judgments from other district courts, so a state court judgment may be converted into a federal one only by bringing suit thereon. But Threlkeld v. Tucker, 496 F.2d 1101 (9th Cir. 1974) held: "Inasmuch as the federal courts are not appendages of the state courts, a federal court cannot enforce a state-court judgment without first independently establishing its own jurisdiction over the subject matter and the parties. [Citing cases.] Here diversity jurisdiction provides the basis for subject-matter jurisdiction . . . ." Id. at 1104.

The result of 28 U.S.C. § 1963 and the Threlkeld holding is that a plaintiff with a state court judgment will be able to seek enforcement in federal court, thereby avoiding Williams v. Lee, only if there is diversity, federal question, or special statutory jurisdiction. Assume the parties are not diverse. (For inspection of the question whether federal court jurisdiction exists when the parties are diverse and the suit would be barred by Williams v. Lee in state court, compare Poitra v. DeMarrias, 502 F.2d 23 (8th Cir. 1974) cert. denied, 421 U.S. 934 (1975) and American Indian Nat'l Bank v. Red Owl, 478 F. Supp. 302 (D.S.D. 1979) (yes) with Hot Oil Serv., Inc. v. Hall, 366 F.2d 295 (9th Cir. 1966) and Littell v. Nakai, 344 F.2d 486 (9th Cir. 1965), cert. denied, 382 U.S. 986 (1966) (no). The new edition of Cohen's Federal Indian Law, supra note 50, prefers the latter at 317.) Furthermore, there is generally no statute giving federal court jurisdiction over such suits.

Is there federal question jurisdiction under 28 U.S.C. § 1331? It appears settled that there is not since the federal question must appear in the plaintiff's complaint. See Cohen, supra, at 311. Thus, in Williams v. Lee, as a matter of federal law, the Arizona court cannot hear the case. Nevertheless, a federal court could not adjudicate the debt unless the parties are diverse. The suit must go to tribal court, as the Supreme Court suggests. 358 U.S. at 222. Likewise, there would not seem to be a federal question, allowing for suit in federal court on a state court judgment, merely because the state judgment is not enforceable on the reservation as a matter of federal law.

Here, however, the debtor could gain at least some support from the Ninth Circuit, which has held that a federal court may not hear a diversity suit which would be barred by *Williams* from state court. 66  
Finally, a series of cases has been decided involving the Uniform Reciprocal Enforcement of Support Act where the obligor is found on a reservation and the support-seeker is found in another state. 67 Generally speaking, these cases are unhelpful on the issue under discussion because the courts seek some off-reservation, in-state activity so as to create subject matter jurisdiction in the state court. Most often it is not found. 68

In summary, the *Joe v. Marcum* view appears correct, with the potentially substantial practical limitation posed by the *Dewey County Bank* counterclaim.

**Enforcement of State Court Judgments in Tribal Court**

It was suggested earlier, as a practical way around the problem of service of process on the reservation, that process be served under both state and tribal law. A similar but more complex solution exists with respect to enforcement of the judgment: the judgment creditor may attempt to have the state court judgment enforced in tribal court. This raises interesting questions of full faith and credit and comity. 69

Comity may be discussed rather quickly. That doctrine represents the respect one government shows to another, in this instance by recognizing the other government’s court judgments. 70 The question is one of the local law of the jurisdiction granting comity, here the tribe. A judgment creditor may always take the state court judgment to the tribal court seeking comity, i.e., arguing to the tribal court that it ought, as a matter of tribal policy, recognize and enforce the state’s judgment. It is not at all unlike-

