

**§ 935.90**

fee, but shall nevertheless be subject to subpoena like any other person.

**Subpart J—Civil Actions**

**§ 935.90 General.**

(a) The Federal Rules of Civil Procedure (28 U.S.C.) apply to civil actions in the Court to the extent the presiding Judge considers them applicable under the circumstances.

(b) There is one form of action called the "Civil Action."

(c) Except as otherwise provided for in this part, there is no trial by jury.

(d) A civil action begins with the filing of a complaint with the Court. The form of the complaint is as follows except as it may be modified to conform as appropriate to the particular action:

IN THE WAKE ISLAND COURT  
[Civil Action No. \_\_\_\_\_]  
\_\_\_\_\_  
(Plaintiff) vs. \_\_\_\_\_,  
\_\_\_\_\_  
(Defendant)

**Complaint**

\_\_\_\_\_ plaintiff alleges that the defendant is indebted to plaintiff in the sum of \$\_\_\_\_; that plaintiff has demanded payment of said sum; that defendant has refused to pay; that defendant resides at \_\_\_\_\_ on Wake Island; that plaintiff resides at \_\_\_\_\_.

**§ 935.91 Summons.**

Upon the filing of a complaint, a Judge or Clerk of the Court shall issue a summons in the following form and deliver it for service to a peace officer or other person specifically designated by the Court to serve it:

IN THE WAKE ISLAND COURT  
[Civil Action No. \_\_\_\_\_]  
\_\_\_\_\_  
(Plaintiff), vs. \_\_\_\_\_  
\_\_\_\_\_  
(Defendant)

**Summons**

To the above-named defendant:  
You are hereby directed to appear and answer the attached cause at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ 20—, at \_\_\_\_\_ -M. and to have with you all books, papers, and witnesses needed by you to establish any defense you have to said claim.

You are further notified that in case you do not appear, judgment will be given against you, for the amount of said claim, together with cost of this suit and the service of this order.

**32 CFR Ch. VII (7–1–14 Edition)**

Dated: \_\_\_\_\_, 20 \_\_\_\_\_. (Clerk, Wake Island Court) \_\_\_\_\_

**§ 935.92 Service of complaint.**

(a) A peace officer or other person designated by the Court to make service shall serve the summons and a copy of the complaint at Wake Island upon the defendant personally, or by leaving them at his usual place of abode with any adult residing or employed there.

(b) In the case of a corporation, partnership, joint stock company, trading association, or other unincorporated association, service may be made at Wake Island by delivering a copy of the summons and complaint to any of its officers, a managing or general agent, or any other agent authorized by appointment or by law to receive service.

**§ 935.93 Delivery of summons to plaintiff.**

The Clerk of the Court shall promptly provide a copy of the summons to the plaintiff, together with notice that if the plaintiff fails to appear at the Court at the time set for the trial, the case will be dismissed. The trial shall be set at a date that will allow each party at least 7 days, after the pleadings are closed, to prepare.

**§ 935.94 Answer.**

(a) The defendant may, at his election, file an answer to the complaint.

(b) The defendant may file a counterclaim, setoff, or any reasonable affirmative defense.

(c) If the defendant elects to file a counterclaim, setoff, or affirmative defense, the Court shall promptly send a copy of it to the plaintiff.

**§ 935.95 Proceedings; record; judgment.**

(a) The presiding Judge is responsible for the making of an appropriate record of each civil action.

(b) All persons shall give their testimony under oath or affirmation. The Chief Judge shall prescribe the oath and affirmation that may be administered by any Judge or the Clerk of the Court.

(c) Each party may present witnesses and other forms of evidence. In addition, the presiding Judge may informally investigate any controversy, in

or out of the Court, if the evidence obtained as a result is adequately disclosed to all parties. Witnesses, books, papers, documents, or other objects may be subpoenaed as provided for in § 935.80 for criminal cases.

(d) The Court may issue its judgment in writing or orally from the bench. However, if an appeal is taken from the judgment, the presiding Judge shall, within 10 days after it is filed, file a memorandum of decision as a part of the record. The Judge shall place in the memorandum findings of fact, conclusions of law, and any comments that he considers will be helpful to a thorough understanding and just determination of the case on appeal.

#### § 935.96 Execution of judgment.

(a) If, after 60 days after the date of entry of judgment (or such other period as the Court may prescribe), the judgment debtor has not satisfied the judgment, the judgment creditor may apply to the Court for grant of execution on the property of the judgment debtor.

(b) Upon a writ issued by the Court, any peace officer may levy execution on any property of the judgment debtor except—

(1) His wearing apparel up to a total of \$300 in value;

(2) His beds, bedding, household furniture and furnishings, stove, and cooking utensils, up to a total of \$300 in value; and

(3) Mechanics tools and implements of the debtor's trade up to a total of \$200 in value.

(c) Within 60 days after levy of execution, a peace officer shall sell the seized property at public sale and shall pay the proceeds to the Clerk of the Court. The Clerk shall apply the proceeds as follows:

(1) First, to the reasonable costs of execution and sale and court costs.

(2) Second, to the judgment.

(3) Third, the residue (if any) to the debtor.

(d) In any case in which property has been seized under a writ of execution, but not yet sold, the property seized shall be released upon payment of the judgment, court costs, and the costs of execution.

#### § 935.97 Garnishment.

(a) If a judgment debtor fails to satisfy a judgment in full within 60 days after the entry of judgment (or such other period as the Court may prescribe), the Court may, upon the application of the judgment creditor issue a writ of garnishment directed to any person having money or property in his possession belonging to the judgment debtor or owing money to the judgment debtor. The following are exempt from judgment:

(1) Ninety percent of so much of the gross wages as does not exceed \$200 due to the judgment debtor from his employer.

(2) Eighty percent of so much of the gross wages as exceeds \$200 but does not exceed \$500 due to the judgment debtor from his employer.

(3) Fifty percent of so much of the gross wages as exceeds \$500 due to the judgment debtor from his employer.

(b) The writ of garnishment shall be served on the judgment debtor and the garnishee and shall direct the garnishee to pay or deliver from the money or property owing to the judgment debtor such money or property as the Court may prescribe.

(c) The garnished amount shall be paid to the Clerk of the Court, who shall apply it as follows:

(1) First, to satisfy the costs of garnishment and court costs.

(2) Second, to satisfy the judgment.

(3) Third, the residue (if any) to the judgment debtor.

(d) Funds of the debtor held by the United States are not subject to garnishment.

### Subpart K—Criminal Actions

#### § 935.100 Bail.

(a) A person who is arrested on Wake Island for any violation of this part is entitled to be released on bail in an amount set by a Judge or Clerk of the Court, which may not exceed the maximum fine for the offense charged. If the defendant fails to appear for arraignment, trial or sentence, or otherwise breaches any condition of bail, the Court may direct a forfeiture of the whole or part of the bail and may on motion after notice to the surety or