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66. Hot Oil Serv. Inc. v. Hale, 366 F.2d 295 (9th Cir. 1966).
68. *Nenna, Flammond* and *Three Irons* all found jurisdiction lacking. In view of the earlier critical comments in the text concerning the reluctance of the Montana Supreme Court to accept the doctrine of tribal sovereignty, it should be noted that *Flammond* and *Three Irons* embrace the doctrine with some enthusiasm. “In recent years American Indian tribes have strived to become independent and responsible government entities. There is every reason to hope, therefore, that the Blackfeet Tribe will afford the petitioning wife a viable remedy in its courts.” 621 P.2d at 474. Justice Harrison retains the old view. See *Flammond*, 621 P.2d at 474-76 (Harrison, J., dissenting).
ly that the tribal court will grant such recognition, perhaps after some formal or informal hearing to determine that the state judgment was obtained fairly. The existence *vel non* of comity, of this hearing and the procedures for it, are governed by tribal law, restricted, as always, by the Indian Civil Rights Act's guarantees of due process.\(^71\)

More problematical is full faith and credit, a federal policy that might be imposed on the tribes, if Congress is of a mind to do so.\(^72\) The legislation that implements full faith and credit is 28 U.S.C. § 1738.\(^73\) This statute, set out in the margin,\(^74\) does not mention Indians, but contains the word "territories," which has been interpreted in some cases to mean Indian tribes.\(^75\)

There are several difficulties with the application of 28 U.S.C. § 1738 to Indian tribes. First, of course, is the unlikely interpretation of "territory" to mean Indian tribe, surely not an interpretation of any sweeping use.\(^76\) Second, there is 25 U.S.C. § 1911(d), the Indian Child Welfare Act's full faith and credit clause,\(^77\) which calls a tribe a tribe and shows the clarity with which Congress legislates when it wishes to. Furthermore, 25 U.S.C. § 1911(d) would not have been necessary had Congress believed that 28 U.S.C. § 1738 applied to tribes.\(^78\)


71. After Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978), the tribal court will police its own compliance with the Indian Civil Rights Act.

72. The Constitution's full faith and credit clause, article IV, § 1, does not mention "Indian tribe" and hence does not bind them, Lohnes v. Cloud, 254 N.W.2d 430, 433 (N.D. 1977). It appears that had it done so, it would be one of the "general terms" of the Constitution which would apply to tribes, even under Talton v. Mayes, 163 U.S. 376 (1896).

73. A related statute is 25 U.S.C. § 1322(c) (1976), which, in Public Law 280 states, grants "full force and effect" to tribal ordinances and customs not inconsistent with state law. This statute does not mention judicial proceedings.

74. The records and judicial proceedings of any court of any . . . State, Territory or Possession . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. Act of June 25, 1948, ch. 646, 62 Stat. 947, 28 U.S.C. § 1738 (1976).


77. The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the . . . judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the . . . judicial proceedings of any other entity. Act of Nov. 8, 1978, Pub. L. 95-608, tit. I, § 101, 92 Stat. 3071, 25 U.S.C. § 1911(d) (1976).

78. Naturally, the later statute could be explained as Congress' attempt to leave the matter free of doubt in an area of special concern.
The greatest difficulty in the application of 28 U.S.C. § 1738 to tribes is that its interpretation, in this article’s context, is left entirely in the hands of the tribal court. There is no appeal from the tribal court into the federal system,79 and Martinez removed the possibility of collateral attack under the due process clause of the ICRA.80 Thus, if a tribe determines that it is not bound to recognize a state court judgment under 28 U.S.C. § 1738, that interpretation of federal law is final, with no possibility of Supreme Court or other federal court review.

Several cases have discussed full faith and credit issues with respect to Indian tribes, but all of the reported cases are the other way, i.e., in the context of state enforcement of tribal judgments.81 Those cases are split, with the majority granting recognition more often as a matter of comity than of full faith and credit.82

80. There may be an application of the theory of Dry Creek Lodge v. Arapahoe & Shoshone Tribes, 623 F.2d 682, 685 (10th Cir.), cert. denied, 449 U.S. 1110, reh. denied, 450 U.S. 960 (1980), to this situation. The holding of that case was that where no tribal forum is available, the federal court may provide relief under the Indian Civil Rights Act, notwithstanding Martinez. In the hypothetical case, the plaintiff presents the judgment to tribal court, which refuses to grant full faith and credit to the state judgment. This is akin to, but distinguishable, from the denial of any tribal forum. If the court should find otherwise, then the judgment plaintiff could bring suit in federal court alleging that to deny full faith and credit violates the due process clause of the ICRA. (The ICRA has no full faith and credit clause.) If the plaintiff prevails, then judgment would be entered in the federal court, which judgment could be executed upon the reservation with no Williams problem. Such would be an unfortunate extension of Dry Creek Lodge, already an unfortunate case, see Laurence, Swallowing the Bitter Pill of Dry Creek Lodge, 14 AM. INDIAN L. NEWSLETTER 30 (1981), and a judicial engraf ting of a full faith and credit clause onto the ICRA.
81. See note 48, supra.
82. In re Lynch’s Estate, 92 Ariz. 354, 377 P.2d 199 (1962) (theory for recognition unclear); Begay v. Miller, 70 Ariz. 380, 222 P.2d 624 (1950) (same); Wakefield v. Little Light, 276 Md. 333, 447 A.2d 228 (1975) (comity); Wippert v. Blackfeet Tribe, 654 P.2d 512 (Mont. 1982) (comity); In re Marriage of Limpy, 636 P.2d 266 (Mont. 1981) (comity); State ex rel. Stewart v. District Court, 609 P.2d 290 (Mont. 1980); In re Doe, 49 N.M. 606, 555 P.2d 906, 913 (Ct. App. 1976) (full faith and credit); Airvator, Inc. v. Turtle Mountain Mfg. Co., 329 N.W.2d 596, 605 (N.D. 1983) (no full faith and credit) (dictum); Lohnes v. Cloud, 254 N.W.2d 430 (N.D. 1977) (no full faith and credit; no comity) (dictum); Red Fox & Red Fox, 23 Or. App. 393, 542 P.2d 918 (1975) (comity); Barrick v. Johnson, 286 N.W.2d 523 (S.D. 1979) (statute provides for recognition in the precise circumstances of the case); In re Buehl, 87 Wash. 2d 649, 555 P.2d 1334 (1976) (full faith and credit); Makah Indian Tribe v. Clallam County, 73 Wash. 2d 677, 440 P.2d 442 (1968) (tribal custom given “full force and effect”). There are a series of old federal cases arising in Indian Territory or Oklahoma, then in the Eighth Circuit, now in the Tenth: Hayes v. Barringer, 168 F. 221 (8th Cir. 1909); Buster v. Wright, 135 F. 947 (8th Cir. 1905); Cornells v. Shannon, 63 F. 305 (8th Cir. 1894); Standley v. Roberts, 59 F. 836 (8th Cir. 1894); Exendine v. Pore, 56 F. 777 (8th Cir. 1893); Mehlin v. Ice, 56 F. 12 (8th Cir. 1893).
In summary, then, a plaintiff with a valid state court judgment that must be enforced on the reservation may attempt enforcement in a number of ways:

(1) Ignoring the reservation, the judgment creditor might attempt to enforce the judgment under state law, assuming the sheriff may be convinced of the propriety of such a notion. Joe v. Marcum reasons correctly that this attempt constitutes an infringement on the tribe’s self-government.

(2) The judgment creditor might approach the tribal court informally, seeking direct execution under tribal law. Tribal execution of a state court judgment is not a tidy combination, but the generally unpretentious tribal courts might well accept the idea. As noted above, the creditor should expect a hearing of some sort to determine that the state court judgment was fairly obtained.

(3) The judgment creditor might approach the tribal court more formally, bringing suit in tribal court on the state court judgment, arguing that it should be recognized under the doctrine of comity. Comity is a flexible doctrine flowing from sovereign states and should be appealing to a tribal court, especially when the state in turn grants comity to tribal judgments, a theme of reciprocity seen in the state court opinions.

(4) The judgment creditor might bring suit in tribal court, arguing that full faith and credit must be given under 28 U.S.C. § 1738. In some cases, this argument, more formal than the last, might prevail where comity would not. A tribal court, reluctant to enforce the judgment of a hostile state but still sensitive to the obligation under a federal statute, might reach this result. Still, given the ambiguity of 28 U.S.C. § 1738, such a court would probably be able to avoid full faith and credit as well as comity and refuse recognition.

(5) Were a tribe and state to be especially cooperative, the tribe might have a registration procedure whereby suit on the state judgment would become unnecessary. The judgment creditor would merely file the judgment with a tribal official, and

83. One of the attractions of garnishment is that the sheriff need not be involved. The writ is sought from and issued by the clerk, off-reservation, and in many states may be served on the garnishee by a private party.

84. And conceivably could raise Indian Civil Rights Act due process questions.


execution would then proceed under tribal law. The model statute is the Uniform Enforcement of Foreign Judgments Act. 88

Conclusion

This article began by noting a number of similarities between service of process and execution of judgment. The discussion above has disclosed an additional similarity, for in each case it was noted how knotty problems could be solved by tribal-state cooperation. Such cooperation, not a hallmark of state-Indian interaction in the past, seems to be an idea whose time has come. 89 If it grows and attacks the question of state court litigation involving reservation Indians and their property, then perhaps this article, which makes no pretense of being the last word on the subject, will be, instead, the last notice taken by anyone concerning the problem.

88. Note that § 1 of the U.E.F.J.A. makes only judgments entitled to full faith and credit registerable.
89. See, e.g., COMMISSION ON STATE-TRIBAL RELATIONS, HANDBOOK ON STATE-TRIBAL RELATIONS (1983).
Appendix I

Statutes and Regulations

A. Public Law 280.

—28 U.S.C. § 1360: “The listed states have civil jurisdiction over causes of action between Indians or to which Indians are parties to the same extent that they have jurisdiction over other causes of action and those civil laws that are of general application to private persons or private property . . . .” Trust property may not be encumbered. Mandatory transfer of jurisdiction exists for:

1. Alaska
2. California
3. Minnesota, except Red Lake
4. Nebraska, except perhaps Omaha. (Compare State v. Goham, 187 N.W.2d 305 (1971) with Omaha Tribe v. Village of Walthill, 460 F.2d 1327 (8th Cir. 1972)).
5. Oregon, except Warm Springs
6. Wisconsin, except Menominee (See Governor’s Proclamation of 2/19/76.)

—25 U.S.C. § 1322(a): The United States has consented to the conferring of jurisdiction of the nature allowed by 28 U.S.C. § 1360 in other states where the occupying tribe consents. The states listed below have assumed some degree of jurisdiction:

2. Idaho, for seven subject areas including domestic relations; more with tribal consent. Idaho Code § 67-5101
3. Iowa, for civil causes of action on Sac and Fox, Iowa Code Ann. § 1.12
7. Utah, with tribal consent, Utah Code Ann. § 63-36-9


C. 25 C.F.R. pt. 11, governing courts of Indian offenses, extends its jurisdiction over the thirty-one tribes enumerated in § 11.1. The regulations apply, at least temporarily, to IRA tribes, 25 C.F.R. § 11.1(d), but do not apply where state law is “effective.” Id. § 11.1(c).

Civil jurisdiction is given in 25 C.F.R. §§ 11.22-11.32C. Generally, jurisdiction over non-Indians is by consent. Actual notice of the suit is required by § 11.22.
Appendix II
Selected Tribal Ordinances Governing Service of Process and Execution of Judgments*
Assiniboine and Sioux Tribes of Fort Peck

Sec. 30 Judgments.

(a) Payment. Any judgment of the Courts against an Indian, which is not paid by the judgment debtor within the time set by the Courts, shall be paid out of funds deposited to the credit of the judgment debtor at the Fort Peck Agency, upon a determination by the Secretary of the Interior or his authorized representative that the payment will not result in hardship to the judgment debtor, and on such terms and conditions as the Secretary may prescribe.

Blackfeet Tribe

Sec. 1 Jurisdiction

The Tribal Court and the State shall have concurrent and not exclusive jurisdiction of all suits wherein the defendant is a member of the Tribe which is brought before the Court. No judgment shall be given on any suit until the defendant has been given ample opportunity to appear in Court in his defense. Evidence of the receipt of notice shall be kept as part of the records in the case. In all civil suits the complainant may be required to deposit with the Clerk of Court a fee or other security in reasonable amount to cover the cost and disbursements in the case.

Sec. 5 Payment of Judgments from Individual Indian Moneys

[This section is similar to Lummi § 3.4.10]

Colorado River Tribes

Sec. 108.—Notices and Service.

a. Any notice or process to any person or party which is required or may be given or served under any provision of this Code shall be served in accordance with one of the following provisions as applicable.

(1) If to a natural person, by delivering it to him personally, or by leaving it at his usual place of residence with a member of his family of the age of eighteen (18) years or older.

(2) If to any other than a natural person, by delivering it personally to any owner, proprietor, officer, director, partner, member, associate, principal stockholder, manager, foreman, or supervisor of such person, or by leaving it at any of its offices or places of business with its principal employee, agent or representative at that place.

b. Any notice, complaint, pleading, instrument, or process of or by any

* The valuable aid of Bryce Wildcat, research assistant at the National Indian Law Library in Boulder, is cheerfully acknowledged.
party to any civil trial, case or proceeding before any of the courts of the Tribes may be served by any person of the age of eighteen (18) years or older who is not a party thereto. Upon the request of any party in such civil matter, such service will be made for him within the Reservation by the Judicial Clerk, or an assistant Judicial Clerk, and the expense thereof will be charged to that party. Any service or execution hereunder shall be verified by a certificate of the person making the service or execution, stating upon whom, when, how and where it was made. That certificate shall be filed with the court.

c. Alternative methods of service.
(1) Registered Mail. If any person or party has not made an appearance in a trial, case or proceeding pending before the courts of the Tribes, so that the provisions of Section 108 a (3) are not applicable, and that person or party cannot be located within the Reservation but the whereabouts of that person or party outside the Reservation are known, service may be obtained by depositing a copy of the notice or process in the U.S. mails, addressed to the person or party to be served, by registered or certified mail with request for a return receipt signed by the addressee only.
(2) Publication. Service by publication shall be allowed only in or for a trial, case or proceeding affecting specific property or status or other proceedings in rem.

Havasupai Tribe

2.11 Service of Process

The copy of the summons and the copy of the complaint shall be served together. Service shall be made as follows:
A. Upon any individual by delivering a copy of the summons which shall indicate the hearing date, and of the complaint to him personally.
B. If service of the summons and complaint cannot be personally made, within the jurisdiction of the Havasupai Tribal Court, a copy of the summons and complaint shall be mailed by Registered or Certified Mail, Return Receipt requested, to the defendant's last known post office address by the Clerk of the Tribal Court.

2.19 Satisfaction of Judgment

A. Where the judgment is for a sum of money, the collection of such judgment shall be by execution, if the judgment has not been satisfied in total within twenty (20) days after entry of judgment or an installment agreement has not been reached.
B. The party in whose favor the judgment has been entered shall have the right to avail her/himself of all remedies available in the Tribal Court for the enforcement of such judgment.

2.20 Judgment—Stay of Entry and Execution—Installment Payment

A. When judgment is to be rendered and the party against whom it is to be entered requests it, the Tribal Court Judge shall:
1. Inquire fully into the earnings and financial status of such party and shall have full discretionary power to stay the entry of judg-
ment, and to stay execution except in cases involving wage claims.

2. To order partial payments in such amounts, over such period, and upon such terms, as shall seem just under the circumstances and as will assure a definite and steady reduction of the judgment until it is finally and completely satisfied.

B. Upon a showing that such party has failed to meet any installment payment without just excuse the stay of execution shall be vacated.

Lummi Tribe
Chapter 3.3 Notification

3.3.01 Notice and Service.

Civil actions may be instituted either by voluntary appearance and agreement of the parties or by service upon the defendant of a true copy of the filed complaint and notice either personally or as provided herein. The notice shall be attached to the copy of the complaint, and cite the defendant to be and appear before the Court at the time and place therein specified, which shall not be less than 20 days from the date of serving of the complaint and notice. Such service may be made by means of certified mail, return receipt requested. Evidence of the receipt of notice shall be kept as part of the record in case.

3.3.02 Publication.

Upon a showing by the complainant to the Reservation Court that diligent efforts were made to serve the complaint and notice on the defendant pursuant to section 3.1.02 and that service could not be made for sufficient reasons, the judge may allow service to be made by posting copies of the notice and complaint in two public places on the reservation for three weeks and by publication of a copy of the notice and complaint once a week for three consecutive weeks in a newspaper of general circulation in the vicinity of the Lummi Indian Reservation. In such case the return date shall be not less than 30 days from the date of first publication.

3.4.10 Payment of Judgments.

Whenever the Lummi Reservation Court shall have ordered payment of money damages to an injured party and the losing party refuses to make such payment, within the time set for payment by the Court, and when the losing party has sufficient funds to his credit at the agency office to pay all or part of such judgment, the Superintendent shall certify to the Secretary of the Interior the record of the case and the amount of the available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the injured party the amount of the judgment, or such lesser amount as may be specified by the Secretary, from the account of the delinquent party.

Navajo Tribe
Sec. 604. Notice and Opportunity to Appear

No judgment shall be given on any suit unless the defendant has actually
received notice of such suit and ample opportunity to appear in court in his
defense. Evidence of the receipt of notice shall be kept as part of the record in
the case.

Sec. 704. Payment from Individual Indian Moneys

[See Lummi § 3.4.10]

Sec. 705. Writs of Execution—Generally

The party in whose favor a money judgment is given by the Courts of the
Navajo Tribe may at any time within five years after entry thereof have a writ of
execution issued for its enforcement. No execution, however, shall issue after
the death of the judgment debtor. A judgment creditor may have as many writs
of execution as are necessary to effect collection of the entire amount of the
judgment.

Sec. 712. Execution Prior to Judgment

(a) Any chattel, legal title to which is in the plaintiff, or upon which the
plaintiff holds a lawful lien may be taken into custody and delivered to the Clerk
upon a writ of execution issued prior to judgment, upon motion of the plaintiff,
for good cause shown and upon posting bond or making a cash deposit in an
amount determined by the Court to be sufficient to compensate the defendant
for any damages he may suffer as a result of wrongful execution. Plaintiff shall
deposit such additional sum as the Court may fix to cover costs of the execution
and of the maintenance of the property while in custody.

Oglala Sioux Tribe

Sec. 20. Jurisdiction.

The Oglala Sioux Tribal Court shall have jurisdiction of all suits wherein the
defendant is a member of the tribe or tribes within their jurisdiction, and of all
other suits between members and non-members which are brought before the
court by stipulation of both parties. No judgment shall be given on any suit
unless the defendant has actually received notice of such suit and ample oppor-
tunity to appear in court in his defense. Evidence of the receipt of the notice
shall be kept as part of the record in the case. In all civil suits the complainant
may be required to deposit with the clerk of court a fee or other security in a
reasonable amount to cover costs and disbursements in the case.

Sec. 22. Judgments in Civil Actions.

In all civil cases, judgments may consist of an order of the court awarding
money damages to be paid to the injured party, or directing the surrender of
certain property to the injured party, or the performance of some other act for
the benefit of the injured party.

Red Lake Tribe

Sec. 3—Service

A. The service of a summons on a person residing or being on the Red
Lake Indian Reservation shall be made by delivering the original summons, with a copy of the complaint attached, to the defendant personally or to a responsible person at the residence or usual abode of the defendant by a police officer of the Bureau of Indian Affairs, or by any other enrolled adult Indian not a party to the action or by certified mail with a return receipt requested.

B. The officer or person causing the service to be made shall file a return on a copy of the summons, to the Court, which shall show the place, date, time and person on whom the service was made.

Sec. 11—Payment of Judgment from Individual Indian Moneys.

[This section is similar to Lummi § 3.4.10]

Sec. 14—Judgments: Method of Enforcement

Where a judgment requires the payment of money or the delivery of real or personal property, it may be enforced in these respects by execution. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required thereby or by law to obey the same; and if he refuses he may be punished by the Court as is provided in Section 19, Chapter 2, Code of Indian Offenses.

Salish and Kootenai Tribes

Sec. 5. Service.

1. The summons and complaint shall be served on the defendant by personal service, whenever possible, within five days, or by mail if the defendant cannot be located. Service by mail shall be made by the Clerk of Court, by registered or certified mail, return receipt requested. The return receipt shall be kept in the docket as evidence of the receipt of notice. Personal service shall be made by a law enforcement officer delivering the summons and complaint to the defendant in person. The officer making personal service shall promptly return to the Clerk an affidavit of service when service has been effected, and this affidavit shall be kept in the docket as proof of personal service. If the officer cannot effect personal service within five days, he/she shall so notify the Clerk of Court why service was not possible.

Shoshone-Bannock Tribe

Sec. 2.4 Service

The Clerk of the Fort Hall Indian Court shall furnish the plaintiff with a copy of the Complaint and a copy of the Notice showing the time and place of hearing. The Clerk shall then enter proof of service upon the original Notice and as provided in Chapter 2 Civil Procedures Section 2.5. If the defendant does not personally appear in the Law and Order office and accept service of the Notice together with a copy of the Notice and Complaint, the Clerk shall furnish the original Notice together with a copy of the Notice and Complaint to the Indian Police who shall serve a copy of the Notice and Complaint upon each individual defendant by delivering a copy of the Notice and the Complaint to him per-
personally or by leaving the copies thereof at his dwelling house or usual place of abode with some person over the age of 18 years then residing therein. The officer serving the copy of the Complaint and Notice of hearing shall then make proof of service upon the original Notice and pursuant to the provisions of Chapter II, Civil Procedure Section 2.5 Proof of Service.

Section 2.5 Proof of Service

The clerk or the officer serving a copy of the Complaint and Notice of hearing upon a defendant, shall upon making service, sign a verified statement on the back of the original Notice that they personally served a copy of the Complaint and Notice upon the named defendant and shall indicate the time and date of service. The clerk or officer shall then affix their signature to the statement.

Ute Tribe

Rule 2. Commencement of Action; Service of Process.

a) Commencement of Action. A civil action is commenced by filing a complaint and serving a copy of such on the defendant or defendants as provided herein. The court shall have jurisdiction from such time as both the complaint is filed and properly served upon the defendant and a return of service is filed with the clerk.

b) Service of Process. Service of process shall consist of delivering to the party served a copy of the complaint along with a summons, which need not be issued by the judge or clerk, which advises the defendant that he is required to answer the complaint within 20 days or a default judgment will be entered against him.

1) The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the clerk.

2) Service may be made on a party by delivering the required papers to the party himself or upon some person of suitable age and discretion over 14 years old at the party's home or principal place of business, or on an officer, managing agent or employee, or partner of a non-individual party.

3) Service by publication may be made upon order of the court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once per week for four weeks and by leaving an extra copy of the complaint or paper with the court for the party.

4) Service may be made by any law enforcement officer or other person, not a party, 18 years of age or older.

5) Service upon a person otherwise subject to the jurisdiction of the Ute Indian Tribal Court may be made anywhere in the United States; otherwise, service shall be made within the exterior boundaries of the Reservation.

6) If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.